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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC21–0026; SC21–930–1 FR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Changes to Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Cherry Industry Administrative Board to revise the reporting requirements prescribed under the Federal marketing order regulating the handling of tart cherries. This action modifies reporting requirements to include the information necessary to determine the portion of total inventory that is greater than five years old.

DATES: Effective January 20, 2022.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Region Office, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, or Email: *Jennie.Varela@usda.gov* or *Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 930, (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Part 930 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Cherry Industry Administrative Board (Board or CIAB) locally administers the Order and is comprised of producers and handlers of tart cherries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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

This action revises the reporting requirements to include the sales and inventory information necessary to segregate between inventory that is five years old and inventory that is less than five years old. This modification will allow the industry to better estimate how much inventory on-hand is still marketable and help ensure relevant inventory information is available when considering volume restrictions. This action was unanimously recommended by the Board at its February 25, 2021 meeting.

Section 930.70 of the Order provides, in part, authority to require handlers to submit reports of inventory. Section 930.70 further provides, with the approval of the Secretary, authority for the Board to collect other such information from handlers as needed to perform its duties. This rule utilizes this authority to establish a new § 930.170 under the rules and regulations of the Order. This new section codifies existing inventory reporting requirements and requires handlers of tart cherries to annually report inventory that exceeds five years of age.

During Board meetings held on June 25, 2020 and January 14, 2021, the Board received industry's feedback about enhancing tart cherry inventory transparency and developing a clearer understanding of the age of product in inventory. In these discussions, several members expressed concern that some of the inventory currently being reported may be product beyond its saleable date, which could create a misleading view of the actual amount of tart cherries available for market.

Currently, handlers submit inventory reports four times per year for the

reporting periods ending November 30, February 28, May 31, and June 30, with reports for those periods due on December 10, March 10, June 10, and July 10, respectively. This information is submitted on CIAB Form 3 (Sales/Inventory Report) as previously approved by OMB and assigned OMB No. 0581–0177. The report includes information on the type, form, and the amount of product, but does not include data regarding the age of the products in inventory. The Board agreed the existing reporting requirements may limit their knowledge of the industry's on-hand tart cherry inventory and formed a subcommittee to review the inventory reporting requirements.

The Board reviewed the subcommittee findings at the January 14, 2021, meeting, and expressed support for the subcommittee's recommendation to adjust reporting requirements to account for inventory greater than five years old. The Board noted a five-year inventory cutoff date was appropriate because this period would sufficiently accommodate the lifespans of nearly all existing products likely to be inventoried. Board members agreed having this additional information regarding the age of inventory would be beneficial.

The Order includes the authority for establishing volume regulation, and one element considered during those discussions is the amount of tart cherries available in inventory. The regulated season runs from July 1 through June 30. The current reporting aggregates the industry's inventory data and does not separately track older inventory, and this compilation could provide an incomplete view of the industry's marketable inventory. By segregating the accounting of inventory older than five years, the Board would have more precise information regarding inventory when discussing market issues.

As part of their discussions, the Board also provided clarifying information on how to calculate inventory age for reporting purposes. To determine product age, the date used would either be the date of harvest and processing or date of remanufacturing. Board members emphasized the starting point for calculating inventory age would be reset if the inventory were remanufactured into a new product.

For example, if a handler was completing their routine inventory report on May 31, 2021, any tart cherries harvested in 2014 or earlier would be considered over five years old. Although cherries harvested in 2014 would be considered part of the 2014–15 harvest year, based on the date they were harvested and processed, they would be greater than five years old for reporting purposes by the end of May 2021. If the cherries harvested in 2014 were remanufactured into another product, the date of remanufacturing would become the date used for calculating the age for inventory purposes. The Board stated this is the same dating procedure as used for calculating the age of cherries held in reserve under volume regulation. Using these dates, inventory older than five years would be reported each May on the modified report.

Several members commented the age of inventory is already recorded by handlers as part of their normal business activities, and as a result, this requirement would not be overly burdensome. Members further expressed the separate reporting of inventory over five years old would at most require a few extra minutes of a handler's time and would only be required once annually.

Consequently, the Board voted to add a section to the inventory report to include the total volume of inventory over five years old. The Board recommended including this information on the inventory report for the reporting period ending May 31 due on June 10. The Board agreed this was the appropriate time to have the information available as this report would be used to develop the industry inventory data when the Board meets in June to consider the need to establish a volume control recommendation for the coming season.

This rule adds sales and inventory report requirements to the administrative provisions under the Order and requires handlers to report inventory older than five years. These reporting requirements will be added in a new § 930.170 and will include information on the handler submitting the form; the reporting period; beginning inventory for each product; the amount packed for each product; sales; information on transfers of product between handlers, including the name of the selling handler, name of the receiving handler, and form type, number of units; information on product repacked or remanufactured during the reporting period, including the form and number of units of source products and the form and number of units of end products; and information on the amount of ending inventory for each product, including the amount of ending inventory for each product over five years old. Only the May 31 report will require handlers to record the amount of inventory over five years old.

This information will support the industry's ability to make marketing decisions by providing more descriptive information than currently available when evaluating the need for volume regulation. Besides providing important information for industry reports regarding sales and inventory, this action will also help ensure compliance with this reporting requirement by including it in the rules and regulations under the Order.

Final Regulatory Flexibility Analysis

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

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

There are approximately 450 producers of tart cherries in the regulated area and approximately 40 handlers who are subject to the Order. Small agricultural growers are defined by the Small Business Administration (SBA) as those having annual receipts less than $1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to information from the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries during the 2019–20 season was approximately $0.15 per pound. With total utilization at 236.34 million pounds, the total 2019–20 crop value is estimated at $35.45 million (236.34 million pounds times $0.15). Dividing the crop value by the estimated number of producers (450) yields an estimated average receipt per producer of $78,778. This is well below the SBA threshold for small producers.

A free on board (FOB) price of $0.82 per pound for processed tart cherries was derived from USDA's 2020 purchases of dried tart cherries at an average price of $4.11 per pound. The dried cherry price was converted to a raw product equivalent price at an industry recognized ratio of five to one. Based on utilization, this price represents a good estimate of the price for processed cherries. Multiplying this FOB price ($0.82) by total utilization of 236.34 million pounds results in an estimated handler-level tart cherry value

of $193.8 million. Dividing this figure by the number of handlers (40) yields estimated average annual handler receipts of $4.85 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This final rule adds the sales and inventory report requirements to the administrative provisions under the Order and will require handlers to report inventory older than five years. This rule establishes a new § 930.170 under the rules and regulations of the Order. The authority for this action is provided in § 930.70 of the Order.

AMS anticipates that this final rule will impose minimal, if any, additional costs on handlers or growers, regardless of their size. This action will impose a small increase in the reporting burden for each tart cherry handler. However, because handlers currently maintain data about the age of their inventory in the regular course of business, they should be able to readily access this information. Consequently, any additional costs associated with this change should be minimal (not significant) and apply equally to all handlers.

This action should also benefit the entire industry by providing more precise information on tart cherry product in inventory. This information will provide accurate information regarding available inventory and help with marketing and planning for the industry. Further, having these requirements codified under the rules and regulations would also benefit compliance enforcement of this reporting requirement. The benefits of this rule are expected to be equally available to all tart cherry growers and handlers, regardless of their size.

The Board discussed other alternatives to this action, including reporting inventory older than three years for the purposes of classifying the age of inventory, reporting the age of inventory quarterly, and leaving the current reporting requirements unchanged. When discussing the alternatives, the Board concluded a three-year timeframe would not sufficiently cover the normal lifespan of all products held in inventory. The Board also commented that quarterly reporting of older inventory was unnecessary because this information would be most useful at the end of the season, prior to making annual volume restriction recommendations. Therefore, the alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. This final rule will require changes to the Board's existing CIAB Form 3. However, the changes are minor and the currently approved burden for the form will be minimally increased by the changes. The revised form has been submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Further, the Board's meetings are widely publicized throughout the tart cherry industry. The meetings are public and virtual or in a hybrid style with participants having a choice whether to attend in person or virtually. All interested persons are invited to attend the meetings and participate in Board deliberations on all issues. The Board's meetings on June 25, 2020, January 14, 2021, and February 25, 2021, were each conducted via videoconference. All entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 13, 2021 (86 FR 44647). Copies of the proposed rule were sent via email to Board members and known tart cherry handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 13, 2021 was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the proposed rule.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add § 930.170 to read as follows:

§ 930.170 Sales and inventory report.

(a) Handlers shall submit to the Board a sales and inventory report for the reporting period ending November 30, February 28, May 31, and June 30 of each crop year. Handlers shall file such reports by the tenth day of the month following the reporting period, December 10, March 10, June 10, and July 10, respectively. Should the filing due date fall on a Saturday, Sunday, or federal holiday, reports are due by the first business day following the due date. Such reports shall be reported to the Board on CIAB Form 3 and include:

(1) The name, address, telephone number, and identifying number of the handler;

(2) The reporting period covered by the report;

(3) The form, type, and unit size for each product;

(4) The total beginning of year inventory for each product;

(5) The packed amount for each product;

(6) Total inter-handler transfers, and total volume repackaged or remanufactured for each product, year-to-date;

(7) Total sales outside the industry for each product, year-to-date;

(8) The amount of ending inventory for each product, year-to-date;

(9) List of inter-handler transfers, both in and out, during the reporting period including:

(i) Name of the selling handler;

(ii) Name of the receiving handler; and

(iii) Form, type, number of units.

(10) List of repacks and remanufactures during the reporting period including:

(i) Form, type, and number of units of source products; and

(ii) Form, type, and number of units of end products.

(b) The amount of inventory for each product over 5 years old shall be reported annually on the sales and inventory report for the reporting period ending May 31. Product age is based on the crop year in which the current product was processed or remanufactured.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–27579 Filed 12–20–21; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[Document Number AMS–SC–20–0100]

Peanut Promotion, Research, and Information Order; Increase the Threshold of the Primary Peanut-Producing States and Adjustment of Membership

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

ACTION: Final rule.

SUMMARY: This rule changes the threshold for defining primary peanut-producing states as states that maintain a 3-year average production of at least 20,000 tons of peanuts, instead of 10,000 tons of peanuts as currently prescribed in the Peanut Promotion, Research, and Information Order (Order). The Order is administered by the National Peanut Board (Board) with oversight by the U.S. Department of Agriculture (USDA). As a result of increasing the threshold, the Board's membership will decrease from 13 to 12 members and their respective alternates. This change will contribute to effective administration of the program.

DATES: Effective January 20, 2022.

FOR FURTHER INFORMATION CONTACT: Victoria M. Carpenter, Marketing Specialist, Mid Atlantic Branch, Market Development Division, Specialty Crops Program, AMS, USDA, Stop 0244, 1400 Independence Avenue SW, Room 1406–S, Washington, DC 20250–0244; Telephone: (202) 720–6930; or Email: *VictoriaM.Carpenter@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Order (7 CFR part 1216). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This action has been reviewed in accordance with requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The Agricultural Marketing Service (AMS) has assessed the impact of this rule on Indian tribes and determined that this rule will not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about changes to regulations were shared during a recent quarterly call, and tribal leaders were informed about the revisions to the regulation and had the opportunity to submit comments. AMS will continue to work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to this change to the Order.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

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

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule will increase the threshold for defining primary peanut-producing states as states that maintain a 3-year average production of at least 20,000 tons of peanuts, instead of 10,000 tons of peanuts as currently prescribed in the Order. This will help ensure that the Board reflects the peanut production in the United States. The Order is administered by the Board with oversight by USDA.

The Order became effective on July 30, 1999. Under the Order, the Board administers a nationally coordinated program of promotion, research and information designed to strengthen the position of peanuts in the marketplace and to develop, maintain, and expand the demand for peanuts in the United States. Under the program, assessments are levied on all farmers' stock peanuts sold at a rate of $3.55 per ton for Segregation 1 peanuts, and $1.25 per ton for Segregation 2 peanuts and 3 peanuts, as those terms are defined in 7 CFR 996.13(b) through (d). Assessments are remitted to the Board by handlers and, for peanuts under loan, by the Commodity Credit Corporation.

The Order defines the terms ''minor peanut-producing states'' and ''primary peanut-producing states'' for purposes of Board representation and voting at meetings. According to USDA, Federal-State Inspection Service, National Peanut Tonnage Reports, there are 13 peanut-producing states, which include: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma,

South Carolina, Texas, and Virginia. Section 1216.21 currently defines primary peanut-producing states as Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia. These states must maintain a 3-year average production of at least 10,000 tons of peanuts to meet the current definition. All other peanut-producing states are defined as minor peanut-producing states in § 1216.15 and are represented by one member and one alternate on the Board—currently only Louisiana meets this definition.

With the growth in farm size, there are fewer and larger peanut producers than when the Order was promulgated in 1999. As stated above, currently, there is only one state, Louisiana, that represents the minor peanut-producing states, which is the at-large position on the Board. This makes it difficult to get adequate numbers of nominees to fill both member and alternate member seats on the Board. By increasing the threshold for defining primary peanut-producing states to states that maintain a 3-year average production of at least 20,000 tons instead of 10,000 tons of peanuts as currently prescribed, this action will increase the candidate pool for at-large member seats on the Board.

Pursuant to § 1216.87, amendments to the Order may be proposed from time to time by the Board or by any interested person affected by provisions of the 1996 Act, including the Secretary of Agriculture.

For several years, the Board has been concerned about having enough nominees to fill vacant seats and was hopeful that the situation would improve. The Board staff has actively recruited candidates to be considered for nomination from multiple primary peanut-producing states and the at-large state, sometimes with little success. Due to an alternate member vacancy for New Mexico and difficulty finding producers to serve, the Board determined it was time to increase the 3-year average.

The Board discussed increasing the threshold with the industry to explain the situation, and determined that increasing the threshold for defining primary peanut-producing states was a good way to give the peanut producing states an opportunity to be nominated for a member or alternate seat on the Board.

Board Recommendation

The Board met to discuss methods to increase the pool of candidates for representation of the minor peanut-producing states to serve on the Board. At the time of the Board's formation in July 1999 (64 FR 41252), peanut farms were smaller, and therefore, there were many more producers eligible to be nominated to serve on the Board. In April 1999, USDA reported there were approximately 25,000 peanut producers (64 FR 80107). Based on the Board's records, for the 2018 production crop year, there were 8,126 peanut producers and for the 2019 crop year, there were 7,200 peanut producers.

Currently, in minor peanut-producing states the pool of candidates is very small, with Louisiana being the only state in this category. The Board has had difficulty in gathering the required two nominees for each open position for submission to the Secretary of Agriculture.

The Board has been concerned about this issue for several years and was hopeful that the situation would improve. For approximately 10 years, the Board's management has actively recruited candidates to be considered for nomination from multiple primary and minor peanut-producing states to fill seats on the Board. In the 2020 submission to the Secretary for appointments to fill member and alternate seats for New Mexico, only two nominees were submitted for consideration instead of four. Therefore, only the member seat was filled, and the alternate seat remains vacant. In addition, since there is currently only one state (Louisiana) representing minor peanut-producing states, it is often difficult to get a sufficient number of nominees to fill member and alternate positions as well. These nominees are comprised of producers of all sizes including small producers.

In 1999, the Board was comprised of 10 members and their alternates. The Board's representation for primary peanut-producing states were Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia and minor peanut-producing states were represented by a Louisiana member and an Arizona alternate member. Over the years, there have been three adjustments of membership, which increased the size of the Board's membership. On July 9, 2008, the Board increased its membership from 10 to 11 when it added Mississippi as a primary peanut-producing state (73 FR 39214). On March 21, 2014, the Board increased its membership a second time from 11 to 12 when it added Arkansas as a primary peanut-producing state (79 FR 15636). The most recent change in the Board's membership was the addition of Missouri, which was published on March 23, 2020 (85 FR 16229). That addition increased the membership from 12 to 13.

For the 2019 production year, computations based on Federal State Inspection Service data show that Georgia was the largest producer, with 49.8 percent followed by Florida (10.7 percent), Alabama (9.4 percent), Texas (8.7 percent), North Carolina (8.1 percent), South Carolina (4.1 percent), Arkansas (3.1 percent), Virginia (2.0 percent), Mississippi (1.4 percent), Missouri (1.2 percent), Oklahoma (1.0 percent), and New Mexico (0.3 percent). Currently, these 12 states are considered primary peanut-producing states and they each have a member, with their alternate, seated on the Board. All other states (minor peanut-producing states) that produce peanuts are represented by the at-large member.

There is currently only one minor peanut-producing state (Louisiana) representing ''at-large'' seats. That minor peanut-producing state has only five producers producing peanuts in that state. Increasing the threshold from 10,000 tons to 20,000 tons will cause the state of New Mexico to become a minor peanut-producing state instead of a primary peanut-producing state. This change will increase the pool of candidates eligible to represent minor peanut-producing states as the at-large member and alternate. Minor peanut-producing states will be represented by Louisiana and New Mexico. This rule will increase the threshold for defining primary peanut-producing states as states that maintain a 3-year average production of at least 20,000 tons of peanuts instead of 10,000 tons of peanuts, an increase of 10,000 tons.

The intent of the Order is to allow peanut farmers to oversee a peanut research, marketing, and promotion organization to improve their economic condition. To be successful, there must be an adequate pool of interested, qualified producers to serve on the Board. The Board voted unanimously on December 3, 2020, and February 3, 2021, to raise the threshold for primary peanut-producing states to those that maintain a 3-year average production of at least 20,000 tons of peanuts. This rule will cause the state of New Mexico to become a minor peanut-producing state instead of a primary peanut-producing state, since its production will be below the proposed 20,000-ton threshold. Minor peanut-producing states will be represented by Louisiana and New Mexico. The Board recommended that the change take place by January 1, 2022, to give New Mexico's certified peanut producer organization enough notice of their status change to a minor peanut-producing state. Nominations to

fill the at-large seats will take place during the next nomination cycle.

Accordingly, this rule will amend §§ 1216.15 and 1216.21 to define the state of New Mexico as a minor peanut-producing state. This rule will require primary peanut-producing states to maintain a 3-year average production of at least 20,000 tons of peanuts. This rule will also revise § 1216.40(a) to specify that the Board will be comprised of no more than 12 peanut producer members and their alternates rather than 13, and revise § 1216.40(a)(1) to reflect the new number of primary peanut-producing states, by revising 12 to 11.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the final rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $1 million and small agricultural service firms (handlers) as those having annual receipts of no more than $30 million.

According to the Board, there were approximately 7,200 producers and 34 handlers of peanuts who were subject to the program in 2019.

Most producers would be classified as small agricultural production businesses under the criteria established by the SBA (no more than $1 million in annual peanut sales). USDA's National Agricultural Statistics Service (NASS) reported that crop values of peanuts produced in the top 11 peanut-producing states for the years 2017, 2018, and 2019 were $1.63 billion, $1.17 billion, and $1.13 billion, respectively. The 3-year crop average was $1.31 billion. With a 2019 crop value of $1.13 billion and a total of 7,200 producers, average peanut sales per producer were approximately $157,000. With a 2017–2018 average crop value of $1.31 billion, average sales per producer were approximately $182,000. Both figures are well below the $1 million threshold for a small producer, providing strong evidence that most peanut producers are small businesses.

With 34 handlers, the average annual peanut crop value per handler from 2017 to 2019 ranged from $33 million to $48 million, with a 3-year average of $39 million. With average sales figures moderately higher than the small business threshold size of $30 million, it appears that several handlers are small businesses and there are also a number that are large businesses—no definitive statement can be made.

According to NASS, the number of pounds of U.S. peanut production from 11-primary peanut-producing states for 2017, 2018, and 2019 were 7.12 billion, 5.50 billion and 5.47 billion, respectively. The 3-year average production was 6.03 billion pounds. Computations based on NASS data show that Georgia was the largest producer, with 50.9 percent of the 3-year average quantity, followed by Alabama (9.9 percent), Florida (9.9 percent), Texas (9.1 percent), North Carolina (7.2 percent), South Carolina (5.4 percent), Arkansas (2.4 percent), Mississippi (1.9 percent), Virginia (1.8 percent), Oklahoma (1.0 percent), and New Mexico (under one percent).

This action will amend §§ 1216.15, 1216.21, and 1216.40 to redefine the state of New Mexico from a primary peanut-producing state to a minor peanut-producing state. The Order is administered by the Board with oversight by USDA. Under the Order, primary peanut-producing states must maintain a 3-year average production of at least 10,000 tons of peanuts. This action will increase the production threshold to 20,000 tons of peanuts. This action will expand the number of minor peanut-producing states to ensure that the Board obtains an adequate pool of qualified producers to serve on the Board to represent minor peanut-producing states. This action is authorized under § 1216.87 of the Order.

Regarding the economic impact of this final rule on affected entities, this action will impose no costs on producers or handlers. Changes will define the state of New Mexico as a minor peanut-producing state based on the proposed increase to the threshold to 20,000 tons of peanuts.

Regarding alternatives, the Board has been concerned about obtaining the required two nominees for each open seat to be submitted to the Secretary of Agriculture for primary peanut-producing states and minor peanut-producing states. For years, the Board's staff has actively recruited candidates to be considered for nomination from multiple primary peanut-producing states and minor peanut-producing states, sometimes with little success. The Board considered increasing the threshold for primary peanut-producing states from 10,000 to 30,000 per ton for a 3-year production average. After discussion, the Board voted to double the threshold and require the primary peanut-producing states to maintain a 3-year production average of at least 20,000 tons of peanuts.

In accordance with OMB regulation [5 CFR part 1320], which implements information collection requirements imposed by the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule. In fact, a decrease of 0.30 hours in the information collection burden for the peanut program is expected. Information collection requirements have been previously approved by OMB under OMB control number 0581–0093 and 0505–0001.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Regarding outreach efforts, the Board invited Executive Directors of certified peanut producer organizations who represent the primary peanut-producing states (Georgia, Alabama, Texas, Florida, North Carolina, South Carolina, Mississippi, Missouri, Arkansas, Virginia, Oklahoma, and New Mexico) to attend its annual meeting on February 3, 2021. Most of the Executive Directors for certified peanut producer organizations attended this meeting. All the Board's meetings are open to the public and interested persons are invited to participate and express their views. The Board announced that it voted to increase the threshold level from 10,000 to 20,000 per ton on a 3-year average production for a state to become a primary peanut-producing state. No concerns were raised.

A 30-day comment period was provided to allow interested persons to respond to the proposal which was published in the **Federal Register** on August 27, 2021 [86 FR 48046]. Copies of the rule were made available through the internet by the Department and the Office of the Federal Register. The comment period ended September 27, 2021.

Analysis of Comments

Three comments were received in response to the proposed rule. Two

comments were received that were determined to be immaterial to the topic.

One commenter questioned if one state, Georgia, produces half of the peanuts in the United States, why do they have a disproportionate say in the promotion of peanuts on the Board? Shouldn't we be amending the Board to better represent the actual production of peanuts in the U.S., instead of assisting the 32 states who barely number more than 1% production?

Research and promotion programs are well established as a way for producers, importers, handlers, and any other industry member to raise funds for generic product promotion of a commodity. The Board was established consisting of producers from peanut-producing States. The Secretary of Agriculture appoints members to the Board from nominees submitted by the industry according to regulations in its Order.

Membership on the Board allows for one member and one alternate from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state. Minor peanut-producing states collectively have one at-large member and one alternate, who are producers, appointed from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership. Georgia is currently represented by a member and alternate on the Board. Accordingly, no changes were made to the rule as proposed, based on the comments received.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board, the comments received, and other available information, AMS finds that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Agricultural research, Information, Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, Agricultural Marketing Service amends 7 CFR part 1216 as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1216 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 2. Section 1216.15 is revised to read as follows:

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

■ 3. Section 1216.21 is revised to read as follows:

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Arkansas, Florida, Georgia, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain a 3-year average production of at least 20,000 tons of peanuts.

■ 4. In § 1216.40, paragraphs (a) introductory text and (a)(1) are revised to read as follows:

§ 1216.40 Establishment and membership.

(a) *Establishment of a National Peanut Board.* There is hereby established a National Peanut Board, hereinafter called the Board, comprised of no more than 12 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) *Eleven members and alternates.* One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–27513 Filed 12–20–21; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4274

[Docket No. RBS–20–BUSINESS–0032]

RIN 0570–AA99

Intermediary Relending Program (IRP) Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBCS), (Agency), is completing a revision to the Intermediary Relending Program (IRP) regulations to streamline process, provide clarity on the daily administration of the program, and incorporate program updates. The regulatory cleanup incorporates the program statutory requirements established in the Agriculture Improvement Act of 2018 (Farm Bill).

DATES: This final rule is effective December 21, 2021.

FOR FURTHER INFORMATION CONTACT: Sami Zarour, Supervisory Business Loan and Grant Analyst, Program Management Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3226, 1400 Independence Avenue SW, Washington, DC 20250–3226; email: *Sami.Zarour@usda.gov;* telephone (202) 720–1400.

SUPPLEMENTARY INFORMATION:

I. Background

The Intermediary Relending Program (IRP), originally enacted under 42 U.S.C. 9812 and currently authorized at 7 U.S.C. 1936b, authorizes the Secretary to make or guarantee low-interest loans to local intermediaries to relend funds to businesses to improve economic conditions and create jobs in rural communities. The purpose of the IRP is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities, through financing targeted towards smaller and emerging businesses, in partnership with other public and private resources, and in accordance with State and regional strategy, based on identified community needs. This purpose is achieved through loans made to intermediaries that provide loans to ultimate recipients to promote community development, establish new businesses, establish and support microlending programs and create or retain employment opportunities in predominantly rural areas. The

regulations set forth the criteria the Agency uses via a point system to determine an eligible applicant's priority for available loan funds.

Since the enactment of the authorizing legislation, the passage of the Agriculture Improvement Act of 2018 (Farm Bill) has necessitated specific changes to this regulation. The Agency is also, through this rulemaking, improving processes, streamlining requirements, and providing clarity to daily administration of the program.

II. Summary of Changes

Farm Bill Specific Updates

The Farm Bill resulted in specific modifications to three topics: Limitation on loan amounts, evaluation, and return of equity (42 U.S.C. 9812).

The limitation on loan amounts for ultimate recipient projects, including unpaid balance of any existing loans, is modified to allow a maximum loan to an ultimate recipient in the lesser of $400,000 or 50 percent of the loan to the intermediary. In assigning priorities to applications, the Agency now requires an eligible entity to demonstrate that it has a governing or advisory board made up of business, civic and community leaders who are representative of the communities of the service area, without limitation to the size of the service area. Prior versions of the IRP limited intermediary service areas to no more than 14 counties in order to receive points under this criterion. The Agency eliminated the reference to the 14-county service area to be consistent with the Farm Bill provision.

The Agency establishes a schedule that is consistent with the amortization schedules of the portfolio of loans made or guaranteed under the general requirements of the IRP, for the return of any equity contribution made under the program by an eligible entity that is current on all principal and interest payments and in compliance with the loan covenants. An intermediary with an IRP loan(s) where the cash portion of the IRP revolving loan fund includes fees, principal and interest payments received from the ultimate recipients and is not composed of any original Agency IRP loan funds may request a partial or full return of its contributed equity under the conditions outlined in the subpart: (1) The intermediary is current in all payments to the Agency and in compliance with all elements of their loan agreement and Agency reporting requirements; (2) the ratio of intermediary equity to the Agency loan after the return of equity remains consistent with the initial equity injection percentage by the intermediary; and (3) any return of an intermediary's equity from the revolving loan fund must be approved by the Agency in writing and is also limited to an amount that the Agency determines will not cause additional credit risk to the revolving loan fund.

Across the Regulation Updates

The entire regulation was updated to make it easier to understand and more streamlined. Throughout this document, the Farm Bill changes are enacted, and minor edits were made that were not intended to change the meaning of the regulation, just to make it clearer, provide more clarification to the public, streamline the regulation, and make it easier for the public to understand. This includes deleting repetitive, unnecessary phrases; breaking up confusing, long sentences and paragraphs into small segments to be more easily understood; and re-organizing the document to make it flow and read more cleanly. This was done throughout the whole regulation.

Introduction (§ 4274.301)

The changes in this regulation revision include an introductory section for loans made by the Agency to eligible intermediaries. This applies to borrowers, ultimate recipients, and other involved parties. Any complete applications that have been received but not funded, or funded applications where the loan has not yet been closed by the effective date of this regulation, will be processed under these new requirements. An intermediary borrower may use the Agency-prescribed self-election template for the Intermediary Relending Program (IRP), to have its existing loans (projects already approved and closed) and any loans approved under the previous regulation but not yet closed processed under these provisions. Other edits in this section were made to provide necessary clarification.

Definitions (§ 4274.302)

The Definitions section, § 4274.302, has been updated for a variety of reasons, including to be consistent with the Farm Bill, other Agency regulations, and provide needed clarity.

Administrator has been added to be consistent with other Agency regulations. *Agency* has been edited to be consistent with other Agency regulations. *Affiliate* has been updated and expanded to be consistent with other Agency regulations, specifically the OneRD Guarantee Loan Initiative, and clarify factors that will be used in determining whether affiliation exists. *Agency IRP loan* was added to distinguish between Agency loans and the existing term *Agency IRP loan funds* and also to distinguish the Agency's loan from an Intermediary's loan to an ultimate recipient. *Agricultural production* was changed to be consistent with other Agency regulations, specifically the OneRD Guarantee Loan Initiative. *Aquaculture* was added to the regulation to be consistent with other Agency programs, and to match the Value-Added Producer Grants definition. *Citizenship* has been changed to '*Citizen*' to simplify the definition. *Community development* was added to add context to references relating to program purpose and scoring. The Farm Bill clearly indicates it is an eligible purpose, so this was added for clarity. *Conflict of interest* was updated for consistency with other Agency programs and to add context to its reference in other parts of the regulation. *Cooperative* was added to eliminate confusion and establish consistency in its application when determining eligibility of applicable entities. *Hydroponics* was added to define it as an eligible use of funds and to distinguish it from agriculture production. This has been found to be a popular trend in the country and warranted some clarification. *Immediate family* was added to provide readers a list of relationships that constitute immediate family members to assist in determining if a conflict of interest exists when employing parties of an organization that may have a financial interest or tangible personal benefit in a business transaction. This definition is also consistent across other Business and Industry programs, and the OneRD Guarantee Loan Initiative program. *Indian tribe* was added to eliminate confusion and establish consistency in its application when determining eligibility of applicable entities. *Intermediary* was changed to add the common purpose of recapitalizing a revolving loan fund. *Intermediary equity contribution* was added to provide context to the use of the term under priority scoring of projects. *IRP revolving loan fund* was updated to provide clarity regarding the creation of the fund and the segregation of the account from other funds. *Loan Agreement* was added to define it as a debt instrument that acts as an agreement between an intermediary borrower and the Agency setting forth terms and conditions of the Agency IRP Loan. *Military personnel* was added to provide clarification to the term for eligibility purposes and to codify information that was previously addressed through Administrative

Notices. *Public agency* was added to eliminate confusion and establish consistency in its application when determining eligibility of applicable entities. *Revolved funds* was updated for clarity. The term ''rural and rural area'' was updated to be consistent with the Farm Bill. This will eliminate confusion and ensure consistency in application of the term throughout the Agency field offices and users of the regulation. *Statewide nonmetropolitan median household income* was deleted as it is not used in the regulation. *Processing office or officer* was deleted because this term is no longer used in the regulation. *Technical assistance* was updated to provide additional information on what constitutes technical assistance and to whom the assistance is provided. *Underrepresented group* was updated to provide examples of common demographic characteristics. *Value-added agricultural product* was added to provide consistency to other Agency programs, specifically the OneRD Guarantee Loan Initiative. *Work plan* was added to define the information components as the document is a required part of a complete application. *Initial Agency IRP loan* and *Subsequent IRP loan* were removed from the definitions as their use was causing confusion and a misconception as it relates to revolved funds and continuing compliance with program regulations. Also, there has been confusion regarding the continuance of the Federal character of funds once the funds revolved and projects were no longer funded from the *Initial Agency IRP loan.*

The regulations repeated definitions throughout, and duplications were removed to avoid confusion. For example, § 4274.310(a) and (f) removed duplicate definitions of public agency, Indian Tribe, cooperative, and citizens. Section 4271.311(c) was also edited to avoid duplicating and confusing the definition of citizens.

Review or Appeal Rights (§ 4274.303, Formerly § 4274.373)

Discussion on Appeal Rights has been moved from the former § 4274.373 to § 4274.303. Section 4274.303 was previously a reserved section. A description was added to clarify what appeal and review rights intermediaries have with respect to adverse Agency decisions, in accordance with 7 CFR part 11.

Exception Authority (§ 4274.304, Formerly § 4274.381)

Discussion on Exception Authority was moved from the former § 4274.381 to § 4274.304. This section was revised to clarify that the Agency is authorized to exercise Exception Authority when use of such authority is in the best financial interest of the Federal Government and is not contrary to any applicable statutory authorities.

Other Regulatory Requirements (§ 4274.305, Formerly Reserved)

The current rule is being updated to incorporate specific requirements of the applicable Rural Development environmental regulation, 7 CFR part 1970, ''Environmental Policies and Procedures.'' In accordance with 7 CFR part 1970, intermediary lending is considered a Multi-Tier Action and all intermediaries must execute an Exhibit H to RD Instruction 1970–A, ''Multi-tier Action Environmental Compliance Agreement'' as part of their IRP application submitted to the Agency. In accordance with 7 CFR 1970.55, the intermediary must sign a certification that they have a National Environmental Policy Act (NEPA) staff capable of undertaking an environmental review that meets Agency standards. For intermediaries that do not have capable staff, the Agency has decided that State RBCS Program staff will deliver training to borrowers on the environmental process and how to determine whether a project is a categorical exclusion or requires an environmental assessment and review. Agency RBCS Program staff can also opt to assist with completing the NEPA categorical exclusion review with information provided by the intermediary or ultimate recipient.

In the case of each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, an environmental review will be completed in accordance with 7 CFR 1970.53 and 1970.54. This promulgation will also address whether a project funded from revolved program dollars is subject to NEPA requirements. Projects that do not qualify for a categorical exclusion, or which may be subject to an extraordinary circumstance under 7 CFR 1970.52, will be referred to the Agency for review under 7 CFR part 1970, subpart C.

Requirements for seismic safety of new building construction were revised to reference updated provisions of the most current version of the International Building Code (IBC) or two versions prior; currently that is 2021 IBC, 2018 IBC or 2015 IBC, or an above-code seismic standard that meets or exceeds the equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions).

Eligibility Requirements—Intermediaries (§ 4274.310, Formerly § 4274.307)

Section 4274.310 contains eligibility requirements for intermediaries. This section was in the former regulation at § 4274.307 and it was revised to provide clarity on process. It was updated to segregate lengthy paragraphs into smaller sections for clarity and ease of understanding. The term project completion was dropped and instead continuation was used as a more accurate and clear term. As most funds go on in perpetuity, it was the more appropriate term to use. Clarification was added under Section 4274.310(b) to state that if the intermediary is an affiliate of another entity, the intermediary's governing board must be independent of the affiliated entity. Section 4274.310(d) was expanded to clarify that the essential activities of a business lending operation and the administration of the IRP revolving loan fund must be conducted in-house by an employee of the intermediary; they may not routinely use outside entities for their lending outreach, loan underwriting, management, or day-to-day operations. Section 4274.310(j) was added to prohibit intermediaries that may be established for the purpose of, or that predominantly use IRP loan funds for, the financial benefit of an affiliate through loan participations or other funding methods.

Eligibility Requirements—Ultimate Recipients (§ 4272.311, Formerly § 4274.308)

Section 4274.311 contains eligibility criteria for Ultimate Recipients and was moved from its location in the previous regulation at § 4274.308. This section was revised to provide clarity, but no substantive changes were made.

Loan Purposes (§ 4274.320, Formerly § 4274.314)

Eligible Loan Purposes are now outlined in the new § 4274.320 and were located in § 4274.314 in the previous regulation. Paragraph (a) has been updated to provide a better explanation of intermediary responsibilities regarding Agency IRP loans. Aquaculture and hydroponics, commercial fishing, commercial nurseries, forestry, and value-added production will continue to be eligible loan purposes, but to minimize confusion, they have now been explicitly listed. In order to provide the necessary clarity for housing projects in the program, eligible use of funds for housing projects was better defined as limited to costs related to community

development projects, and not for the purchase of residential housing. Additional IRP revolving loan fund purposes were included as appropriate. Section 4274.320(c) was expanded to clarify the use of loan participations as an eligible loan purpose, including provisions that must be included in a loan participation agreement between lenders while also prohibiting the use of an open-ended participation agreement between the intermediary and any lender. A provision was also added that no more than 50 percent of the total intermediary loans to ultimate recipients may be sold or participated to an individual lender or affiliation of lenders.

Ineligible Loan Purposes (§ 4274.321, Formerly § 4274.319)

Ineligible loan purposes are outlined in § 4274.321 and were formerly found in the prior regulation at § 4274.319. In addition to reorganization, this section now has been updated to include additional information on conflict of interest prohibitions for clarification, agricultural production was modified to reference the now eligible activities in § 4274.320(b)(15) through (19), and the Agency has increased the threshold for ineligibility due to annual gross revenue derived from gambling activities from 10 to 15 percent, as recent industry trends show an increase in revenue from gambling activities, including lease income from space or machines.

Agency IRP Loan Conditions and Terms (§ 4274.330, Formerly § 4274.320)

Information about Loan Terms is now included in § 4274.330, moved from the former location of § 4274.320 in the previous regulation. In § 4274.330(b), loan closing between the intermediary and Agency was revised to require that loan closing must take place within six months of loan approval or else funds will be deobligated. The rationale for this change is that the Agency has had numerous cases where projects are not closed for years. This nonuse of funds has had a negative effect on subsidy rates for the program and does not meet the intent of the program.

In § 4274.330(c) loan terms between the intermediary and Agency are clarified to indicate that in the fourth year after loan closing, the loan will fully amortize, and that ''full amortization'' means principal and interest payments are due based on the total outstanding amount of the loan and not just on the amount drawn down and advanced to ultimate recipients. There has been past confusion on this issue, so the Agency is providing the necessary clarification in this update. All documents representing an interest in a participation loan made under § 4274.320 were added at § 4274.330(e)(2) to the list of documents that must be assignable.

IRP Revolving Loan Fund Loan Conditions and Terms (§ 4274.331, Formerly § 4274.320 and § 4274.325)

In § 4274.331(a)(1) the Agency clarifies IRP revolving loan fund loan conditions and terms between the intermediary and ultimate recipients. This section provides the needed clarification that interest rates are negotiated between the two parties and that rates must be the lowest rates sufficient to cover the loan's proportional share of the fund debt service reserve and administrative costs.

Post Award Requirements (§ 4274.332)

Intermediaries can contract personnel for hire; however, § 4274.332(b)(2) prohibits contracting of essential activities, such as loan underwriting, or day-to-day operations.

In § 4274.332(b)(3) language was revised to use ''debt service reserve'' in lieu of ''bad debt reserve.'' The revised term clarifies that funds may be used to ensure that adequate cash is available for the annual IRP loan installment(s) in the event that the IRP revolving loan fund has insufficient cash to make these payments. Some intermediaries interpreted ''bad debt reserve'' as available only to payoff bad debts; thus, there was needed clarification on the definition and term. Additional language was added that prohibits Agency IRP funds or funds from an encumbered source from being used to fund this account.

In § 4274.332(b)(5) language was clarified that an intermediary cannot use funds for any investments in securities, or certificates of deposit over a 30-day duration. Certificates of deposit often come with penalties for withdrawals outside of a pre-determined period of time. IRP is not designed for investment of proceeds and therefore such a financial tool does not meet the intent of the program.

Loan Agreements (§ 4274.333)

In § 4274.333(a)(4)(i) and (ii) the Agency addresses the provisions for late charges on the intermediary loan by the Agency. There has been a disconnect in communication with borrowers on late fee assessments and interest calculations. Language was added here to notify readers that in the event of late fees being charged, that a notice will be sent to the intermediary identifying the per diem amount until the account becomes current. Guidance further explains that interest will be calculated on a 365-day basis unless otherwise stated in legal documents.

Audit Opinion (§ 4274.333, Formerly in § 4274.338)

In § 4274.333(b)(4)(i)(A) the Agency removed the requirement for an unqualified audit opinion. Unlike an adverse opinion, the reason for the issuance of a qualified opinion generally has no impact on the fair presentation of the financial information provided; therefore, the Agency has determined that the blanket restriction on qualified opinions was placing an undue burden on applicants.

The Disbursement Procedure (§ 4274.333, Formerly § 4274.338)

Disbursement Procedures have been relocated from § 4274.338 to § 4274.333(a)(5) and have been updated to include current funds disbursement procedures. The Agency believes these procedures better provide the appropriate balance between safeguarding taxpayer funds and allowing the intermediaries to operate their funds according to their standards and practices.

Applications (§ 4274.340, Formerly § 4274.343)

Application requirements have been moved from § 4274.343 in the prior regulation to § 4274.340. This section was changed in format and layout to be consistent with other RBCS programs. In addition, necessary forms are indicated as well as an indication for where other online guidance can be found. Additional guidance on contracted personnel was added at § 4274.340(a)(1)((ii)(A) through (C) to reinforce that contract personnel are for interim expertise and should only be used on an ''as needed'' basis.

Processing Applications for Loans (§ 4274.341, Formerly § 4274.343)

Section 4274.341 (formerly § 4274.343) was updated to clarify that applications are received on an ongoing basis but will compete for funds on a quarterly basis for available funds based on a priority score ranking. This section also modifies the priority scoring criteria to address current economic and community development demographics and program conditions, resulting in maximum utilization of the loan fund awards by addressing critical community and small business financing needs. The Agency is revising the scoring requirements found in this section as follows:

First. The scoring criteria, for base points, is being realigned to reduce

redundancy and focus on items that best ensure program dollars are targeted to communities the IRP was designed to assist. To ensure more equitable priority scoring, separate scoring criteria for initial applications and existing intermediaries seeking funds to replenish their revolving loan funds were created. Expanded scoring thresholds for equity contributions to the revolving loan fund are included. Due to the removal of the intermediary service area restriction, the Agency added a criterion regarding the makeup of the governing board of the organization. The Agency provided clarification on the median household income calculation used in scoring and reiterated that the source of unemployment information was the Department of Labor. To better prioritize projects, two new criteria were added. The first provides points if greater than 50 percent of the service area is experiencing trauma due to a natural disaster, and the second is for loan requests of $750,000 or less.

Second. Under the prior regulation, the leveraging criteria was calculated on three levels which caused confusion and inconsistencies in scoring projects and thereby affected whether the most noteworthy applicants were funded. The updated rule will only evaluate intermediary contributions toward ultimate recipient total project costs from its equity contributions to the IRP revolving loan fund. To incentivize the change, increased points will be awarded if the intermediary's equity contribution to an ultimate recipient project is 50 percent or more of the project costs from 15 points to 25 points. An intermediary's equity contribution must be loaned out prior to, or on a pro rata basis, with Agency IRP loan funds.

Third. The scoresheet is being automated to remove repetitive criteria, reduce errors in mathematical calculations and include the Administrator points criteria. The Administrator points scoring was modified to two criteria, versus six criteria in the prior regulation. This change significantly reduces the subjective nature that can arise in awarding points and allows for a more objective process that is based purely on hard facts. As such, the number of Administrator points that can be awarded is reduced from 35 points to a maximum 10 points. The overall combined scoresheet is more user-friendly, cleanly outlined and complies with Department requirements to automate forms.

Letter of Conditions (§ 4274.345, Formerly § 4274.350)

There is minimum change to this section and the Agency has clarified that there are separate Agency forms, one for each of the Letter of Conditions, Letter of Intent to Meet Conditions and Request for Obligation of Funds, that must be completed by the intermediary. The Agency has also clarified that any changes to the letter of conditions proposed by the intermediary must be approved in writing by the Agency prior to finalization and approval of the letter of conditions.

Loan Closing (§ 4274.346, Formerly § 4274.356)

The format and layout of the loan closing documents, and process has been adjusted to be consistent with other RBCS programs.

Loan Approval and Obligating Funds (§ 4274.351)

The format and layout have been adjusted to be consistent with other RBCS programs. The Request for Obligation of Funds was previously mentioned as administrative text and was needed, but the regulation now clarifies that the form is required.

Loan Documentation for Ultimate Recipients (§ 4274.352, Formerly § 4274.361)

Section 4274.352(b) was added to provide information on loans made by the intermediary with revolved funds as there has been confusion among Agency staff and intermediaries on the process and information required.

Executive Orders and Other Certifications

Executive Order 12866 and 13563

This final rule has been determined to be non-significant for purposes of Executive Order (E.O.) 12866 and 13563 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Assistance Listing Assistance Listing (Formerly Known as Catalog of Federal Domestic Assistance)

The assistance listing number for the program impacted by this action is 10.767, Intermediary Relending Program. All active assistance listing programs and the assistance listing catalog can be found at the following website: *https://sam.gov/.* The website also contains a PDF file version of the catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the assistance listing to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at (202) 512–1800 or toll free at (866) 512–1800, or access GPO's online bookstore at *https://bookstore.gpo.gov.*

Executive Order 12372

This Program is not subject to the provisions of E.O. 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RBCS has determined that this rule meets the applicable standards provided in § 3 of the Executive Order. Additionally, (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect to the Executive Order will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule, while affecting small entities, will not have an adverse economic impact on small entities. This rule does not impose any significant new requirements on program recipients, nor does it adversely impact proposed real estate transactions involving program recipients as the buyers.

National Environmental Policy Act/ Environmental Impact Statement

This final rule has been reviewed in accordance with 7 CFR part 1970 ''Environmental Policies and Procedures.'' Rural Development has determined that this action was

analyzed and meets the criteria established in 7 CFR 1970.53(f) and does not have any extraordinary circumstances and the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Unfunded Mandates Reform Act

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments, or the private sector. Thus, this rule is not subject to the requirements of §§ 202 and 205 of the UMRA.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to provide increased opportunities for citizens to access Government information and services electronically to the maximum extent possible.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. Based on the review and analysis of the rule and available data, application submission, and eligibility criteria, issuance of this Final Rule is not likely to adversely nor disproportionately impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status.

Congressional Review Act

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

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

This final rule has been designated as non-significant by OMB under Executive Order 12866. The promulgation of this regulation will not have a significant effect on energy supply, distribution, or use.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and concluded that this rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. OTR has determined that tribal consultation under E.O. 13175 is not required at this time. If consultation is requested, OTR will work with RD to ensure quality consultation is provided.

USDA Non-Discrimination Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

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.ocio.usda.gov/document/ad-3027,* 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.*

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection activities associated with this rule are covered under OMB Number: 0570–0063. This final rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995.

List of Subjects for 7 CFR Part 4274

Community development, Loan programs-business, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, 7 CFR part 4274 is amended as follows:

PART 4274—DIRECT AND INSURED LOANMAKING

■ 1. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

■ 2. Subpart D is revised to read as follows:

Subpart D—Intermediary Relending Program (IRP)

Sec.

4274.301 Introduction.
4274.302 Definitions.
4274.303 Review or appeal rights.
4274.304 Exception authority.

4274.305 Other regulatory requirements.
4274.306–4274.309 [Reserved]
4274.310 Eligibility requirements—intermediary.
4274.311 Eligibility requirements—ultimate recipients.
4274.312–4274.319 [Reserved]
4274.320 Loan purposes.
4274.321 Ineligible loan purposes.
4274.322–4274.329 [Reserved]
4274.330 Agency IRP loan conditions and terms.
4274.331 IRP revolving loan fund loan conditions and terms.
4274.332 Post award requirements.
4274.333 Loan agreements between the Agency and the intermediary.
4274.334–4274.339 [Reserved]
4274.340 Application content and submittal.
4274.341 Processing applications for loans.
4274.342–4274.344 [Reserved]
4274.345 Letter of conditions.
4274.346 Agency IRP loan closing.
4274.347–4274.350 [Reserved]
4274.351 Loan approval and obligating funds.
4274.352 Loan documentation for ultimate recipients.
4274.353–4274.359 [Reserved]

Subpart D—Intermediary Relending Program (IRP)

§ 4274.301 Introduction.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries. This applies to borrowers, ultimate recipients and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. All complete applications received before December 21, 2021 will be processed, awarded, and serviced in accordance with the existing regulatory provisions in effect at the complete application date for the program under which the application was submitted. An intermediary borrower may use the Agency-prescribed self-election template, available at the USDA Rural Development website under ''Details'' in the RBCS IRP program section to have its existing loans, and any loans approved under the previous regulation but not yet closed, serviced under these provisions.

(b) The purpose of the program is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities in partnership with other public and private resources, and in accordance with State and regional strategy based on identified community needs. This purpose is achieved through loans made to intermediaries that establish a revolving loan fund for the purpose of providing loans to ultimate recipients to promote community development, establish new businesses, establish and support microlending programs, and create or retain employment opportunities in rural areas.

(c) Intermediaries are required to identify any known relationship or association with an Agency employee. Any processing or servicing Agency activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or close personal associates, is subject to the provisions of 7 CFR part 1900, subpart D.

(d) Copies of all forms, regulations, and Agency procedures referenced in this subpart are available at USDA Rural Development's website under the ''Resources'' section, in the Rural Development National Office, or any Agency State Office.

§ 4274.302 Definitions.

The following definitions are applicable to the terms used in this subpart.

Administrator. The Administrator of the Rural Business-Cooperative Service within the Rural Development mission area of the U.S. Department of Agriculture (USDA).

Affiliate. Affiliate means individuals and entities are affiliates of each other when:

(1) One controls or has the power to control the other, or a third party or parties controls or has the power to control both. Factors such as ownership, management, current and previous relationships with or ties to another concern, and contractual relationships, shall be considered in determining whether affiliation exists. It does not matter whether control is exercised, so long as the power to control exists. Concerns owned and controlled by Indian Tribes, Alaska Native Corporations (ANC), Native Hawaiian Organizations (NHO), Community Development Corporations (CDC), or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management.

(2) There is an identity of interest between immediate family with identical or substantially identical business or economic interests (such as where the immediate family operate concerns in the same or similar industry in the same geographic area); however, an individual or entity may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

Agency. The Rural Business-Cooperative Service (RBCS) that has the responsibility to administer the Intermediary Relending Program (IRP).

Agency IRP loan. An IRP loan from the Agency to an intermediary with established terms and evidenced by a loan agreement and promissory note between parties.

Agency IRP loan funds. Cash proceeds of an Agency IRP loan received by an intermediary are considered Agency IRP loan funds.

Agricultural production or agriculture production. The cultivation, growing, or harvesting of plants and crops (including farming) breeding, raising, feeding, or housing of livestock (including ranching); forestry products, hydroponics, or nursery stock; or aquaculture.

Aquaculture. The commercial cultivation of aquatic animals and plants in natural or controlled marine or freshwater environments.

Citizen. An individual who is a citizen of the United States or resides in any State in the United States after being legally admitted for permanent residence.

Community development. Advancing livable and vibrant communities through coordinated approaches to economic, environmental, and human development by means of comprehensive business-based technical and financial assistance.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially, or there is a real or perceived benefit from engaging in certain projects or transactions. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members and as stated in § 4274.321(b)(4).

Cooperative. An entity that is legally chartered by a State in which it operates as a cooperatively-operated business, or an entity that is not legally chartered as

a cooperative but is owned and operated for the benefit of its members, with the return of residual earnings paid to such members on the basis of patronage.

Hydroponics. The commercial cultivation of plants by placing the roots in liquid nutrient solutions rather than in soil.

Immediate family. Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, stepchild, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Indian tribe. The term as defined in 25 U.S.C. 5304(e); any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Intermediary. The entity requesting or receiving, as applicable, Agency IRP loan funds for establishing or recapitalizing an IRP revolving loan fund and relending to ultimate recipients.

Intermediary equity contribution. Represents an intermediary's investment in the IRP revolving loan fund, in the form of cash and unencumbered ownership in an amount determined by the applicant. This must be contributed to the IRP revolving loan fund prior to, or concurrently to, the disbursement of Agency IRP loan funds from the Agency. This contribution becomes restricted and must remain as equity in the IRP revolving loan fund subject to the provisions of §§ 4274.332(d) and 4274.341(b)(1) and (2).

IRP revolving loan fund. A group of assets:

(1) Obtained through or related to an Agency IRP loan; and

(2) Accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary's other assets and financial activities.

Loan agreement. The agreement, which utilizes the requisite OMB-approved form, between the Agency and the intermediary setting forth the terms and conditions of the Agency IRP loan.

Military personnel. Individuals currently on active duty in the regular service, having enlisted from civilian or Reserve Officers' Training Corps status, or individuals on active duty in the regular service with more than six months until their anticipated date of release from service.

Principals of intermediary. Members, officers, directors, and other individuals or entities directly involved in the operation and management, including those setting policy, of an intermediary.

Public agency. Any State, Indian Tribal or local government, or any branch or agency of such government having authority to act on behalf of that government, to borrow funds and engage in activities eligible for funding under this subpart.

Revolved funds. The cash portion of an IRP revolving loan fund that includes fees, principal, and interest payments received from ultimate recipients and is not composed of any Agency IRP loan funds.

Rural or rural area. Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H), according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. In making this determination, the Agency will use the latest decennial census of the United States. The following exclusions apply:

(1) Any area in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants that has been determined to be ''rural in character'' as follows:

(i) The determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (1)(ii) of this definition. The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within ¼ mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to the appropriate Rural Development State Director for recommendation to the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (1)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable governor or leader in a similar position and request comments to be submitted within five business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Rural Development State Office website and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

(iii) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is ''rural in character.'' A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements of paragraph (1)(i)(B) of this definition and discusses why the State Director believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, topography, and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the ''rural in character'' provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable Governor and request comments within 10 business days, unless gubernatorial comments were submitted with the request. A public notice will be published by the State Office in accordance with paragraph (1)(ii) of this definition. There is no appeal process for requests made on the initiative of the State Director.

(2) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a

contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be Rural if they are not urban in character.

(4) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the Honolulu CDP, may be determined to be Rural if they are not urban in character.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical assistance. A function performed for the benefit of an ultimate recipient, or proposed ultimate recipient, that is a problem-solving activity that assists the ultimate recipient in selecting, initiating, or completing a project. The Agency will determine whether a specific activity qualifies as technical assistance.

Ultimate recipient. An entity or individual that receives a loan from an intermediary's IRP revolving loan fund.

Underrepresented group. U.S. citizens with identifiable common characteristics, (including, but not limited to, racial and ethnic minorities, disabled and/or gender) that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage they represent of the general population.

Value-added agricultural product. Any agricultural commodity that meets the requirements specified here. The agricultural commodity must meet one of the following value-added methodologies:

(1) Has undergone a change in physical state;

(2) Is a source of farm or ranch-based renewable energy; or

(3) Is aggregated and marketed as a locally produced agricultural food product.

Work plan. A narrative provided by the intermediary that demonstrates the feasibility of the intermediary and its lending program to meet the objectives of the IRP program, including a set of goals, strategies, anticipated outcomes, and well-developed targeting criteria for assisting eligible ultimate recipients.

§ 4274.303 Review or appeal rights.

An intermediary may have appeal or review rights for adverse Agency decisions made under this part. Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

§ 4274.304 Exception authority.

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal government. Exercise of this authority cannot be in conflict with applicable law.

§ 4274.305 Other regulatory requirements.

(a) *Intergovernmental consultation.* The approval of an Agency IRP loan to an intermediary is subject to intergovernmental consultation in accordance with Executive Order 12372. For ultimate recipients located in States where the State has elected to review the program under the intergovernmental review process, in accordance with Executive Order 12372, the intermediary and ultimate recipient must submit a notification in the form of a project description to the State single point of contact. The intermediary must include any comments from the State with the intermediary's request to use the Agency IRP loan funds for the ultimate recipient. Prior to the Agency's decision on the request, the ultimate recipient must demonstrate compliance with the requirements of intergovernmental consultation. These requirements are set forth in 2 CFR part 415, subpart C, General Program Administrative Regulations.

(b) *Environmental requirements.* The requirements of 7 CFR part 1970 apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans in order to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(1) All IRP loans between the Agency and the intermediary are considered categorical exclusions absent the existence of extraordinary circumstances in accordance with 7 CFR part 1970. All intermediaries must execute an Exhibit H, ''Multi-tier Action Environmental Compliance Agreement,'' to RD Instruction 1970–A as part of their IRP application submitted to the Agency. The intermediary must sign a certification that they have National Environmental Policy Act (NEPA) staff capable of undertaking an environmental review that meets Agency standards. For intermediaries that don't have capable staff, the Agency will deliver sufficient training to intermediaries on the environmental process and how to determine whether an ultimate recipient project is a categorical exclusion or requires an environmental assessment and review.

(2) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, an environmental review will be completed in accordance with 7 CFR 1970.55. For projects that do not qualify for a categorical exclusion, or which may be subject to an extraordinary circumstance under 7 CFR 1970.52, the intermediary will refer the project to the Agency for review under 7 CFR part 1970, subpart C. The intermediary retains responsibility for providing sufficient information for the Agency to make an environmental determination, though Agency staff may also opt to complete the environmental review with information provided by either the intermediary or ultimate recipient.

(3) The Agency will prepare an environmental impact statement for any application for a loan from Agency IRP loan funds determined to have a significant adverse effect on the quality of the human environment.

(c) *Equal opportunity and nondiscrimination requirements.* In accordance with Title V of Public Law 93–495, the Equal Credit Opportunity Act, and section 504 of the Rehabilitation Act for Federally

Conducted Programs and Activities, neither the intermediary nor the Agency will discriminate against any employee, intermediary, or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime any cash of the IRP revolving loan fund is involved.

(1) The civil rights compliance requirements contained in 7 CFR part 1901, subpart E, apply to intermediaries and ultimate recipients.

(2) The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, ''Nondiscrimination in Federally Assisted Programs,'' 42 U.S.C. 2000d–4, § 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1990 (as amended).

(d) *Seismic safety of new building construction.* The IRP is subject to the provisions of Executive Order 12699, which require each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(1) All new buildings financed from the IRP revolving loan fund, whether directly or through participations, must be designed and constructed in accordance with the seismic provisions of the most current version of the International Building Code (IBC) or two versions prior; currently that is 2021 IBC, 2018 IBC or 2015 IBC, or an above-code seismic standard that meets or exceeds the equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions.)

(2) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications constitutes evidence of compliance with the seismic requirements of the appropriate code.

§ 4274.306–§ 4274.309 [Reserved]

§ 4274.310 Eligibility requirements—intermediaries.

To be eligible to receive an Agency IRP loan, an intermediary must comply with the requirements specified in paragraphs (a) through (i) of this section.

(a) *Type of entity.* The intermediary must be one of the following types of entities:

(1) A private nonprofit corporation;

(2) A public agency;

(3) An Indian Tribe; or

(4) A cooperative.

(b) *Legal authority.* The intermediary must have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan. If the intermediary is an affiliate of another entity, the intermediary's governing board must be independent of the affiliated entity.

(c) *Proven record.* The intermediary must have a proven lending record of successfully assisting rural business and industry or, for intermediaries that propose to finance community development, a proven lending record of successfully assisting rural community development projects of the type planned. The intermediary must have the capacity to conduct outreach and marketing, the underwriting of loan applications, and provide the servicing and monitoring of its proposed IRP portfolio.

(1) Except as provided in paragraph (c)(2) of this section, such record must include recent experience in loan making and servicing with loans that are similar in nature to those proposed by the intermediary and a delinquency and loss rate acceptable to the Agency. Any request for an exception must be specifically addressed in the loan application and be supported with concluding statements that relate to the items specified in paragraphs (c)(2)(i) and (ii) of this section.

(2) The Agency may approve an exception to the requirement for loan making and servicing experience provided the intermediary:

(i) Itself has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects through technical assistance or business development projects to the type and size of planned ultimate recipient borrowers; and

(ii) Will, before the loan is closed, employ individuals with loan making and servicing experience and qualifications and expertise for the operation and administration of an IRP revolving loan fund as described in § 4274.340(a)(1)(ii). These shall not include contracted staff and staff from affiliates of the intermediary.

(d) *Staff.* The intermediary itself must employ a staff with loan making and servicing expertise acceptable to the Agency. The intermediary may contract for general services, such as, clerical, administrative, and accounting services, and loan packaging. The intermediary may not routinely contract their lending outreach, loan underwriting, management, or day-to-day operations. Essential activities of a business lending operation and the administration of the IRP revolving loan fund must be conducted in-house.

(e) *Capitalization/equity.* The intermediary's balance sheet must have capitalization or equity acceptable to the Agency and deemed sufficient to sustain its lending and business operations.

(f) *Citizens.* At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens.

(g) *Delinquent debt.* An intermediary is ineligible to receive an Agency IRP loan if the intermediary or any principal of the intermediary has any delinquent debt to the Federal government. Agency IRP loan funds cannot be used to satisfy the delinquent debt.

(h) *Conditions.* No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the intermediary itself; and

(2) The amount of the loan, together with other funds available, is adequate to ensure the continuation or establishment of an effective IRP revolving loan fund or achieve the purposes for which the loan is made.

(i) *Other financing unavailable.* The intermediary must be unable to finance the continuation or establishment of an effective IRP revolving loan fund from its own resources, or through commercial credit, or from other Federal, State, or local programs at reasonable rates and terms.

(j) *Restrictions.* Intermediaries established for the purpose of, or that predominantly use IRP loan funds for, the financial benefit of an affiliate through loan participations or other funding methods will not be allowed.

§ 4274.311 Eligibility requirements—ultimate recipients.

To be eligible for a loan from an intermediary under this subpart, an ultimate recipient must meet or comply with the requirements specified in

paragraphs (a) through (g) of this section.

(a) *Type of entity.* The ultimate recipient must be a legal entity that can incur debt, including but not limited to, an individual; a public organization; a private organization; or other legal entity.

(b) *Legal authority.* The ultimate recipient must have the legal authority to incur the debt and carry out the purpose of the loan.

(c) *Citizens.* An individual ultimate recipient must be a citizen. In the case of an entity ultimate recipient, at least 51 percent of the outstanding membership or ownership of the entity must be citizens.

(d) *Location.* The ultimate recipient project must be located in an eligible rural area, although funds may also be used for community projects that predominantly serve rural residents of a State. Predominantly serves means more than 50 percent of the ultimate recipient's service is to rural residents of a State.

(e) *Other financing unavailable.* The ultimate recipient must be unable to finance the entirety of the proposed project from its own resources, or through commercial credit or from other Federal, State, or local programs at reasonable rates and terms.

(f) *Legal or financial influence.* (1) The intermediary and its principals (including immediate families) must hold no legal or financial interest or influence in or with the ultimate recipient as this is considered a conflict of interest, as defined. However, this paragraph does not prevent an intermediary that is organized as a cooperative from making a loan to one of its members per § 4274.321(b)(4) of this subpart.

(2) The ultimate recipient must, along with its principals (including their immediate families), hold no legal or financial interest or influence in or with the intermediary as per § 4274.321(b)(4) as this is considered a conflict of interest, as defined.

(g) *Delinquent debt.* An ultimate recipient is ineligible to receive a loan from IRP loan funds if the ultimate recipient or any of its principals has any federal delinquent debt or is debarred from engaging in business with the Federal government. IRP loan funds may not be used to satisfy any Federal delinquent debt or used to make an otherwise ineligible ultimate recipient eligible for IRP loan funds.

(h) *Fund usage.* Ultimate recipients must demonstrate, to the Agency's satisfaction, that loan funds will remain in the United States and the facility being financed will primarily create new or save existing jobs for rural U.S. residents.

§ 4274.312–§ 4274.319 [Reserved]

§ 4274.320 Loan purposes.

(a) *Agency IRP loans.* The intermediary must deposit the Agency IRP loans into the intermediary's IRP revolving loan fund to provide loans directly to eligible ultimate recipients or in cooperation with banks and other lending organizations through loan participation agreements.

(b) *IRP revolving loan fund loans.* Ultimate recipients receiving loans from an IRP revolving loan fund must use those loans for business or community development projects and for projects that predominately serve communities and residents in rural areas.

(1) The Secretary may relend funds to eligible intermediaries for projects that:

(i) Promote community development;

(ii) Establish new businesses;

(iii) Establish and support microlending programs; and

(iv) Create or retain employment opportunities.

(2) Such loan purposes may include, but are not limited to, those purposes identified in paragraphs (b)(2)(i) through (xx) of this section.

(i) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(ii) Business construction, conversion, enlargement, repair, modernization, or development.

(iii) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(iv) Purchase of equipment, leasehold improvements, machinery, or supplies.

(v) Pollution control and abatement.

(vi) Transportation services.

(vii) Start-up operating costs and working capital.

(viii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed three years.

(ix) Feasibility studies.

(x) Debt refinancing.

(A) The intermediary is responsible for making prudent lending decisions based on sound underwriting principles when considering the restructuring of an ultimate recipient's debt.

(B) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable, and refinancing is necessary to create new or save existing jobs or create or continue a needed service.

(xi) Reasonable fees and charges to the ultimate recipient are allowed only as specifically listed in this paragraph. Authorized fees include loan documentation and fees for recording a collateral lien, environmental data collection fees, management consultant fees, and other fees for services rendered by professionals in relation to the loan project. Professionals are generally persons licensed by States or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. Additional charges to the ultimate recipient, whether by a fee or interest rate increase, for an intermediary's costs related to loan participations are not allowed. In addition, the intermediary shall not be charged fees related to the purchase or sale of a loan participation. The maximum amount of any fee will be what is reasonable and customary in the community or region where the project is located; provided, however, that all costs must be actual costs and shall not be marked-up beyond actual cost. Any such fees or charges are to be fully documented and justified.

(xii) Hotels, motels, tourist homes, bed and breakfast establishments, nonowner-occupied real estate, convention centers, and other tourist and recreational facilities except as prohibited by § 4274.321. These types of facilities are allowed when the pro rata value, supported by an analysis of the supporting real estate appraisal, of the owner's living quarters is deleted from the appraised value.

(xiii) Educational institutions.

(xiv) Revolving lines of credit provided the portion of the intermediary's total IRP revolving loan fund that is committed to, or in use for revolving lines of credit, will not exceed 25 percent at any time.

(A) All ultimate recipients receiving revolving lines of credit must reduce the outstanding balance of the revolving line of credit to zero at least once each year.

(B) The intermediary must approve all revolving lines of credit for a specific maximum amount and for a specific maximum time period, not to exceed two years.

(C) The intermediary must provide a detailed description, which will be incorporated into the intermediary's work plan and be subject to Agency approval, of how the revolving lines of credit will be operated and managed. The description must include evidence that the intermediary has an adequate system for:

(*1*) Interest calculations on varying balances; and

(*2*) Monitoring and control of the ultimate recipients' cash, inventory, and accounts receivable.

(D) If, at any time, the Agency determines that an intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the government, the Agency may terminate the intermediary's authority to use the IRP revolving loan fund for revolving lines of credit. Such termination will be by written notice and will prevent the intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

(xv) Aquaculture and hydroponics, as defined in this subpart.

(xvi) Commercial fishing.

(xvii) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage.

(xviii) Forestry, which includes businesses primarily engaged in the commercial operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation.

(xix) Value-added production.

(xx) Housing, only when related to community development projects and, limited to working capital, equipment, pre-business development costs, and other such business purposes. Agency IRP loan funds may be used to assist a housing project planner, a housing project builder, a construction sub-contractor (indirect soft costs such as architectural, engineering and legal fees), or for any other business-related aspect of a housing project that is separate from the sale and/or purchase transaction involved in transferring ownership of a single or multi-family dwelling. While the proceeds from a sale might be used by an ultimate recipient to repay an Agency IRP loan, an Agency IRP loan cannot be used to finance a residential housing purchase. Agency IRP loans may not be used to assist in the purchase of residential housing (single, multiple dwelling, etc.) as financial assistance moves outside of community development when the financial assistance (a mortgage loan) is requested for a purchase.

(c) *Participations.* (1) Loans made to eligible ultimate recipients by eligible intermediaries in cooperation with banks and other organizations through loan participation agreements shall be considered an eligible loan to an ultimate recipient for the purposes of this program. Loan participations are allowed in the IRP program, subject to the provisions of this regulation, with the intent to assist intermediaries in the management of their revolving loan fund, to meet the needs of larger ultimate recipient projects, and to promote cooperation in community projects where multiple lenders may be involved. In a participation, the lead (originating) bank retains a partial interest in the loan, holds all loan documentation in its own name, services the loan, and deals directly with the customer for the benefit of all participants. All loan participants share in the credit risk of the associated loan up to the amount of their participation.

(2) Loan participant buyers are able to compensate for low loan demand or invest in large loans without servicing burdens and origination costs. Lenders selling loan participations can accommodate a larger credit while mitigating some of the risk by reducing their credit exposure.

(3)(i) Participation agreements between the lead lender and buying participants are executed with each transaction and must address, among other items:

(A) The obligation of the lead lender to furnish timely credit information and to provide notification of material changes in the borrower's status;

(B) Requirements that the lead lender consult with participants and obtain their consent prior to modifying any loan, guaranty, or security agreements and before taking any action on defaulted loans; and

(C) The specific rights and remedies available to the lead and participating lenders upon default of the borrower.

(ii) A Master (open ended) participation agreement between the intermediary and any lender is not allowed. All loans made through use of participation agreements must be to eligible ultimate recipients and for eligible purposes. The ultimate recipients, lead lender and all participating lenders must agree to be bound by the applicable requirements of this regulation.

(4) Participation in loans where 50 percent or more of the loan funds are used to refinance a lead lender's existing loans to the borrower are ineligible. The Agency does not consider take out or terming out a construction loan as refinancing.

(5) No more than 50 percent of an intermediary's loan funds may be used to purchase loans from any individual lender or affiliation of lenders, to prevent an exclusive relationship with a lender or lender holding company. Likewise, no more than 50 percent of the total intermediary loans to ultimate recipients may be sold or participated to an individual lender or affiliation of lenders. An exception to these limits may be requested by the intermediary and is subject to review by the Agency of the intermediary's lending portfolio, credit quality and overall use of loan participations.

§ 4274.321 Ineligible loan purposes.

(a) *Agency IRP loans.* The intermediary cannot use Agency IRP loan funds to pay for its administrative costs and expenses.

(b) *IRP revolving loan fund loans.* IRP revolving loan fund loans cannot be used for any of the purposes identified in paragraphs (b)(1) through (13) of this section.

(1) Assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.

(2) Distribution, payment, or loans to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity, or control, in the ultimate recipient. This is not intended to prevent the sale of a business among immediate family members as long as the selling immediate family member does not retain an ownership interest and the price paid is deemed to be reasonable. This type of transaction is not an arm's length transaction and reasonableness of the price paid will be based upon an appraisal acceptable to the Agency.

(3) Charitable institutions and fraternal organizations that would not have revenue from sales, fees, or stable revenue source to support their operation and repay the loan.

(4) Assistance to Federal government employees, active-duty military personnel, employees of the intermediary, or any organization for which such persons are directors or officers or have 20 percent or more ownership.

(5) A loan to an ultimate recipient that has an application pending with or a loan outstanding from another intermediary involving an IRP revolving loan fund if the total Agency IRP loans would exceed the limits established in § 4274.331(c).

(6) Agricultural production. For the purposes of this program, Agricultural production does not include those activities specifically listed as eligible uses of IRP revolving loan fund loans in § 4274.320(b)(15) through (19).

(7) The transfer of ownership unless the loan will keep the business from closing, prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(8) Community antenna television services or facilities.

(9) Any illegal activity.

(10) Any project that is in violation of either a Federal, State, or local environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation.

(11) Loans to lending and investment institutions and insurance companies.

(12) Golf courses, racetracks, or gambling facilities.

(13) An entity is ineligible if it derives more than 15 percent of its annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State-authorized lottery proceeds or Tribal-authorized gambling proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

§ 4274.322–§ 4274.329 [Reserved]

§ 4274.330 Agency IRP loan conditions and terms.

(a) *Revolving fund.* The intermediary must place Agency IRP loan funds in the intermediary's IRP revolving loan fund, and these funds must only be used to provide loans to eligible ultimate recipients per § 4274.320(a).

(b) *Loan closing.* Loan closing between the intermediary and the Agency must take place within six months of loan approval and obligation of funds, or funds will be forfeited, and the Agency will deobligate the loan.

(c) *Term.* The Agency IRP maximum loan term will be 30 years. Principal and interest payments will be scheduled at least annually. All Agency IRP loans will have interest-only payments scheduled for a maximum of the first three years following the loan closing. An intermediary may request a shorter interest-only period during the application process. All Agency IRP loans will automatically, fully amortize with principal and interest payments due in the fourth year on the anniversary of the closing date. The Agency IRP loan will fully amortize based on the total amount of the loan.

(d) *Interest rate.* The interest rate for an Agency IRP loan will be a fixed rate of one percent per annum over the term of the loan.

(e) *Security.* Security for all Agency IRP loans to intermediaries must ensure that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. The intermediary is responsible for making loans to ultimate recipients in a manner that fully protects the interests of the intermediary and the Federal Government.

(1) Security for such loans may include, but is not limited to:

(i) Any realty, personalty, or intangible asset capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of the Agency; and

(ii) Any realty, personalty, or intangible asset capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of the Agency.

(2) Initial security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving loan fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, the Agency will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary must covenant that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request to protect the Federal Government interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to the Agency. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients, including all documents representing an interest in a participation loan made pursuant to § 4273.320 of this chapter, must be assignable.

(3) In addition to normal security documents, a first lien interest in the intermediary's IRP revolving loan fund account(s) will be accomplished by a control agreement satisfactory to the Agency. Agency signatures for withdrawals are not required. The depository bank must waive its offset and recoupment rights against the depository account to the Agency and subordinate any liens it may have against the IRP depository bank account. The use of Form RD 402–1, ''Deposit Agreement,'' or a similar form developed by the Agency's Office of the General Counsel is acceptable.

(f) *Loan limits.* (1) No loan to an intermediary will exceed the maximum amount the intermediary can reasonably be expected to lend to eligible ultimate recipients, in an effective and sound manner, within three years after loan closing. Only one Agency IRP loan will be approved by the Agency for an intermediary in any single fiscal year unless the additional request is from an IRP earmark that serves a different geographical area than the initial non-earmarked loan.

(2) The Agency IRP loan to an intermediary will not exceed the maximum award amount established by the Agency in an annual Notice.

(3) Intermediaries that have received one or more Agency IRP loans may apply for and be considered for additional Agency IRP loans provided that the outstanding loans of the intermediary's IRP revolving loan fund are generally sound, the intermediary is in compliance with all applicable regulations and its loan agreements with the Agency, and either:

(i) The intermediary has insufficient IRP revolving loan funds available for lending to meet current and expected ultimate recipient loan demand. Funds available for lending consist of Agency IRP loan funds not yet disbursed by the Agency, revolved funds, and cash on-hand in the IRP revolving loan fund. Necessary cash reserves including, but not limited to, debt service reserves, may be deducted from the IRP revolving loan fund cash on-hand in determining funds available for lending. The intermediary must provide documentation acceptable to the Agency of the current and expected ultimate recipient loan demand; or

(ii) The Agency IRP loan will serve a geographic area not included in an area currently served by an existing IRP intermediary and it is not possible or feasible to expand the existing IRP loan's service area to include the new geographic area; and

(4) Total outstanding IRP indebtedness of an intermediary to the Agency will not exceed $15 million at any time.

§ 4274.331 IRP revolving loan fund loan conditions and terms.

(a) *Conditions and terms.* Loan conditions and terms made by an intermediary to an ultimate recipient from the IRP revolving loan fund will be negotiated by the intermediary and ultimate recipient.

(1) *Interest rate.* The interest rate must be within limits established by the intermediary's work plan approved by the Agency. The rate must be the lowest rate sufficient to cover the loan's proportional share of the IRP revolving loan fund's debt service reserve and administrative costs.

(2) *Repayment.* The loan term must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of

collateral, and must be within any limits established by the intermediary's work plan approved by the Agency.

(b) *Security.* The intermediary is responsible for adherence to prudent lending practices when obtaining adequate security on each of its ultimate recipient loans.

(c) *Loan limits.* Loans from intermediaries to ultimate recipients using the IRP revolving loan fund must not exceed the limits in paragraphs (c)(1) and (2) of this section. In accordance with § 4274.321(b)(5), these loan limits apply to ultimate recipients cumulatively based on all existing and pending loans from one or multiple IRP intermediaries. The loan limits of ultimate recipient loans made from Agency IRP funds may be based on the total amount of the Agency IRP loans awarded. However, should any portion of an intermediary's Agency IRP loan funds be de-obligated by the Agency, the ultimate recipient loan limit will thereafter be based on the actual amount of Agency IRP loan funds advanced to the intermediary and loaned out to ultimate recipients. Intermediaries with multiple IRP loans that have combined those IRP funds in accordance with § 4274.332(b)(6) may base their ultimate recipient loan limits on the combined amount of Agency IRP loans. The maximum amount of an IRP Agency loan made by an intermediary to an ultimate recipient, whether directly or held through loan participation and including the balance of any existing ultimate recipient loans, shall be the lesser of:

(1) $400,000; and

(2) Fifty percent of the originally-approved Agency IRP loan amount to an intermediary (including the unpaid balance of any existing ultimate recipient loans).

§ 4274.332 Post award requirements.

(a) *Applicability.* Intermediaries receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work plan, security interests, and any other conditions which the Agency may impose in making a loan. Whenever this subpart imposes a requirement on loans made from the ''IRP revolving loan fund,'' such requirement shall apply to all loans made by an intermediary to an ultimate recipient from the intermediary's IRP revolving fund for as long as any portion of the intermediary's IRP loan from the Agency remains unpaid. This includes revolved funds. Whenever this subpart imposes a requirement on loans made by intermediaries from ''Agency IRP loan funds,'' without specific reference to the IRP revolving loan fund, such requirement shall apply only to loans made by an intermediary using Agency IRP loan funds and will not apply to loans made from revolved funds.

(b) *Maintenance of IRP revolving loan fund.* For as long as any part of an Agency IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP revolving loan fund. All Agency IRP loan funds received by an intermediary must be deposited in an IRP revolving loan fund. The IRP revolving loan fund can only be used for receiving advances from the Agency, making payments to the Agency, disbursing ultimate recipient loans, and collecting ultimate recipient loan repayments. This includes transferred IRP revolving loan funds from another intermediary as a result of a transfer and assumption. Interest earned, cash obtained from fees assessed from activities of the IRP revolving loan fund, etc. must remain part of the IRP revolving loan fund though these monies may be used to pay administrative expenses as provided below. All Agency IRP loan activity must be managed through the IRP revolving loan fund. The intermediary may transfer additional assets into the IRP revolving loan fund to cover any shortage at any time. The intermediary must deposit all cash of the IRP revolving loan fund in a separate bank account or accounts. The intermediary is prohibited from commingling other funds of the intermediary with the funds in the IRP revolving loan fund. Intermediaries may use an operating account, general fund, or Automated Clearing House (ACH) account to initially collect payments from ultimate recipients, as long as those payments are transferred to the IRP revolving loan fund within 10 working days of receipt or by the end of the Federal fiscal quarter, whichever occurs first. All moneys deposited to the IRP revolving loan fund bank account or accounts must be money of the IRP revolving loan fund, and such accounts must be properly secured in accordance with § 4274.330(e). The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP revolving loan fund are a part of the IRP revolving loan fund.

(1) The intermediary can use the portion of the IRP revolving loan fund that consists of Agency IRP loan funds only for making loans in accordance with § 4274.320. The intermediary may use the portion of the IRP revolving loan fund that consists of revolved funds for debt service reserve and reasonable administrative costs, in accordance with this section, or for making additional ultimate recipient loans.

(2) The intermediary must submit for Agency approval an annual budget of proposed IRP revolving loan fund income and expenses including expected administrative costs. The annual budget must itemize income, including interest received from ultimate recipients, interest earnings on deposits, fees, and other income excluding principal recaptured from ultimate recipients, and expenses including interest repaid to the Agency, administrative expenses, liquidation expenses, loan write-offs, and other fees and costs excluding principal repaid to the Agency. The intermediary cannot use proceeds received from the collection of principal repayment by an ultimate recipient for administrative expenses. The amount removed by the intermediary from the IRP revolving loan fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving loan fund, including loan servicing, and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget. The administrative expenses that the intermediary charges to the IRP fund may never exceed the actual income earned on an annual basis. An intermediary can contract personnel for hire per § 4274.340(a)(1)(ii); but the intermediary may not routinely contract loan underwriting, management, or day-to-day operations. Essential activities of the IRP revolving loan funds must be conducted in-house.

(3) The intermediary must establish a debt service reserve fund. The purpose of the debt service reserve fund is to ensure that adequate cash is available for the annual IRP loan installment(s) in the event that the IRP revolving loan fund has insufficient cash to make these payments. The minimum amount of cash in the debt service reserve fund must be at least equal to the intermediary's cumulative, annual debt service requirements for all Agency IRP loans outstanding. This account should be established by the date of loan closing, but the minimum required cash balance does not have to be reached until the third anniversary of an Agency IRP loan closing. The minimum required balance must be maintained for the life of the Agency IRP loan thereafter. The debt service reserve funds can only be withdrawn when there is insufficient cash in the IRP revolving loan fund's other account(s) to

make the annual Agency IRP loan installments, and such withdrawals require the prior written concurrence of the Agency. Any withdrawal that causes the cash balance to drop below the minimum amount required must be repaid to the debt service reserve fund as soon as possible, but in no event can such repayment be longer than six months from the date of withdrawal. The funding of this debt service reserve fund may not come from Agency IRP loan funds and must come from an unencumbered source.

(4) The intermediary must make any cash in the IRP revolving loan fund that is not needed for debt service or approved administrative costs available for additional loans to ultimate recipients. If the Agency determines that the intermediary has substantial amounts of Agency IRP loan funds available for lending that is not being regularly loaned out to ultimate recipients, the Agency may require, at its discretion, that those funds be returned to the Agency in accordance with paragraph (b)(8) of this section.

(5) The intermediary must deposit all reserves and other cash of the IRP revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with other securities in accordance with normal banking practices and all applicable State laws. The account must be interest-bearing if feasible and any interest earned thereon remains a part of the IRP revolving loan fund. The intermediary cannot use funds for any certificates of deposit over a 30-day duration or for investments in securities. All instruments associated with the revolving loan fund must be liquid and not impose fees associated with the withdrawal or movement of cash.

(6) If an intermediary receives more than one IRP loan, the intermediary does not need to establish and maintain a separate IRP revolving loan fund for each loan. Instead, the intermediary may combine them and maintain only one IRP revolving loan fund, unless the Agency requires separate IRP revolving loan funds because there are significant differences in the loan purposes, work plans, loan agreements, or requirements for the loans. The Agency may allow loans with different requirements to be combined into one IRP revolving loan fund if the intermediary agrees in writing to operate the combined revolving funds in accordance with the most stringent requirements of the Agency. The combining of multiple loans in one IRP revolving loan fund does not preclude the intermediary from being able to individually track the activity of each Agency IRP loan. The Agency must be able to readily determine the ultimate recipient loans made from each Agency IRP loan.

(7) The intermediary may deposit their full equity contribution for the entire Agency IRP loan before the initial advance of Agency IRP loan funds or it may deposit its matching percent at each interval that loan advances are made by the Agency.

(8) IRP revolving loan fund funds are intended to be active mechanisms to enhance business development in rural communities. If Agency IRP loan funds have been unused for a period of six months or more, those funds in excess of $250,000 will be returned to the Agency unless the Agency concurs with an intermediary's request for an exception. Any exception would be based on evidence satisfactory to the Agency that every effort is being made by the intermediary to utilize the IRP revolving loan fund funding for loans to ultimate recipients in conformance with program objectives.

(9) The full measure of collateral must be made up of cash available in the IRP revolving loan fund, the debt service reserve, and the total outstanding balance of ultimate recipient loans. At all times, the sum of the IRP revolving loan fund, debt service reserve, and principal amount outstanding on performing ultimate recipient loans must equal 100 percent of what is owed to the Agency by the intermediary plus any equity contribution amount. Therefore, if any part of the collateral fluctuates to the extent that the minimum retention requirement falls below the 100 percent plus the equity contribution threshold, the intermediary must inject cash into the IRP revolving loan fund and or debt service reserve fund to ensure that the total collateral is maintained at the minimum required level.

(10) The intermediary must also file a Uniform Commercial Code (UCC) financing statement at closing in order to perfect the Agency's security interest in the ultimate recipient's promissory notes. The intermediary is responsible for covering the costs of filing as well as ensuring the necessary filings are renewed and recorded with the Secretary of State, or the equivalent tribal official as appropriate.

(c) *Agency oversight.* The Agency will monitor each intermediary based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contact with the intermediary as necessary. The Agency will send written notices on payments coming due to the intermediary approximately 15 days in advance of the payment due date.

(d) *Return of equity.* An intermediary with an IRP loan(s) where the cash portion of the IRP revolving loan fund includes fees, principal and interest payments received from ultimate recipients and is not composed of any original Agency IRP loan funds, may annually request a partial or full return of their contributed equity under the following conditions:

(1) The intermediary is current in all payments to the Agency and in compliance with all elements of their loan agreement and Agency reporting requirements;

(2) The ratio of intermediary equity to the Agency loan after the return of equity remains consistent with the initial equity injection percentage by the intermediary; and

(3) Any return of an intermediary's equity from the revolving loan fund must be approved by the Agency in writing and is limited to an amount that the Agency determines will not cause additional credit risk to the revolving loan fund or the Agency and is in compliance with paragraph (b)(9) of this section.

§ 4274.333 Loan agreements between the Agency and the intermediary.

The intermediary and the Agency must execute a loan agreement or a supplement to a previous loan agreement at loan closing for each Agency IRP loan. The Agency will prepare the loan agreement and the intermediary must review it prior to loan closing. The intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(a) The loan agreement will, at a minimum, set out:

(1) The amount of the loan;

(2) The interest rate;

(3) The term and repayment schedule;

(4) The provisions for late charges. The intermediary must pay a late charge of four percent of the payment due if payment is not received within 15 calendar days following the due date. The Agency will consider the late charge as unpaid if it is not received within 30 calendar days of the missed due date for which it was imposed. The Agency will add any unpaid late charge to the loan's principal balance, and it will be due as an extra payment at the end of the term. Acceptance of a late charge by the Agency does not constitute a waiver of default.

(i) A per diem amount will be shown on the late notice sent to the intermediary. The Agency will continue sending notices to the intermediary on the late payments or any further payments until the account is in a current status.

(ii) Interest will be computed on a 365-day basis unless legal documents state otherwise.

(5) The disbursement procedure. The Agency will disburse the Agency IRP loan funds to the intermediary on an as-needed basis after the loan agreement and promissory note are executed, and after any other conditions precedent to disbursement of funds are fully satisfied. Fund disbursement requests must be submitted with an intermediary's request for Agency concurrence in accordance with the provisions of § 4274.352(a). Only the amount of Agency IRP loan funds necessary to fund the given ultimate recipient loan request(s) can be requested by the intermediary and disbursed by the Agency. The intermediary's equity contribution may not be used for administrative costs. When lending, the intermediary's equity contribution must be loaned out prior to or on a pro rata basis with Agency IRP loan funds. For purposes of computing interest, the date of each draw down of an Agency IRP loan constitutes the date the funds are advanced under the loan agreement.

(6) The provisions regarding default. On the occurrence of any event of default (monetary or nonmonetary), the Agency may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable laws and regulations. Any of the following may be regarded as an ''event of default'' at the sole discretion of the Agency:

(i) Failure of the intermediary to carry out the specific activities in its loan application as approved by the Agency or failure to comply with the loan terms and conditions of the loan agreement, any applicable Federal or State laws, or with such USDA or Agency regulations as may be applicable; or

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to the Agency; or

(iii) The occurrence of:

(A) The intermediary becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors; or

(B) Proceedings for the appointment of a receiver, trustee, or liquidator of the intermediary, in whole or of a substantial part of its assets, being authorized or instituted by or against it; or

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to the Agency in connection with the financial assistance awarded hereunder which is false, incomplete, or incorrect in any material respect; or

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors, loan making or policymaking body) arising since the date of the Agency's award of assistance hereunder, which condition was an inducement to the Agency's original award.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project funded from the IRP revolving loan fund in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the Agency, upon the Agency's request, in the event of default by the intermediary.

(ii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iii) The intermediary is responsible for determining if an ultimate recipient funded from the IRP revolving loan fund is located in a special flood or mudslide hazard area. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with 7 CFR part 1806, subpart B.

(iv) Intermediaries must provide fidelity bond coverage, or employee dishonesty insurance, for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through ''blanket'' coverage providing protection for all appropriate employees and officials.

(A) The minimum amount of fidelity bond/employee dishonesty coverage required by the Agency will equal the total, cumulative annual debt service requirements for all Agency IRP loans. Intermediaries with fidelity bond/employee dishonesty coverage requirements through other Agency programs (*e.g.,* the Rural Microentrepreneur Assistance Program) must add the coverage requirements of those programs to the coverage requirements of this section in calculating the minimum coverage amount.

(B) Evidence of this coverage must be provided at, or prior to, loan closing and must be maintained for the life of the IRP loan. During the term of the loan, the intermediary must provide evidence to the Agency, upon request, that adequate fidelity bond/employee dishonesty coverage is in place.

(v) The Agency may also require the intermediary to carry other appropriate insurance, such as coverage for public liability, leasehold, and property damage.

(b) The intermediary must agree in the loan documents to:

(1) Not make any changes in the intermediary's articles of incorporation, charter, or by-laws that would impact the intermediary's eligibility for the IRP program or would adversely affect their ability to operate the IRP program in accordance with the provisions of this instruction and any other applicable laws, regulations, and executive orders without the prior written concurrence of the Agency. This pertains to the Agency's original IRP loan funds and revolved funds.

(2) Not make a loan commitment to an ultimate recipient to be funded from Agency IRP loan funds without first receiving the Agency's written concurrence;

(3) Maintain a separate ledger and segregated accounting for the IRP revolving loan fund;

(4) Provide to the Agency:

(i) An annual audit as described in 2 CFR part 200, subpart F, or any successor regulation;

(A) The financial audit report period may be different than the IRP reporting periods. Intermediaries must promptly provide the auditor with the records and documentation necessary for the completion of the audit following the end of the audit period. The audit report must be submitted to the Agency within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of the audit period as described in 2 CFR 200.512. Audits must cover all the intermediary's activities. Audits will be performed by

an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards (GAAP) and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. Compilations or reviews do not satisfy the audit requirement.

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by 2 CFR part 200, subpart F, as codified in 2 CFR 400.1, should submit audits conducted in accordance with that regulation.

(ii) Quarterly or semiannual reports (due 30 days after the end of the period);

(A) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been loaned out to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or loan agreement, or the Agency determines that the intermediary's IRP revolving loan fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(B) These reports must contain information only on the IRP revolving loan fund. Information required to be included in these reports as well as detailed reporting instructions will be provided by the Agency through a revolving loan fund user manual (available on the USDA Rural Development Intermediary Relending Program website) or similar documentation, which may be amended from time to time;

(iii) Annual proposed budget for the following year that meets the requirements of § 4274.360(b)(2); and

(iv) Other reports as the Agency may require from time to time;

(5) Before the initial lending of Agency IRP loan funds to an ultimate recipient, to obtain written Agency approval of all forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments. If the intermediary plans to sell participations in its loans made to ultimate recipients, the loan participation agreement and any planned interest rate spread or associated fees must be submitted to the Agency for review and concurrence;

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer may approve changes in forms, security policy, IRP revolving loan fund plan, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this subpart or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's IRP loan is outstanding.

(7) To secure the indebtedness by pledging the IRP revolving loan fund, including all of its loans derived from the proceeds of the Agency loan award, and pledging its real and personal property and other rights and interests as the Agency may require;

(8) In the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, to provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request, to protect the agency's interest or to perfect a security interest in any assets, including physical delivery of assets and specific assignments; and

(9) Funds not disbursed to the intermediary by the end of the 36th month of the IRP loan from the Agency will be deobligated and not available for disbursement to the intermediary.

(10) For revolved funds, the intermediary is responsible for continuing compliance with the terms and conditions of the loan agreement until the Agency loan is fully satisfied and repaid.

§ 4274.334—§ 4274.339 [Reserved]

§ 4274.340 Application content and submittal.

Intermediaries seeking to participate in the IRP program must submit an application in accordance with paragraph (a) of this section. Intermediaries applying for a subsequent Agency IRP loan may instead submit a streamlined application in accordance with paragraph (b) of this section. All intermediaries must submit their applications as provided in paragraph (c) of this section.

(a) *Intermediary application content.* A complete application will include forms as requested in the intermediary application checklist guide available on the USDA Rural Development Intermediary Relending Program website plus information identified in paragraphs (a)(1) through (12) of this section.

(1) A work plan/narrative that demonstrates the feasibility of the intermediary's program to meet the objectives of this program. The work plan must include, at a minimum:

(i) A copy of the intermediary's policy and/or procedural manuals to assure the Agency that its mission and goals align with that of the Agency (*i.e.,* economic development, promoting rural America, regional and community development.)

(ii) Document the intermediary staff's ability in administering an IRP revolving loan fund. This includes but is not limited to providing a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. Their qualifications should detail their experience in loan making, loan monitoring, and loan servicing including liquidations. The personnel may be either members or employees of the intermediary's organization or on an as-needed basis and as allowed by this regulation, contracted personnel.

(A) Contract personnel may be used to train, develop, or supervise the intermediary's members or employees or to provide interim expertise while the intermediary develops relevant in-house experience. The intermediary may contract for general services, such as clerical, administrative, and accounting services, and loan packaging.

(B) The intermediary cannot use contract personnel for the primary functions of its lending program, such as credit analysis and loan underwriting. The intermediary is expected to make an independent lending decision for each ultimate recipient loan request.

(*1*) The contract between the intermediary and the person or entity providing such service must be submitted for Agency review.

(*2*) The terms of the contract and its duration must be sufficient to develop in-house expertise and to ensure the Agency loan is adequately serviced throughout its term. The contract must provide for termination at the request of the Agency whether or not for cause.

(C) If the Agency determines the intermediary's personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(iii) Demonstrate a need for loan funds. At a minimum, the intermediary must either positively identify a

sufficient number of proposed and known ultimate recipients it has on hand to justify the level of Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for the IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(iv) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms (*e.g.,* jobs created for low-income area residents or self-empowerment opportunities funded) and should relate to the purpose of IRP (*see* § 4274.301(b)); and

(v) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(2) Demonstrate the sustainability of the IRP revolving loan fund by providing a pro forma balance sheet at start-up and projected balance sheets for at least three additional years including the accumulated debt service reserve; financial statements for the last three years, or from inception of the operations of the intermediary if less than three years; and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP revolving loan fund only and a separate set of projections that shows the intermediary organization's total operations. Also, if principal repayment on the IRP loan will not be scheduled during the first three years, the projections for the IRP revolving loan fund must extend to include at least one year with a full annual installment on the IRP loan.

(3) Provide documentation of any funds pledged and intermediary equity contribution that will be contributed into the IRP revolving loan fund to serve as security for the IRP loan and to pay for part of the cost of the ultimate recipient projects. Pledged funds and intermediary equity contribution must be in the form of cash and cannot be in-kind contributions; they also cannot be used as intermediary operating funds.

(4) A written agreement of the intermediary to abide with the Agency audit requirements.

(5) Complete organizational documents including: Articles of Incorporation (initial loan only), Bylaws, Certificate of Good Standing, a list of board members with contact and lending experience information, and evidence of authority to conduct the proposed lending activities (this could be satisfied with a statement from the intermediary's counsel).

(6) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of an IRP program. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects.

(7) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations.

(8) Provide evidence to Agency satisfaction that the intermediary has a proven record of obtaining private or philanthropic funds for the operation of similar programs to the IRP.

(9) Latest audit report, if available.

(10) The IRP revolving loan fund plan is a separate stand-alone document from the application and may be revised in the future. The IRP revolving loan fund plan governs the use of the RLF and must be developed by the intermediary and approved by the Agency. The plan must include a detailed explanation of the intermediary's fund administration policies and procedures in addition to planned fund use after the original IRP loan funds in the RLF have revolved. Fund administration policies and procedures must also include information regarding the review and approval of loans from the fund, including participation loans. The revolving loan fund plan must be of sufficient and detailed information to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient, including participation loans. The IRP revolving loan fund plan must contain:

(i) The specific service area of the IRP fund including names of counties and or cities within the service area;

(ii) Borrower eligibility criteria, loan purposes, loan priorities, fees, rates, terms, loan limits and collateral requirements;

(iii) Details on the intermediary's application review and approval process;

(iv) Details on the method of disposition of funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, the reporting requirements by the ultimate recipient's management; and

(v) A copy of the intermediary's ultimate recipient loan application package and sample loan documents (*i.e.,* application forms, debt instruments, collateral and security documents, etc.).

(11) Credit Elsewhere Certification (*see* Agency template available at the USDA Rural Development Intermediary Relending Program website).

(12) Prior to applying for program funding, a resolution by the intermediary's board of directors is required. At a minimum, the executive director of the intermediary must make the organization's board of directors aware of the possibility that the organization may be entering into a significant debt.

(b) *Streamlined applications.* Intermediaries that have an active Agency IRP loan may submit a streamlined application that includes the following:

(1) Submission of the information required under the Intermediary Guide (available at the USDA Rural Development Intermediary Relending Program website) and paragraphs (a)(1) through (4) of this section except that the information required by paragraph (a)(2) of this section may be limited to projections for the proposed new IRP revolving loan fund.

(2) A statement that the new loan would be operated in accordance with the work plan on file for the previous IRP loan(s) may be submitted in lieu of a new work plan. Any substantial change to an existing work plan would require the submission of a new work plan.

(3) Intermediaries that have received one or more Agency IRP loans may apply for and be considered for additional Agency IRP loans provided that the outstanding loans of the intermediary's IRP revolving loan fund are generally sound, the intermediary is in compliance with all applicable regulations and its loan agreements with the Agency, and the revolving loan fund's liabilities do not significantly exceed their assets. The intermediary must have a reasonable plan to disburse any unused IRP loan funds within six

months of loan closing in addition to showing the need for additional IRP funds in accordance with paragraph (a)(1)(iii) of this section.

(c) *Application submittal.* Intermediaries must submit the complete application in one package. The intermediary must file its application with the Agency State Office in the State in which the intermediary's headquarters is located. An intermediary headquartered in the District of Columbia may file its application with the Delaware/Maryland Rural Development State Office, Attention: Business Programs, 1221 College Park Drive, Suite 200, Dover, DE 19904.

§ 4274.341 Processing applications for loans.

(a) *Processing applications.* Applications are accepted in the Rural Development State Office on an ongoing basis. The Agency will review all applications received for eligibility and will score each application according to the criteria in paragraph (b) of this section. Eligible applications received by the Rural Development State Office by close of business on September 30, December 31, March 31, and June 30 of each year will compete based on score ranking for available funds with other applications in that Federal fiscal quarter. If the quarterly application deadline falls on a weekend or holiday, the application deadline will be the next business day. The Agency will rank all eligible, scored applications each Federal fiscal quarter and will fund applications in the order of priority ranking using available funds for that quarter. The Agency will retain unsuccessful applications due to limited funding for consideration in subsequent reviews, through a total of four quarterly reviews.

(b) *Scoring.* The Agency will use a point system to determine an eligible applicant's priority ranking for available loan funds. Points will be awarded only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the work plan items have a high probability of being accomplished. Application content must contain sufficient information to assess the applicant's ability to manage an IRP revolving loan fund and allow the Agency to assign priority points in accordance with the criteria discussed in this section. The Agency will award points using the criteria identified in paragraphs (b)(1) through (9) of this section. Any application that does not meet the minimum value for receiving points associated with a criterion will receive no points for that criterion.

(1) *Intermediary equity contribution for initial Agency IRP loan applications only (maximum 35 points).* The Agency will award points under this criterion if the applicant is applying for its first ever Agency IRP loan and will contribute cash matching funds to the IRP revolving loan fund. These funds must be deposited into the IRP account at closing and are subject to the same use restrictions as Agency IRP loan funds. These funds must be loaned out to ultimate recipients in conjunction with Agency IRP loan funds. The amount of cash matching funds contributed will be:

(i) At least 5 percent, but less than 10 percent of the requested loan amount—10 points.

(ii) At least 10 percent, but less than 20 percent of the requested loan amount—15 points.

(iii) At least 20 percent, but less than 30 percent of the requested loan amount—20 points.

(iv) At least 30 percent, but less than 40 percent of the requested loan amount—25 points.

(v) At least 40 percent, but less than 50 percent of the requested loan amount—30 points.

(vi) More than 50 percent of the requested loan amount—35 points.

(2) *Intermediary equity contribution for subsequent Agency IRP loan applications only (maximum 35 points).* The Agency will award points under this criterion if the applicant is applying for a subsequent IRP loan and will contribute cash matching funds to the IRP revolving loan fund. The Agency must determine that the applicant's performance under their current IRP loan(s) is satisfactory in accordance with § 4274.330(f)(3) in order to be eligible and receive points under this criterion. These funds must be deposited into the IRP account at closing and are subject to the same use restrictions as Agency IRP Funds and loaned out to ultimate recipients in conjunction with Agency IRP loan funds. Cash matching funds are not required of subsequent applicants, but points will be awarded if the amount of cash matching funds contributed will be:

(i) At least 5 percent, but less than 10 percent of the requested loan amount—10 points.

(ii) At least 10 percent, but less than 20 percent of the requested loan amount—15 points.

(iii) At least 20 percent, but less than 30 percent of the requested loan amount—20 points.

(iv) At least 30 percent, but less than 40 percent of the requested loan amount—25 points.

(v) At least 40 percent, but less than 50 percent of the requested loan amount—30 points.

(vi) More than 50 percent of the requested loan amount—35 points.

(3) *Community Representation (10 points).* Governing board of directors where 50 percent or more of its members consist of business, banking, civic and community leaders that are representative of the rural communities within the service area(s) that intermediary serves. These board members are diversely spread across the service areas and represent at least 50 percent of the intermediary total service area. These board members are not employees of the intermediary. Statewide and national IRP lenders must have a board of directors with members that are also familiar with current economic conditions and the inherent credit risks of making and servicing loans outside of the intermediary's primary location to receive these points. Documentation in the workplan must address these qualifications.

(4) *Leveraging (maximum 25 points).* The Agency will award points if the intermediary will limit the funding of ultimate recipient project loans with Agency IRP funds. IRP revolving loan fund funds that consist of revolved funds may also be used as leveraging. However, any projects funded must continue to comply with the loan agreement and requirements of this subpart so long as any part of the Agency IRP loan remains unpaid. The intermediary's equity contribution will be the following percentages of an ultimate recipient's total project costs:

(i) At least 10 percent, but less than 25 percent of the total project costs—5 points will be awarded;

(ii) At least 25 percent, but less than 50 percent of the total project costs—10 points will be awarded; or

(iii) Fifty percent or more of the total project costs—25 points will be awarded.

(5) *Median household income (maximum 15 points).* The Agency will award points under this criterion based on the degree to which the median household income in the service area of the intermediary exceeds the poverty line for a family of four. For applicant intermediaries whose service area includes multiple locations or geographic areas, weighted averages based on the populations will be used in calculating the area's median household income. For median household income computations,

applicant intermediaries will use income data from the latest decennial census of the United States, updated according to changes in the consumer price index as published annually by the Agency. The poverty line used will be as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), which will be published annually by the Agency. If the median household income in the intermediary's service area exceeds the poverty line for a family of four by:

(i) At least 50 percent, but not more than 75 percent, 5 points will be awarded;

(ii) At least 25 percent, but less than 50 percent, 10 points will be awarded; or

(iii) Below 25 percent, 15 points will be awarded.

(6) *Unemployment (maximum 15 points).* The Agency will award points under this criterion based on the extent to which the unemployment rate in the intermediary's service area exceeds the national unemployment rate. For unemployment computations, applicant intermediaries must use the unemployment data published by the Bureau of Labor Statistics, U.S. Department of Labor, for the most current month available at the time of application in comparison to the national unemployment rate for the same month. If the service area is a single city, town, or Indian Reservation and current, monthly unemployment data is not available for that city or town, the current, monthly unemployment rate for the county (or Indian Reservation) in which the service area is located should be used. For applicant intermediaries whose service area includes multiple locations or geographic areas, a weighted average based on the populations should be used in calculating the area's unemployment rate. If the unemployment rate in the intermediary's service area is:

(i) Equal to, or less than 25 percent above the national unemployment rate, 5 points will be awarded;

(ii) At least 25 percent above, but less than 50 percent above the national unemployment rate, 10 points will be awarded; or

(iii) Fifty percent or more above the national unemployment rate, 15 points will be awarded.

(7) *Trauma (maximum 15 points).* Under this criterion, the Agency will award 15 points if 50 percent or more of the intermediary's service area is experiencing trauma due to a major natural disaster, as declared by the Federal Emergency Management Agency (FEMA), that occurred not more than three years prior to the filing of the application for assistance. Intermediaries with proposed statewide and nationwide service areas do not qualify for these points.

(8) *Experience (maximum 30 points).* The Agency will award points under this criterion based on the number of years the intermediary entity has in successfully making and servicing commercial loans. If the intermediary entity itself has actual experience in making and servicing commercial loans, with a successful record, for:

(i) At least 1 but less than 3 years, 5 points will be awarded;

(ii) At least 3 but less than 5 years, 10 points will be awarded;

(iii) At least 5 but less than 10 years, 20 points will be awarded; or

(iv) Ten or more years, 30 points will be awarded.

(9) *Size of loan request (maximum 20 points).* The Agency will award points under this criterion based on the size of the intermediary's loan request. If the size of the loan request is:

(i) $500,000 or less, 20 points will be awarded; or

(ii) Over $500,000, and up to $750,000, 10 points will be awarded

(10) *Administrator (maximum 10 points).* The Administrator may award up to 10 additional points to an application to account for either or both of the items identified in below:

(i) The project meets the President/Secretary Initiative(s) (*e.g.,* local foods, regional development, persistent poverty, energy-related, etc.); or

(ii) The applicant's service area will include areas not currently served by existing IRP Intermediaries. Statewide and nationwide Intermediaries will not be considered for Administrator points with regard to whether an area is currently covered by an existing IRP fund.

§ 4274.342–§ 4274.344 [Reserved]

§ 4274.345 Letter of conditions.

The Agency will provide the successful intermediary with a letter of conditions listing all requirements for the loan. Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary must complete, sign, and return the requisite forms provided by the Agency indicating the intermediary's intent to meet the conditions and the request of obligation of funds. If the intermediary identifies certain conditions that cannot be met, the intermediary may propose alternate conditions to the Agency. The Agency must approve in writing of any proposed changes made to the initially issued or proposed letter of conditions prior to acceptance and finalization

§ 4274.346 Agency IRP loan closing.

(a) At the time the Agency IRP loan is closed, the intermediary must certify to each condition identified in paragraphs (a)(1) through (5) of this section.

(1) No major changes have been made in the work plan except those approved in the interim by the Agency.

(2) All requirements of the letter of conditions have been met.

(3) There has been no material adverse change in the intermediary's financial condition, nor any other material adverse change in the intermediary, for any reason, during the period of time from the Agency's loan approval to loan closing regardless of the cause or causes of the change and whether or not the change or causes of the change were within the intermediary's control. Any material adverse change must be explained by the intermediary. The Agency, at its sole discretion, will consider any such change and determine if it is significant enough to prevent the loan closing or disbursement of IRP loan funds to the intermediary.

(4) There are no claims or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties pending against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

(5) Certification that the intermediary has received Agency staff training on how to distinguish a required environmental review from a categorical exclusion in accordance with § 4274.305(b).

(b) The Agency will consider all requested changes submitted in writing to the Agency but will only approve changes that do not materially affect the IRP project, its capacity, employment, original projections, or credit factors.

§ 4274.347–§ 4274.350 [Reserved]

§ 4274.351 Loan approval and obligating funds.

(a) The loan will be considered approved on the date that the obligation of funds document (*Form RD 1940–1, Request for Obligation of Funds*), is signed by the Agency. Agency IRP loans not closed within six months of approval by the Agency will be deobligated and the loan funds will no longer be available to the intermediary.

(b) An obligation of funds established for an intermediary may be transferred by the Agency to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purposes for which Agency IRP loan funds will be used remain substantially unchanged.

§ 4274.352 Loan documentation for ultimate recipients.

(a) *Agency IRP loans.* Prior Agency concurrence is required when an intermediary makes loans to an ultimate recipient from its Agency IRP loan funds (this applies to each Agency IRP loan received). A request for Agency concurrence in approval of a proposed loan to an ultimate recipient, whether made directly or through a loan participation purchase, must contain or comply with, as appropriate, the items identified in paragraph (b)(1) through (5) of this section and must include information listed in the IRP Revolving Loan Fund File Checklist, on the Agency website at the USDA Rural Development Intermediary Relending Program website:

(1) Certification by the intermediary that:

(i) The ultimate recipient is eligible for the loan;

(ii) The loan is for an eligible purpose;

(iii) Agency IRP loan funds are not more than 75 percent of the total project costs;

(iv) The loan complies with all applicable statutes and regulations;

(v) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and

(vi) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary. The interest and influence of a cooperative member when the intermediary is a cooperative is an allowable exception to this paragraph.

(2) A completed and executed request for environmental information on a form provided by the Agency for projects that meet the criteria for a NEPA review categorical exclusion, NEPA environmental assessment or NEPA environmental impact statement in accordance with § 4274.305(b)(2).

(3) All comments obtained in accordance with § 4274.305(a) regarding intergovernmental consultation (if required).

(4) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files to allow the Agency to determine the:

(i) Name, address, DUNS number, Federal ID number, and North American Classification System (NAICS) Code of the ultimate recipient;

(ii) Loan purpose;

(iii) Interest rate and term;

(iv) Location, nature, and scope of the project being financed;

(v) Uses and sources of funds; and

(vi) Nature and lien priority of the collateral.

(5) Such other information as the Agency may request.

(b) *Revolved IRP loan funds.* An intermediary may use revolved funds to make loans to ultimate recipients in accordance with § 4274.320(b) without obtaining prior Agency concurrence as required in § 4274.352(a) and are also exempted from completion of items required by paragraphs (a)(2) and (3) of this section.

§ 4274.353–§ 4274.359 [Reserved]

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2021–27522 Filed 12–20–21; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1065; Project Identifier MCAI–2021–01264–T; Amendment 39–21858; AD 2021–25–14]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by the determination that fatigue cracking may occur at the wing manhole access panel attachment holes at certain wing skin panels on airplanes with Sharklets or its structural reinforcements installed. This AD requires repetitive inspections for cracking of the area, and corrective action if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective January 5, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 5, 2022.

The FAA must receive comments on this AD by February 4, 2022.

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 *https://www.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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1065.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1065; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer,

Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–1065; Project Identifier MCAI–2021–01264–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@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 2021–0256, dated November 16, 2021 (EASA AD 2021–0256) (also referred to as the MCAI), to correct an unsafe condition for all Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This AD was prompted by the determination that fatigue cracking may occur at the left-hand and right-hand wing manhole access panel attachment holes in the bottom wing skin panels 2, between rib 13 and rib 23, on airplanes with Sharklets or its structural reinforcements installed. The FAA is issuing this AD to address this condition, which could lead to crack propagation, possibly resulting in reduced structural integrity of the wings. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0256 specifies procedures for repetitive detailed visual inspections to detect discrepancies (cracking) of the left-hand and right-hand wing manhole access panel attachment holes in the bottom wing skin panels 2, between rib 13 and rib 23. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the aviation authority of another country and are 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 described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type designs.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0256 described previously, except for any differences identified as exceptions in the regulatory text of this 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, EASA AD 2021–0256 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2021–0256 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0256 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 2021–0256. Service information required by EASA AD 2021–0256 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1065 after this AD is published.

Interim Action

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

FAA's Justification and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because fatigue cracking at the wing

manhole access panel attachment holes in the bottom wing skin panels 2, between rib 13 and rib 23, on airplanes with Sharklets or its structural reinforcements are installed, could lead to crack propagation, possibly resulting in reduced structural integrity of the wings. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 1,463 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
14 work-hours × $85 per hour = $1,190	$0	$1,190	$1,740,970 per inspection cycle.

* Table does not include estimated costs for reporting inspection results.

The FAA estimates that it takes 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $124,355, or $85 per product, per inspection cycle.

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–25–14 Airbus SAS: Amendment 39–21858; Docket No. FAA–2021–1065; Project Identifier MCAI–2021–01264–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 5, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (3) of this AD and certificated in any category.

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by the determination that fatigue cracking may occur at the left-hand and right-hand wing manhole access panel attachment holes in the bottom wing skin panels 2, between rib 13 and rib 23, on airplanes with Sharklets or its structural reinforcements installed. The FAA is issuing this AD to address this condition, which could lead to crack propagation, possibly resulting in reduced structural integrity of the wings.

(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) AD 2021–0256, dated November 16, 2021 (EASA AD 2021–0256).

(h) Exceptions to EASA AD 2021–0256

(1) Where EASA AD 2021–0256 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021–0256 requires ''a DET [detailed visual inspection] of the affected areas,'' this AD requires a detailed visual inspection to detect discrepancies (cracking) of the affected areas.

(3) Where paragraph (2) of EASA AD 2021–0256 specifies to ''contact Airbus for approved instructions and . . . accomplish [the specified] instructions accordingly'' if discrepancies are detected, for this AD if any cracking is detected, the cracking must be repaired before further flight using a method approved by the Manager, Large Aircraft Section, 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.

(4) Paragraph (3) of EASA AD 2021–0256 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(4)(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.

(5) The ''Remarks'' section of EASA AD 2021–0256 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* 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, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information referenced in EASA AD 2021–0256 that contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *Sanjay.Ralhan@faa.gov.*

(k) 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 2021–0256, dated November 16, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0256, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

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

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

Issued on December 3, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27707 Filed 12–17–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1064; Project Identifier MCAI–2021–01028–T; Amendment 39–21856; AD 2021–25–12]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–19–09, which applied to certain De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–8–400 series airplanes. AD 2017–19–09 required modifying the nose landing gear (NLG) shock strut assembly. This new AD requires repetitive lubrications of the trailing arm of the NLG. This new AD also requires revising the existing maintenance or inspection program to include new and revised airworthiness limitations (life limits for certain bolts). This AD was prompted by reports of a certain bolt being found missing or having stress corrosion cracking. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 5, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 5, 2022.

The FAA must receive comments on this AD by February 4, 2022.

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 *https://www.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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com*; internet *https://dehavilland.com*. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1064.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1064; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for the Docket Operations office is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued AD 2017–19–09, Amendment 39–19039 (82 FR 43829, September 20, 2017) (AD 2017–19–09), which applied to certain De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–8–400, –401, and –402 airplanes. AD 2017–19–09 was prompted by reports of discrepancies of a certain bolt at the pivot pin link, resulting in corrosion of the bolt. AD 2017–19–09 required modifying the NLG shock strut assembly. The FAA issued AD 2017–19–09 to address failure of the pivot pin retention bolt, which could result in a loss of directional control or loss of an NLG tire during takeoff or landing.

Actions Since AD 2017–19–09 Was Issued

Since the FAA issued AD 2017–19–09, the FAA has determined new actions are necessary to address the unsafe condition. New bolts that have been installed must be repetitively lubricated and replaced before reaching their life limit. Failure of the pivot pin retention bolt could result in loss of directional control or loss of a NLG tire during takeoff or landing, which could lead to runway excursions. The actions required by AD 2017–19–09 are not retained in this AD.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2009–29R4, dated October 1, 2021 (TCCA AD CF–2009–29R4) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1064.

This AD was prompted by reports of a certain bolt at the pivot pin link being found missing or having stress corrosion cracking. The FAA is issuing this AD to address failure of the pivot pin retention bolt, which could result in a loss of directional control or loss of an NLG tire during takeoff or landing. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued Service Bulletin 84–32–167, dated August 12, 2021. This service information describes procedures for repetitive lubrications of the trailing arm of the NLG, which include a general visual inspection of the NLG pivot pin mechanism for discrepancies (*i.e.,* bolt part number (P/N) NAS602–14D is missing or has damage (*e.g.,* stress corrosion or stress corrosion cracking)) and replacement of missing or damaged bolts.

De Havilland Aircraft of Canada Limited has also issued Temporary Revision ALI–0223, dated October 15, 2020. This service information describes new and revised airworthiness limitations, including life limits for certain bolts as specified in Structures Safe Life Task 32–21–01–701 and Task 32–21–01–702.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this AD because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions described previously for De Havilland Aircraft of Canada Limited Service Bulletin 84–32–167, dated August 12, 2021. This AD also requires revising the existing maintenance or inspection program to include new and revised airworthiness limitations (life limits for certain bolts).

Differences Between This AD and the MCAI or Service Information

Part I of TCCA AD CF–2009–29R4 requires a modification to the NLG shock strut assembly within 1,600 flight cycles or 9 months for certain airplanes. The FAA is currently considering requiring the modification in order to address the identified unsafe condition. However, the planned compliance time for the installation of the modification would allow enough time to provide notice and opportunity for prior public comment on the merits of the modification. Therefore, this AD does not include the modification.

Part III of TCCA AD CF 2009–29R4 applies to all airplanes but specifies to do the actions using De Havilland Aircraft of Canada Service Bulletin 84–32–167, dated August 12, 2021. The service information only has instructions for pivot pin retention bolt P/N NAS6204–14D. Therefore, the repetitive lubrications specified in (i) of this AD is for airplanes with pivot pin

retention bolt P/N NAS6204–14D installed on the NLG assembly.

Explanation of Change to the Applicability

AD 2017–19–09 did not include serial number (S/N) 4002 in its applicability but it did identify Model DHC–8–400 airplanes in the applicability. However, the only Model DHC–8–400 airplane is S/N 4002, making the reference to Model DHC–8–400 unnecessary. In addition, the Model DHC–8–400 airplane is not included in TCCA AD CF–2009–29R4. Therefore, this AD does not apply to the Model DHC–8–400 airplane.

In addition, the FAA has revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the pivot pin retention bolt could result in a loss of directional control or loss of a NLG tire during takeoff or landing, which could lead to runway excursions. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–1064; Project Identifier MCAI–2021–01028–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Interim Action

The FAA considers this AD interim action. The FAA is currently considering requiring the modification to the NLG shock strut assembly specified in Part I of TCCA AD CF–2009–29R4.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 54 airplanes of U.S. registry.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New actions	1 work-hour × $85 per hour = $85	Negligible	$85	$4,590

* Table does not include estimated costs for revising the maintenance or inspection program.

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. 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. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$8	$178

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2017–19–09, Amendment 39–19039 (82 FR 43829, September 20, 2017); and

■ b. Adding the following new AD:

2021–25–12 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–21856; Docket No. FAA–2021–1064; Project Identifier MCAI–2021–01028–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 5, 2022.

(b) Affected ADs

This AD replaces AD 2017–19–09, Amendment 39–19039 (82 FR 43829, September 20, 2017) (AD 2017–19–09).

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes, certificated in any category, serial numbers 4001 and 4003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of a certain bolt at the pivot pin link being found missing or having stress corrosion cracking. The FAA is issuing this AD to address failure of the pivot pin retention bolt, which could result in a loss of directional control or loss of a nose landing gear (NLG) tire during takeoff or landing, which could lead to runway excursions.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

For airplanes with pivot pin retention bolt part number (P/N) NAS6204–14D installed on the NLG assembly: Within 30 days after the effective date of this AD, or within 30 days after installation of pivot pin retention bolt part number P/N NAS6204–14D, whichever occurs later, revise the existing maintenance or inspection program, as applicable, to incorporate the information for Structures Safe Life Task 32–21–01–701 and Task 32–21–01–702, as specified in De Havilland Aircraft of Canada Limited Temporary Revision ALI–0223, dated October 15, 2020. The initial compliance time for doing the tasks is at the applicable time specified in De Havilland Aircraft of Canada Limited Temporary Revision ALI–0223, dated October 15, 2020, or within 30 days after the effective date of this AD, whichever occurs later; except, if replacement of bolt P/N NAS6204–14D was performed before the effective date of this AD as specified in De Havilland Aircraft of Canada Service Bulletin 84–32–161, the initial compliance time for Task 32–21–01–702 (bolt P/N NAS6204–14D replacement) is within 3 months after the effective date of this AD or within 800 flight cycles after performing the replacement, whichever occurs later.

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* replacements) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Repetitive Lubrications

For airplanes with pivot pin retention bolt P/N NAS6204–14D installed on the NLG assembly: Within 30 days or 400 flight cycles, whichever occurs first after the effective date of this AD, and thereafter at intervals not exceeding 400 flight cycles, lubricate the trailing arm of the NLG, including doing a general visual inspection of the NLG pivot pin mechanism for discrepancies (*i.e.,* bolt P/N NAS602–14D is missing or has damage (*e.g.,* stress corrosion or stress corrosion cracking)) and, as applicable, replacing the bolt before further flight, in accordance with paragraph 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–32–167, dated August 12, 2021.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2009–29R4, dated October 1, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1064.

(2) For more information about this AD, contact Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart

Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) De Havilland Aircraft of Canada Limited Service Bulletin 84–32–167, dated August 12, 2021.

(ii) De Havilland Aircraft of Canada Limited Temporary Revision ALI–0223, dated October 15, 2020.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com*; internet *https://dehavilland.com*.

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

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

Issued on December 3, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27709 Filed 12–17–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0869; Project Identifier AD–2021–00176–E; Amendment 39–21878; AD 2021–26–19]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) CF34–8C and CF34–8E model turbofan engines. This AD was prompted by a report of a quality escape during the manufacturing of a high-pressure turbine (HPT) rotor stage 1 disk. This AD requires removing the HPT rotor stage 1 disk from service and replacing the HPT rotor stage 1 disk with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 25, 2022.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *https://www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0869.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0869; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Scott Stevenson, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7132; fax: (781) 238–7199; email: *Scott.M.Stevenson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain GE CF34–8C5, CF34–8C5B1, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 model turbofan engines. The NPRM published in the **Federal Register** on October 8, 2021 (86 FR 56217). The NPRM was prompted by GE notifying the FAA of a quality escape that occurred during the manufacturing of an HPT rotor stage 1 disk. The quality escape occurred at a supplier that began production in August 2019. On November 25, 2019, the supplier discovered tool gouges at the forward chamfer on the air holes of an HPT rotor stage 1 disk. These gouges may reduce the life of the HPT rotor stage 1 disk. In the NPRM, the FAA proposed to require removing a certain HPT rotor stage 1 disk from service and replacing the HPT rotor stage 1 disk with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information

The FAA reviewed GE CF34–8C Alert Service Bulletin (ASB) 72–A0344 R01 and GE CF34–8E ASB 72–A0228 R01, both dated December 19, 2019. The ASBs describe procedures for removing the HPT rotor stage 1 disk. The FAA also reviewed GE Repair Document RD #150–1811–P1, dated March 17, 2020. This document describes procedures for repairing the HPT rotor stage 1 disk.

Costs of Compliance

The FAA estimates that this AD affects 23 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace HPT rotor stage 1 disk	812 work-hours × $85 per hour = $69,020	$258,100	$327,120	$7,523,760

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–26–19 General Electric Company: Amendment 39–21878; Docket No. FAA–2021–0869; Project Identifier AD–2021–00176–E.

(a) Effective Date

This airworthiness directive (AD) is effective January 25, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) CF34–8C5, CF34–8C5B1, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 model turbofan engines with an installed high-pressure turbine (HPT) rotor stage 1 disk, part number (P/N) 4125T22P04, and a serial number (S/N) listed in Figure 1 or Figure 2 to paragraph (c) of this AD.

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Figure 1 to Paragraph (c) – HPT rotor stage 1 disk, P/N 4125T22P04, installed on CF34-8C5 and CF34-8C5B1 engines

HPT Rotor Stage 1 Disk S/N
NCU1234C
NCU0180C
NCU0174C
NCU0183C
NCU6175C
NCU6174C
NCU7694C
GATJ8T64
NCU7065C
NCU7068C
NCU6173C
NCU1232C
NCU7698C
GATJ8P5T

Figure 2 to Paragraph (c) – HPT rotor stage 1 disk, P/N 4125T22P04, installed on CF34-8E2, CF34-8E2A1, CF34-8E5, CF34-8E5A1, CF34-8E5A2, CF34-8E6, and CF34-8E6A1 engines

HPT Rotor Stage 1 Disk S/N
GATJ8PJF
GATJ8P5R
NCU9014C
NCU9654A
GATJ903T
NCU8314C
GATJ8WK4
NCU9785A
NCU1233C
NCU2151C
NCU7070C
NCU2920C
NCU7692C
NCU6171C
GATJ8TCF
GATJ8T63
NCU8313C

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a report of a quality escape during the manufacturing of an HPT rotor stage 1 disk. The FAA is issuing this AD to prevent failure of the HPT rotor stage 1 disk. The unsafe condition, if not addressed, could result in uncontained disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

For all affected engines, at the next engine shop visit or before the HPT rotor stage 1 disk accumulates 7,600 cycles since new, whichever occurs first after the effective date of this AD, remove the HPT rotor stage 1 disk from service and replace with a part eligible for installation.

(h) Definitions

For the purpose of this AD:

(1) An ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the

purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(2) A ''part eligible for installation'' is an HPT rotor stage 1 disk that is not listed in Figure 1 or Figure 2 to paragraph (c) of this AD or an HPT rotor stage 1 disk that has been repaired using an FAA-approved repair.

Note 1 to paragraph (h)(2): Guidance for repairing the HPT rotor stage 1 disk can be found in GE Repair Document RD #150–1811–P1, dated March 17, 2020.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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 certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Scott Stevenson, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7132; fax: (781) 238–7199; email: *Scott.M.Stevenson@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on December 15, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27480 Filed 12–20–21; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0786; Project Identifier MCAI–2021–00429–A; Amendment 39–21843; AD 2021–24–22]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2012–06–16, which applied to all Pilatus Aircraft Ltd. (Pilatus) Model PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes. AD 2012–06–16 required installing a new rudder and elevator locking screw and modifying the installation of the rudder and elevator hinge bolt. Since the FAA issued AD 2012–06–16, the European Union Aviation Safety Agency (EASA) superseded its mandatory continuing airworthiness information (MCAI) to correct an unsafe condition on these products. This AD does not retain any actions required by AD 2012–06–16 and requires inspecting and modifying the rudder, elevator, and right-hand (RH) aileron hinge bolt installations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 25, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 25, 2022.

ADDRESSES: For service information identified in this final rule, contact Pilatus Aircraft Ltd., Customer Support General Aviation, CH–6371 Stans, Switzerland; phone: +41 848 247 365; email: *techsupport.ch@pilatus-aircraft.com;* website: *https://www.pilatus-aircraft.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0786; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the 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.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2012–06–16, Amendment 39–16997 (77 FR 19061, March 30, 2012) (AD 2012–06–16). AD 2012–06–16 applied to all Pilatus Model PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes and required installing a new elevator and rudder locking screw and modifying the installation of the elevator and rudder hinge bolt. The NPRM published in the **Federal Register** on September 17, 2021 (86 FR 51835).

The NPRM was prompted by AD 2021–0098, dated April 9, 2021 (referred to after this as ''the MCAI''), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states:

> Occurrences were reported where, on certain PC–6 aeroplanes, the elevator or the rudders was lost or partially detached during flight. All the occurrences happened on PC–6 aeroplanes in CONFIG 1.
>
> This condition, if not corrected, could lead to in-flight failure of the elevator or rudder attachment, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Pilatus issued SB 55–001 (original issue and Revision 1) to provide rework instructions for the elevator and rudder hinge bolt locking. Consequently, EASA published AD 2011–0230 to require this rework. Subsequently, Pilatus issued recommended SB 55–003 (later revised) to provide instructions to modify the hinge bolt installation of the elevator and rudder. This [service bulletin] SB, being recommended only, had no impact on the existing EASA AD.
>
> Since that [EASA] AD and the recommended Pilatus SB 55–003 were published, the latest risk assessment determined that the modification of the hinge bolt installation of the elevator, rudder and right-hand (RH) aileron installation must be required to reach an acceptable level of safety for the affected aeroplanes. Consequently, Pilatus issued the SB, as defined in this [EASA] AD, to provide instructions to modify the affected aeroplanes into CONFIG 2 standard.
>
> For the reasons described above, this [EASA] AD supersedes EASA AD 2011–0230 and requires, for certain aeroplanes, a one-time inspection of the elevator and rudder installation, followed by repetitive inspections of the elevator and rudder, and, depending on findings, accomplishment of applicable corrective action(s). This [EASA] AD also requires modification of the elevator, rudder and RH aileron hinge bolt installations into CONFIG 2, which is the terminating action for the repetitive inspections required by this [EASA] AD. Finally, this [EASA] AD prohibits (re)installation of affected parts.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0786.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pilatus PC–6 Service Bulletin (SB) No. 55–005, dated February 25, 2021 (Pilatus SB 55–005). The service information specifies procedures for repetitively inspecting the hinge bolt installations and taking any necessary corrective actions until the hinge bolt is modified. Modifying the hinge bolt installation in accordance with Pilatus SB 55–005 makes the airplane a CONFIG 2 design. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

Pilatus also issued Pilatus PC–6 SB No. 55–003, dated November 29, 2013; Pilatus PC–6 SB No. 55–003, Revision 1, dated December 9, 2014; Pilatus PC–6 SB No. 55–003, Revision 2, dated January 19, 2017; and Pilatus PC–6 SB No. 55–003, Revision 3, dated November 6, 2017. This service information specifies procedures for modifying the hinge bolt installations, which makes the airplane a CONFIG 2 design. This service information was superseded by Pilatus SB 55–005.

Costs of Compliance

The FAA estimates that this AD affects 50 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspecting CONFIG 1 airplanes	4.5 work-hours × $85 per hour = $382.50	Not applicable	$382.50 per inspection cycle.	$19,125 per inspection cycle.
Modifying from CONFIG 1 to CONFIG 2	14 work-hours × $85 per hour = $1,190	$1,200	$2,390	$119,500.

The FAA estimates the following costs to do any necessary corrective actions that would be required based on the results of the mandated inspection. The FAA has no way of determining the number of airplanes that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Accomplishing corrective actions	.5 work-hour × $85 per hour = $42.50	$200	$242.50

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive AD 2012–06–16, Amendment 39–16997 (77 FR 19061, March 30, 2012); and

■ b. Adding the following new airworthiness directive:

2021–24–22 Pilatus Aircraft Ltd.: Amendment 39–21843; Docket No. FAA–2021–0786; Project Identifier MCAI–2021–00429–A.

(a) Effective Date

This AD is effective January 25, 2022.

(b) Affected ADs

This AD replaces AD 2012–06–16, Amendment 39–16997 (77 FR 19061, March 30, 2012).

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, all serial numbers, certificated in any category.

Note 1 to paragraph (c): These airplanes may also be identified as Fairchild Republic Company airplanes, Fairchild Industries airplanes, Fairchild Heli Porter airplanes, or Fairchild-Hiller Corporation airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Codes 2700, Flight Control System; 2710, Aileron Control System; 2720, Rudder Control System; and 2730, Elevator Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as detachment or partial detachment of the elevator or rudder in flight. The FAA is issuing this AD to prevent failure of the elevator or rudder attachment. The unsafe condition, if not addressed, could result in loss of control of the airplane.

(f) Compliance

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

(g) Definitions

The following definitions apply for purposes of this AD.

(1) *Group 1 airplanes:* Airplanes that have not been modified in accordance with Pilatus PC–6 Service Bulletin (SB) No. 55–003, dated November 29, 2013 (Pilatus SB 55–003); Pilatus PC–6 SB No. 55–003, Revision 1, dated December 9, 2014 (Pilatus SB 55–003R1); Pilatus PC–6 SB No. 55–003, Revision 2, dated January 19, 2017 (Pilatus 55–003R2); Pilatus PC–6 SB No. 55–003, Revision 3, dated November 6, 2017 (Pilatus 55–003R3); or Pilatus PC–6 SB No. 55–005, dated February 25, 2021 (Pilatus SB 55–005).

(2) *Group 2 airplanes:* Airplanes that have been modified in accordance with Pilatus SB 55–003, SB 55–003R1, SB 55–003R2, Pilatus SB 55–003R3; or Pilatus SB 55–005.

(h) Inspect Elevator, Rudder, and RH Aileron Hinge Bolt Installations

(1) *For Group 1 airplanes:* Within 14 days after the effective date of this AD, inspect the elevator, rudder, and RH aileron hinge bolt installations and take any corrective actions before further flight by following the Accomplishment Instructions-Part 1-On Aircraft-Inspection in Pilatus SB 55–005.

(2) *For Group 1 airplanes:* Within 100 hours time-in-service (TIS) after the inspection required by paragraph (h)(1) of this AD and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (i) of this AD is done, inspect the elevator, rudder, and RH aileron hinge bolt installations and take any corrective actions before further flight by following the Accomplishment Instructions-Part 2-On Aircraft-CONFIG 1-Repeat Inspections in Pilatus SB 55–005.

(i) Modify Group 1 Airplanes

Within 11 months after the effective date of this AD, modify the hinge bolt installations on the elevator, rudder, and RH aileron assemblies by following the Accomplishment Instructions-Part 3-On Aircraft-Modification from CONFIG 1 to CONFIG 2 in Pilatus SB 55–005. Modifying the elevator, rudder, and RH aileron hinge bolt installations terminates the repetitive inspections required by paragraph (h)(2) of this AD.

(j) Installation Prohibition

As of the following applicable compliance time, do not install on any airplane an elevator assembly part number (P/N) 113.50.06.011, 113.50.06.012, 6305.0010.00, 6305.0010.52, 6305.0010.53, 6305.0010.54, or 6305.0010.55, or a rudder assembly P/N 113.40.06.018, 6302.0010.51, or 6302.0010.52.

(1) *For Group 1 airplanes:* As of the modification required by paragraph (i) of this AD.

(2) *For Group 2 airplanes:* As of the effective date of this AD.

(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 certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD and email: *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

(1) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0098, dated April 9, 2021, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–0786.

(3) You may obtain information related to Pilatus SB 55–003, SB 55–003R1, SB 55–003R2, Pilatus SB 55–003R3; or Pilatus SB 55–005, which are not incorporated by reference, using the contact information found in paragraph (m)(3) of this AD.

(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 the AD specifies otherwise.

(i) Pilatus PC–6 Service Bulletin (SB) No. 55–005, dated February 25, 2021.

(ii) [Reserved]

(3) Pilatus Aircraft Ltd., Customer Support General Aviation, CH–6371 Stans, Switzerland; phone: +41 848 247 365; email: *techsupport.ch@pilatus-aircraft.com;* website: *https://www.pilatus-aircraft.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued on November 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27507 Filed 12–20–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1077; Project Identifier MCAI–2020–00819–A; Amendment 39–21842; AD 2021–24–21]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. Model EMB–500 and EMB–505 airplanes. This AD was prompted by a report that the

operational envelope does not contain airspeed limitations and procedures for operating the airplane at static air temperatures below −54 °C. This AD requires revising the airplane flight manual (AFM) to incorporate new and revised airspeed limitations and procedures. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 25, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 25, 2022.

ADDRESSES: For service information identified in this final rule, contact Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, P.O. Box 36/2, São José dos Campos, 12227–901, Brazil; phone: +55 12 3927 1000; email: *phenom.reliability@embraer.com.br;* website: *https://www.embraer.com.br/en-US/Pages/home.aspx.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1077.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1077; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Embraer S.A. Model EMB–500 and EMB–505 airplanes with certain engines installed. The NPRM published in the **Federal Register** on August 2, 2021 (86 FR 41410). The NPRM was prompted by MCAI originated by the Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil. ANAC issued AD 2020–05–03, effective June 1, 2020 (ANAC AD 2020–05–03) (also referred to after this as ''the MCAI''), to correct an unsafe condition on Embraer S.A. Model EMB–500 and EMB–505 airplanes with certain engines installed. Although the affected airplanes were designed for operation at temperatures below −54 °C, the operational envelope in the AFM does not contain the necessary limitations and procedures to operate safely in these colder temperatures. The MCAI states that operation of the affected airplanes at static air temperatures below −54 °C without these limitations could cause several systems and components to operate inadequately, resulting in multiple systems failures.

Accordingly, the MCAI requires updating the AFM to incorporate a modified operational envelope that establishes restrictions and minimum airspeed required for each static temperature range. In the NPRM, the FAA proposed to require revising the AFM to incorporate the new and revised airspeed limitations and procedures specified in the manufacturer's service information. The FAA is issuing this AD to prevent inadequate operation below the allowable temperature, which could result in multiple systems failures and compromise safe flight of the airplane.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1077.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment on the NPRM from Embraer. The following presents the comment received and the FAA's response to the comment.

Embraer requested that the FAA change the final rule to allow operators to revise the AFM using EMB–500 AFM 2656, Revision 24, dated March 17, 2020, and EMB–505 AFM–2665, Revision 21, dated March 13, 2020, as well as future FAA-approved AFM revisions. Embraer stated that the information in the service information proposed for incorporation by reference has been included in the March 2020 AFM revisions for each model type.

The FAA agrees and has revised the AD to allow use of a different document provided the language is identical to the language in the service information incorporated by reference.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Embraer Phenom Operational Bulletin No. 500–001/20, dated March 9, 2020; and Operational Bulletin No. 505–005/13, Revision 1, dated March 9, 2020. This service information specifies revising the AFM to incorporate limitations and procedures for the minimum airspeed in the affected region of the operational envelope. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 590 airplanes of U.S. registry.

ESTIMATED COSTS FOR REVISING THE AFM

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
.5 work-hour × $85 per hour = $42.50	$0	$42.50	$25,075

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. For the reasons discussed above, I certify that this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–24–21 Embraer S.A.: Amendment 39–21842; Docket No. FAA–2020–1077; Project Identifier MCAI–2020–00819–A.

(a) Effective Date

This airworthiness directive (AD) is effective January 25, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model EMB–500 and EMB–505 airplanes, all serial numbers, certificated in any category, with Model PW617F–E or PW617F1–E engines (for Model EMB–500 airplanes) or Model PW535E engines (for Model EMB–505 airplanes) installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 0200, Operations.

(e) Unsafe Condition

This AD was prompted by a report that the operational envelope does not contain airspeed limitations and procedures for operating the airplane at static air temperatures below −54 °C. The FAA is issuing this AD to prevent inadequate operation below the allowable temperature. The unsafe condition, if not addressed, could result in multiple systems failures and compromise safe flight of the airplane.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD:

(1) For Model EMB–500 airplanes: Revise Section 2 Limitations and Section 5 Performance of the existing AFM for your airplane by incorporating the information in ''V—OPERATING INFORMATION,'' of Embraer Phenom Operational Bulletin No. 500–001/20, dated March 9, 2020. You may use a different document provided the language is identical to the language in ''V—OPERATING INFORMATION,'' of Embraer Phenom Operational Bulletin No. 500–001/20, dated March 9, 2020.

(2) For Model EMB–505 airplanes: Revise Section 2 Limitations, Section 5 Performance, and Supplement 2 of the existing AFM for your airplane by incorporating the information in ''V—OPERATING INFORMATION,'' of Embraer Phenom Operational Bulletin No. 505–005/13, Revision 1, dated March 9, 2020. You may use a different document provided the language is identical to the language in V—OPERATING INFORMATION,'' of Embraer Phenom Operational Bulletin No. 505–005/13, Revision 1, dated March 9, 2020.

(h) 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. Send your request to the person identified in paragraph (i)(1) of this AD and email: *9-AVS-AIR-730-AMOC@faa.gov*.

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

(i) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*.

(2) Refer to Mandatory Continuing Airworthiness Information (MCAI) Agência Nacional de Aviação Civil AD 2020–05–03, effective June 1, 2020, for related information. This MCAI may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1077.

(j) 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 the AD specifies otherwise.

(i) Embraer Phenom Operational Bulletin No. 500–001/20, dated March 9, 2020.

(ii) Embraer Phenom Operational Bulletin No. 505–005/13, Revision 1, dated March 9, 2020.

(3) For service information identified in this AD, contact Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, P.O. Box 36/2, São José dos Campos, 12227–901, Brazil; phone: +55 12 3927 1000; email: *phenom.reliability@embraer.com.br;*

website: *https://www.embraer.com.br/en-US/Pages/home.aspx.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued on November 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27511 Filed 12–20–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1006; Project Identifier 2019–CE–047–AD; Amendment 39–21855; AD 2021–25–11]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 78–02–03, which applied to all Piper Aircraft, Inc. (Piper) Model PA–23–250 airplanes. AD 78–02–03 required repetitively inspecting the stabilator tip tube and weight assemblies for cracks, inspecting for missing rivets and screws, replacing the forward rib/horn assemblies, and reinforcing the mounting. Since AD 78–02–03 was issued, Piper developed a newly-designed stabilator, which is not subject to the unsafe condition, and revised its service information. This AD retains the actions of AD 78–02–03, but reduces the applicability and requires the actions in the revised service information. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 25, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 25, 2022.

ADDRESSES: For service information identified in this final rule, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 299–2141; website: *https://www.piper.com/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1006.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1006; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: John Marshall, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5524; fax: (404) 474–5605; email: *john.r.marshall@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by superseding AD 78–02–03 [Reg. Docket No. 77–EA–81, Amendment 39–3128] (43 FR 3079, January 23, 1978) (AD 78–02–03). AD 78–02–03 applied to all Piper Model PA–23–250 airplanes and required repetitively inspecting both the stabilator tip tube and weight assemblies for cracks. For different groups of serial-numbered airplanes, AD 78–02–03 required a one-time inspection of the stabilator tip ribs for missing rivets and screws, replacement of the forward rib/horn assemblies, and reinforcement of the mounting. The repetitive inspections in AD 78–02–03 for all serial-numbered airplanes had no terminating action and were required regardless of any corrective actions performed.

The NPRM published in the **Federal Register** on September 16, 2021 (86 FR 51636). The NPRM was prompted by Piper developing a newly-designed stabilator, which is not subject to the unsafe condition, and revising its service information. The FAA determined the applicability of AD 78–02–03 should be revised to exclude airplanes beginning with serial number 27–7954122, which were manufactured with the stabilator design change. In the NPRM, the FAA proposed to retain all of the requirements of AD 78–02–03 but reduce the applicability and update some of the service information that would be required for compliance. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service documents required for compliance with this AD:

- Piper Service Bulletin (SB) No. 547, dated March 1, 1977, which contains instructions for inspecting the stabilator tip rib;
- Piper SB No. 569, dated August 24, 1977, which contains information for replacing the stabilator tab horn;
- Piper Service Letter No. 807A, dated September 8, 1977, which contains information for installing the stabilator outboard nose rib; and
- Piper SB No. 540B, February 9, 2021, which contains instructions for inspecting the stabilator tip tube and weight assembly and addressing any cracks found.

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

Other Related Service Information

The FAA reviewed the following documents for information related to this AD:

- Piper SB 540, which contains instructions for inspecting and reinforcing the stabilator tip tube and weight assembly; and
- Piper Aztec Service Manual, Part Number 753–564, dated January 1, 2009. Paragraphs 4–65 through 4–67 of this manual contain procedures for checking control surface balance.

Differences Between This AD and the Service Information

Piper SB 540B specifies contacting Piper for repair instructions. This AD requires contacting the FAA for an approved repair method instead.

Costs of Compliance

The FAA estimates that this AD affects 625 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Inspect the stabilator tip tube and weight assembly.	0.5 work-hour × $85 per hour = $42.50	Not applicable	$42.50 per inspection cycle.	$26,562.50 per inspection cycle.
Inspect the stabilator tip ribs	0.5 work-hour × $85 per hour = $42.50	Not applicable	$42.50	$26,562.50.
Replace the stabilator tab forward rib/horn assemblies.	4 work-hours × $85 per hour = $340	$817	$1,157	$723,125.
Install additional nose ribs	1 work-hour × $85 per hour = $85	$367	$452	$282,500.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Repair stabilator tip tube and weight assemblies (airplanes without kit P/N 763 987).	4 work-hours × $85 per hour = $340	$80	$420
Install missing stabilator tip rib rivets and/or the stabilator tip tube and weight assembly attachment screws.	1 work hour × $85 per hour = $85	$39	124
Balance stabilator	5 work-hours × $85 per hour = $425	Not applicable	425

For airplanes with kit P/N 763 987, the cost to repair cracking may vary significantly from airplane to airplane, and therefore the FAA has no way of determining an estimated cost.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 78–02–03 [Reg. Docket No. 77–EA–81, Amendment 39–3128] (43 FR 3079, January 23, 1978); and

■ b. Adding the following new airworthiness directive:

2021–25–11 Piper Aircraft, Inc.: Amendment 39–21855; Docket No. FAA–2020–1006; Project Identifier 2019–CE–047–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 25, 2022.

(b) Affected ADs

This AD replaces AD 78–02–03 [Reg. Docket No. 77–EA–81, Amendment 39–3128] (43 FR 3079, January 23, 1978) (AD 78–02–03).

(c) Applicability

This AD applies to Piper Aircraft, Inc., Model PA–23–250 airplanes, serial numbers 27–7654001 through 27–7954121, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5510, Horizontal Stabilizer Structure.

(e) Unsafe Condition

This AD was prompted by reports of cracks developing on the stabilator structure. The FAA is issuing this AD to prevent weakening of the stabilator structure and to detect and

correct cracks on the stabilator tip tube and weight assembly. The unsafe condition, if not addressed, could cause weakening of the complete structure and lead to loss of the trim tab and counter balance weight, which may result in reduced airplane control.

(f) Compliance

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

(g) Previously Required Actions Retained From AD 78–02–03

(1) Within 50 hours time-in-service (TIS) after January 26, 1978 (the effective date of AD 78–02–03), do the following inspections and modifications.

(i) For airplanes with serial numbers 27–7654001 through 27–7754054, inspect both stabilator tip ribs for missing rivets and missing tube and weight assembly attachment screws and if necessary alter in accordance with Piper Service Bulletin (SB) 547, dated March 1, 1977.

(ii) For airplanes with serial numbers 27–7654001 through 27–7754127, 27–7754130, 27–7754131, 27–7754133 through 27–7754136, and 27–7754138 through 27–7754144, replace the right and left stabilator tab forward inboard rib/horn assemblies by installing Piper Kit 761 143 or equivalent kit in accordance with Piper SB 569, dated August 24, 1977.

(iii) For airplanes with serial numbers 27–7654001 through 27–7754041 equipped with stabilators Piper part number (P/N) 15658–2, 15658–3, 15658–22 or 15658–23, reinforce the mounting of the stabilator tube and weight assemblies by installing additional nose-ribs with Piper Kit 761 141 or equivalent kit in accordance with Piper Service Letter 807A, dated September 8, 1977.

(2) Before further flight after completing the alterations in paragraphs (g)(1)(ii) and (iii) of this AD, balance the stabilator.

(h) Inspection of Stabilator Tip Tube and Weight Assembly

Within 10 hours TIS after the effective date of this AD or within 100 hours TIS after completing the last inspection required by paragraph (a) of AD 78–02–03, whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS, inspect the left and right stabilator balance weight assemblies for cracks and complete any necessary repairs by following Parts I and II of the Instructions in Piper SB No. 540B, dated February 9, 2021, except you are not required to contact Piper for repair instructions. Instead, repair in accordance with FAA-approved procedures.

(i) Credit for Previous Actions

You may take credit for the initial inspection and corrective actions required by paragraph (h) of this AD if you performed those actions before the effective date of this AD using Piper SB No. 540, dated January 4, 1977, or SB No. 540A, dated October 20, 1980.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD.

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

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the following provisions apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact John Marshall, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5524; fax: (404) 474–5605; email: *john.r.marshall@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Piper Service Bulletin No. 547, dated March 1, 1977.

(ii) Piper Service Bulletin No. 569, dated August 24, 1977.

(iii) Piper Service Letter No. 807A, dated September 8, 1977.

(iv) Piper Service Bulletin No. 540B, February 9, 2021.

(3) For the service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 299–2141; website: *https://www.piper.com/.*

(4) You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on December 3, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27510 Filed 12–20–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0916]

RIN 1625–AA00

Safety Zone; Corpus Christi Ship Channel, Mile Markers 19 and 20, Victoria, TX

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Corpus Christi Ship Channel, between mile markers 19 and 20. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipelines that will be removed from the floor of the Corpus Christi Ship Channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective from 10 a.m. through 2:30 p.m. every day from December 21, 2021, until December 22, 2021. For the purposes of enforcement, actual notice will be used from December 15, 2021, until December 21, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *CCWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and

opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by pipelines removal operations and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with pipeline removal operations in the Corpus Christi Ship Channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with pipeline removal operations occurring from 10 a.m. through 2:30 p.m. every day from December 15, 2021, through December 22, 2021, will be a safety concern for anyone within the Corpus Christi Ship Channel between mile markers 19 and 20. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while pipelines are removed from the floor of the Corpus Christi Ship Channel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 10 a.m. through 2:30 p.m. every day from December 15, 2021, through December 22, 2021. The safety zone will encompass all navigable waters of the Corpus Christi Ship Channel defined by the following coordinates; 27°49′27″ N, 097°8′38″ W; 27°49′34″ N, 097°8′41″ W; 27°49′26″ N, 097°8′29″ W; 27°49′35″ N, 097°8′31″ W. The pipeline will be removed along the floor of the Corpus Christi Ship Channel. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone of 1,300 feet by 1,900 feet will be enforced for a short period of only 4.5 hours every day. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of the Corpus Christi Ship Channel between markers 19 and 20. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipeline that will be removed from the floor of the Corpus Christi Ship Channel. It is categorically excluded from further review under paragraph L60(c) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A record of environmental consideration is not necessary, but will be added to the docket if needed.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0916 to read as follows:

§ 165.T08–0916 Safety Zone; Corpus Christi Ship Channel, Miler Markers 19 to 20, Victoria, TX.

(a) *Location.* The following area is a safety zone: All navigable waters of the Corpus Christi Ship Channel defined by the following coordinates; 27°49′27″ N, 097°8′38″ W; 27°49′34″ N, 097°8′41″ W; 27°49′26″ N, 097°8′29″ W; 27°49′35″ N, 097°8′31″ W.

(b) *Effective period.* This section is effective from 10 a.m. through 2:30 p.m. every day from December 21, 2021, until December 22, 2021. For the purposes of enforcement, actual notice will be used from December 15, 2021, until December 21, 2021.

(c) *Regulations.* (1) According to the general regulations in § 165.23, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

H.C. Govertsen,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2021–27548 Filed 12–20–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0022; FRL–9123–01–OCSPP]

Spinetoram; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of spinetoram in or on multiple commodities which are identified and discussed later in this document. Clarke Mosquito Control Products, Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 21, 2021. Objections and requests for hearings must be received on or before February 22, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0022, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0022 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 22, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0022, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 3, 2020 (85 FR 12454) (FRL–10005–58), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F8804) by Clarke Mosquito Control Products, Inc., 675 Sidwell Court, St. Charles, IL 60174. The petition requested that 40 CFR 180.635 be amended by establishing tolerances for residues of the insecticide spinetoram, expressed as a combination of XDE-175-J: 1-*H*-as-indaceno[3,2-d] oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-mannopyranosyl) oxy]-13-[[(2*R*,5*S*,6*R*)-5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,4,5,5a,5b,6,9,10,11,12,13,14,16a,16b-hexadecahydro-14-methyl-, (2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*); XDE-175-L: 1-*H*-as-indaceno[3,2-d] oxacyclododecin-7,15-dione, 2-[(6deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl];oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-(2*S*,3a*R*,5a*S*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*S*); ND-J: (2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*)-9-ethyl-14-methyl-13[[(2*S*,5*S*,6R)-6-methyl-5-(methylamino)tetrahydro-2*H*-pyran-2-yl]oxy]-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1*H*-*as*-indaceno[3,2-d] oxacyclododecin-2-yl-6-deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranoside; and NF-J: (2*R*,3*S*,6*S*)-6-([(2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*)-2-[(6-deoxy-3-*O*-ethyl-2,4-di-*O*-methyl-α-*L*-mannopyranosyl)oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14,15,16a,16b-octadecahydro-1*H*-*as*-indaceno[3,2-d]oxacyclododecin-13-yl]oxy)-2-methyltetrahydro-2*H*-pyran-3-yl(methyl)formamide, in or on fish at 4.0 parts per million (ppm); fish-shellfish, crustacean at 4.0 ppm; fish-shellfish, mollusc at 4.0 ppm; grass, forage, fodder and hay, group 17, forage at 10.0 ppm; grass, forage, fodder and hay, group 17, hay at 5.0 ppm; animal feed, nongrass, group 18, forage at 35.0 ppm; and animal feed, nongrass, group 18, hay at 30.0 ppm to account for incidental residues from the proposed use of spinetoram as a mosquito larvicide in aquatic areas and standing water within agricultural sites. That document referenced a summary of the petition prepared by Clarke Mosquito Control Products, Inc., the petitioner, which is available in the docket, *https://www.regulations.gov.* Two non-substantive comments were received on the notice of filing and the notice of receipt and did not result in changes to EPA's decision. Based upon review of the data supporting the petition, EPA has removed the trailing zeros on the requested tolerance values and revised certain commodity terms. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

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

EPA has previously published tolerance rulemakings for spinetoram, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to spinetoram and established tolerances for residues of that chemical. EPA is incorporating previously published sections of those rulemakings that remain unchanged as described further in this rulemaking. While these tolerances are being established for spinetoram use as a larvicide, the previous spinetoram tolerance rulemaking was based on the databases for both spinetoram and spinosad.

Toxicological profile. Spinetoram and spinosad are considered by EPA to be toxicologically identical for human health risk assessment based on their very similar chemical structures and similarity of the toxicological databases for currently available studies. Therefore, the Agency has assessed and summarized the toxicological profile for both together. For a discussion of the Toxicological Profile of spinetoram and spinosad, see Unit III.A. of the previous spinetoram tolerance rulemaking published in the **Federal Register** of August 8, 2018 (83 FR 38976) (FRL–9978–83).

Toxicological points of departure/Levels of concern. Spinetoram and spinosad should be considered toxicologically identical in the same manner that metabolites are generally considered toxicologically identical to the parent. As a result, studies from both toxicological databases were considered for endpoint selection. For a summary of the Toxicological Points of Departure/Levels of Concern used for the safety assessment, see Unit III.B. of the August 8, 2018 rulemaking.

Exposure assessment. In evaluating dietary exposure to spinetoram and spinosad, EPA considered exposure under the petitioned-for spinetoram tolerances as well as all existing spinetoram and spinosad tolerances. Spinosad is currently registered for use as a mosquito larvicide in aquatic areas and standing water within agricultural sites, and there are existing tolerances for incidental residues of spinosad in or on the same commodities identified in this action. Because application rates for the proposed mosquito larvicide use of spinetoram are lower than spinosad, incidental residues of spinetoram in or on these commodities will not exceed the existing spinosad tolerances. Moreover, because spinetoram and spinosad are used to control similar pests and are not likely to be used in combination with each other, EPA has concluded it would overstate exposure to assume that residues of both spinetoram and spinosad would appear on the same commodities. Therefore, much of the dietary exposure assessment remains unchanged from the August 8, 2018 rulemaking, which included the existing spinosad tolerances.

The currently registered maximum application rate for spinosad was used to assess residential exposure, as this rate is higher than the proposed application rate for spinetoram. The residential assessment for spinosad is protective for spinetoram for the reasons described above.

For a description of the rest of the EPA approach to and assumptions for the exposure assessment, including with respect to dietary exposure, residential exposure, and cumulative effects, see Unit III.C. of the August 8, 2018 rulemaking.

Safety factor for infants and children. EPA continues to conclude that there is reliable data showing that the safety of infants and children is adequately protected if the Food Quality Protection Act safety factor is reduced from 10X to 1X. The reasons for that determination are articulated in Unit III.D. of the August 8, 2018 rulemaking.

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

An acute dietary exposure assessment was not conducted as toxicological effects attributable to a single dose were not identified. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD: Children 1 to 2 years old are the population subgroup with the highest exposure estimate at 72% of the cPAD. The short-term aggregate MOE (food, water, and residential) is 200 for children 1 to less than 2 years old and 840 for adults. These MOEs do not exceed the level of concern, which are MOEs of 100 or below. The short-term aggregate risk assessment is protective of intermediate-term exposure as the short-term and intermediate-term PODs are identical. EPA has also concluded that spinetoram is not expected to pose a cancer risk to humans based on the lack of evidence of carcinogenicity in the database.

Determination of safety. Based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to spinetoram residues. More detailed information about the Agency's analysis can be found at *https://www.regulations.gov* in the document titled ''Spinetoram: Human Health Risk Assessment in Support of Proposed New Granular Sand Formulation for Use as a Mosquito/Larvicide and Proposed Tolerance for Residues of Spinetoram on Fish; Fish-shellfish, Crustacean; Fish-Shellfish, Mollusc; Grass, Forage, Fodder and Hay, Group 17, Forage; Grass, Forage, Fodder and Hay, Group 17, Hay; Animal Feed, Nongrass, Group 18, Forage; and Animal Feed, Nongrass, Group 18, Hay'' in docket ID number EPA–HQ–OPP–2020–0022.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the August 8, 2018 rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs for spinetoram on the commodities identified in this action.

C. Revisions to Petitioned-For Tolerances

EPA has removed the trailing zeros on the requested tolerance values to be consistent with Organization for Economic Co-operation and Development (OECD) Rounding Class Practice. EPA has also revised the commodity terms for fish, freshwater, finfish; fish, shellfish, crustacean; and fish, shellfish, mollusc to be consistent with the Agency's preferred vocabulary terms for these commodities; see the document titled ''Preferred Vocabulary for Establishing Pesticide Tolerances'' dated September 27, 2017 in docket ID

number EPA–HQ–OPP–2020–0022 at *https://www.regulations.gov.*

V. Conclusion

Therefore, tolerances are established for residues of spinetoram, in or on fish, freshwater, finfish at 4 ppm; fish, shellfish, crustacean at 4 ppm; fish, shellfish, mollusc at 4 ppm; grass, forage, fodder and hay, group 17, forage at 10 ppm; grass, forage, fodder and hay, group 17, hay at 5 ppm; animal feed, nongrass, group 18, forage at 35 ppm; and animal feed, nongrass, group 18, hay at 30 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 10, 2021.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.635, amend table 1 to paragraph (a) by adding in alphabetical order the entries ''Animal feed, nongrass, group 18, forage''; ''Animal feed, nongrass, group 18, hay''; ''Fish, freshwater, finfish''; ''Fish, shellfish, crustacean''; ''Fish, shellfish, mollusc''; ''Grass, forage, fodder and hay, group 17, forage'' and ''Grass, forage, fodder and hay, group 17, hay'' to read as follows:

§ 180.635 Spinetoram; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Animal feed, nongrass, group 18, forage	35
Animal feed, nongrass, group 18, hay	30
* * * * *	
Fish, freshwater, finfish	4
Fish, shellfish, crustacean	4
Fish, shellfish, mollusk	4
* * * * *	
Grass, forage, fodder and hay, group 17, forage	10
Grass, forage, fodder and hay, group 17, hay	5
* * * * *	

* * * * *

[FR Doc. 2021–27551 Filed 12–20–21; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 536

[GSAR Case 2015–G505; Docket No. GSA–GSAR 2021–0029; Sequence No. 1]

RIN 3090–AJ65

General Services Administration Acquisition Regulation (GSAR); Architect-Engineer Selection Procedures

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

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to remove text from the GSAR regarding internal architect-engineer selection procedures and move it into the General Services Administration Acquisition Manual (GSAM).

DATES: Effective January 20, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Liam Skinner or Mr. Bryon Boyer at 817–850–5580 or *gsarpolicy@gsa.gov,* for clarification of content. For

information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR Case 2015–G505.

SUPPLEMENTARY INFORMATION:

I. Background

As part of GSA's regulatory reform efforts, GSA identified internal agency guidance on architect/engineer selection procedures in the General Services Administration Acquisition Regulation (GSAR) that are non-regulatory. The on-going clean up of the GSAR presents the opportunity to move this text into internal agency acquisition guidance, the General Services Administration Acquisition Manual (GSAM). Thus, the Fall 2017 edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions in the **Federal Register** at 83 FR 1664 on January 12, 2018, notes GSA's intention to publish a final rule in the **Federal Register** to remove this language from the GSAR and add it to the non-regulatory GSAM.

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

Federal Acquisition Regulation (FAR) 1.301(a)(2) provides an agency head the ability to issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.,* designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements). Furthermore, FAR 1.301(b) states that publication for public comment is not required for issuances under FAR 1.301(a)(2).

GSA's implementation and supplementation of the FAR is issued in the GSAM, which includes the GSAR. The GSAR contains policies and procedures that have a significant effect beyond the internal operating procedures of GSA or a significant effect beyond the internal operating procedures of GSA or a significant cost or administrative impact on contractors or offerors (see FAR 1.301(b)). Relevant procedures, guidance, instruction, and information that do not meet this criteria are issued through the non-regulatory portion of the GSAM and other GSA publications.

As a part of GSA's comprehensive review of its regulatory requirements in the GSAR, internal agency guidance was identified within GSAR Part 536 that could be moved to GSA's non-regulatory acquisition policy of the GSAM. This internal guidance does not have a significant effect beyond the internal operating procedures of GSA or a significant cost or administrative impact on contractors or offerors (see FAR 1.301(b)). As a result, this action represents an administrative clean-up to remove internal agency guidance from the GSAR and move it to GSA's non-regulatory acquisition policy. Moving this language from GSAR to GSAM allows for future updates to be easier and more efficient, allowing for the section to stay up to date with current procedures.

The amendments to GSAR part 536 are minor and reflect needed changes to have language reflect current practice.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been reviewed and determined by the Office of Management and Budget (OMB) not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ''major 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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This rule has been reviewed and determined by OMB not to be a ''major rule'' under 5 U.S.C. 804(2).

VI. Notice for Public Comment

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) 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 rule is not required to be published for public comment, because it does not have a significant effect or impose any new requirements on contractors or offers, the rule merely removes internal agency guidance from regulatory, to non-regulatory authority.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section VI. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 536

Government procurement.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR part 536 as set forth below:

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 1. The authority citation for 48 CFR part 536 continues to read as follows:

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

Subpart 536.6 [Removed and Reserved]

■ 2. Remove and reserve subpart 536.6, consisting of sections 536.602 and 536.602–1.

[FR Doc. 2021–27444 Filed 12–20–21; 8:45 am]

BILLING CODE 6820–61–P

Proposed Rules

Federal Register
Vol. 86, No. 242
Tuesday, December 21, 2021

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–2021–1063; Project Identifier MCAI–2021–00826–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) 2018–09–09, which applies to certain Airbus Model A318 series airplanes and Model A319 series airplanes; all Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and all Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2018–09–09 requires modifying the holes of the upper cleat to upper stringer attachments at certain areas of the left-and right-hand wings. Since the FAA issued AD 2018–09–09, additional affected configurations were identified and, for certain airplanes, it was determined that additional modification work and revised compliance times are necessary. This proposed AD would retain the requirements of AD 2018–09–09 and add airplanes, require different compliance times for certain airplane configurations, and, for certain airplanes, require additional modifications or reduce compliance times, as 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 February 4, 2022.

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 *https://www.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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material that will be incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR 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 on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1063.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1063; 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. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@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–2021–1063; Project Identifier MCAI–2021–00826–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 the 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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

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 Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued AD 2018–09–09, Amendment 39–19266 (83 FR 19925, May 7, 2018; corrected May 15, 2018 (83 FR 22354)) (AD 2018–09–09), which applies to certain Airbus Model A318 series airplanes and Model A319 series airplanes; all Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and all Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2018–09–09 requires modifying the holes of the upper cleat to upper stringer attachments at certain areas of the left- and right-hand wings. The FAA issued AD 2018–09–09 to prevent fatigue cracking in the stringer attachment holes of the wings, which could result in reduced structural integrity of the wings.

Actions Since AD 2018–09–09 Was Issued

Since the FAA issued AD 2018–09–09, additional affected configurations were identified to be subject to this widespread fatigue damage and, for certain airplanes, it was determined that additional modification work or revised compliance times are necessary.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0167, dated July 14, 2021 (EASA AD 2021–0167) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. EASA AD 2021–0167 supersedes EASA AD 2017–0117, dated July 7, 2017 (which corresponds to FAA AD 2018–09–09). Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report indicating that additional affected configurations were identified to be subject to widespread fatigue damage and, for certain airplanes, it was determined that additional modification work (such as, for certain configurations, oversizing certain additional holes, replacing a certain fastener with a corrosion-resistant fastener, or cleat refit and sealant procedure) or revised compliance times are necessary. The FAA is proposing this AD to prevent fatigue cracking in the stringer attachment holes of the wings, which could result in reduced structural integrity of the wings. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2018–09–09, this proposed AD would retain all of the requirements of AD 2018–09–09. Those requirements are referenced in EASA AD 2021–0167, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0167 describes procedures for modifying the stringer attachments at rib 2 through rib 7 of the left- and right-hand wings. The modification includes oversizing the holes, doing an eddy current inspection of the affected holes for damage, and repairing damage. EASA AD 2021–0167 also specifies additional work for airplanes on which the modification actions were accomplished using certain service information. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0167 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this 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 2021–0167 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0167 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 2021–0167 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 2021–0167. Service information required by EASA AD 2021–0167 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1063 after the FAA final rule is published.

Explanation of Compliance Time

The compliance time for the modification specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is modified before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. The FAA will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,446 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2018–09–09.	125 work-hours × $85 per hour = $10,625.	$26,260	$36,885	$41,901,360 (1,136 airplanes).
New proposed actions	125 work-hours × $85 per hour = $10,625.	1,520	12,145	17,561,670.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions or the additional work for certain previously modified airplanes, as specified in this proposed AD.

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) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The 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) 2018–09–09, Amendment 39–19266 (83 FR 19925, May 7, 2018; corrected May 15, 2018 (83 FR 22354)); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2021–1063; Project Identifier MCAI–2021–00826–T.

(a) Comments Due Date

The FAA must receive comments by February 4, 2022.

(b) Affected Airworthiness Directives (ADs)

This AD replaces AD 2018–09–09, Amendment 39–19266 (83 FR 19925, May 7, 2018; corrected May 15, 2018 (83 FR 22354)).

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0167, dated July 14, 2021 (EASA AD 2021–0167).

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

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report that additional affected configurations were identified to be subject to widespread fatigue damage at certain stringer attachments and, for certain airplanes, it was determined that additional modification work is necessary. The FAA is issuing this AD to prevent fatigue cracking in the stringer attachment holes of the wings, which could result in reduced structural integrity of the wings.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0167.

(h) Exceptions to EASA AD 2021–0167

(1) Where EASA AD 2021–0167 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0167 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) 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, Large Aircraft Section, 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):* For any service information referenced in EASA AD 2021–0167 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining

approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2021–0167, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://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. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1063.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

Issued on December 3, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27288 Filed 12–20–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1005; Project Identifier MCAI–2020–00709–A]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Viking Air Limited (type certificate previously held by Bombardier Inc.) Model DHC–3 airplanes with a certain wing strut assembly installed. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as fatigue damage of the wing struts. This proposed AD would require a bolt hole eddy current inspection of the lug plate holes, a visual and fluorescent dye penetrant inspection of the lug fittings, and a visual and eddy current surface scan inspection of the wing strut assemblies. This unsafe condition could lead to failure of the wing strut, which could result in an in-flight breakup of the wing. 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 February 4, 2022.

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 *https://www.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.

For service information identified in this NPRM, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1005; 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 MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, Aviation Safety Engineer, New York ACO Branch, FAA, 1515 Stewart Avenue, Westbury, NY 11590; phone: (516) 228–7300; fax: (516) 794–5331; email: *deep.gaurav@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–2020–1005; Project Identifier MCAI–2020–00709–A'' 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 *https://www.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 Deep Gaurav, Aviation Safety Engineer, New York ACO Branch, FAA, 1515 Stewart Avenue, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2020–20, dated May 27, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition on Viking Air Limited (formerly Bombardier Inc.) Model DHC–3 airplanes. The MCAI states:

A DHC–3 experienced an in-flight failure of a wing strut in October 2019. Inspection

of the failed part determined that it had fractured and that the fracture was consistent with fatigue damage. The investigation of the occurrence is ongoing.

In 1969, it was determined from fatigue testing and analysis that part number (P/N) C3W100 wing strut assemblies on DHC–3 that were used for normal operations at a maximum weight of 8000 pounds should be removed from service before they have accumulated more than 20 000 hours air time. This information, including definitions of normal operations, was published in Service Bulletin 3/10 dated 26 August 1969. It was also published at the same time in Appendix 4 Part 6, Structural Component Recommended Service Life Limits, of the DHC–3 Maintenance Manual PSM 1–3–2.

It is Transport Canada Civil Aviation (TCCA) policy to mandate compliance with new or more restrictive airworthiness limitations (AWLs) by the issuance of an AD if the AWL is established after products that are affected by the AWL are already in service. To date, TCCA has not mandated compliance with the 20 000 hours air time life limit AWL that is applicable to P/N C3W100 wing strut assemblies. This AD includes a requirement to comply with the life limit.

Some DHC–3 aeroplanes have been modified to permit operations at maximum weights above 8000 pounds. For example, TCCA Supplemental Type Certificate (STC) SA95–32 increases the maximum operating weight to 8367 pounds. This STC includes a requirement to reduce the life limit that is applicable to P/N C3W100 wing strut assembly from 20 000 hours air time to 17 500 hours air time, adjusted for the amount of time that the wing strut assembly is used at the higher maximum operating weight. Because this reduced life limit has been in place since the initial issue of STC SA95–32 in 1995, TCCA considers compliance to be mandatory for all aeroplanes that have been modified in accordance with the STC.

In November 2019, Viking Air Ltd. (Viking) issued Alert Service Bulletin (ASB) V3/0011. The ASB provides instructions for a one-time inspection and follow-on corrective actions for all dash numbers of wing strut assembly P/N C3W100. Since that time, several operators have reported the results of the inspection to Viking. The information in the operators' reports suggests that other DHC–3 wing struts may be at risk of failure. The inspection of the wing struts on five aeroplanes revealed crack indications during non-destructive inspection of bolt holes, seized bolts, pitting corrosion and fretting on the face of lug plates, scratches and gouges in the bolt hole of a lug plate. Failure of a wing strut could result in a catastrophic in-flight breakup of the wing.

This [Transport Canada] AD mandates the accomplishment of ASB V3/0011 or alternative inspection instructions provided by Viking on wing struts that have accumulated more than 2500 hours air time as of the effective date of this AD. New or serviceable struts installed on aeroplanes after the effective date of this AD that accumulate more than 2500 hours air time after the effective date of this AD are not subject to this AD or to the ASB V3/0011 inspections.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1005.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Viking DHC–3 Otter Alert Service Bulletin No. V3/0011, Revision NC, dated November 26, 2019. The service information contains procedures for a bolt hole eddy current inspection of the lug hole on the lug plate part number (P/N) C3W104, a visual and fluorescent dye penetrant inspection of the lug fitting P/Ns C3W102 and C3W103, and a visual and eddy current surface scan inspection of the wing strut assembly P/N C3W101. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

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 and service information referenced above. The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Differences Between This Proposed AD and the MCAI

The MCAI allows an alternative inspection, obtained from the design approval holder, if completed within 5 months. This proposed AD does not include this alternative; however, operators who choose this option may propose an alternative method of compliance in accordance with paragraph (h) of the proposed AD.

Interim Action

The FAA considers this proposed AD interim action. The inspection reports that would be required by this AD will be used by Viking and Transport Canada to determine if there is a need for further action. If additional action is later identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 39 airplanes of U.S. registry. The FAA also estimates that it would take about 32 work-hours per airplane to comply with the inspection and repair or replacement requirements of this proposed AD. The proposed reporting requirement would take about 1 work-hour. The average labor rate is $85 per work-hour. Required parts would cost about $31,415 per airplane.

Based on these figures, the FAA estimates the cost of the proposed AD on U.S. operators would be $1,334,580 or $34,220 per airplane.

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Viking Air Limited (Type Certificate Previously Held by Bombardier Inc.): Docket No. FAA–2020–1005; Project Identifier MCAI–2020–00709–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 4, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc.) Model DHC–3 airplanes, all serial numbers, certificated in any category, with a wing strut assembly part number (P/N) C3W100 (all dash numbers) installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 5700, Wing Structure.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as fatigue damage of the wing struts. The FAA is issuing this AD to prevent failure of a wing strut. The unsafe condition, if not addressed, could result in an in-flight breakup of the wing.

(f) Compliance

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

(g) Required Actions

(1) For airplanes that have not been modified with Supplemental Type Certificate (STC) SA00438NY: Before each wing strut assembly P/N C3W100 accumulates 20,000 hours total time-in-service (TIS) or within 30 days after the effective date of this AD, whichever occurs later, remove the wing strut assembly P/N C3W100 from service and replace with a new (zero hours TIS) part. Thereafter, remove each wing strut assembly P/N C3W100 from service and replace with a new (zero hours TIS) part before accumulating 20,000 hours total TIS.

(2) For airplanes with a wing strut assembly P/N C3W100 with more than 2,500 hours total TIS on the effective date of this AD, regardless of whether the airplane has been modified with STC SA00438NY: Within 30 days after the effective date of this AD, inspect the wing strut assembly and attachment hardware for cracks, corrosion, and damage in accordance with the Accomplishment Instructions in Viking DHC–3 Otter Alert Service Bulletin No. V3/0011, Revision NC, dated November 26, 2019, except you are not required to contact Viking.

(3) For all affected airplanes: Within 30 days after completing the inspection required by paragraph (g)(2) of this AD or within 30 days after the effective date of this AD, whichever occurs later, report the results of the inspection to Viking using the inspection reply form in Viking DHC–3 Otter Alert Service Bulletin No. V3/0011, Revision NC, dated November 26, 2019.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD.

(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.

(i) Related Information

(1) For more information about this AD, contact Deep Gaurav, Aviation Safety Engineer, New York ACO Branch, FAA, 1515 Stewart Avenue, Westbury, NY 11590; phone: (516) 228–7300; fax: (516) 794–5331; email: *deep.gaurav@faa.gov.*

(2) Refer to MCAI Transport Canada AD CF–2020–20, dated May 27, 2020, for related information. You may examine the Transport Canada AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1005.

(3) For service information identified in this AD, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on December 15, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27509 Filed 12–20–21; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2021–0088; FRL–8792–06–OCSPP]

Receipt of Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities (December 2021)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before January 20, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP)

of interest as shown in the body of this document, online at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

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

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* or Charles Smith, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), summaries of the petitions that are the subject of this document, prepared by the petitioners, are included in dockets EPA has created for these rulemakings. The dockets for these petitions are available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

A. Notice of Filing—Amended Tolerances for Non-Inerts

PP 1F8921. (EPA–HQ–OPP–2021–0650). Spring Regulatory Sciences on behalf of Bedoukian Research, Inc., 21 Finance Drive, Danbury, CT 06810–4192, requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1124 for residues arthropod pheromones, used as insect attractants and/or repellents in or on all food commodities, when not applied at greater than 150 grams of active ingredient per acre per year. The petitioner believes no analytical method is needed because EPA has previously determined that an exemption was appropriate for these compounds based upon generally low toxicity, high volatility, the low environmental and human exposure expected from pheromones when used in retrievably sized polymeric matrix dispensers, and the low application rates and limits on acreage. *Contact:* BPPD.

B. New Tolerance Exemptions for Inerts (Except PIPS)

PP IN–11646. (EPA–HQ–OPP–2021–0840). Spring Regulatory Sciences (6620 Cypresswood Dr, Suite 250, Spring, TX 77379), on behalf of Stepan Company (22 W Frontage Rd., Northfield, IL 60093), requests to establish an exemption from the requirement of a tolerance for Oxirane, 2-(phenoxymethyl)-, polymer with oxirane, ether with 2,2′,2″-nitrilotris[ethanol] (3:1), diblock (CAS RN 2307555–89–9), with a minimum number average molecular weight of 5,300 daltons, when used as an inert ingredient (dispersing agent) in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from

the requirement of a tolerance. *Contact:* RD.

C. New Tolerance Exemptions for Non-Inerts (Except PIPS)

1. *PP 0F8867.* (EPA–HQ–OPP–2020–0700). Agrauxine Corp., 375 Bonnewitz Avenue, Van Wert, OH 45891, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide and nematicide, *Trichoderma atroviride* strain K5 NRRL B–50520 in or on food commodities. The petitioner believes no analytical method is needed because, if *Trichoderma atroviride* strain K5 NRRL B–50520 is used as proposed, no residues of toxicological concern would result. *Contact:* BPPD.

2. *PP 1F8920.* (EPA–HQ–OPP–2021–0675). Biotalys NV, Buchtenstraat 11, 9051 Sint-Denijs-Westrem, Belgium, requests to establish a temporary exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide ASFBIOF01–02 in or on grape and strawberry. The petitioner believes no analytical method is needed because the mammalian toxicity studies are sufficient to support the conclusion that there are no foreseeable human or domestic health hazards likely to arise from the use of ASFBIOF01–02 in food crop commodities; therefore, the requirement to provide practical methods for removing residues from these agricultural commodities or processed foods is not applicable. *Contact:* BPPD.

D. New Tolerances for Non-Inerts

PP 0E8891. (EPA–HQ–OPP–2021–0520). Bayer CropScience LP, 800 N Lindbergh Blvd., St. Louis, MO 263167 requests to establish a tolerance in 40 CFR part 180.589 for residues of the fungicide propamocarb hydrochloride in or on onion, bulb, crop subgroup 3–07A at 2 parts per million (ppm), leek at 30 ppm, and kale at 20 ppm. Analytical methods gas/liquid chromatography and N–FID or MSD are used to measure and evaluate the chemical propamocarb hydrochloride. This supersedes the paragraph published in the **Federal Register** on September 22, 2021 (86 FR 52624 FRL–8792–03–OCSPP). *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: December 13, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021–27619 Filed 12–20–21; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 86, No. 242

Tuesday, December 21, 2021

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–CN–21–0059]

Determination for Conducting a Continuance Referendum Regarding Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the U.S. Department of Agriculture's (USDA) determination not to conduct a continuance referendum regarding the 1991 amendments to the Cotton Research and Promotion Order provided for in the Cotton Research and Promotion Act amendments of 1990. This determination is based on the results of a sign-up period conducted June 21, 2021, through July 2, 2021, and October 18, 2021, through October 29, 2021, during which eligible cotton producers and importers were provided an opportunity to request a continuance referendum.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406; Telephone (540) 361–2726, Email at *CottonRP@usda.gov.*

SUPPLEMENTARY INFORMATION: The 1991 amendments to the Cotton Research and Promotion Order (Order) (7 CFR part 1205) were implemented following the July 1991 referendum. The amendments were provided for in the 1990 amendments to the Cotton Research and Promotion Act (Act) (7 U.S.C. 2101–2118). These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons, to be determined by USDA, who import cotton or cotton products into the U.S., and whom USDA selects from nominations submitted by importer organizations certified by USDA; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount USDA can be reimbursed for the conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On December 18, 2020, USDA issued a determination based on its review not to conduct a referendum regarding the 1991 amendments to the Order (85 FR 82426); however, the Act provides that USDA shall nevertheless conduct a referendum at the request of 10 percent or more of the total number of eligible producers and importers that voted in the most recent referendum.

Pursuant to section 8(c) of the Act, USDA provided all eligible Upland cotton producers and importers of cotton and cotton-containing products an opportunity to sign up and request a continuance referendum regarding the 1991 amendments to the Order from June 21, 2021, until July 2, 2021 (86 FR 20255). During the counting and verification of sign-up requests, the AMS learned that the United States Postal Service (USPS) erroneously closed the Post Office Box AMS used to receive sign-up requests, and USPS returned mail contained within the box. Given this error by the USPS and not knowing how many pieces of mail were contained in the box, AMS believed it was necessary to reopen the sign-up period to allow for any eligible importers and producers to submit a request in the event any sign-ups submitted during the original sign-up were not received by AMS.

On September 21, 2021, USDA issued a direct final rule indicating that the sign-up period would be reopened October 18, 2021 through October 29, 2021. (86 FR 52397).

During the period of June 21, 2021, through July 2, 2021, and October 18, 2021, through October 29, 2021, USDA provided an opportunity for eligible cotton producers and importers to request a continuance referendum regarding the 1991 amendments to the Order provided for in the Act. Sign-up requests from both sign-up periods were considered.

Sign-up period results showed that USDA received 3 valid requests from eligible producers and importers. The following table depicts the number of requests for a continuance referendum.

Farm service agency state office	Total sign-up requests
Alabama	0
Arizona	0
Arkansas	0
California	0
Florida	0
Georgia	0
Illinois	0
Kansas	0
Kentucky	0
Louisiana	0
Mississippi	0
Missouri	0
Nevada	0
New Mexico	0
North Carolina	2
Oklahoma	0
South Carolina	0
Tennessee	0
Texas	0
Virginia	0
Importers	1
Total	3

Section 8(c)(2) of the Act, provides that following a sign-up period, USDA shall conduct a referendum upon the request of 10 percent or more of the number of cotton producers and importers voting in the most recent referendum (1991). This would require 10 percent or 4,622 (46,220 × .10 = 4,622) of the 46,220 valid ballots cast by cotton producers and importers in the July 1991 referendum. It is further provided that, in counting such request not more than 20 percent may be from producers from any one state or importers of cotton.

The results of this sign-up period did not meet the criteria as established by the Act for a continuance referendum, and, therefore, a referendum will not be conducted. USDA bases this determination on the fact that the three valid requests received during the sign-up period is less than the 4,622 required.

With this announcement of the results of the sign-up period, USDA has completed all requirements set forth in Section 8(c)(1) and (2) of the Act regarding the review of the Cotton Research and Promotion Program to

determine if a continuance referendum is warranted. A referendum will not be conducted, and no further actions are planned in connection with this review.

(Authority: 7 U.S.C. 2101–2118.)

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–27577 Filed 12–20–21; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meeting Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board, Specialty Crop Committee

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Agricultural Research, Extension, and Teaching Policy Act, and the Agriculture Improvement Act of 2018, the United States Department of Agriculture (USDA) announces a meeting of the Specialty Crop Committee.

DATES: The National Agricultural Research Extension, Education, and Economics Advisory Board, Specialty Crop Committee will meet virtually via Zoom on January 19–20, 2022. The public may file written comments by to January 3, 2022.

ADDRESSES: The meeting will take place virtually via the Zoom meeting application at this link: SCC Jan 2022 Meeting Link.

Web Preregistration: Participants wishing to participate should preregister by email at *nareee@usda.gov* to the attention of Ms. Shirley Morgan-Jordan. A meeting link will be sent out to pre-registered guests.

Written comments may be sent to The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, Room 6019, The South Building, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–0321. We recommend you email comments to *nareee@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Lewis, Executive Director/Designated Federal Official, or Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 380–5373 or email: *nareee@usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the meeting: To hear feedback on USDA's National Institute of Food and Agriculture (NIFA) Specialty Crop Research Initiative (SCRI) grant projects awarded in 2021. Project Directors will present their projects that address the critical needs of the specialty crop industry supporting research and extension issues by addressing key challenges of national, regional, and multi-state importance in sustaining all components of food and agriculture, including conventional and organic food production systems. An agenda for this two-day meeting may be received from Shirley Morgan-Jordan or at *https://nareeeab.ree.usda.gov.*

Public Participation: This meeting is open to the public via Zoom meeting application and via phone for any interested individuals wishing to attend. Opportunity for public comment will be offered. To attend the virtual meeting and/or make oral statements regarding any items on the agenda, you must contact USDA by email at: *nareee@usda.gov.* at least 5 business days prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business. Written comments by attendees and other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (no later than close of business on Thursday, February 3, 2022). All written statements must be sent to Shirley Morgan-Jordan, Program Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board, U.S. Department of Agriculture, Room 6019, The South Building, 1400 Independence Avenue SW, Washington, DC 20250–0321; or by email: *nareee@usda.gov.* All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Education, and Economics Advisory Board Office.

Dated: December 14, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–27634 Filed 12–20–21; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, (Agriculture) USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Shasta-Trinity National Forest within Shasta County. RAC information can be found at the following website: *https://www.fs.usda.gov/main/stnf/working together/advisorycommittees.*

DATES: The virtual meeting will be held on Wednesday, February 2, 2022, 9:00 a.m.–5:00 p.m., Pacific Standard Time.

All RAC meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held virtually via Microsoft Teams. Details for how to join the meeting are listed in the above website link under **SUMMARY**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Shasta Lake Ranger Station. Please call ahead at 530–275–1587 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lejon Hamann, RAC Coordinator, by phone at 530–410–1935 or via email at *lejon.hamann@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review the following:

1. Comments from the Designated Federal Officer (DFO);
2. Approve minutes from last meeting;
3. Discuss, recommend, approve Title II projects;
4. Public comment period; and
5. Closing comments from the DFO.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by the Friday before the scheduled meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lejon Hamann, RAC Coordinator, 3644 Avtech Parkway, Redding, California 96002; or by email to *lejon.hamann@usda.gov.*

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled for **FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Dated: December 16, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–27584 Filed 12–20–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chippewa National Forest Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Chippewa National Forest Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as make recommendations on recreation fee proposals for sites on the Chippewa National Forest within Beltrami, Cass, and Itasca counties, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/chippewa/workingtogether/advisorycommittees.*

DATES: The virtual meeting will be held on January 11, 2022, from 6:00 p.m. to 9:00 p.m., Central Standard Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held virtually via Microsoft Teams. Members of the public may join the meeting by dialing +1 202–650–0123 and entering phone conference ID: 573 460 107#.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Todd Tisler, RAC Coordinator, by phone at 218–335–8629 or email at *todd.tisler@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Finalize project and funding recommendations on Title II projects;
2. Approve meeting minutes; and
3. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by December 30, 2021, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Todd Tisler, Chippewa National Forest, 200 Ash Avenue NW, Cass Lake, MN 56633 or by email to *todd.tisler@usda.gov.*

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Dated: December 16, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–27587 Filed 12–20–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will hold two virtual meetings by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Shasta-Trinity National Forest within Trinity County, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees*.

DATES: The virtual meetings will be held on:

- Monday, January 10, 2022, 4:30 p.m.–6:30 p.m., Pacific Standard Time; and
- Monday, January 24, 2022, 4:30 p.m.–6:30 p.m., Pacific Standard Time.

All RAC meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held virtually via Microsoft Teams. Details for how to join the meetings are listed in the above website link under **SUMMARY**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Weaverville Ranger Station. Please call ahead at 530–623–2121 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lejon Hamann, RAC Coordinator, by phone at 530–410–1935 or via email at *lejon.hamann@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review the following:

1. Comments from the Designated Federal Officer (DFO);
2. Approve minutes from the last meeting;
3. Discuss, recommend, approve Title II projects;
4. Public comment period; and
5. Closing comments from the DFO.

The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by the Thursday before each of the scheduled meetings, to be scheduled on the agenda for that particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Lejon Hamann, RAC Coordinator, 3644 Avtech Parkway, Redding, California 96002 or by email to *lejon.hamann@usda.gov.*

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled for **FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Dated: December 16, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–27586 Filed 12–20–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc County Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Modoc County Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or teleconference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as make recommendations on recreation fee proposals for sites on or benefitting the Modoc National Forest within Modoc County, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/modoc/workingtogether/advisorycommittees.*

DATES: The virtual meeting will be held on January 12, 2022, 3:00 p.m.–6:00 p.m., Pacific Standard Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held virtually via Microsoft Teams. For audio connection, dial +1 323–886–7051 and use phone conference ID 428135083#. For video connection, click here to join the meeting on the date and time of the meeting.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Chris Christofferson, Designated Federal Officer (DFO), by phone at 530–233–

8700 or email at *chris.christofferson@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the week, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from possible Title II project proponents and discuss project proposals;
2. Plan for project solicitation and replacment member recruitment;
3. Review and make recommendations on recreation fee proposals;
4. Review meeting minutes; and
5. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by January 10, 2022, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the Modoc National Forest staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Modoc County RAC, 225 W 8th St., Alturas, CA 96101 or by email to *chris.christofferson@usda.gov.*

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled for **FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Dated: December 16, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–27585 Filed 12–20–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee; Meeting

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or telephone conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/main/eldorado/workingtogether/advisorycommittees.*

DATES: The virtual meeting will be held on Wednesday, January 5, 2022, 3:30 p.m.–5:30 p.m., Pacific Standard Time.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held with virtual attendance only. For virtual meeting information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at: Eldorado National Forest Supervisor's Office, 100 Forni Road, Placerville, CA. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jennifer Chapman, RAC Coordinator by phone at 530–957–9660 or via email at *jennifer.chapman@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the upcoming call for proposals in relation to Caldor Fire Recovery.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing seven days before the meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Jennifer Chapman, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667, by email to *jennifer.chapman@usda.gov,* or via facsimile to 530–621–5297.

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled for **FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Dated: December 16, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–27582 Filed 12–20–21; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) will hold a series of meetings via Webex platform on the following dates and times listed below. The purpose of the meetings is to decide the topic for their next project and collaborate on a project proposal.

DATES: These meetings will be held on:

- Wednesday, January 19, 2022, from 12:00 p.m.–1:00 p.m. CT
- Wednesday, March 2, 2022, from 12:00 p.m.–1:00 p.m. CT
- Wednesday, March 30, 2022, from 12:00 p.m.–1:00 p.m. CT
- Wednesday, April 13, 2022, from 12:00 p.m.–1:00 p.m. CT

Public Webex Registertion Link:

- Wednesday, January 19th: *https://tinyurl.com/2p8jwp9d*
- Wednesday, March 2nd: *https://tinyurl.com/2p8t38jm*
- Wednesday, March 30th: *https://tinyurl.com/2vjjz99x*
- Wednesday, April 13th: *https://tinyurl.com/y79pcwy7*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Discussion
IV. Public Comment
V. Adjournment

Dated: December 16, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–27593 Filed 12–20–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Pennsylvania Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Wednesday January 12, 2022 at 12:00 p.m. Eastern time. The Committee will review project proposal to study civil rights and fair housing in the state.

DATES: The meeting will take place on Wednesday January 12, 2022 from 12:00p.m.—1:00p.m. Eastern time.

Online Regisration (Audio/Visual): https://bit.ly/3E00rBl.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2761 036 2591

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to these discussions. Committee meetings are available to the public through the above listed online registration link or call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Pennsylvania Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Civil Rights and Fair Housing in Pennsylvania
Future Plans and Actions
Public Comment
Adjournment

Dated: December 16, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–27594 Filed 12–20–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kentucky Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission

on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Kentucky Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting via WebEx at 12:00 p.m. ET on Wednesday, January 19, 2022 for the purpose of discussing a topic for the Committee's next civil rights project.

DATES: The meeting will take place on Wednesday, January 19, 2022, at 12:00 p.m. ET.

Online (Audio/Visual): https://tinyurl.com/ycka2hw7.

Telephone (Audio Only): Dial: 1–800–360–9505 Toll Free. Access code: 433 716 81.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at *ero@usccr.gov* or (202) 376–8473.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the meeting link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1 (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *ero@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (310) 464–7102.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kentucky Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Project Planning
III. Next Steps
IV. Public Comment
V. Adjournment

Dated: December 16, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–27595 Filed 12–20–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Commission on Civil Rights; Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Friday, January 7, 2022 at 1:00 p.m. Central Time. The purpose of the meeting is for the Committee to discuss testimony received regarding IDEA compliance and implementation in Arkansas schools.

DATES: The meeting will be held on Friday, January 7, 2022 1:00 p.m.–2:00 p.m. Central time.

Web Access (audio/visual): Register at: *https://bit.ly/3oTu6YA.*

Phone Access (audio only): 800–360–9505, Access Code 2760 565 9445.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Discussion: IDEA Compliance and Implementation in Arkansas School
III. Public Comment
VI. Adjournment

Dated: December 16, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–27596 Filed 12–20–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of a Public Meeting of the Maine Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of a public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Maine State Advisory Committee to the Commission will hold a virtual meeting on Thursday, January 20, 2022, at 12:00 p.m. (ET) for the Committee to hold a planning meeting.

DATES: January 20, 2022, Thursday at 12:00 p.m. (ET):

- To join by web conference: *https://bit.ly/3E1q1Wx*
- To join by phone only, dial 1–800–360–9505; Access code: 2761 429 0143#

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or by phone at (202) 809–9618.

SUPPLEMENTARY INFORMATION: These meetings are available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will

not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for these meetings.

Members of the public are entitled to make comments during the open period at the end of the meetings. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meetings will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Thursday, January 20, 2022, at 12:00 p.m. (ET)

I. Roll Call
II. Transition of Designated Federal Official
III. Planning Meeting
IV. Open Comment
V. Adjourn

Dated: December 16, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–27591 Filed 12–20–21; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Small Business Pulse Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on May 19, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U. S. Census Bureau, Commerce.

Title: Small Business Pulse Survey.

OMB Control Number: 0607–1014.

Form Number(s): None.

Type of Request: Regular Submission, Request for a Revision of a Currently Approved Collection.

Number of Respondents: 810,000 (22,500 responses per week for up to a maximum of 36 weeks of collection).

Average Hours per Response: 6 minutes.

Burden Hours: 81,000.

Needs and Uses: Phase 1 of the Small Business Pulse Survey was launched on April 26, 2020 as an effort to produce and disseminate high-frequency, geographic- and industry-detailed experimental data about the economic conditions of small businesses as they experience the coronavirus pandemic. It is a rapid response endeavor that leverages the resources of the federal statistical system to address emergent data needs. Given the rapidly changing dynamics of this situation for American small businesses, the Small Business Pulse Survey has been successful in meeting an acute need for information on changes in revenues, business closings, employment and hours worked, disruptions to supply chains, and expectations for future operations. In addition, the Small Business Pulse Survey provided important estimates of federal program uptake to key survey stakeholders.

Due to the ongoing nature of the pandemic, the Census Bureau subsequently conducted Phases 2 through 7 of the Small Business Pulse Survey. The Census Bureau now seeks approval to conduct Phase 8 of the Small Business Pulse Survey which will occur over 9 weeks starting February 14, 2022.

The continuation of the Small Business Pulse Survey is responsive to stakeholder requests for high frequency data that measure the effect of changing business conditions during the Coronavirus pandemic on small businesses. While the ongoing monthly and quarterly economic indicator programs provide estimates of dollar volume outputs for employer businesses of all size, the Small Business Pulse Survey captures the effects of the pandemic on operations and finances of small, single location employer businesses. As the pandemic continues, the Census Bureau is best poised to collect this information from a large and diverse sample of small businesses.

It is hard to predict when a shock will result in economic activity changing at a weekly, bi-weekly, or monthly frequency. Early in the pandemic, federal, state, and local policies were moving quickly so it made sense to have a weekly collection. The problem is that while we are in the moment, we cannot accurately forecast the likelihood of policy action. In addition, we are not able to forecast a change in the underlying cause of policy actions: the effect of the Coronavirus pandemic on the economy. We cannot predict changes in the severity of the pandemic (*e.g.,* will it worsen in flu season?) nor future developments that will alleviate the pandemic (*e.g.,* vaccines or treatments). In a period of such high uncertainty, the impossibility of forecasting these inflection points underscores the benefits of having a weekly survey. For these reasons, the Census Bureau will proceed with a weekly collection.

SBPS Phase 8 content continues the inclusion of core concepts plus relevant topics to gauge the impact of the Coronavirus pandemic on small businesses. There are 20 questions in total for phase 8. A Phase 4/Phase 5 question inquiring about a businesses' plans for capital expenditures was updated to reference period 2021 and added to the questionnaire. The business norms questions 14 –17 were updated to inquire about the last six months rather than the March 2020 timeframe. The received assistance question was removed as it referenced legislature dates greater than a year ago in December 2020. The remarks field at the end of the survey still present.

The Census Bureau is seeking formal approval for Phase 8 one week prior to starting data collection, by Friday, February 4, 2022.

Based on the SBPS success, the Census Bureau is pursuing a permanent program, the Business Pulse Survey. The Business Pulse Survey will be an ongoing collection that will allow the Census Bureau to continuously provide high frequency, timely, and granular information about current economic conditions and trends as well as the impact of national, subnational, or sector-level shocks and their impact on business activity. The proposed Business Pulse Survey would also allow the Census Bureau to provide more detailed, timely data during times of economic or other emergencies. The Census Bureau is pursuing parallel

approval tracks for SBPS phase 8 and the new Business Pulse Survey. In the event that a postponement is required for the Business Pulse Survey, we will run data collection for phase 8 of the SBPS.

All results from the Small Business Pulse Survey will continue to be disseminated as U.S. Census Bureau Experimental Data Products (*https://portal.census.gov/pulse/data/*). This and additional information on the Small Business Pulse Survey are available to the public on census.gov.

Affected Public: Business or other for-profit organizations.

Frequency: Small business will be selected once to participate in a 6-minute survey.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1014.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–27601 Filed 12–20–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Foreign-Trade Zone Applications

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 22, 2022.

ADDRESSES: Interested persons are invited to submit written comments by email to Juanita Chen, Senior Foreign Trade Zones Analyst, International Trade Administration, or by email to *juanita.chen@trade.gov* or *PRAcomments@doc.gov*. Please reference OMB Control Number 0625–0139 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Christopher Kemp, Office of Foreign-Trade Zones, (202)482–0862 or *Christopher.Kemp@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Foreign-Trade Zone Application is the vehicle by which individual firms or organizations apply for foreign-trade zone (FTZ) status, for subzone status, production authority, modifications of existing zones, or for waivers. The FTZ Act and Regulations (19 U.S.C. 81b and 81f; 15 CFR 400.21–25, 43(f)) set forth the requirements for applications and other requests to the FTZ Board. The Act and Regulations require that applications for new or modified zones contain information on facilities, financing, operational plans, proposed production operations, need for FTZ authority, and economic impact, where applicable. Any request involving production authority requires specific information on the foreign status components and finished products involved. Applications for production activity can involve issues related to domestic industry and trade policy impact. Such applications must include specific information on the customs-tariff related savings that result from zone procedures and the economic consequences of permitting such savings. The FTZ Board needs complete and accurate information on the proposed operation and its economic effects because the Act and Regulations authorize the Board to restrict or prohibit operations that are detrimental to the public interest. The Regulations (15 CFR 400.43(f)) also require specific information for applications requesting waivers by parties impacted by 400.43(d). This information is necessary to assess the likelihood of the proposed activity resulting in a violation of the uniform treatment provisions of the FTZ Act and Regulations.

II. Method of Collection

U.S. firms or organizations submit applications by email to the office of Foreign-Trade Zones.

III. Data

OMB Control Number: 0625–0139.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal government, or not-for-profit institutions applying for foreign-trade zone status, subzone status, modification of existing zones, production authority, or waivers.

Estimated Number of Respondents: 288.

Estimated Time per Response: 3.5 to 131.0 hours (dependent on the type of application).

Estimated Total Annual Burden Hours: 2,521.

Estimated Total Annual Cost to Public: $123,000.

Respondent's Obligation: Mandatory.

Legal Authority: The Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), administered through the FTZ Regulations (15 CFR part 400) and CBP Regulations (19 CFR part 146).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–27552 Filed 12–20–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB637]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 78 South Atlantic Spanish Mackerel Assessment Webinar 3.

SUMMARY: The SEDAR 78 assessment of the South Atlantic Stock of Spanish mackerel will consist of a series of assessment webinars. A SEDAR 78 Assessment Webinar 3 is scheduled via webinar for January 26, 2022. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 78 South Atlantic Spanish Mackerel Assessment Webinar 3 has been scheduled for January 26, 2022, from 9 a.m. to 12 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 78 South Atlantic Spanish Mackerel Assessment Webinar 3 are as follows:

Finalize any data issues as needed. Continue discussion on base model configuration and discuss proposed changes to model, sensitivity runs, and projections. Finalize base model configuration if possible.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 16, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–27609 Filed 12–20–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB636]

Fisheries of the Gulf of Mexico and the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 79 Data Workshop for Gulf of Mexico and South Atlantic mutton snapper.

SUMMARY: The SEDAR 79 assessment process of Gulf of Mexico and South Atlantic mutton snapper will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 79 Data Workshop will be held from 1 p.m. on January 31, 2022, until 1 p.m. on February 4, 2022. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The SEDAR 79 Data Workshop will be held at the Hilton Tampa Airport Westshore, 2225 N Lois Ave., Tampa, FL 33607; phone: 1–813–877–6688.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION:

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Workshop are as follows:

An assessment data set and associated documentation will be developed during the workshop.

Participants will evaluate proposed data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 16, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–27620 Filed 12–20–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB647]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Research Steering Committee will hold a meeting.

DATES: The meeting will be held on Tuesday, January 18, 2022, starting at 9 a.m. and continue through 12:30 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Research Steering Committee to review and provide feedback on the draft goals and objectives and a decision-tree document detailing critical questions and issues to be considered regarding a potential redevelopment of the Council's Research Set-Aside (RSA) program. The Committee will also continue to develop the topics and agenda for a fourth, and final, planned in-person RSA redevelopment workshop in February.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: December 16, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–27611 Filed 12–20–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB638]

Fisheries of the U.S. Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 80 Life History Topical Working Group Webinar I for U.S. Caribbean queen triggerfish.

SUMMARY: The SEDAR 80 stock assessment of U.S. Caribbean queen triggerfish will consist of a series of data webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 80 Life History Topical Working Group Webinar I will be held on Friday, January 28, 2022, from 10 a.m. until 1 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being

extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the webinar are as follows:

Participants will discuss and make recommendations regrading what life history data may be included in the assessment of U.S. Caribbean Queen Triggerfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 16, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–27614 Filed 12–20–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[RTID 0648–XB606]

Pacific Remote Islands Marine National Monument; Monument Management Plan

AGENCY: National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Service (USFWS), as co-leads, announce their intention to prepare a Monument Management Plan (MMP) for the Pacific Remote Islands Marine National Monument (Monument). NOAA and USFWS are updating their original notice of intent to draft the MMP to include information about the expansion of the Monument in 2014, and to announce that NOAA and USFWS are co-leads in drafting the MMP. NOAA and USFWS are seeking input on issues, concerns, ideas, and suggestions for the future management of the Monument. NOAA and USFWS will also prepare a draft environmental assessment, concurrent with the management plan, to evaluate potential effects of implementing the proposed management alternatives for the Monument. Following the completion of the MMP, USFWS will prepare new individual Comprehensive Conservation Plans (CCPs) and revise existing CCPs for National Wildlife Refuges within the Monument, as appropriate.

DATES: We must receive comments by January 20, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0122, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2021–0122 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Dr. Malia Chow, Branch Chief, Habitat Conservation Division, Pacific Islands Regional Office, National Marine Fisheries Service, NOAA Inouye Regional Center, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received or uploaded after the end of the comment period, may not be considered by NOAA and USFWS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Additional information about the Monument and the seven refuge units is available at *http://www.fws.gov/refuge/pacific_remote_islands_marine_national_monument* and *https://www.fisheries.noaa.gov/pacific-islands/habitat-conservation/pacific-remote-islands-marine-national-monument.*

FOR FURTHER INFORMATION CONTACT: Dr. Malia Chow, NOAA, (808) 725–5015, or *malia.chow@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA and USFWS are co-leads in the preparation of the MMP for the Monument, which was established by Presidential Proclamation 8336 and expanded by Presidential Proclamation 9173. With this notice, NOAA and USFWS update their original 2011 notice of intent (April 5, 2011, 76 FR 18775). NOAA and USFWS are making the updates to include the 2014 expansion of the Monument and to identify NOAA and USFWS as co-leads in drafting the MMP (previously, USFWS was the lead agency). A draft environmental assessment (EA) to evaluate the potential effects of implementing the proposed management alternatives will also be prepared. When the draft MMP and EA are complete, NOAA and USFWS will publish a notice of availability to obtain comments and input from the public and other Federal agencies on the draft documents.

We invite the public and Federal, Tribal, State, and local governments to submit input on issues, concerns, ideas, and suggestions for the future management of the Monument.

Monument Establishment

On January 6, 2009, President George W. Bush issued Presidential Proclamation No. 8336, establishing the Monument under the authority of the Antiquities Act of 1906 (16 U.S.C. 431–433). Upon establishment, the Monument incorporated approximately 495,189 square nautical miles (nm^2), or 1,282,534 square kilometers (km^2), within its boundaries, which extended 50 nm (93 km) out from the mean low water lines of Baker, Howland, and Jarvis Islands; Johnston, Palmyra, and Wake Atolls; and Kingman Reef. On September 25, 2014, President Barack Obama issued Presidential Proclamation No. 9173, which expanded the Monument by expanding the area around Jarvis Island and Johnston and Wake Atolls to include the waters and submerged lands to the extent of the seaward limit of the U.S. Exclusive Economic Zone, generally to 200 nm (370 km) offshore.

Monument Natural Resources

The Monument contains significant objects of scientific interest and is home to one of the most widespread assemblages of marine and terrestrial protected areas in the Pacific Ocean. It is designated to protect and sustain many endemic (not found elsewhere) species, including corals, fish, shellfish, marine mammals, seabirds, water birds, land birds, insects, and vegetation. The 2014 expansion areas provide habitat and forage for tuna, turtles, manta rays, sharks, cetaceans, and seabirds. These areas also contain pristine deep sea and open ocean ecosystems with unique biodiversity, and approximately 165 seamounts (undersea mountains) that provide habitat for colonies of deepwater corals that are many thousands of years old.

Agency Responsibilities

The Proclamations require the Secretaries of the Interior and Commerce, who delegated management responsibilities to USFWS and NOAA to prepare an MMP within their respective authorities for the Monument, and to promulgate implementing regulations that address specific actions necessary for the proper care and management of the Monument. With this notice, the Department of the Interior and Department of Commerce commit to working cooperatively together and with partners and stakeholders in the development of the MMP.

Military Role in Management

In accordance with the Proclamation, USFWS Director will not commence management of emergent lands at Wake Atoll unless and until a use agreement between the Secretary of the Air Force and the Secretary of the Interior is terminated. The Secretary of Defense also continues to manage those portions of the emergent lands of Johnston Atoll under the administrative jurisdiction of the Defense Department until such administrative jurisdiction is terminated, at which time those emergent lands shall be administered as part of the Monument and the Johnston Atoll National Wildlife Refuge (NWR; Refuge). However, the MMP will recommend management actions for marine areas surrounding both Johnston and Wake Atolls.

Fishing

The Proclamations prohibit commercial fishing within the Monument. Consistent with this requirement, the MMP will not consider management alternatives to allow commercial fishing. The Proclamations do allow the Secretaries of Interior and Commerce to permit fishing for scientific exploration and research purposes. Noncommercial fishing may also be permitted, as long as it is managed as a sustainable activity. The noncommercial fishing permit process is established; information is available at *https://www.fisheries.noaa.gov/permit/marine-national-monument-fishing-permit.*

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)

NOAA is responsible for the stewardship of the Nation's ocean resources and their habitats, or ''trust resources,'' primarily through the Magnuson-Stevens Act. The trust resources are living marine resources and their habitats, including but not limited to commercial and recreational fishery resources, endangered and threatened marine species and their designated critical habitats, marine mammals, marine turtles, marshes, mangroves, seagrass beds, coral reefs, other coastal habits, and areas identified as essential fish habitat (EFH), in accordance with the Magnuson-Stevens Act. EFH is made up of those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Using the EFH, Endangered Species Act, and Marine Mammal Protection Act consultation processes, NOAA will work in collaboration and coordination with USFWS, partner agencies, project proponents, and stakeholders to conserve these trust resources.

Overview of Refuges and Previous Planning Efforts

Within the boundaries of the Monument, USFWS continues to administer pre-existing national wildlife refuges at Baker, Howland, and Jarvis Islands; Wake, Johnston, and Palmyra Atolls; and Kingman Reef, in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee; Refuge System Administration Act, as amended). USFWS manages these individual refuges, and the Monument as a whole, as part of the National Wildlife Refuge System (NWRS).

Howland Island, Baker Island, and Jarvis Island

Howland Island, Baker Island, and Jarvis Island are unique places for climate change research and other research conducted at the Equator. These areas have deepwater corals, coral reefs, and corals in near-pristine condition, as well as predator-dominated marine ecosystems with a biomass of top predators. CCPs were completed for the Baker Island, Howland Island, and Jarvis Island NWRs on September 24, 2008 (73 FR 76678; December 17, 2008). CCPs are required for each refuge in accordance with the National Wildlife Refuge System Improvement Act.

Kingman Reef and Palmyra Atoll

Kingman Reef and Palmyra Atoll have relatively undisturbed coral reefs, with high levels of coral diversity, fish biomass, and large proportions of apex predators relative to other areas in the central Pacific Ocean.

Johnston Atoll

Johnston Atoll's coral reefs help connect the Hawaiian Archipelago reef communities to others in the Pacific. This reef community is the originating source for much of the larvae for the Hawaiian Islands' corals, invertebrates, and other reef fauna. The atoll's reefs have the deepest reef-building corals on record.

Wake Atoll

Wake Atoll encompasses possibly the oldest living coral atoll in the world and has healthy and abundant coral and fish populations. CCPs have not been completed for Palmyra, Kingman, Wake, and Johnston Atoll NWRs. For the current MMP planning process, USFWS will focus on appropriate conservation and management recommendations for all refuges. Following the completion of the MMP, USFWS will prepare new CCPs and revise existing CCPs, as appropriate.

Monument Management Plan Development Process

The purpose for developing an MMP is to provide monument managers with a 15-year direction for the proper care and management of the significant objects of scientific interest that are within the boundaries of the Monument. The MMP will be consistent with Refuge purposes and will contribute toward the mission of the NWRS. The MMP will be consistent with the Magnuson-Stevens Act and sound principles of marine protected area planning and fish and wildlife management, conservation, legal mandates, and applicable policies. The EA will evaluate the impacts of implementing the proposed draft management plan, in accordance with the National Environmental Policy Act (42 U.S.C. 4321, as amended).

Public Involvement

NOAA and USFWS will conduct the planning process in a manner that will provide participation opportunities for the public and Federal, Tribal, State, and local governments. At this time, NOAA and USFWS encourage comments in the form of issues, concerns, ideas, and suggestions for the future management of the Monument.

Preliminary Issues, Concerns, and Opportunities

Below, we have identified the following preliminary issues, concerns, and opportunities that may be addressed in the MMP. Additional issues may be identified during public scoping.

- Climate impacts and management approach
- Invasive species prevention and control
- Management access, maintenance, and island infrastructure
- Seabird protection and management
- Scientific exploration and research opportunities
- Marine debris and abandoned floating fishing aggregation device removal
- Cultural, historic, and maritime resources protection
- Past and current military use
- Legacy contaminants management and cleanup
- Potential threats (*e.g.,* trespass; illegal fishing; and shipwrecks, groundings, and spills)
- Public awareness, education, and support
- Emergency response to natural and manmade disasters and assessments
- Inventory and monitoring of biological organisms and abiotic (nonliving) factors
- Surveillance and enforcement regarding illegal fishing
- Permit system for allowable public activities (special uses, recreational fishing)
- Methods and best management practices for habitat conservation and restoration actions
- International programs and collaboration
- Opportunities for sustainable practices in management operations

Next Steps

USFWS and NOAA will consider all the public comments received from this NOI in developing the draft MMP. The draft MMP and EA will be made available for public comment once they are completed.

Ngagne Jafnar Gueye,

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

Robyn Thorson,

Regional Director, Columbia-Pacific Northwest and Pacific Islands Regions, U.S. Fish and Wildlife Service.

[FR Doc. 2021–27535 Filed 12–20–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0171]

Agency Information Collection Activities; Comment Request; Survey of Postgraduate Outcomes for the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement with change of a previously approved collection.

DATES: Interested persons are invited to submit comments on or before February 22, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0171. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Pamela Maimer, (202) 453–6891.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the

Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey of Postgraduate Outcomes for the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Program.

OMB Control Number: 1840–0840.

Type of Review: Reinstatement with change of a previously approved collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 157.

Total Estimated Number of Annual Burden Hours: 40.

Abstract: The purpose of Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act) is to promote and develop modern foreign language training and area studies throughout the educational structure of the United States. To help accomplish this objective, fellowships are awarded through U.S. institutions of higher education to American doctoral dissertation fellows enabling them to conduct overseas research and enhance their foreign language proficiency. Under the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) program, individual scholars apply through eligible institutions for an institutional grant to support the research fellowship. These institutions administer the program in cooperation with the U.S. Department of Education (US/ED). This information collection is the tool that can gather the information necessary to determine the performance of the fellows and the program. Since this collection is currently in a discontinued status, this collection package is a reinstatement with change.

Dated: December 16, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–27633 Filed 12–20–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0135]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; William D. Ford Direct Loan Program General Forbearance Request

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before January 20, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Direct Loan Program General Forbearance Request.

OMB Control Number: 1845–0031.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 2,188,770.

Total Estimated Number of Annual Burden Hours: 175,102.

Abstract: Due to the effects of the COVID–19 pandemic and the suspension of the collection of loans, the Department of Education is requesting an extension without change of the currently approved Direct Loan General Forbearance Request form information collection. The current form includes the Direct Loan, FFEL, and Perkins Loan programs making it easier for borrowers to request this action. There has been no change to the form, the underlying regulations, or anticipated usage.

Dated: December 16, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–27578 Filed 12–20–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Draft Environmental Assessment for the Commercial Disposal of Savannah River Site Contaminated Process Equipment

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of its *Draft Environmental Assessment for the Commercial Disposal of*

Savannah River Site Contaminated Process Equipment (DOE/EA–2154) (Draft Savannah River Site (SRS) Contaminated Process Equipment Environmental Assessment (EA)). The Draft SRS Contaminated Process Equipment EA evaluates the potential impacts from a proposed action to dispose of certain SRS contaminated process equipment at a commercial low-level radioactive waste (LLW) disposal facility outside of South Carolina, licensed by either the Nuclear Regulatory Commission (NRC) or an Agreement State pursuant to NRC's regulations for land disposal of radioactive waste. The proposed disposal of the SRS contaminated process equipment is being analyzed consistent with the Department's interpretation of the statutory term ''high-level radioactive waste'' (HLW) as defined in the Atomic Energy Act of 1954, as amended (AEA), and Nuclear Waste Policy Act of 1982, as amended (NWPA).

DATES: The 45-day public comment period extends from the date of publication of this notice in the **Federal Register** through February 4, 2022, in consideration of the end of calendar year 2021 holidays. DOE will hold an informational webinar on January 11, 2022, at 2 p.m. ET. See section V, ''Public Participation,'' for further information on the public comment process and the informational webinar.

ADDRESSES: Please direct written comments or questions on the Draft SRS Contaminated Process Equipment EA using one of the following methods:

Email: SRSequipmentEA@em.doe.gov. Please submit comments in Microsoft™ Word or PDF file format and avoid the use of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID–19 pandemic. For this EA, DOE is suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact James Joyce at (202) 586–5000 to discuss the need for alternative arrangements.

The Draft SRS Contaminated Process Equipment EA is available at: *https://www.energy.gov/em/downloads/draft-environmental-assessment-commercial-disposal-srs-contaminated-process-equipment.*

FOR FURTHER INFORMATION CONTACT: James Joyce, U.S. Department of Energy, Office of Environmental Management, at *SRSequipmentEA@em.doe.gov* or (202) 586–5000.

SUPPLEMENTARY INFORMATION:

I. Background

SRS occupies approximately 310 square miles primarily in Aiken and Barnwell counties in South Carolina. Over the years, a primary SRS mission has been the production of special radioactive isotopes to support national defense programs, including reprocessing of spent nuclear fuel and target materials. More recently, the SRS mission has emphasized waste management, environmental restoration, and the decontamination and decommissioning of facilities that are no longer needed for SRS's traditional defense activities. SRS generated large quantities of liquid radioactive waste as a result of reprocessing activities associated with its nuclear materials production mission.

The SRS process equipment has been utilized during the on-site storage and treatment of the reprocessing waste, which results in the equipment's contamination. This Draft SRS Contaminated Process Equipment EA analyzes the potential environmental impacts associated with the commercial disposal of SRS process equipment contaminated with reprocessing waste. Portions of the Tank 28F salt sampling drill string, glass bubblers, and glass pumps are comprised of hazardous components (*e.g.,* lead) or are contaminated with hazardous constituents. Because there are no permitted facilities at SRS for the disposal of mixed LLW, this contaminated process equipment cannot be disposed of on-site.

The Tank 28F salt sampling drill string was used to collect reprocessing waste samples from the waste storage tank in F-Area. The Tank 28F salt sampling drill string consists of steel piping measuring 2.25 inches in outer diameter by 41 feet long, contaminated with reprocessing waste (supernatant) from Tank 28F. Contaminants include a mixture of radionuclides (*e.g.,* cesium-137 and plutonium-238). The Tank 28F drill string is currently stored in a large container in a high-radiation area south of the H-Area Tank Farm until a disposal path can be established.

The glass bubblers are used to increase the efficiency of the SRS Defense Waste Processing Facility (DWPF) melter operations, where high-activity tank waste is vitrified into glass under high temperature. Each glass bubbler is made up of a ¾-inch Inconel pipe, which is inserted into the DWPF melter and through which an inert gas is introduced to increase melter efficiency. During operations, approximately three feet of the lower portion of the bubbler is submerged in the melt pool and becomes contaminated with various radionuclides (*e.g.,* cesium-137 and plutonium-238). The total length of each complete bubbler assembly is between 8.8 feet and 9.4 feet, as there are four design lengths based on the bubbler location in the melter. SRS currently has approximately 60 contaminated bubblers in storage and is expected to generate four contaminated glass bubblers every six months until DWPF operations are completed in the 2034 timeframe. Based on the glass bubbler replacement rate of eight bubblers annually, DOE projects a need to dispose of approximately 172 bubblers by the forecasted end of DWPF operations. The bubblers are currently stored inside the DWPF canyon building.

The glass pumps were previously used to support melter efficiency but have been replaced by the glass bubblers and therefore are no longer generated at SRS. Each glass pump includes a section of Inconel pipe, measuring approximately 3.625 inches in outer diameter; only the lower portion (two feet) of which was in the melt pool and contains contaminated glass. The overall glass pump is about 11 feet long. There are approximately 10 glass pumps in storage at SRS requiring disposal. Similar to the glass bubblers, the glass pumps are currently stored inside the DWPF canyon building.

This Draft SRS Contaminated Process Equipment EA will be the second National Environmental Policy Act (NEPA) analysis proposing to apply the high-level radioactive waste interpretation (HLWI) to a particular waste stream. In August 2020, DOE completed its first NEPA analysis (Commercial Disposal of DWPF Recycle Wastewater Environmental Assessment, DOE/EA–2115) analyzing a proposed application of the HLWI.[1] This was implemented in accordance with the June 10, 2019, *Supplemental Notice Concerning U.S. Department of Energy Interpretation of High-Level Radioactive Waste* (Supplemental Notice), 84 FR 26835, in which DOE provided its interpretation of the statutory term HLW as defined in the AEA [2] and NWPA.[3]

[1] NEPA documents and technical documents for the commercial disposal of DWPF recycle wastewater from SRS under the HLWI can be found at: *https://www.energy.gov/em/program-scope/high-level-radioactive-waste-hlw-interpretation.*

[2] 42 U.S.C. 2011 *et seq.*

[3] 42 U.S.C. 10101 *et seq.*

In early 2021, various stakeholders submitted both supportive and non-supportive letters to the Secretary of Energy regarding the HLWI. The Secretary is committed to implementing the Department's environmental cleanup programs in a manner that is consistent with the law and that makes evidence-based decisions guided by the best available science and data. The Department assessed the HLWI in light of this commitment; please see separate **Federal Register** Notice, *Assessment of Department of Energy's Interpretation of the Definition of High-Level Radioactive Waste,* which is being published in the **Federal Register** concurrently with this notice, documenting the Department's assessment and affirming the Department's interpretation of the statutory term ''high-level radioactive waste'' as defined in the AEA and the NWPA.

II. Purpose and Need for Action

There is no current disposal pathway for the SRS contaminated process equipment. The purpose and need for DOE's action is to identify a disposal pathway for the SRS contaminated process equipment to mitigate on-site storage constraints, improve worker safety, and support accelerated completion of the environmental cleanup mission at SRS.

III. Proposed Action and Alternatives

Under the proposed action, DOE would dispose of the SRS contaminated process equipment (Tank 28F salt sampling drill string, glass bubblers, and glass pumps) at a commercial LLW disposal facility outside of South Carolina licensed by either the NRC or an Agreement State under 10 CFR part 61. Prior to a disposal decision, DOE would characterize the contaminated process equipment to verify with the licensed offsite commercial LLW disposal facility whether the waste meets DOE's HLWI Criterion 1 for disposal as non-HLW, in accordance with DOE Manual 435.1–1, *Radioactive Waste Management Manual.* DOE would demonstrate compliance with the waste acceptance criteria and all other requirements of the disposal facility, including any applicable regulatory requirements for management of the waste prior to disposal and applicable U.S. Department of Transportation and NRC requirements for packaging and transportation from SRS to the commercial disposal facility. DOE has identified two reasonable action alternatives for the proposed action:

- *Alternative 1*—If determined to be Class B or Class C LLW,[4] DOE would stabilize and package the waste at SRS and ship the waste packages to Waste Control Specialists LLC (WCS) in Andrews County, Texas, for disposal.[5] Implementation would be dependent upon the waste meeting the facility's waste acceptance criteria, among other requirements.
- *Alternative 2*—If determined to be Class A LLW, DOE would stabilize and package the waste at SRS and ship the waste packages to either Energy*Solutions*[6] in Clive, Utah, or WCS in Andrews County, Texas, for disposal. Implementation would be dependent upon the waste meeting the facility's waste acceptance criteria, among other requirements.

The EA also evaluates a No-Action Alternative under which the contaminated process equipment would remain in storage at SRS until another disposal path was identified.

IV. NEPA Process

Comments on the Draft SRS Contaminated Process Equipment EA received during the public comment period will be considered during preparation of the Final SRS Contaminated Process Equipment EA. Following the public comment period—and based on the Final SRS Contaminated Process Equipment EA and consideration of all comments received—DOE will either issue a Finding of No Significant Impact (FONSI) or announce its intent to prepare an environmental impact statement (EIS). If DOE determines that a FONSI is appropriate, both the Final EA and FONSI will be made available to the public. If DOE determines that an EIS is needed, either during preparation of the Final SRS Contaminated Process Equipment EA or after completing the EA, DOE would issue in the **Federal Register** a Notice of Intent to prepare an EIS.

Consultations with other agencies (*e.g.,* State Historic Preservation Officer, U.S. Fish and Wildlife Service) were not required or undertaken in connection with the Draft SRS Contaminated Process Equipment EA because the Proposed Action would not impact cultural resources, historic properties, or threatened or endangered species. The following regulatory agencies were notified of the preparation of this Draft SRS Contaminated Process Equipment EA: U.S. Environmental Protection Agency; NRC; Idaho Department of Environmental Quality; Nevada Division of Environmental Protection; New York State Energy Research and Development Authority; South Carolina Department of Health and Environmental Control; Texas Commission on Environmental Quality; Utah Department of Environmental Quality; and Washington State Department of Ecology.

V. Public Participation

Submission of Public Comments: DOE will accept comments on the Draft SRS Contaminated Process Equipment EA no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice. Because your comments will be made public, you are solely responsible for ensuring that your comments do not include any Confidential Business Information that you or a third party may not wish to be posted.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. It is DOE's policy that all comments will be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Informational Webinar: The time and date of the webinar are listed in the **DATES** section at the beginning of this notice. This webinar, which will provide an overview of the Draft SRS Contaminated Process Equipment EA, can be accessed at: *https://doe.webex.com/doe/j.php?MTID=m60ab8e647f04ce33ab25e3cf7e5b60ea.*

No registration is required. Participants are responsible for ensuring their systems are compatible with the webinar software.

[4] In its 10 CFR part 61 regulations, NRC has identified classes of LLW—Class A, B, or C—for which near-surface disposal is safe for public health and the environment. This waste classification regime is based on the concentration levels of a combination of specified short-lived and long-lived radionuclides in a waste stream, with Class C LLW having the highest concentration levels.

[5] Because the SRS contaminated process equipment would most likely result in Class B or Class C LLW, this has been identified as the first alternative.

[6] Energy*Solutions* is currently licensed to only dispose of Class A LLW and mixed LLW; WCS is licensed to dispose of Class A, Class B, and Class C LLW and mixed LLW.

Signing Authority

This document of the Department of Energy was signed on December 15, 2021, by John A. Mullis II, Acting Associate Principal Deputy Assistant Secretary for Regulatory and Policy Affairs, Office of Environmental Management, pursuant to delegated authority from the Secretary of Energy. This 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 at Washington, DC, on December 16, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–27558 Filed 12–20–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Assessment of Department of Energy's Interpretation of the Definition of High-Level Radioactive Waste

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) affirms its interpretation of the statutory term ''high-level radioactive waste'' (HLW) as defined in the Atomic Energy Act of 1954, as amended (AEA), and the Nuclear Waste Policy Act of 1982, as amended (NWPA). The HLW interpretation (HLWI) is consistent with the law, the best available science and data, and the recommendations of the Blue Ribbon Commission on America's Nuclear Future. In developing the HLWI, the views of members of the public and the scientific community were considered.

ADDRESSES: This Federal Register Notice (FRN) and other documents relevant to DOE's HLWI are available on the Department's website at: *https://www.energy.gov/em/program-scope/high-level-radioactive-waste-hlw-interpretation*.

FOR FURTHER INFORMATION CONTACT: James Joyce at *james.joyce@em.doe.gov* or (202) 586–5000.

SUPPLEMENTARY INFORMATION: The Secretary of Energy is committed to implementing the Department's environmental cleanup programs in a manner that is consistent with the law and that makes evidence-based decisions guided by the best available science and data. In early 2021, various stakeholders submitted both supportive and non-supportive letters to the Secretary of Energy regarding the HLWI. The Department assessed the HLWI in light of this commitment. This FRN documents the results of that assessment.

As explained in this FRN, DOE affirms its interpretation of the statutory term ''high-level radioactive waste'' (HLW) as defined in the AEA [1] and NWPA.[2] As DOE stated in the *Supplemental Notice Concerning U.S. Department of Energy Interpretation of High-Level Radioactive Waste,* 84 FR 26835 (June 10, 2019, FRN) (Supplemental Notice), and the *High-Level Radioactive Waste Interpretation Limited Change to DOE Manual 435.1–1, Radioactive Waste Management Manual and Administrative Change to DOE Order 435.1, Radioactive Waste Management,* 86 FR 5173 (January 19, 2021, FRN), DOE interprets the statutory term ''high-level radioactive waste'' to mean that not all wastes from the reprocessing of spent nuclear fuel (reprocessing wastes) are HLW. DOE interprets the statutory term such that some reprocessing wastes may be classified as not HLW (non-HLW) and may be safely disposed of in accordance with its radiological characteristics. DOE confirms that the HLWI is consistent with the law, the best available science and data, and the recommendations of the Blue Ribbon Commission on America's Nuclear Future. DOE further affirms that the views of the public and the scientific community were considered in developing the HLWI.

I. Background

Building on the recommendations of the Blue Ribbon Commission on America's Nuclear Future issued in 2012,[3] the development of the HLWI began in 2016 at the direction of then Secretary Moniz. The HLWI was finalized in 2019, and was successfully implemented on a single waste stream in 2020.

The Department sought public comments on its HLWI through its *Request for Public Comment on the U.S. Department of Energy Interpretation of High-Level Radioactive Waste,* 83 FR 50909 (October 10, 2018, FRN). The 90-day public comment period, including a 30-day extension to submit comments, invited public input in order to better understand stakeholder perspectives, and sought to increase transparency and enhance public understanding of DOE's views of its legal authority. DOE received a total of 5,555 comments, roughly 360 of which were distinct comments, from a variety of stakeholders: Members of the public; tribal nations; members of Congress; numerous state and local governments; and one federal agency, the Nuclear Regulatory Commission (NRC). All input was important to the process and all comments were carefully and fully considered by DOE.

In June 2019, after careful consideration of all comments received on the October 2018 FRN, DOE issued the Supplemental Notice. The Supplemental Notice provided additional explanation of DOE's interpretation as informed by public review and comment and further consideration by DOE following the October 2018 FRN. The Supplemental Notice also provided responses to significant and recurring comments received through the public comment process. In its Supplemental Notice, DOE explained its interpretation of the term HLW, as defined in the AEA and NWPA.[4] DOE has the long-standing authority and responsibility under the AEA to ensure that all DOE radioactive waste—including reprocessing waste—is managed and disposed of in a safe manner. The AEA and NWPA define HLW as:

(A) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) Other highly radioactive material that the [NRC], consistent with existing law, determines by rule requires permanent isolation.

42 U.S.C. 10101(12); see 42 U.S.C. 2014(dd). In Paragraph A of 42 U.S.C. 10101(12), Congress limited the designation of HLW to those materials that are ''highly radioactive.'' This

[1] 42 U.S.C. 2011 *et seq.*

[2] 42 U.S.C. 10101 *et seq.*

[3] This commission was formed in 2010 by then-Secretary of Energy Chu at the request of President Obama to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle and recommend a new strategy. *https://www.energy.gov/ne/downloads/blue-ribbon-commission-americas-nuclear-future-report-secretary-energy.*

[4] The AEA and NWPA include the same definition of HLW.

limiting term applies to all reprocessing waste, including the ''liquid waste produced directly in reprocessing'' and ''any solid material derived from such liquid waste.'' The use of the limiting term, ''highly radioactive,'' demonstrates that Congress intended to distinguish between reprocessing waste that is ''highly radioactive'' and reprocessing waste that is not. If Congress had intended to define all reprocessing waste as HLW regardless of its radiological characteristics, it would not have included the ''highly radioactive'' requirement and instead defined HLW as ''all waste material resulting from the reprocessing of spent nuclear fuel.''

Similarly, for ''any solid material derived from'' the ''liquid waste produced directly in reprocessing,'' Congress also specified that in addition to being ''highly radioactive'' it must also contain fission products in ''sufficient concentrations.'' The terms ''highly radioactive'' and ''sufficient concentrations'' are not defined in the AEA or the NWPA. By providing in Paragraph A that liquid reprocessing waste is HLW only if it is ''highly radioactive,'' and that solid material derived from liquid reprocessing waste is HLW only if it is ''highly radioactive'' and contains fission products in ''sufficient concentrations'' without further defining these standards, Congress left it to DOE to determine when the standards are met for reprocessing wastes.

DOE has evaluated the meaning of these terms based on its historical knowledge, experience, and expertise in managing reprocessing wastes. DOE's interpretation is an articulation of the technical criteria that can be applied to individual waste streams on a case-by-case basis to determine whether the standard for HLW has been met. DOE also notes that in the NRC's comments on the interpretation, the NRC staff stated that they ''agree with the concept proposed in **Federal Register** October 10 Notice (83 FR 50909) that radioactive waste may be classified and disposed of in accordance with its radiological characteristics.'' DOE places significant weight on the NRC's views of matters relating to the safe management and disposal of radioactive waste, including the HLWI.

As explained in the Supplemental Notice, DOE has both the scientific and technical expertise as well as the legal authority to interpret the term HLW in the AEA and NWPA to determine that certain of its reprocessing wastes are not HLW based on their radiological characteristics. DOE interprets those statutes to provide that reprocessing wastes are properly classified as non-HLW where the radiological characteristics of the waste, in combination with appropriate disposal facility requirements for safe disposal, demonstrate that disposal of such waste is fully protective of human health and the environment. Specifically, as stated in the Supplemental Notice, DOE interprets the statutes to provide that a reprocessing waste may be determined to be non-HLW if the waste meets either of the following two criteria:

(I) Does not exceed concentration limits for Class C low-level radioactive waste as set out in section 61.55 of title 10, Code of Federal Regulations, and meets the performance objectives of a disposal facility; or

(II) Does not require disposal in a deep geologic repository and meets the performance objectives of a disposal facility as demonstrated through a performance assessment conducted in accordance with applicable requirements.

Reprocessing waste meeting either I or II of the criteria is non-HLW, and—pursuant to appropriate processes—may be classified and disposed of in accordance with its radiological characteristics in an appropriate disposal facility provided all applicable requirements of the disposal facility are met.

On June 10, 2019 (84 FR 26847), in determining whether and how to implement the HLWI specific to a particular waste stream, DOE initiated a public process pursuant to the National Environmental Policy Act (NEPA) to analyze the potential environmental impacts associated with disposing of up to 10,000 gallons of stabilized (grouted) Defense Waste Processing Facility (DWPF) recycle wastewater from the Savannah River Site (SRS) at a commercial low-level radioactive waste (LLW) disposal facility located outside of South Carolina licensed by either the NRC or an Agreement State. In August 2020, DOE completed an environmental assessment (EA) (DOE/EA–2115) and published a Finding of No Significant Impact (85 FR 48236). DOE applied the HLWI to a specific waste stream, shipping eight gallons of the SRS DWPF recycle wastewater to the Waste Control Specialists LLC Federal Waste Facility, a licensed commercial LLW facility located near Andrews, Texas, for stabilization and disposal as non-HLW.[5]

DOE's January 19, 2021, FRN (86 FR 5173) announced a limited change to DOE Manual 435.1–1, *Radioactive Waste Management Manual,* to formally incorporate the Department's interpretation of the statutory definition of HLW. Additionally, DOE made an administrative change to DOE Order 435.1, *Radioactive Waste Management.* The revised Manual includes DOE's interpretation of the statutory term HLW as defined in the AEA and NWPA.

Pursuant to the HLWI, on January 19, 2021, DOE issued the Notice, *Draft Environmental Assessment for the Commercial Disposal of Savannah River Site Contaminated Process Equipment* (86 FR 5175), announcing its intent to prepare a draft EA (DOE/EA–2154) pursuant to NEPA to dispose of contaminated process equipment from SRS at a commercial LLW disposal facility located outside of South Carolina licensed by either the NRC or an Agreement State. As explained in a separate Notice of Availability, *Draft Environmental Assessment for the Commercial Disposal of Savannah River Site Contaminated Process Equipment,* which is being published in the **Federal Register** concurrently with this FRN, the draft EA analyzes capabilities for alternative disposal options through the use of existing, licensed, off-site commercial disposal facilities. The SRS contaminated process equipment would be characterized, stabilized as appropriate, and packaged, and if the waste acceptance criteria and performance objectives of a specific disposal facility are met, DOE could consider whether to dispose of the waste as LLW under the Department's interpretation of HLW.

The process for public comment on the draft EA for the Commercial Disposal of Savannah River Site Contaminated Process Equipment is explained in the separate Notice of Availability. DOE is committed to robust, informed, stakeholder participation and highly encourages all interested individuals and organizations to further provide input to DOE on its implementation at SRS for this second waste stream under the HLWI, using that NEPA process. DOE will continue to solicit comments, as appropriate, on individual actions related to implementing the HLWI, for example, through the NEPA process.

At this time, DOE is not proposing to implement the HLWI at any other site or for any other waste stream. DOE will continue to evaluate its waste inventories and related management and disposal options, and expects to engage openly with stakeholders regarding potential future opportunities to implement the HLWI more broadly. Any decisions, however, about whether and how the interpretation will apply to

[5] *https://www.energy.gov/nepa/doeea-2115-commercial-disposal-defense-waste-processing-facility-recycle-wastewater-savannah.*

other wastes at any specific site and whether such waste may be managed as non-HLW will be the subject of subsequent actions.

II. Assessment

After extensive policy and legal assessment, DOE affirms the HLWI is consistent with the law, guided by the best available science and data, and that the views of members of the public and the scientific community have been considered in its adoption. The HLWI is a science-based tool to help further the tank waste cleanup mission across the country.

In its assessment, documented below, the Department evaluated whether: (1) The HLWI is based on the best available science and data; (2) the HLWI is consistent with law; (3) the views of members of the public and the scientific community have been considered in adopting the HLWI; (4) the Department has a rigorous decision-making process in place to ensure future application of the HLWI to individual waste streams will consider—through NEPA or analogous processes (*e.g.,* Comprehensive Environmental Response, Compensation and Liability Act (CERCLA))—environmental justice, protection of the environment and public health, impact on access to clean air and water, limit on exposure to hazardous chemicals and radioactive materials, and impact on greenhouse gas emissions and climate change, which are highlighted by Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,*[6] and (5) the Department has processes in place to gather input from the public and stakeholders, including state, local, tribal, and territorial officials, scientists, labor unions, environmental advocates, and environmental justice organizations during future applications of HLWI to individual waste streams.

(1) The HLWI is based on the best available science and data.

Waste characteristics, and not the origin or source of a waste, determine the corresponding risks to workers, the public, and the environment. Current DOE management practices are generally based on waste characteristics (which determines risk) and not solely origin or source (which does not determine risk). The waste characteristics are based on rigorous sampling and analysis and documented in accordance with strict quality assurance standards.

DOE implements the HLWI through well-established statutes, regulations, requirements and policies included but not limited to:

- AEA and NWPA;
- Regulation and oversight of nuclear waste disposal facilities:
  - *LLW:* 10 Code of Federal Regulations (CFR) part 61, *Licensing Requirements for Land Disposal of Radioactive Waste;*
    - All commercial disposal facilities must be designed, constructed, operated and closed to meet relevant safety standards.
    - Commercial LLW disposal facilities are licensed by either NRC or Agreement States under 10 CFR part 61.
  - Transuranic waste generated from atomic energy defense activities:
    - 40 CFR part 191, *Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes;*
    - 40 CFR part 194, *Criteria for the Certification and Re-Certification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR part 191 Disposal Regulations;*
- *CERCLA;*
- *Resource Conservation and Recovery Act* (RCRA);
- *NEPA;* and
- DOE Order 144.1, *Department of Energy Tribal Government Interactions and Policy.*

Disposal of reprocessing waste based on radiological characteristics versus its source is a science-based approach as demonstrated by:

- Recommendations by the Blue Ribbon Commission on America's Nuclear Energy Future, tasked by then-Secretary of Energy Chu, at the request of President Obama (2012),[7] which concluded that ''[t]he most important overarching criticism of the U.S. waste classification system is that it is not sufficiently risk-based. Rather, it is (for the most part) directly or indirectly source-based—that is, based on the type of facility or process that produces the waste rather than on factors related to human health and safety risks.'' The Blue Ribbon Commission also found that ''the definition of HLW, in particular, has attracted the most criticism'' for being insufficiently risk-based, noting that ''to the extent that terms such as 'highly radioactive,' 'sufficient concentrations,' and 'requires permanent isolation' are used to define HLW, they have not been quantified.''
- Affirmation from six National Laboratories: ''The national laboratories have reviewed the proposal and support the revised interpretation based on its technical attributes and potential complex-wide benefits. . . . We believe that classification of reprocessing waste for disposal based on radiological risk provides the best path to accelerating the safe long-term stabilization and disposition of a wide variety of waste streams and provides immediate benefit to the health and safety of the worker, communities, and environment across the complex.''[8]
- International guidelines for management and disposal of radioactive waste, *i.e.,* International Atomic Energy Agency Safety Series, Classification of Radioactive Waste, Report No. 111–G–1.1, Vienna (1994).
- NRC's public comments on the HLWI; NRC staff ''agree with the concept proposed [in the October 2018 FRN] that radioactive waste may be classified and disposed of in accordance with its radiological characteristics.''
- Numerous other independent reports, *e.g.,* Massachusetts Institute of Technology, *The Future of the Nuclear Fuel Cycle, An Interdisciplinary MIT Study* (2011), National Research Council, *Risk and Decisions About Disposition of Transuranic and High-Level Radioactive Waste* (2005), Government Accountability Office (GAO), GAO–17–317, *High Risk Series—Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others* (2017), Energy Communities Alliance, *Waste Disposition: A New Approach to DOE's Waste Management Must Be Pursued* (2017).[9]

Lastly, the HLWI is consistent with how wastes from non-reprocessing sources (*e.g.,* decontamination and decommissioning, environmental restoration) are classified. It does not change existing requirements for protectiveness of human health, the

[6] Executive Order 13990 states it is the Administration's policy ''to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impact of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.''

[7] *https://www.energy.gov/sites/default/files/2019/06/f63/Independent-Reports-Supporting-a-Risk-Based-Approach-to-Radioactive-Waste-Management-June-2019.pdf.*

[8] Letter from the Directors of the Savannah River National Laboratory, Idaho National Laboratory, Sandia National Laboratories, Pacific Northwest National Laboratory, Los Alamos National Laboratory, and Oak Ridge National Laboratory to the Secretary of Energy, dated March 25, 2019.

[9] *https://www.energy.gov/sites/default/files/2019/06/f63/Independent-Reports-Supporting-a-Risk-Based-Approach-to-Radioactive-Waste-Management-June-2019.pdf.*

environment and workers (*i.e.,* waste disposal must comply with performance objectives, waste acceptance criteria, license conditions/permits, and all other existing applicable requirements).

In summary, implementation of the HLWI is based on waste characterization and analysis performed in accordance with rigorous quality assurance requirements; is consistent with the existing framework of statutes, regulations, and policies, including NEPA, RCRA, and CERCLA; is consistent with the recommendations of, or has been affirmed by, highly technical and influential organizations such as the Blue Ribbon Commission on America's Nuclear Energy Future, six National Laboratories, the International Atomic Energy Agency, the NRC staff, and independent technical reports.

(2) The HLWI is consistent with law.

DOE affirms the detailed explanation of the Department's legal authority to issue and implement the HLWI set forth in the Supplemental Notice. Two general points from the Supplemental Notice warrant emphasis here.

First, DOE's interpretation is consistent with the plain language of the HLW definition in the AEA and NWPA. As discussed in the ''Background'' section of this FRN and further explained in the Supplemental Notice, the statutory text in Paragraph A of the HLW definition [10] indicates that not all reprocessing waste is HLW. The adverb, ''highly,'' modifies ''radioactive,'' which indicates that the degree of radioactivity is relevant to the definition. If certain reprocessing waste is not ''highly'' radioactive, such waste would be excluded from the definition of HLW. Further, the use of ''highly'' suggests that there should be a threshold for the level of radioactivity because even ''moderately'' radioactive material would not qualify. The phrase ''sufficient concentrations'' likewise indicates that there must be a concentration level that would be ''insufficient,'' and material with concentrations of fission products below that level would not be HLW. Neither the AEA nor the NWPA define the phrases ''highly radioactive'' or ''sufficient concentrations.'' These phrases are inherently ambiguous and necessarily require an exercise of interpretative judgment by DOE—the agency charged with ''provid[ing] for safe storage, processing, transportation, and disposal of'' reprocessing and other radioactive wastes resulting from the United States' defense program. *See* 42 U.S.C. 2123(a)(3), 5814, 7151(a).

DOE's view is that the appropriate dividing line between reprocessing waste that is ''highly radioactive'' and waste that is not, and between reprocessing waste that contains fission products in ''sufficient concentrations'' and waste that does not, is based on the risk the waste poses—specifically, whether or not the waste can be disposed of safely in an existing facility that is not a deep geologic repository. As reflected in the NWPA, deep geologic disposal is the internationally recognized and technically viable means to provide the long-term isolation necessary to safely dispose of waste that, according to the NRC, has historically been described as HLW—waste that contains both highly concentrated short-lived radionuclides and long-lived radionuclides. Because not all radioactive wastes include this combination of radionuclides, the NRC has established a regulatory framework in 10 CFR part 61 that differentiates wastes based on their radiological characteristics.[11] This framework allows lower-risk wastes to be disposed of in facilities that are not deep geologic repositories, so long as stringent technical requirements to protect public health and the environment are met.

Second, DOE's interpretation is a reasonable and appropriate exercise of the Department's authority to protect human health and the environment.[12] The interpretation is informed by DOE's significant historical knowledge, experience, and technical expertise in safely managing reprocessing and other radioactive wastes resulting from the United States' defense program and government-sponsored nuclear energy research. Among other things, the interpretation incorporates the well-established principles and standards of the NRC's regulatory framework for the disposal of LLW, and—as discussed previously—it is consistent with the recommendations of, or has been affirmed by, highly technical and influential organizations such as the Blue Ribbon Commission on America's Nuclear Energy Future, six National Laboratories, the International Atomic Energy Agency, the NRC staff, and independent technical reports.

(3) The views of members of the public and the scientific community have been considered in adopting the HLWI.

During the development of the HLWI, DOE provided opportunities to interested parties and stakeholders for meaningful input/comment. DOE issued its HLWI in the **Federal Register** in October 2018 for a 60-day period and extended it for an additional 30 days. Approximately 5,555 comments were received from citizens, federal and state regulatory agencies, lawmakers, tribal nations, scientific and environmental organizations, and state and local governments. Each of these comments was carefully considered by DOE in development of the HLWI criteria and DOE published the responses to comments by major topic in the Supplemental Notice. For example, in response to NRC's comment, DOE modified the interpretation's first criterion by adding the requirement that waste at or below Class C LLW limits must also meet the performance objectives of a disposal facility. In response to comments by other stakeholders concerning the propriety of DOE determining for itself what is HLW and non-HLW, DOE explained that Congress had assigned DOE this role through the AEA, and that DOE is accountable to a number of external regulatory, oversight, and technical standards entities including the NRC, Defense Nuclear Facilities Safety Board, U.S. Environmental Protection Agency, state agencies, as well as the National Council on Radiation Protection and Measurements and International Commission on Radiological Protection.

Throughout this process, as requested, DOE officials met with state and federal officials, tribal nation representatives, industry, and other stakeholders, as well as provided briefings at multiple stakeholder forums.

(4) The Department has a rigorous decision-making process in place to ensure future application of the HLWI to individual waste streams will consider—through NEPA or analogous processes (*e.g.,* CERCLA)—environmental justice, protection of the environment and public health, impact on access to clean air and water, limit on exposure to hazardous chemicals and radioactive materials, and impact on greenhouse gas emissions and climate

[10] 42 U.S.C. 10101(12); *see* also 42 U.S.C. 2014(dd).

[11] In its regulations, the NRC has identified classes of LLW—Class A, B, or C—for which near-surface disposal is safe for public health and the environment. Waste that exceeds the Class C tables in 10 CFR 61.55 also may be safely disposed in a near-surface disposal facility under certain conditions. This waste classification regime is based on the concentration levels of a combination of specified short-lived and long-lived radionuclides in a waste stream, with Class C LLW having the highest concentration levels. In accordance with NRC regulations, 10 CFR 61.55(a)(2)(iv) and 10 CFR 61.58, waste that exceeds the Class C levels is evaluated on a case-specific basis to determine whether it requires disposal in a deep geologic repository, or whether an alternative disposal facility can be demonstrated to provide safe disposal.

[12] *See, e.g.,* AEA § 91(a)(3), 42 U.S.C. 2121(a)(3); AEA § 161(b), 42 U.S.C. 2201(b).

change, which are highlighted by Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.*

The integrity of the federal decision-making is ensured by DOE's compliance with the existing framework of statutes, regulations, and policies, including, but not limited to, NEPA, RCRA, and CERCLA; DOE's transparent processes (*e.g.,* public input through NEPA and technical documents); and independent oversight by NRC and/or Agreement States through every phase of radioactive waste management and disposal at commercial facilities. The HLWI complies with Administration policies, as outlined in Executive Order 13990.

• *Environmental justice:* Application of the HLWI could remove reprocessing waste from the states and proximities to tribal nations and other Native American communities where it has been stored for decades and provide for the disposal of these wastes in facilities constructed and regulated for such purposes. Environmental justice issues are evaluated as part of DOE's NEPA process. In accordance with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* DOE is required to identify and address the disproportionately high and adverse human health or environmental effects of its actions on minority and low-income populations, to the greatest extent practicable and permitted by law.

• *Protection of the environment and public health:* Application of the HLWI could reduce the length of time that radioactive waste is stored on-site at DOE facilities, increasing safety for workers, the public, and the environment. For off-site commercial disposal of reprocessing waste determined to be non-HLW, federal requirements (10 CFR part 61) to protect human health and the environment are embedded in the NRC and Agreement State's design, permitting and operations license conditions. DOE must comply with the existing NRC and Agreement State regulatory framework and federal laws (*e.g.,* CERCLA) before any waste can be disposed including evaluating waste acceptance criteria and impacts on performance objectives of disposal facilities, preparing or revising permits and obtaining regulatory approvals, and coordinating with stakeholders. For commercial facilities, the NRC or the Agreement State provides oversight through every phase of LLW management and disposal. In no case would the HLWI abrogate DOE's responsibilities under laws, regulations, agreements, or permit requirements. Nor does it change DOE's existing statutory authorities or those of its regulators at the federal, state, or local level.

• *Impact on access to clean air and water:* Application of the HLWI to a specific waste stream would comply with the Clean Air Act, Clean Water Act, and other federal regulations for protection of clean air and water. Potential impacts to air and water are evaluated under NEPA. Primary sources of air pollutants, including hazardous air pollutants, are identified and assessed during the NEPA evaluation for each of the alternatives. Impacts on groundwater quality, potential impacts to stormwater runoff, stream quality, wetlands quality, etc. are identified and assessed during the NEPA evaluation for each of the alternatives.

• *Limit on exposure to hazardous chemicals and radioactive materials:*[13] Application of the HLWI to a specific waste stream would comply with the AEA, NWPA, CERCLA, RCRA, and other federal regulations for protection of human health and environment. Potential impacts due to exposures to hazardous chemicals and radioactive materials as a result of reprocessing waste being determined to be non-HLW are evaluated as part of the NEPA process. The NEPA evaluation identifies any special precautions needed to transport hazardous materials, if required, as part of the proposed action or alternatives and identifies any on-site treatment, engineering, or administrative controls that may be applied to the hazardous and radioactive waste encountered.

• *Potential impacts on greenhouse gas emissions and climate change:* Potential greenhouse gas emissions and potential impacts to climate change would be evaluated consistent with Council on Environmental Quality (CEQ) and DOE NEPA regulations.

(5) The Department has processes in place to gather input from the public and stakeholders, including state, local, tribal, and territorial officials, scientists, labor unions, environmental advocates, and environmental justice organizations during future applications of HLWI to individual waste streams.

The Department has robust, formal public review and comment processes—such as those under NEPA, RCRA, and CERCLA—that provide additional opportunities for public participation on potential future applications of the HLWI. Informed stakeholder participation, including members of the environmental justice community, in DOE clean-up decisions is required by these statutes and environmental regulations and policies. Additionally, DOE Order 144.1, *Department of Energy Tribal Government Interactions and Policy,* requires government-to-government consultations with affected tribal nations to ensure that tribal rights, including concerns regarding cultural resources management, are considered in clean-up decisions.

• Public participation requirements for DOE NEPA activities are specified in 40 CFR 1500–1508 and 10 CFR part 1021. All Federal agencies are required to provide meaningful opportunities for public participation.

• RCRA implementing regulations (*e.g.,* 40 CFR parts 124 and 270), as administered by the U.S. Environmental Protection Agency and state regulatory agencies, requires public participation during the hazardous waste permitting process (*e.g.,* permit to remove and treat tank mixed waste) and during the site corrective action program (*e.g.,* tank closures) and DOE follows these requirements. The RCRA Public Participation Manual describes the many public participation activities required by federal RCRA permitting regulations.

• CERCLA, as implemented by the National Contingency Plan, requires specific community involvement activities be undertaken at certain points throughout the Superfund process (40 CFR 300.430(c)(2)(ii)), and DOE follows these requirements. The CERCLA program requires public participation, and the Superfund Community Involvement Handbook describes community involvement activities during Superfund response actions (see, *e.g.,* Chapter 4).

• DOE Order 144.1, *Department of Energy Tribal Government Interactions and Policy,* communicates departmental, programmatic, and field responsibilities for interacting with tribal nations. It provides direction to all departmental officials, staff, and contractors regarding fulfillment of trust obligations and other responsibilities arising from departmental actions which may potentially impact American Indian and Alaska Native traditional, cultural, and religious values and practices; natural resources; treaty and other federally recognized and reserved rights. DOE conducts government-to-government consultations with affected tribal nations to ensure that tribal rights, including concerns regarding cultural resources management, are considered in clean-up decisions, in accordance

[13] Executive Order 13990 uses the terms ''dangerous chemicals and pesticides.'' DOE's assessments focus on hazardous materials, hazardous substances, hazardous wastes, and radiological materials, depending on the context.

with DOE Order 144.1. DOE also coordinates and considers the views from other Native American communities.

Additionally, DOE has other mechanisms to ensure robust, informed stakeholder participation that includes frequent interactions with citizens advisory boards, intergovernmental groups, federal and state regulators, congressional staff, and others. These interactions promote transparency and public involvement. DOE sites also use communications tools that include, but are not limited to, townhall meetings, website calendars, online collaboration and informational meetings, reading rooms, and press releases.

The established process to apply the HLWI to a specific waste stream is exemplified by the successful model used for SRS DWPF recycle wastewater. This process provided opportunities for stakeholder involvement and feedback throughout the project. Multiple entities such as Energy Communities Alliance, SRS Community Reuse Organization, and the National Governors Association have provided DOE with positive feedback on its availability of public information and its willingness to discuss and explain the HLWI publicly. Although not required by CEQ and DOE NEPA regulations for EAs, the process included making the draft EA available for public comment, holding informational meetings and webinars on the draft and final EAs, preparing and making available fact sheets, and including a Comment Response Document in the final EA. The supporting technical documents, including sampling data and other information demonstrating that the proposed waste disposal meets the disposal facility waste acceptance criteria and performance objectives for protection of human health and the environment, have been made available to the public and included in public outreach briefings.

Signing Authority

This Department of Energy document was signed on December 15, 2021, by William I. White, Senior Advisor for Environmental Management, 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 at Washington, DC, on December 16, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–27555 Filed 12–20–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site; Meeting

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, January 25, 2022; 9:00 a.m.–3:30 p.m.

ADDRESSES: Aiken Municipal Building, 214 Park Avenue SW, Aiken, SC 29801

The meeting will also be streamed on YouTube, no registration is necessary; links for the livestream can be found on the following website: *https://cab.srs.gov/srs-cab.html.*

FOR FURTHER INFORMATION CONTACT: Amy Boyette, Office of External Affairs, U.S. Department of Energy (DOE), Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120; or Email: *amy.boyette@srs.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Chair Update
Agenda Review
Agency Updates
Presentations:
- Transuranic Waste Program Update
- Savannah River Ecology Laboratory
- Liquid Waste Status
- Savannah River Mission Completion Introduction

Public Comments

Public Participation: The meeting is open to the public. It will be held strictly following COVID–19 precautionary measures. To provide a safe meeting environment, seating may be limited; attendees should register for in-person attendance by sending an email to *srscitizensadvisoryboard@srs.gov* no later than 4:00 p.m. ET on Thursday, January 20, 2022. The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Amy Boyette at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should submit their request to *srscitizensadvisoryboard@srs.gov.* Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. Comments will be accepted after the meeting, by no later than 4:00 p.m. ET on Monday, January 31, 2022. Please submit comments to *srscitizensadvisoryboard@srs.gov.* The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make oral public comments will be provided a maximum of five minutes to present their comments. Individuals wishing to submit written public comments should email them as directed above.

Minutes: Minutes will be available by emailing or calling Amy Boyette at the email address or telephone number listed above. Minutes will also be available at the following website: *https://cab.srs.gov/srs-cab.html.*

Signed in Washington, DC, on December 15, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–27576 Filed 12–20–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4881–031]

Ada County, Idaho Fulcrum LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 4881–031.

c. *Date filed:* November 30, 2021.

d. *Applicant:* Ada County, Idaho; Fulcrum LLC.

e. *Name of Project:* Barber Dam Hydroelectric Project.

f. *Location:* On the Boise River, near the city of Boise, Ada County, Idaho. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Nicholas Josten, 2742 St. Charles Ave., Idaho Falls, Idaho 83404; 208–520–5135.

i. *FERC Contact:* Matt Cutlip, 503–552–2762, *matt.cutlip@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 31, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–4881–031. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. The application is not ready for environmental analysis at this time.

n. *The Barber Dam Project consists of the following existing facilities*: (1) A 1,100-foot-long earthen embankment dam; (2) a 400-foot-long, 25-foot-high concrete capped timber crib spillway section; (3) a powerhouse containing two 1,850-kilowatt generating units; (4) a trash sluiceway; (5) a 75-acre impoundment; (6) a 100-foot-long concrete tailrace; (7) 120 feet of transmission line; and (8) appurtenant facilities. The project is operated in a run-of-river mode and generates an average of 11,900 megawatt-hours per year. The licensee proposes to modify the existing spillway to incorporate a variable elevation weir, and to modify the plant operating system to control the variable weir so that water is automatically bypassed to the Boise River when the powerhouse trips offline.

o. A copy of the application can be viewed on the Commission's website at *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 on March 13, 2020. For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments*: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Additional Study Requests due—January 2022
Issue Deficiency Letter (if needed)—January 2022
Request for Additional Information (if needed)—January 2022
Issue Scoping Document 1 for comments—April 2022
Issue Determination on Additional Study Requests—April 2022

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27565 Filed 12–20–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–470–000]

Freeport LNG Development, L.P.; FLNG Liquefaction, LLC; FLNG Liquefaction 2, LLC; FLNG Liquefaction 3, LLC; Notice of Schedule for Environmental Review of the Freeport LNG Capacity Amendment Project

On June 29, 2021, Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (together referred to as Freeport LNG) filed an application with the Federal Energy Regulatory Commission (Commission or FERC) in Docket No. CP21–470–000 requesting authorization pursuant to Section 3(a) of the Natural Gas Act to increase the liquefied natural gas (LNG) production capacity of the Freeport LNG terminal located on Quintana Island, in Brazoria County, Texas. Freeport LNG proposes to increase the authorized maximum LNG production capacity from 782 billion cubic feet per year (bcf/y) to approximately 870 bcf/y. The proposal is known as the Freeport LNG Capacity Amendment Project (Project).

On July 14, 2021, the Commission issued its Notice of Application for the

Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—April 22, 2022
90-day Federal Authorization Decision Deadline—July 21, 2022

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description and Background

Pursuant to Section 3(a) of the Natural Gas Act and in accordance with Part 153 of the Commission's regulations, Freeport LNG filed an application to amend the authorizations granted by the Commission in Docket Nos. CP12–509–000 and CP12–29–000, as amended in Docket Nos. CP15–518–000 and CP20–532–000.

Freeport LNG has determined that under the upper limit normal operating conditions, 870 bcf/y reflects the maximum quantity of LNG that could be produced in a particular year on the basis of operating at an annualized rate of 2.38 bcf per day at design conditions previously approved by the Commission. Freeport LNG is seeking to align the terminal's authorizations with this maximum design LNG production capability. Freeport LNG states that no additional construction or modification of previously-authorized facilities is required to implement this increase.

The U.S. Department of Transportation—Pipeline and Hazardous Materials Safety Administration is a cooperating agency in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* CP21–470), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27564 Filed 12–20–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–28–000]

Gulf South Pipeline Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 8, 2021, Gulf South Pipeline Company, LLC (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA) and Gulf South's blanket certificate issued in Docket No. CP82–430–000, for authorization to abandon, in its entirety, Index 3342–9, also identified by the Bureau of Safety and Environmental Enforcement (BSEE) as pipeline segment number (PSN) 16042, located in offshore Louisiana. The proposed project consists of abandoning approximately 10.3 miles of 10-inch-diameter natural gas pipeline, of which an approximately 6,650-foot segment is proposed for abandonment by removal and the remaining approximately 48,232 feet is proposed for abandonment in place, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to J. Kyle Stephens, Vice President, Regulatory Affairs, Gulf South Pipeline Company, LLC, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, at (713) 479–3480, or by email to *Kyle.Stephens@bwpipelines.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on February 14, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

the protest deadline, which is February 14, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is February 14, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 14, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–28–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below.[7] Your submission must reference the Project docket number CP22–28–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, or email (with a link to the document) at: *Kyle.Stephens@bwpipelines.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27566 Filed 12–20–21; 8:45 am]

BILLING CODE 6717–01–P

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

[7] Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–30–000]

Kinetica Energy Express, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 10, 2021, Kinetica Energy Express, LLC (KEE), 1001 McKinney Street, Suite 900, Houston, TX 77002–2700 filed in the above referenced docket, a prior notice pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, requesting authorization to abandon by sale to Krewe-TBay, LLC its 523D–100 line, consisting of approximately 18.36 miles of 10-inch and 8-inch inactive pipeline located in Lafourche Parish, Louisiana (523D–100 line abandonment Project or Project).

KEE proposes to abandon these facilities under authorities granted by its blanket certificate issued in Docket No. CP12–489–000.[1] The proposed abandonments will have no impact on KEE's existing customers or affect its existing storage operations. The estimated potential replacement cost for the Project is approximately $27,540,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

[1] *Tennessee Gas Pipeline Co., L.L.C. and Kinetica Energy Express, LLC, 143 FERC ¶61,196, at P 182 (2013).*).

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Bill Prentice, General Counsel, Kinetica Energy Express, LLC, 1001 McKinney Street, Suite 900, Houston, TX 77002–2700; by phone: (713) 228–3347; or email: *bill.prentice@kineticallc.com*.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[2] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on February 14, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[3] any person [4] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[5] and must be submitted by the protest deadline, which is February 14, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [6] and the regulations under the NGA [7] by the intervention deadline for the project, which is February 14, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 14, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–30–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [8]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP22–30–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

[2] 18 CFR (Code of Federal Regulations) 157.9.

[3] 18 CFR 157.205.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 157.205(e).

[6] 18 CFR 385.214.

[7] 18 CFR 157.10.

[8] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Bill Prentice, General Counsel, Kinetica Energy Express, LLC, 1001 McKinney Street, Suite 900, Houston, TX 77002–2700; by phone: (713) 228–3347; or email: *bill.prentice@kineticallc.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27562 Filed 12–20–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time

	Docket Nos.
Corpus Christi Liquefaction Stage III, LLC; Corpus Christi Liquefaction, LLC.	CP18–512–000
Cheniere Corpus Christi Pipeline, LP.	CP18–513–000

Take notice that on December 7, 2021, Corpus Christi Liquefaction Stage III, LLC, Corpus Christi Liquefaction, LLC, and Cheniere Corpus Christi Pipeline, LP (collectively the Applicants), requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until June 30, 2027, to complete their Stage 3 LNG Project and Stage 3 Pipeline Project, as authorized in the November 22, 2019 Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act (November 22 Order).[1] Ordering Paragraphs (B) and (D)(1) of the November 22 Order provide a deadline of November 22, 2024, to make their facilities available for service.

The Applicants now state that, due to adverse economic and logistical conditions induced by the COVID–19 pandemic, commercial progress was slowed and a Final Investment Decision on the Stage 3 Projects was delayed. The Applicants now state that these unforeseen circumstances precluded the project from reaching full commercialization, and that additional time is now required to complete the construction of the authorized project facilities.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on the applicant's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[2]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[3] the Commission will aim to issue an order acting on the request within 45 days.[4] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[5] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[6] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[7] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

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 Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments in lieu of

[1] *Corpus Christi Liquefaction Stage III, LLC, Corpus Christi Liquefaction, LLC, and Cheniere Corpus Christi Pipeline, LP,* 169 FERC ¶ 61,135 (2019) (November 22 Order).

[2] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 39 (2020).

[3] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[4] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[5] *Id.* at P 40.

[6] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[7] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

paper using the ''eFile'' link at *http://www.ferc.gov*. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on December 29, 2021.

Dated: December 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–27563 Filed 12–20–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9364–01–R6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Premcor Refining Group Inc., Valero Port Arthur Refinery, Jefferson County, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition for objection to Clean Air Act Title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated November 30, 2021, granting in part and denying in part a Petition dated February 20, 2018 from the Environmental Integrity Project, Sierra Club, and the Port Arthur Community Action Network (the Petitioners). The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Texas Commission on Environmental Quality (TCEQ) to Premcor Refining Group Inc. (Premcor) for its Valero Port Arthur Refinery located in Jefferson County, Texas.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office is currently closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed below if you need alternative access to the final Order and Petition, which are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Jonathan Ehrhart, EPA Region 6 Office, Air Permits Section, (214) 665–2295, *ehrhart.jonathan@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received the Petition from the Environmental Integrity Project, Sierra Club, and the Port Arthur Community Action Network dated February 20, 2018, requesting that the EPA object to the issuance of operating permit no. O1498, issued by TCEQ to the Premcor Valero Port Arthur Refinery in Jefferson County, Texas. The Petition claims the proposed permit fails to incorporate and assure compliance with Permit by Rule (''PBR'') requirements, including requirements in Premcor's certified PBR registrations, and fails to include monitoring, testing, and recordkeeping provisions that assure compliance with applicable requirements in Premcor's New Source Review (NSR) permits.

On November 30, 2021, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for EPA's decision.

Dated: December 16, 2021.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2021–27573 Filed 12–20–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1222; FR ID 62740]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before January 20, 2022.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the

section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1222.

Title: Inmate Calling Services Annual Reporting, Certification, Consumer Disclosure, and Waiver Request Requirements.

Form Number(s): FCC Form 2301(a) and FCC Form 2301(b).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 20 respondents; 23 responses.

Estimated Time per Response: 5 hours–80 hours.

Frequency of Response: Annual reporting; on occasion; and third party disclosure requirements.

Obligation to Respond: Statutory authority for this information collection is contained in sections 1, 4(i)–4(j), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, 403 and 617.

Total Annual Burden: 2,940 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission anticipates treating as presumptively confidential any particular information identified as proprietary by providers of inmate calling services (ICS).

Needs and Uses: Section 201 of the Communications Act of 1934 Act, as amended (Act), 47 U.S.C. 201, requires that ICS providers' interstate and international rates and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. 276, requires that payphone service providers (including ICS providers) be fairly compensated for completed calls.

On May 24, 2021, the Commission released the Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, WC Docket No. 12–375, FCC 21–60 (*2021 ICS Order*), in which it continued its reform of the ICS marketplace. In that Order, the Commission, among other things, lowered the interstate interim rate caps; reformed the current treatment of site commission payments; eliminated the separate interstate collect calling rate caps; reformed the ancillary service rules for third-party financial fees; capped, for the first time, international calling rates; adopted a new mandatory data collection to gather data to set permanent rates; and reaffirmed providers' obligations regarding access for incarcerated people with disabilities.

The reforms also included expanded consumer disclosure requirements, as well as new reporting requirements for ICS providers seeking waiver of the Commission's interstate and international rate caps. In connection with international rates, the Commission required that providers must separately disclose the rate component for terminating calls to each country where that provider terminates international calls.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–27588 Filed 12–20–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0719; FR ID 62850]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before January 20, 2022.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the

section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0719.

Title: Quarterly Report of Local Exchange Carriers Listing Payphone Automatic Number Identifications (ANIs).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 400 respondents; 1,600 responses.

Estimated Time per Response: 3.5 hours (8 hours for the initial submission; 2 hours per subsequent submission—for an average of 3.5 hours per response).

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226 and 276 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,600 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents wish confidential treatment of their information, they may request confidential treatment under 47 CFR 0.459 of the Commission's Rules.

Needs and Uses: The Commission adopted rules and policies governing the payphone industry under section 276(b)(1)(A) of the Telecommunications Act of 1996 (the Act) and established ''a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.'' Pursuant to this mandate, and as required by section 64.1310(d) of the Commission's rules, Local Exchange Carriers (LECs) must provide to carriers required to pay compensation pursuant to section 64.1300(a), a quarterly report listing payphone ANIs. Without provision of this report, resolution of disputed ANIs would be rendered very difficult. Carriers would not be able to discern which ANIs pertain to payphones and therefore would not be able to ascertain which dial-around calls were originated by payphones for compensation purposes. There would be no way to guard against possible fraud. Without this collection, lengthy investigations would be necessary to verify claims. The report allows carriers to determine which dial-around calls are made from payphones. The information must be provided to third parties. The requirement would be used to ensure that LECs and the carriers required to pay compensation pursuant to 47 CFR 64.1300(a) of the Commission's rules comply with their obligations under the Telecommunications Act of 1996.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–27590 Filed 12–20–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receivership

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for the institution listed below intends to terminate its receivership for said institution.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIP

Fund	Receivership name	City	State	Date of appointment of receiver
10467	Community Bank of the Ozarks.	Sunrise Beach	MO	12/14/2012.

The liquidation of the assets for the receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing, identify the receivership to which the comment pertains, and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 15, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–27526 Filed 12–20–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0121; –0135; –0185]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0121; –0135; and –0185).

DATES: Comments must be submitted on or before January 20, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.fdic.gov/resources/regulations/federal-register-publications/index.html.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Certification of Compliance with Mandatory Bars to Employment.

OMB Number: 3064–0121.

Form Number: 2120/16.

Affected Public: Individuals seeking employment from the FDIC.

Burden Estimate:

ESTIMATED ANNUAL BURDEN

[OMB 3064–0121]

Information collection description	Type of burden	Estimated number of respondents	Estimated number of responses per respondent	Estimated time per response (minutes)	Estimated annual burden (hours)
Form 2120/16	Reporting	528	1	10	88
Total Annual Burden					88

General Description of Collection: This information collection arises from the reporting requirements contained in 12 CFR part 336, subpart B, of the FDIC Rules and Regulations entitled ''Minimum Standards of Fitness for Employment with the Federal Deposit Insurance Corporation''. This rule implements Section 19 of the Resolution Trust Corporation Completion Act (Completion Act), Public Law 103–204, by (among other things) prescribing a certification, with attachments in some cases, relating to job applicants' fitness and integrity. More specifically, the statute provides that the FDIC shall issue regulations implementing provisions that prohibit any person from becoming employed by the FDIC who has been convicted of any felony; has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency; has demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or has caused a substantial loss to federal deposit insurance funds. This collection of information implements these mandatory bars to employment through a certification, signed by job applicants prior to an offer of employment using form 2120/16. There has been no change in the method or substance of this information collection. The change in estimated annual burden is due to an increase in the estimated number of new hires from an annual average of 500 in 2018 to an annual average of 528 currently.

2. *Title:* Purchaser Eligibility Certification.

OMB Number: 3064–0135.

Form Number: 7300–06.

Affected Public: Individuals and entities wishing to purchase receivership assets from the FDIC.

Burden Estimate:

ESTIMATED ANNUAL BURDEN

[OMB 3064–0135]

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response (minutes)	Estimated annual burden (hours)
Purchaser Eligibility Certification (Form No. 7300–06).	Reporting (Voluntary to obtain a benefit).	On occasion	380	1	30	190
Total Estimated Annual Burden (Hours).	.....	.....	.....	.....	.....	190

Source: FDIC.

General Description of Collection: The FDIC is statutorily prohibited from selling assets held by insured depository institutions that have been placed under the conservatorship or receivership of the FDIC to individuals or entities that profited or engaged in wrongdoing at the expense of those failed institutions, or seriously mismanaged those failed institutions.[1] This statutory prohibition is implemented by regulation.[2] The FDIC uses Form No. 7300–06: Purchaser Eligibility Certification (PEC) to determine an entity or person's eligibility to purchase assets. This Information Collection (IC) pertains to the voluntary submission of the PEC by persons seeking to certify their eligibility to be able to purchase receivership assets. Potential respondents to this IC include any entity or individual that wishes to bid on or purchase assets held by insured depository institutions that have been placed under the conservatorship or receivership of the FDIC. This IC contains one reporting requirement. The FDIC arrived at the estimated time to respond estimate of 30 minutes per PEC form, through observation of individuals completing these forms at open-outcry auction events. Since the form has not been revised, the FDIC believes this estimate remains reasonable and appropriate for this ICR. The FDIC estimated the number of respondents by tabulating the number of PECs received in each year between 2015 and 2020. Over that period, the FDIC received 2,282 PECs, or approximately 380 PECs per year on average.

3. *Title:* Resolution plans required for insured depository institutions with $100 billion or more in total assets.

OMB Number: 3064–0185.

Form Number: None.

Affected Public: FDIC insured depository institutions with $50 billion or more in total assets.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL IMPLEMENTATION BURDENS

[OMB No. 3064–0185]

Description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses/ respondent	Time per response (hours)	Estimated annual burden (hours)
Resolution Plan Updates by GSIB specified CIDIs.	Reporting (Mandatory).	Annual (3 year cycle).	9	1	21,920	197,280
Resolution Plan Updates non-GSIB specified CIDIs.	Reporting (Mandatory).	Annual (3 year cycle).	22	1	3785.5	83,281
Resolution Plans by New Filers	Reporting (Mandatory).	Annual (3 year cycle).	2	1	4430.7	8,861.4
Notice of Material Change	Reporting (Mandatory).	On occasion	2	1	120	240
Exemption Request	Reporting (Required to obtain benefit).	On occasion	1	1	1	1
Total Estimated Annual Burden	.....	.....	.....	.....	.....	289,663.4

Source: FDIC.

General Description of Collection: In 2012, the FDIC issued a rule requiring covered insured depository institutions (CIDIs)[3] to submit resolution plans to the FDIC (Rule).[4] The Rule was established to facilitate the FDIC's readiness to resolve a CIDI under the Federal Deposit Insurance Act (FDI Act).[5] Since issuing the Rule in 2012, the FDIC and CIDIs have been through multiple resolution plan submission cycles. Through this experience, the FDIC has learned what aspects of the resolution planning process are most valuable and what could be clarified or exempted. Furthermore, the FDIC has gained additional resolution capabilities relevant to IDI resolution through separate rulemakings subsequent to the issuance of the IDI Rule.[6]

In November 2018, FDIC Chairman McWilliams announced that the agency planned to revise the IDI Rule, and that the next round of resolution plans

[1] 12 U.S.C. 1821(p).

[2] 12 CFR 340.

[3] According to 12 CFR 360.10(b)(4), covered insured depository institution means an insured depository institution with $50 billion or more in total assets, as determined based upon the average of the institution's four most recent Reports of Condition and Income or Thrift Financial Reports (Call Report), as applicable to the insured depository institution.

[4] 77 FR 3075.

[5] 12 U.S.C. 1811, *et seq.*

[6] *See, e.g.,* 12 CFR parts 370 & 371.

submitted pursuant to the IDI Rule would not be required until the rulemaking process was complete.[7] The FDIC partially lifted the resolution plan moratorium for CIDIs with $100 billion or more in assets on January 19, 2021.[8] On June 25, 2021, the FDIC issued a statement (Statement) that outlined a modified approach to implementing the Rule.[9] The modified approach applies to IDIs with $100 billion or more in total assets (specified CIDIs) and announces the FDIC's intent to extend the submission frequency to a three-year cycle, streamline content requirements, and place greater emphasis on engagement with firms. In the Statement, the FDIC stated that it intends to send a letter to each specified CIDI advising it of the timing of its next resolution plan submission during the three-year cycle. To streamline content requirements, the FDIC has exempted all specified CIDIs from including in their resolution plans the provision, identification, description, or discussion of the following topics: Least Costly Resolution Method; Asset Valuation and Sales, Major Counterparties; Material Entity Financial Statements; Systemically Important Functions; Backup Plans; Assessment of the Resolution Plan; and High-Level Description of Resolution Strategy.[10] In addition, the FDIC plans to exempt certain specified CIDIs from additional content items required under the Rule; these exemptions are tailored to the specified CIDI's own circumstances and will be communicated to each specified CIDI in the FDIC's letter. Specified CIDIs may also submit written requests to the FDIC for exemptions from additional categories of information, which should include a description of why the information would not be useful or material to the FDIC in planning to resolve the specified CIDI. The Statement also clarifies the post-submission engagement process and contemplates one such engagement per specified CIDI per three-year resolution plan cycle. At present, CIDIs with less than $100 billion in total assets are not expected to submit resolution plans during the period of this IC.

The Rule contains ''collections of information'' as defined by the Paperwork Reduction Act (PRA) of 1995. As such, the FDIC must obtain approval by the Office of Management and Budget prior to collecting said collections of information. This IC was last approved for renewal on December 6, 2018 for an estimated 43 annual responses and a total estimated annual burden estimate of 572,791 hours.

Given the changes to the PRA requirements of the Rule since the 2018 ICR, the FDIC has revised the delineation of burdens. As per their changes, the IC now comprises the following line items:

1. Resolution Plan Updates by specified CIDIs whose top tier parent company is a U.S. global systemically important bank as defined in 12 CFR 217.402 (GSIB specified CIDIs).
2. Resolution Plan Updates by specified CIDIs whose top tier parent company is not a U.S. global systemically important bank (non-GSIB specified CIDIs).
3. Resolution Plans by New Filers.
4. Notices of Material Change.
5. Exemption Requests.

Potential respondents to this IC, as defined by the Rule under the modified approach described in the Statement, are specified CIDIs, or IDIs with total assets greater than or equal to $100 billion, based upon the average of the IDI's four most recent Call Reports. As of March 31, 2021, there are 33 IDIs meeting those requirements.[11] The FDIC anticipates that one of these Specified CIDIs will cease to exist due to its pending merger with another specified CIDI.[12] The FDIC also anticipates that a new specified CIDI will be created due to the pending merger of two IDIs with expected combined assets over $100 billion.[13] Thus, on net, the FDIC anticipates that there will be 33 potential respondents to this IC. The estimated number of respondents will vary by line item.

Resolution Plan Updates:

Of the set of potential respondents, the FDIC estimates that 9 GSIB Specified CIDIs and 22 non-GSIB specified CIDIs will submit Resolution Plan Updates.[14] To estimate the burden imposed by the Rule under the modified approach described in the Statement, FDIC started with the methodology used in the 2018 ICR. That methodology relied on results from a survey of seven banks to estimate an average PRA burden per submission of 65 hours per billion dollars of assets. FDIC then made the following adjustments to the burden estimate to reflect the modified approach described in the Statement:

- Reduced the estimated average PRA burden by five hours per billion dollars of assets to reflect the exclusion of content the Statement announced the FDIC would exempt from the specified CIDIs' resolution plans.[15]
- Reduced the estimated average PRA burden by two hours per billion dollars of assets to reflect the rescission of guidance that had requested that each CIDI provide information on how a failure scenario would impact its creditor stack.[16]
- Increased the estimated average PRA burden by 2 hours per billion of assets to reflect the anticipated engagement contemplated in the Statement, which contemplates one such engagement per specified CIDI over the three-year filing period.[17]
- Reduced the estimated average burdens for GSIB specified CIDIs by four percent to reflect expected exemptions tailored to each GSIB specified CIDI. The four percent reduction was estimated by dividing the total number of such exemptions across all GSIB specified CIDIs (8) by the total number of required content items across all GSIB specified CIDIs (198).
- Further reduced the estimated average burdens for non-GSIB specified CIDIs by 20 percent to reflect expected exemptions tailored to each non-GSIB specified CIDI. The 20 percent reduction was estimated by dividing the total number of such exemptions across all non-GSIB specified CIDIs (97) by the total number of required content items across all non-GSIB specified CIDIs (484).

Based on the above methodology, FDIC estimates that the burden hours per submission would be 57.6 hours per billion dollars for Resolution Plan Updates by GSIB specified CIDIs.[18] Using assets reported on Call Reports for the nine GSIB specified CIDIs, we

[7] *See* FDIC Chairman Jelena McWilliams, ''Keynote Remarks,'' speech before the 2018 Annual Conference of The Clearing House (TCH) and Bank Policy Institute (BPI) (November 28, 2018), available at *https://www.fdic.gov/news/news/speeches/spnov2818.html.*

[8] *See* FDIC Announces Lifting IDI Plan Moratorium (January 19, 2021), available at *https://www.fdic.gov/resauthority/idi-statement-01-19-2021.pdf.*

[9] *See* Statement on Resolution Plans for Insured Depository Institutions, available at *https://www.fdic.gov/resauthority/idi-statement-06-25-2021.pdf.*

[10] Id. at page 9.

[11] FDIC Call Report Data, March 31, 2021.

[12] *See* FRB Order No. 2021–04 (May 14, 2021), available at *https://www.federalreserve.gov/newsevents/pressreleases/files/orders20210514a1.pdf,* last accessed on July 16, 2021.

[13] *See* First Citizens BancShares, Inc., ''First Citizens, CIT Receive FDIC Approval of Proposed Merger,'' July 14, 2021, available at *https://www.globenewswire.com/news-release/2021/07/14/2262762/0/en/First-Citizens-CIT-Receive-FDIC-Approval-of-Proposed-Merger.html,* last accessed on July 16, 2021.

[14] Based on FDIC Call Report Data, March 31, 2021.

[15] *See* Statement, at page 9.

[16] *Id.*

[17] Id. at page 10.

[18] 57.6 hours = (65 hours − 5 hours − 2 hours + 2 hours) × (100 percent − 4 percent).

estimate a total burden of 591,840 hours for Resolution Plan Updates by GSIB specified CIDIs, or an average of 65,760 hours per submission.[19]

Using the same methodology, FDIC estimates that the burden hours per submission to be 48 hours per billion dollars for non-GSIB specified CIDIs.[20] Using the assets reported on the latest Call Report for the 22 non-GSIB specified CIDIs, we estimate a total burden of 249,840 hours for Resolution Plan Updates by non-GSIB specified CIDIs, or an average of 11,356 hours per submission.[21]

Under the modified approach described in the Statement, each respondent is expected to prepare a single submission in the upcoming three-year renewal cycle, resulting in a response rate of one in three years (or ⅓ per year). Because the OMB's PRA renewal system limits annual responses to values greater than or equal to one, however, FDIC uses an annual rate of one response by both GSIB specified CIDIs and non-GSIB specified CIDIs (rather than ⅓). To estimate the annual hourly burden incurred by a respondent, we divide the estimated burden hours per submission by three to arrive at the estimated burden hours per year. Thus, FDIC estimates that Resolution Plan Updates by GSIB specified CIDIs will incur 21,920 hours per year[22] and Resolution Plan Updates by non-GSIB specified CIDIs will incur 3,785.5 hours per year.[23]

Resolution Plans by New Filers

Of the set of potential respondents, the FDIC estimates that two Specified CIDIs will each submit a new Resolution Plan (*i.e.,* submit a plan for the first time).[24] To estimate the burden imposed by the Rule under the modified approach described in the Statement, FDIC started with the methodology used in the 2018 ICR. That methodology assumed that IDIs that cross the $50 billion threshold will incur approximately 7,200 hours to prepare and submit their first resolution plan. This estimate is substantially higher than a comparative CIDI completing an annual update due to the higher costs of preparing a resolution plan for the first time.[25] Given that, under modified approach described in the Statement, the total asset threshold is $100 billion in assets rather than $50 billion in assets, as was the case in the 2018 ICR, and the submission moratorium on CIDIs with less than $100 billion in total assets remains in place, the FDIC believes that 14,400 hours (7,200 hours × 2) is a reasonable and appropriate estimate for the burden of first time submissions under the Rule for purposes of this IC. Furthermore, note that the non-individual streamlined content exemptions and engagement changes described above, taken together, reduce the estimated average burden hours of Resolution Plan Updates by 7.7 percent.[26] The FDIC believes that these changes would also reduce the burden of first time submissions by the same percentage. Thus, FDIC estimates that that each first time Resolution Plan submission will take 13,292 hours to prepare.[27]

As stated above, each respondent is expected to prepare a single submission in the upcoming three-year cycle, resulting in a response rate equal to ⅓ per year. Because the OMB's PRA renewal system limits annual responses to values greater than or equal to one, however, FDIC uses an annual rate of one response by New Filers. To estimate the annual hourly burden incurred by a respondent, FDIC divides the estimated burden hours per submission by three to arrive at the estimated burden hours per year. Thus, FDIC estimates that Resolution Plans by New Filers will incur 4,430.7 hours per year.[28]

Notice of Material Change

According to the Rule, a CIDI shall file with the FDIC a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the CIDI.[29] The 2018 ICR estimated one annual respondent, two annual responses per respondent, and 120 hours of burden per response, for this Notice of Material Change. The FDIC believes that two annual respondents each with one annual response per respondent is a more reasonable and appropriate estimate, and this estimate reflects that change. Thus FDIC estimates two annual respondents, one annual response per respondent, and 120 hours of burden per response for the line item Notice of Material Change.

Exemption Request

As described above, the Rule and the Statement permit a specified CIDI to seek exemptions from the informational requirements of the Rule beyond those described in the Statement or in the letter from the FDIC to the specified CIDI. Such a request should be in writing and include a ''description of why the information would not be useful or material to the FDIC . . . .''[30] Since the FDIC does not have access to information that would enable it to estimate how many institutions will seek to submit an exemption request or how long it would take to prepare such a request, the FDIC uses placeholder estimates of one such exemption request and one burden hour to complete it.[31] Thus FDIC estimates one annual respondent, one annual response per respondent, and one hour of burden per response for the line item Exemption Request.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

[19] 65,760 hours per submission = 591,840 hours for nine submissions/9 submissions. 591,840 hours = 57.6 hours per submission per billion dollars in asset × $10,275 billion in assets, as reported in the March 31, 2021 Call Report.

[20] 48 hours = (65 hours − 5 hours − 2 hours + 2 hours) × (100 percent − 20 percent).

[21] 11,356 hours per submission = 249,840 hours for twenty-two submissions/22 submissions. 249,840 hours = 48 hours per submission per billion dollars in asset × $5,205 billion in assets, as reported in the March 31, 2021 Call Report. We adjust the assets of one non-GSIB specified CIDI to include the assets of the IDI that merged with it.

[22] 21,920 hours per year = 65,760 hours per submission/3 years per submission.

[23] 3,785 hours per year = 11,356 hours per submission/3 years per submission.

[24] Based on FDIC Call Report Data, March 31, 2021, one specified CIDI has not previously submitted a plan and two CIDIs will merge to become a specified CIDI.

[25] For example, using the 65 hours per billion dollars parameter, a CIDI with $50 billion in assets is estimated to incur 3,250 hours to prepare and submit a Resolution Plan Update.

[26] 7.7 percent = 5 hours/65 hours * 100 percent.

[27] 13,292 hours = 14,400 × (100 percent − 7.7 percent).

[28] 4,430.7 hours per year = 13,292 hours per submission/3 years per submission.

[29] *See* 12 CFR 360.10(c)(1)(v).

[30] *See* Statement at page 10.

[31] The SMEs considered basing an estimate for a § 360.10 exemption request on the estimate of 20 burden hours recently used for an exemption request under § 360.9. The SMEs ultimately determined that the exemption requests under the two provisions were unlikely to be analogous, however, and that the breadth and variability of § 360.10 exemption requests made it impracticable for the FDIC to develop a meaningful estimate without additional information that is not currently available.

Dated at Washington, DC, on December 15, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–27525 Filed 12–20–21; 8:45 am]

BILLING CODE 6714–01–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 January 5, 2022.

A. Federal Reserve Bank of Dallas

(Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Brittany Broke Lane, Jonestown, Texas*; by retaining voting shares of Shelby Bancshares, Inc., and thereby indirectly retaining voting shares of Shelby Savings Bank, SSB, both of Center, Texas.

Board of Governors of the Federal Reserve System, December 16, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–27604 Filed 12–20–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-22–22BG; Docket No. CDC–2021–0131]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comments on a proposed information collection project titled Characteristics of Patients with Environmentally-derived Triazole-resistant *Aspergillus fumigatus.* This case report form collects information on demographics, underlying conditions, treatments, and outcomes of patients with triazole-resistant *A. fumigatus* to inform clinical and public health practice.

DATES: CDC must receive written comments on or before February 22, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0131 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8 Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Characteristics of Patients with Environmentally-derived Triazole-resistant Aspergillus fumigatus—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The environmental mold *Aspergillus fumigatus* (*A. fumigatus*) is the primary cause of invasive aspergillosis and is associated with ~50% mortality in high-risk patients, including stem cell and organ transplant recipients. The use of triazole antifungals has greatly improved survival. However, triazole-resistant *A. fumigatus* infections are

increasingly reported worldwide and are associated with increased mortality and treatment failure. Of particular concern are resistant *A. fumigatus* isolates carrying the TR34/L98H and TR46/Y121F genetic resistance markers, which are associated with environmental triazole fungicide use rather than previous patient exposure to antifungals. Infections with these triazole-resistant strains have become common among patients with *A. fumigatus* infections in Europe, Asia, and South America, and have been characterized epidemiologically. However, U.S. reports of isolates carrying TR34/L98H or TR46/Y121F markers are limited, and detailed epidemiologic data are critical to inform public health response.

Through the Antibiotic Resistance Laboratory Network (ARLN), CDC is already receiving *A. fumigatus* isolates from laboratories across the nation. These isolates undergo testing for triazole resistance (defined using minimum inhibitory concentrations or epidemiologic cutoff values set forth by Clinical and Laboratory Standards Institute). For patients involving triazole-resistant isolates, we plan to use a standardized case report form (CRF) to collect public health surveillance data regarding demographics (*e.g.,* age, sex, race/ethnicity, country of residence), underlying medical conditions, treatments, and outcomes (*e.g.,* vital status at 30 days for initial positive specimen). The CRF would be filled out voluntarily by state and local health departments and contains an optional supplement at the end involving a brief interview (including data on occupational and environmental exposures) of a patient or their representative. The findings would be used to describe the risk factors, clinical features, and outcomes for patients with triazole-resistance *Aspergillus fumigatus.* U.S. data on triazole-resistant *Aspergillus fumigatus* are lacking, although this problem constitutes a major public health threat.

CDC requests OMB approval for an estimated 8 annual burden hours annually for collection from 15 respondents. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total Burden (in hours)
State and Local Health Department.	Characteristics of Patients with Environmentally-derived Triazole-resistant *Aspergillus fumigatus*.	15	15	30/60	8
Total					8

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–27599 Filed 12–20–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–22–0976; Docket No. CDC–2021–0130]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled 2022 Million Hearts® Hypertension Control Champions Challenge. This program will be used to identify clinicians, clinical practices, and health systems that have exceptional rates of hypertension control and recognize them as 2022 Million Hearts® Hypertension Control Champions.

DATES: CDC must receive written comments on or before February 22, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0130 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

2022 Million Hearts® Hypertension Control Champions Challenge (OMB Control No. 0920–0976, Exp. 11/30/2022)—Revision—National Center for Chronic Disease and Public Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Million Hearts® is a national initiative to prevent one million heart attacks and strokes by 2022. In order to prevent one million cardiovascular events (*e.g.,* heart attacks and strokes), we need to decrease smoking, sodium consumption and physical inactivity by 20%; improve performance on quality-of-care measures for appropriate aspirin use, blood pressure control, cholesterol management, and smoking cessation to 80%; and improve outcomes for priority populations disproportionately burdened by cardiovascular disease.

Over the last nine years, we have seen tremendous progress by providers and health care systems that focus on improving their performance in controlling patients' blood pressure. Getting to 80% blood pressure control (defined as <140/<90 mm Hg) would mean that 10 million more Americans with hypertension would have their blood pressure under control, and be at substantially lower risk for strokes, heart attacks, kidney failure, and other related cardiovascular events. For more information about the initiative, visit *https://millionhearts.hhs.gov/.* Million Hearts® is a registered trademark of the Department of Health and Human Services.

The challenge is an important way to call attention to the need for improved hypertension control, provides a powerful motivation and target for clinicians, and will improve understanding of successful implementation strategies at the health system level. It will identify clinicians, clinical practices, and health systems that have exceptional rates of hypertension control and recognize them as 2022 Million Hearts® Hypertension Control Champions. To support improved quality of care delivered to patients with hypertension, Million Hearts® will document the systems, strategies, processes, and staffing that contribute to the exceptional blood pressure control rates achieved by Champions.

The challenge is authorized by Public Law 111–358, the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science Reauthorization Act of 2010 (COMPETES Act). Applicants for the 2022 Million Hearts® Hypertension Control Challenge will be asked to provide two hypertension control rates for the practice's or health system's hypertensive population: A current rate for the most recent 12-month reporting period (*e.g.,* 1/1/2021–12/31/2021) and a previous rate for the 12-month period immediately preceding the most recent reporting period (*e.g.,* 1/1/2020–12/31/2020). Applicants will also be asked to provide the prevalence of hypertension in their population (more details provided below), describe some population characteristics (such as urban/rural location, percent minority, percent enrolled in Medicaid, percent with no health insurance, and percent whose primary language is not English) and strategies used by the practice or health system that support improvements in blood pressure control. A copy of the application form will be available on the Challenge website for the duration of the Challenge.

To be eligible for recognition as a Million Hearts® Hypertension Control Champion under this challenge, an individual or entity:

(1) Shall have completed the application form in its entirety to participate in the competition under the rules developed by HHS/CDC;

(2) Shall have complied with all eligibility requirements and satisfy the requirements in one of the following subparts:

a. Be a U.S. licensed clinician (*i.e.,* MD, DO, nurse practitioner, or physician assistant), practicing in any U.S. setting, who provides ongoing care for adult patients with hypertension. The individual must be a citizen or permanent resident of the U.S.;

b. Be a U.S. incorporated clinical practice, defined as any practice with two or more U.S. licensed clinicians who by formal arrangement share responsibility for a common panel of patients, practice at the same physical location or street address, and provide continuing medical care for adult patients with hypertension;

c. Be a health system, incorporated in and maintaining a primary place of business in the U.S., that provides continuing medical care for adult patients with hypertension. We encourage large health systems (those that are comprised of a large number of geographically dispersed clinics and/or have multiple hospital locations) to consider having one or a few of the highest performing clinics or regional affiliates apply individually instead of the health system applying as a whole;

(3) Must treat all adult patients with hypertension in the practice, not a selected subgroup of patients;

(4) Must have a data management system (electronic or paper) that allows HHS/CDC or their contractor to verify data submitted;

(5) Must treat a minimum of 500 adult patients annually and have a hypertension control rate (blood pressure <140 mm Hg systolic and <90 mm Hg diastolic) of at least *80%;*

(6) May not be a federal entity or federal employee acting within the scope of their employment;

(7) An HHS employee must not work on their application(s) during assigned duty hours;

(8) Shall not be an employee of or contractor at CDC;

(9) Must agree to participate in a data validation process to be conducted by a reputable independent contractor. Data will be kept confidential by the contractor to the extent applicable law allows and will be shared with the CDC, in aggregate form only (*e.g.,* the hypertension control rate for the practice not individual patients' hypertension values);

(10) Must agree to sign, without revisions, a Business Associate Agreement with the contractor conducting the data validation.

(11) Must have a written policy in place about conducting periodic background checks on all providers and taking appropriate action based on the results of the check. CDC's contractor may also request to review the policy and any supporting information deemed necessary. In addition, a health system background check will be conducted by CDC or a CDC contractor that includes a search for the Joint Commission sanctions and current investigations for serious institutional misconduct (*e.g.,* attorney general investigation). Eligibility status, based upon the above-

referenced written policy, appropriate action, and background check, will be determined at the discretion of the CDC consistent with CDC's public health mission.

(12) Must agree to be recognized if selected and agree to participate in an interview to develop a success story that describes the systems and processes that support hypertension control among patients. Champions will be recognized on the Million Hearts® website. Strategies used by Champions that support hypertension control may be written into a success story, placed on the Million Hearts® website, used in press releases, publications, and attributed to Champions.

No cash prize will be awarded. Champions will receive national recognition. CDC requests OMB approval for an estimated 215 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Physician, practices and healthcare systems.	Million Hearts® Hypertension Control Champion Application Form.	200	1	30/60	100
Finalists	Million Hearts® Hypertension Control Champion Data Verification Form.	40	1	2	80
Champions	Interview Guide: Million Hearts® Hypertension Control Champion.	35	1	1	35
Total					215

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–27600 Filed 12–20–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–22–21FJ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Performance Monitoring of CDC's Core State Injury Prevention Program'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 2, 2021 to obtain comments from the public and affected agencies. There were no comments to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Performance Monitoring of CDC's Core State Injury Prevention Program—New—National Center for Injury Prevention and Comtrol (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's National Center for Injury Prevention and Control (NCIPC) requests OMB approval for Performance Monitoring of CDC's Core State Injury Prevention Program (Core SIPP). This proposed data collection will collect performance monitoring data via a web-based Partners' Portal. Data is needed to monitor the cooperative agreement program funded under the Core SIPP.

Monitoring the impact of population-based strategies and identifying new insights and innovative solutions to health problems are two of the noted public health activities that all public health systems should undertake. For NCIPC, these objectives cannot be satisfied without the systematic collection of data and information from state health departments. The information collection will enable the accurate, reliable, uniform, and timely submission of each awardee's progress report and injury indicators, including strategies and performance measures.

Information to be collected will provide crucial data for program performance monitoring and provide CDC with the capacity to respond in a timely manner to requests for information about the program from the

Department of Health and Human Services (HHS), the White House, Congress, and other sources. Information to be collected will also strengthen CDC's ability to monitor awardee progress, provide data-driven technical assistance, and disseminate the most current surveillance data on unintentional and intentional injuries. The information collection plan proposed here will also generate a variety of routine and customizable reports. State-specific reports will allow each awardee to summarize activities and progress towards meeting strategies and performance measure targets related to the reduction and prevention of unintentional and intentional injuries. NCIPC will also have the capacity to generate reports that describe activities and health outcomes across multiple recipients, which will enable better reporting of trends and provision of technical assistance through linking partners across state health departments and collaborating divisions within CDC.

Program recipients will use the information collected to manage and coordinate their activities and to improve their efforts to prevent and control injuries. The Partners' Portal allows recipients to fulfill their annual reporting obligations efficiently by employing user-friendly, easily accessible web-based instruments to collect necessary information for both progress reports and continuation applications including work plans. This approach enables recipients to save pertinent information from one reporting period to the next and reduces the administrative burden on the annual continuation application and the performance monitoring process.

Recipients will report progress and activity information to CDC on an annual schedule. Data will be analyzed using descriptive and summary statistics, as well as qualitative summaries. CDC requests approval for a total of 253 estimated annualized burden hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Core SIPP Program Recipients	Annual Progress Report	23	1	11

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–27598 Filed 12–20–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10552]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *January 20, 2022.*

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Implementation of Medicare and Medicaid Programs;—Promoting Interoperability Programs (Stage 3) (CMS–10552); *Use:* As discussed in the Final Rule published on October 16, 2016 (80 FR 62762), the Centers for Medicare & Medicaid Services (CMS) is requesting approval to collect information from eligible hospitals and critical access hospitals (CAHs). We are making further changes to this program as proposed in the FY 2022 Inpatient Prospective Payment System (IPPS)/Long-term Care Hospital

Prospective Payment System (LTCH PPS) Proposed Rule (86 FR 25628), and as finalized in the FY 2022 Inpatient Prospective Payment System (IPPS)/ Long-term Care Hospital Prospective Payment System (LTCH PPS) Final Rule (86 FR 45460).

The American Recovery and Reinvestment Act of 2009 (Recovery Act) (*Pub. L. 111–5*) was enacted on February 17, 2009. Title IV of Division B of the Recovery Act amended Titles XVIII and XIX of the Social Security Act (the Act) by establishing incentive payments to eligible professionals (EPs), eligible hospitals and critical access hospitals (CAHs), and Medicare Advantage (MA) organizations participating in the Medicare and Medicaid programs that adopt and successfully demonstrate meaningful use of certified EHR technology (CEHRT). These Recovery Act provisions, together with Title XIII of Division A of the Recovery Act, may be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act.''

The HITECH Act created incentive programs for EPs and eligible hospitals, including CAHs, in the Medicare Fee-for-Service (FFS), MA, and Medicaid programs that successfully demonstrate meaningful use of certified EHR technology. In their first payment year, Medicaid EPs and eligible hospitals could adopt, implement, or upgrade to certified EHR technology. It also allowed for negative payment adjustments in the Medicare FFS and MA programs starting in 2015 for EPs, eligible hospitals, and CAHs participating in Medicare that are not meaningful users of CEHRT. The Medicaid Promoting Interoperability Program did not authorize negative payment adjustments, but its participants were eligible for positive incentive payments.

In CY 2017, we began collecting data from eligible hospitals and CAHs to determine the application of the Medicare payment adjustments. At this time, Medicare eligible professionals no longer reported to the EHR Incentive Program, as they began reporting under the Merit-based Incentive Payment System (MIPS). This information collected was also used to make incentive payments to eligible hospitals and critical access hospitals in Puerto Rico.

In the FY 2019 IPPS/LTCH PPS Final Rule (83 FR 41634), we focused on reducing burden on eligible hospitals and CAHs. We finalized a new scoring methodology for eligible hospitals and CAHs, removing the requirement to report on and meet the threshold for all objectives and measures. This approach required an eligible hospital or CAH to meet the requirements on six measures, with scoring based on performance. This approach reduced burden by decreasing the amount of time needed to report on measures. Additionally, we finalized two new optional opioid measures and one new care coordination measure to help address the opioid epidemic and improve interoperability.

In the FY 2020 IPPS/LTCH Final Rule (84 FR 42591), we established the EHR Reporting Period to be a minimum of any continuous 90-day period in CY 2021 for new and returning participants (eligible hospitals and CAHs) in the Medicare Promoting Interoperability Program attesting to CMS, as well as finalizing the removal of the Electronic Prescribing Objective's Verify Opioid Treatment Agreement measure beginning with the EHR reporting period in CY 2020.

In the FY 2021 IPPS/LTCH PPS Final Rule (85 FR 58966), we are finalizing as proposed changes that we believe will continue to be a low reporting burden on eligible hospitals and CAHs in the Medicare Promoting Interoperability Program while incentivizing the advanced use of CEHRT to support health information exchange, interoperability, advanced quality measurement, and maximizing clinical effectiveness and efficiencies. These finalized changes include continuing an EHR reporting period of a minimum of any continuous 90-day period in CY 2022, and maintaining the Query of PDMP measure as optional and worth 5 bonus points in CY 2021.

In the FY 2022 IPPS/LTCH PPS Proposed Rule (86 FR 25628), we proposed changes that we believe will continue to be a low reporting burden on eligible hospitals and CAHs in the Medicare Promoting Interoperability Program while incentivizing the advanced use of CEHRT to support health information exchange, interoperability, advance quality measurement, and maximize clinical effectiveness and efficiencies. The proposals include continuing an EHR reporting period of a minimum of any continuous 90-day period in CY 2023, maintaining the Query of PDMP measure as optional but worth 10 bonus points in CY 2022, the addition of a new Health Information Exchange Bi-Directional Exchange measure beginning in CY 2022 as an optional alternative to the two existing measures, a requirement of reporting 4 specific Public Health and Clinical Data Exchange Objective measures, the inclusion of a new SAFER Guides measure attestation response, and to adopt two new eCQMs to the Medicare Promoting Interoperability Program's eCQM measure set beginning with the reporting period in CY 2023 (in addition to removing three eCQMs from the measure set beginning with the reporting period in CY 2024, in alignment with the finalized changes to the Hospital IQR Program. In the FY 2022 IPPS/LTCH PPS Final Rule (86 FR 45460 through 45498), we finalized these proposals. We did not finalize a proposal to update the Provide Patients Electronic Access to their Health Information measure to include a data retention requirement; however, this proposal would not have affected our information collection burden estimate.

We note the previously approved PRA package under OMB control number 0938–1278 reflecting updates to information collection burden estimates based on policies finalized in the FY 2021 IPPS/LTCH PPS Final Rule include information collection burden estimates for 2021, which is the last year for including Medicaid eligible providers, eligible hospitals, and CAHs in the burden estimate as the Medicaid Promoting Interoperability Program concludes December 31, 2021. Therefore, this PRA request for information collection burden in 2022 does not include any burden under the Medicaid Promoting Interoperability Program. *Form Number:* CMS–10552 (OMB control number: 0938–1278); *Frequency:* Annually; *Affected Public:* State, Local or Private Government; Business and for-profit and Not-for-profit; *Number of Respondents:* 3,300; *Total Annual Responses:* 3,300; *Total Annual Hours:* 21,450. (For policy questions regarding this collection, contact Jessica Warren at 410–786–7519.)

Dated: December 16, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–27630 Filed 12–20–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Document Identifier: CMS–10621, CMS–10141 and CMS–10630]

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 22, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10621 Quality Payment Program/Merit-Based Incentive Payment System (MIPS)

CMS–10141 Medicare Prescription Drug Benefit Program

CMS–10630 The PACE Organization (PO) Monitoring and Audit Process in 42 CFR part 460

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Quality Payment Program/Merit-Based Incentive Payment System (MIPS); *Use:* The Merit-based Incentive Payment System (MIPS) is a program for certain eligible clinicians that makes Medicare payment adjustments based on performance on quality, cost and other measures and activities. MIPS and Advanced Alternative Payment Models (AAPMs) are the two paths for clinicians available through the Quality Payment Program authorized by the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA). As prescribed by MACRA, MIPS focuses on the following performance areas: Quality—a set of evidence-based, specialty-specific standards; improvement activities that focus on practice-based improvements; cost; and use of Certified Electronic Health Record Technology (CEHRT) to support interoperability and advanced quality objectives in a single, cohesive program that avoids redundancies.

Under the AAPM path, eligible clinicians may become Qualifying APM Participants (QPs) and are excluded from MIPS. Partial Qualifying APM Participants (Partial QPs) may opt to report and be scored under MIPS. APM Entities and eligible clinicians must also submit all of the required information about the Other Payer Advanced APMs in which they participate, including those for which there is a pending request for an Other Payer Advanced APM determination, as well as the payment amount and patient count information sufficient for us to make QP determinations by December 1 of the calendar year that is 2 years to prior to the payment year, which we refer to as the QP Determination Submission Deadline (82 FR 53886).

The implementation of MIPS requires the collection of quality, Promoting Interoperability, and improvement activities performance category data. For the quality performance category, MIPS eligible clinicians and groups will have the option to submit data using various submission types, including Medicare claims, direct, log in and upload, CMS Web Interface and CMS-approved survey vendors. For the improvement activities and Promoting Interoperability, clinicians and groups can submit data through direct, log in and upload, or log in and attest submission types. As finalized in the CY 2021 PFS final rule (85 FR 84860), for clinicians in APM Entities, the APM Performance Pathway will be available for both ACOs and non ACOs to submit quality data. Due to data limitations and our inability to determine who would use the APM Performance Pathway versus the traditional MIPS submission mechanism for the CY 2022 performance period/2024 MIPS payment year, we assume ACO APM Entities will submit data through the APM Performance Pathway, using the CMS Web Interface option, and non-ACO APM Entities would participate through traditional MIPS, thereby submitting as an individual or group rather than as an entity. We are finalizing in the CY 2022 PFS final rule

the policy to extend the CMS Web Interface measures as a quality performance category collection type/submission type for the CY 2022 performance period/2024 MIPS payment year. We note that we are finalizing to extend the CMS Web Interface as a collection type/submission type for clinicians in Shared Savings Program reporting the APM Performance Pathway through the CY 2024 performance period/2026 MIPS payment year. We are also finalized the sunsetting of the CMS Web interface measures as a quality performance category collection type/submission type starting with the CY 2023 performance period/2025 MIPS payment year.

In the CY 2022 PFS final rule, we finalized to implement voluntary MIPS Value Pathways (MVP) reporting for eligible clinicians beginning with January 1 of the CY 2023 performance period/2025 MIPS payment year. Beginning with the CY 2023 performance period/2025 MIPS payment year, we also finalized voluntary subgroup reporting within MIPS limited to eligible clinicians reporting through the MVPs or the APP.

For the Promoting Interoperability performance category, in the CY 2022 PFS final rule, we finalized that, beginning with the CY 2022 performance period/2024 MIPS payment year, eligible clinicians must attest to conducting an annual assessment of the High Priority Guides of the SAFER Guides beginning January 1 of CY 2022. We finalized to automatically reweight the Promoting Interoperability for small practices who previously had to apply for reweighting of this performance category.

For the improvement activities performance category, beginning with the CY 2022 Annual Call for MIPS improvement activities, we finalized two new criteria for nomination of improvement activities. We are also requesting to add three new ICRs that are currently with OMB for approval: MVP registration, MVP quality submissions, and Subgroup registration. The MVP registration reflects the burden associated with the finalized registration process for clinicians reporting MVPs beginning with the CY 2023 performance period/2025 MIPS payment year. Subgroup registration reflects the burden associated with the finalized registration process for subgroups reporting the MVPs. The MVP quality submission reflects the decrease in burden associated with the finalized MVP Inventory available for MIPS eligible clinicians. *Form Number:* CMS–10621 (OMB control number: 0938–1314); *Frequency:* Annually; *Affected Public:* Individuals or Households and Business or other for-profit institutions; *Number of Respondents:* 239,813; *Total Annual Responses:* 633,021; *Total Annual Hours:* 2,825,380. (For policy questions regarding this collection contact Michelle Peterman at 410–786–2591)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Prescription Drug Benefit Program; *Use:* Plan sponsor and State information is used by CMS to approve contract applications, monitor compliance with contract requirements, make proper payment to plans, and ensure that correct information is disclosed to potential and current enrollees. *Form Number:* CMS–10141 (OMB control number: 0938–0964); *Frequency:* Annually; *Affected Public:* Private Sector and Business or other for-profit institutions; *Number of Respondents:* 11,771,497; *Total Annual Responses:* 675,231,213; *Total Annual Hours:* 9,261,354. (For policy questions regarding this collection contact Chad D. Buskirk at 410–786–1630)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The PACE Organization (PO) Monitoring and Audit Process in 42 CFR part 460; *Use:* Sections 1894(e)(4) and 1934(e)(4) of the Act and the implementing regulations at 42 CFR 460.190 and 460.192 state that CMS, in conjunction with the State Administering Agency (SAA), must oversee a PACE organization's continued compliance with the requirements for a PACE organization.

The data collected with the data request tools included in this package allow CMS to conduct a comprehensive review of PACE organizations' compliance in accordance with specific federal regulatory requirements. The information gathered during this audit will be used by the Medicare Parts C and D Oversight and Enforcement Group (MOEG) within the Center for Medicare (CM), as well as the SAA, to assess POs' compliance with PACE program requirements. If outliers or other data anomalies are detected, other offices within CMS will work in collaboration with MOEG for follow-up and resolution. Additionally, POs will receive the audit results, and will be required to implement corrective action to correct any identified deficiencies. *Form Number:* CMS–10630 (OMB control number: 0938–1327); *Frequency:* Annually; *Affected Public:* Private Sector, State, Local, or Tribal Governments and Business or other for-profit institutions; *Number of Respondents:* 40; *Total Annual Responses:* 40; *Total Annual Hours:* 31,200. (For policy questions regarding this collection contact Kathleen Flannery at 410–786–6722).

Dated: December 16, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–27603 Filed 12–20–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of a New Systems of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is establishing a new system of records to be maintained by the Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) that will support state child support agencies' enforcement of child support obligations System Number 09–80–0389, ''OCSE Data Center General Support System, HHS/ACF/OCSE.''

DATES: This Notice is applicable December 21, 2021, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by January 20, 2022.

ADDRESSES: The public should address written comments by mail or email to Anita Alford, Senior Official for Privacy, Administration for Children and Families, 330 C St. SW, Washington, DC 20201, or *anita.alford@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: General questions about the new system of records should be submitted by mail or email to Linda Boyer, Deputy Commissioner, Office of Child Support Enforcement, at 330 C St. SW, 5th Floor, Washington, DC 20201, 202–401–5410, or *linda.boyer@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The new system of records will consist of information maintained in a secure gateway system (the OCSE Data Center

General Support System) established by OCSE. OCSE and (at their option) external partners will use the system to facilitate electronic exchanges of information between (1) a state child support enforcement agency and (2) another external child support program partner, such as an employer, a health plan administrator, or a financial institution, through OCSE. The information will be about individual participants in child support cases and will include income withholding order information, medical support information, financial institution account information, and levy file information.

The external partners will provide information to and receive information from the secure gateway system but will not have access to the information within the system. Before the new gateway system was established, the information was exchanged directly between external partners via the U.S. mail, without passing through OCSE, and that will continue to be an option.

OCSE will maintain the records in the gateway system, receiving them from one party and transmitting them to another party, in order to control the data flow and secure and protect the records and the transfer of information. OCSE will not use the information for its purposes, but will directly receive, retrieve (including by personal identifier), and disclose the information to facilitate the information exchanges. Some of the same information may exist in other OCSE systems of records, but other systems of records will not be sources of the records in this system of records. All information exchanged will originate with the external partners.

Linda Boyer,

Deputy Commissioner, Office of Child Support Enforcement.

SYSTEM NAME AND NUMBER:

OCSE Data Center General Support System, HHS/ACF/OCSE, 09–80–0389.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the agency component responsible for the system of records is Office of Child Support Enforcement, Administration for Children and Families, 330 C St. SW, 5th Floor, Washington, DC 20201.

SYSTEM MANAGER(S):

Deputy Commissioner, Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 330 C St. SW, 5th Floor, Washington, DC 20201, or *linda.boyer@acf.hhs.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 652, 659, 666, 669a.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system of records is to support the enforcement of child support obligations by providing a secure gateway (the OCSE Data Center General Support System, or any successor system) that OCSE will use to facilitate electronic exchanges of information about individual participants in child support cases between state child support enforcement agencies and other external partners such as employers, health plan administrators, and financial institutions. The child support enforcement agencies and other external partners will use the gateway system to electronically submit information to and receive information from each other through OCSE.

The gateway system will support, for example:

- The Electronic Income Withholding Order (e-IWO) program, which provides the means to electronically exchange income withholding order information between state child support enforcement agencies and employers.
- The Electronic National Medical Support Notice (e-NMSN) program, which allows state child support enforcement agencies, employers, and health plan administrators to electronically send and receive National Medical Support Notices used to enroll children in medical insurance plans pursuant to child support orders.
- The Federally Assisted State Transmitted (FAST) Levy program, which allows states and financial institutions to exchange information about levy actions through an electronic process.

Multiple child support program partners will utilize the gateway system to electronically send and receive information:

- State child support enforcement agencies will use the system to transmit e-IWOs to employers and e-NMSNs to employers and health plan administrators. State child support enforcement agencies will also use the system to create levy actions for distribution to multiple financial institutions.
- Employers will use the system to respond to state child support enforcement agencies regarding e-IWOs and to provide information about health insurance coverage provided by the employer. Employers and health plan administrators will use the system to respond to state child support enforcement agencies regarding e-NMSNs.
- Financial institutions will use the system to receive and respond to levy actions from multiple state child support enforcement agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records in the system of records are about custodial and noncustodial parents, legal guardians, and third-party caretakers who are participants in child support program cases and whose names and Social Security numbers (SSNs) are used to retrieve the records. Children's personal identifiers are not used to retrieve records in this system of records, so children are not subject individuals for purposes of this system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records exchanged in the gateway system include:

1. Child support case information used to populate an e-IWO, which may include:

a. Name of state, tribe, territory, or private individual entity issuing an e-IWO;

b. Order ID and Case ID;

c. Remittance ID;

d. Employer/income withholder name, address, federal employer identification number (FEIN), telephone number, FAX number, email, or website;

e. Employee/obligor's name, SSN, date of birth;

f. Custodial parent's/obligee's name;

g. Child(ren)'s name(s) and date(s) of birth;

h. Income withholding amounts for current child support, past-due child support, current cash medical support, past-due cash medical support, current spousal support, past-due spousal support;

i. Child support state disbursement unit or tribal order payee name and address;

j. Judge/issuing official's name, title, and signature; and

k. Employee/obligor termination date, last known telephone number, last known address, new employer/income withholder's name and address.

2. Child support case information used to populate an e-NMSN, and medical insurance information included in e-NMSN responses from employers and health plan administrators, which may include:

a. Custodial parent/obligee's name and mailing address;

b. Substituted official/agency name and address (if custodial parent/obligee's address is left blank);

c. Name, telephone number, and mailing address of representative of child(ren);

d. Child(ren)'s name(s), gender, date of birth, and SSN;

e. Employee's name, SSN, and mailing address;

f. Plan administrator name, contact person, FAX number, and telephone number;

g. Employer and/or employer representative name, FEIN, and telephone number;

h. Date of medical support termination, reason for termination, and child(ren) to be terminated from medical support;

i. Medical insurance provider name, group number, policy number, address;

j. Dental insurance provider name, group number, policy number, address;

k. Vision insurance provider name, group number, policy number, address;

l. Prescription drug insurance provider name, group number, policy number, address;

m. Mental health insurance provider name, group number, policy number, address;

n. Other insurance, specified by name, group number, policy number, address; and

o. Plan administrator name, title, telephone number, and address.

3. Child support case information used to administer the FAST Levy program, which includes:

a. Requesting state agency name, address, and state Federal Information Processing Standard (FIPS) code;

b. Financial institution's name and FEIN;

c. Obligor's name, SSN, and date of birth;

d. Account number of account from which to withhold funds;

e. Withholding amount; and

f. Contact name, phone number, and email for point of contact in requesting state.

RECORD SOURCE CATEGORIES:

The sources of the information in the system of records include:

- State child support enforcement agencies initiating e-IWO, e-NMSN, and FAST Levy program transactions.
- Employers or authorized third parties responding to e-IWOs and e-NMSNs.
- Health plan administrators responding to e-NMSNs.
- Financial institutions responding to FAST Levy requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(1)–(b)(2) and (b)(4)–(b)(11), these routine uses specify circumstances under which the agency may disclose information from this system of records to a non-HHS officer or employee without the consent of the data subject. ACF will prohibit redisclosures, or may permit only certain redisclosures, as required or authorized by law. Each proposed disclosure or redisclosure of information permitted directly in the Privacy Act or under these routine uses will be evaluated to ensure that the disclosure or redisclosure is legally permissible.

Any information defined as ''return'' or ''return information'' under 26 U.S.C. 6103 (Internal Revenue Code) is not disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. *Disclosure to Financial Institution to Collect Past-Due Support.* Pursuant to 42 U.S.C. 652(l), information pertaining to an individual owing past-due child support may be disclosed to a financial institution doing business in two or more states to identify an individual who maintains an account at the institution for the purpose of collecting past-due support. Information pertaining to requests by the state child support enforcement agencies for the placement of a lien or levy of such accounts may also be disclosed.

2. *Disclosure of Financial Institution Information to State Child Support Enforcement Agency for Assistance in Collecting Past-Due Support.* Pursuant to 42 U.S.C. 652(l), the results of a comparison between information pertaining to an individual owing past-due child support and information provided by multistate financial institutions may be disclosed to a state child support enforcement agency for the purpose of assisting the state agency in collecting past-due support. Information pertaining to responses to requests by a state child support enforcement agency for the placement of a lien or levy of such accounts may also be disclosed.

3. *Disclosure to Employer to Enforce Child Support Obligations.* Pursuant to 42 U.S.C. 666(b), information pertaining to an individual owing current or past-due child support may be disclosed to an employer for the purpose of collecting current or past-due support by way of an e-IWO.

4. *Disclosure of Employer Information to State Child Support Enforcement Agency in Response to an e-IWO.* Information pertaining to a response by an employer to an e-IWO issued by a state child support enforcement agency for the collection of child support may be disclosed to the state child support enforcement agency.

5. *Disclosure to Employer and Health Plan Administrator to Enforce Medical Support Obligations.* Pursuant to 42 U.S.C. 666(a)(19), information pertaining to participants in a child support case may be disclosed to an employer or a health plan administrator for the purpose of enforcing medical support for a child by way of an e-NMSN.

6. *Disclosure of Employer and Health Plan Administrator Information to State Child Support Enforcement Agency in Response to an e-NMSN.* Information pertaining to a response by an employer or a health plan administrator to an e-NMSN issued by a state child support enforcement agency for the enforcement of medical support may be disclosed to the state child support enforcement agency.

7. *Disclosure to Department of Justice or in Proceedings.* Records may be disclosed to the Department of Justice (DOJ) or to a court or other adjudicative body in litigation or other proceedings when HHS or any of its components, or any employee of HHS acting in the employee's official capacity, or any employee of HHS acting in the employee's individual capacity where the DOJ or HHS has agreed to represent the employee, or the United States Government, is a party to the proceedings or has an interest in the proceedings and, by careful review, HHS determines that the records are both relevant and necessary to the proceedings.

8. *Disclosure to Congressional Office.* Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the written request of the individual.

9. *Disclosure to Contractor to Perform Duties.* Records may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for HHS in accordance with law and with the contract.

10. *Disclosure in the Event of a Security Breach.* a. Information may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such

agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

b. Information may be disclosed to another federal agency or federal entity when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the parent's, guardian's, or third-party caretaker's name or SSN.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Upon approval of a disposition schedule by the National Archives and Records Administration (NARA), the records will be deleted when eligible for destruction under the schedule, if the records are no longer needed for administrative, audit, legal, or operational purposes. ACF anticipates requesting NARA's approval of retention periods of approximately 60 days for the information contained in the transmission files (*i.e.,* long enough to confirm receipt or to resend if necessary) and up to 7 years for the audit log records. Approved disposal methods for electronic records and media include overwriting, degaussing, erasing, disintegration, pulverization, burning, melting, incineration, shredding, or sanding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The system leverages cloud service providers that maintain an authority to operate in accordance with applicable laws, rules, and policies, including Federal Risk and Authorization Management Program (FedRAMP) requirements. Specific administrative, technical, and physical controls are in place to ensure that the records collected, maintained, and transmitted using the OCSE Data Center General Support System are secure from unauthorized access. Access to the records within the system is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse, and who sign a nondisclosure oath to that effect. Agency personnel are provided privacy and security training before being granted access to the records and annually thereafter. Additional safeguards include protecting the facilities where records are stored or accessed with security guards, badges, and cameras; limiting access to electronic databases to authorized users based on roles and either two-factor authentication or user ID and password (as appropriate); using a secured operating system protected by encryption, firewalls, and intrusion detection systems; reviewing security controls on a periodic basis; and using secure destruction methods prescribed in NIST SP 800–88 to dispose of eligible records. All safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html.*

RECORD ACCESS PROCEDURES:

To request access to a record about you in this system of records, submit a written access request to the System Manager identified in the ''System Manager'' section of this System of Records Notice (SORN). The request must reasonably describe the record sought and must include (for contact purposes and identity verification purposes) your full name, current address, telephone number and/or email address, date and place of birth, and signature, and (if needed by the agency) sufficient particulars contained in the records (such as your SSN) to enable the System Manager to distinguish between records on subject individuals with the same name. In addition, to verify your identity, your signature must be notarized or the request must include your written certification that you are the individual who you claim to be and that you understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000. You may request that copies of the records be sent to you, or you may request an appointment to review the records in person (including with a person of your choosing, if you provide written authorization for agency personnel to discuss the records in that person's presence). You may also request an accounting of disclosures that have been made of records about you, if any.

CONTESTING RECORD PROCEDURES:

To request correction of a record about you in this system of records, submit a written amendment request to the System Manager identified in the ''System Manager'' section of this SORN. The request must contain the same information required for an access request and include verification of your identity in the same manner required for an access request. In addition, the request must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

To find out if the system of records contains a record about you, submit a written notification request to the System Manager identified in the ''System Manager'' section of this SORN. The request must identify this system of records, contain the same information required for an access request, and include verification of your identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2021–27324 Filed 12–20–21; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0548]

Data Standards for Drug and Biological Product Submissions Containing Real-World Data; Draft Guidance for Industry; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice of availability entitled ''Data Standards for Drug and Biological Product Submissions Containing Real-World Data; Draft Guidance for Industry'' that appeared in the **Federal Register** on October 22, 2021. The Agency is taking this action in response

to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the ''Data Standards for Drug and Biological Product Submissions Containing Real-World Data; Draft Guidance for Industry'' published October 22, 2021 (86 FR 58672). Submit either electronic or written comments by February 4, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance 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–2021–D–0548 for ''Data Standards for Drug and Biological Product Submissions Containing Real-World Data; Draft Guidance for Industry.'' 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. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993–0002, 301–796–2500, *dianne.paraoan@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *stephen.ripley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 22, 2021, FDA published a notice of availability with a 60-day comment period to provide comments on the draft guidance entitled ''Data Standards for Drug and Biological Product Submissions Containing Real-World Data: Draft Guidance for Industry.'' FDA has received requests to extend the comment period to allow sufficient time to develop and submit meaningful comments. FDA has considered the requests and is extending the comment period for 45 days, until February 4, 2022. The Agency believes that a 45-day extension allows adequate time for interested persons to submit comments.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 15, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–27521 Filed 12–20–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Application for Health Center Program Award Recipients for Deemed Public Health Service Employment With Liability Protections Under the Federal Tort Claims Act, OMB No. 0906–0035—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than February 22, 2022.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer at (301) 443–9094.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Application for Health Center Program Award Recipients for Deemed Public Health Service (PHS) Employment with Liability Protections under the Federal Tort Claims Act (FTCA), OMB No. 0906–0035—Revision.

Abstract: Section 224(g)–(n) of the PHS Act (42 U.S.C. 233(g)–(n)), as amended, authorizes the Secretary to ''deem'' entities receiving funds under section 330 of the PHS Act as PHS employees for the purposes of establishing eligibility for liability protections for covered activities and individuals under the FTCA. The Health Center Program and the Health Center FTCA Program are administered by HRSA's Bureau of Primary Health Care (BPHC). Health centers submit deeming applications annually to BPHC in the prescribed form and manner in order to obtain deemed PHS employee status for this purpose.

Need and Proposed Use of the Information: Deeming applications are required by law and must address certain specified criteria in order for deeming determinations to be issued. The application submissions provide BPHC with the information essential for evaluation of compliance with legal requirements and making a deeming determination under Section 224(g)–(n) of the PHS Act (42 U.S.C. 233(g)–(n)).

The FTCA Program uses a web based application system within HRSA's Electronic Handbooks system. These electronic application forms decrease the time and effort required to complete the older, paper-based approved FTCA application forms. The application includes: Contact information; Section 1: Review of Risk Management Systems; Section 2: Quality Improvement/Quality Assurance; Section 3: Credentialing and Privileging; Section 4: Claims Management; and Section 5: Additional Information, Certification, and Signatures.

HRSA is proposing several changes to the Application for Health Center Program Award Recipients for Deemed PHS Employment with Liability Protections Under the FTCA, to be used for Health Center deeming applications for Calendar Year 2022 and thereafter, to clarify questions posed and required documentation. Specifically, the Application includes the following proposed changes:

- Updated application language: Throughout the application, revised terminology was utilized to provide greater clarity and specificity. These changes were based on stakeholder feedback and inquiries received from HRSA's Health Center Program Support. These changes are not substantive in nature.
- Some questions were removed from the application's Quality Improvement/Quality Assurance Section, as these questions were similar to questions collected in the Risk Management Section. This change is intended to reduce duplicative information collection.
- For the Credentialing and Privileging Section, the application will return to the previous process of requiring the submission of a Credentialing List with providers' credentialing and privileging information. This change is intended to enhance HRSA's oversight and verification capabilities as it relates to continuous compliance with the FTCA statute.

Likely Respondents: Respondents include recipients of Health Center Program funds seeking deemed PHS employee status under Section 224(g)–(n) of the PHS Act (42 U.S.C. 233(g)–(n)).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Application for Health Center Program Deemed Public Health Service Employment Status (Initial)	35	1	35	2.5	87.5
Application for Health Center Program Deemed Public Health Service Employment Status (Redeeming)	1,125	1	1,125	2.5	2,812.5
Total	1,160	2	1,160	5	2,900

HRSA specifically requests comments on (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.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021–27557 Filed 12–20–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Data and Information on New Approach Methodologies for Efficacy Testing of Ectoparasiticide Products To Meet Regulatory Data Requirements

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) requests available data and information on approaches and/or technologies currently used for efficacy testing of ectoparasiticide products. Submitted information will be used to assess the state of the science and determine technical needs for non-animal test methods used to evaluate the efficacy of ectoparasiticides on dogs and cats and to facilitate their incorporation into a testing strategy for regulatory purposes.

DATES: Receipt of information: Deadline for receipt of information is January 28, 2022.

ADDRESSES: Data and information should be submitted electronically to *niceatm@niehs.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Nicole Kleinstreuer, Acting Director, NICEATM; email: *nicole.kleinstreuer@nih.gov;* telephone: (984) 287–3150.

SUPPLEMENTARY INFORMATION:

Background: NICEATM fosters the evaluation and promotion of alternative test methods for regulatory use. As part of this activity, NICEATM supports efforts to develop, validate, and implement alternative approaches for chemicals and medical products. These include approaches used to evaluate the efficacy of ectoparasiticides on dogs and cats, such as products to prevent flea and tick infestations. Tests on such products are required by multiple federal agencies for regulatory and other decision contexts. Currently, the standard tests for this endpoint use animals that can experience significant discomfort and distress during the study.

Request for Information: NICEATM requests available data and information on approaches and/or technologies currently used to predict the efficacy of ectoparasiticides without using animals. Respondents should provide information on any activities relevant to the development or validation of alternatives to in vivo test methods currently used by federal agencies for regulatory and other decision contexts.

Respondents to this request for information should include their name, affiliation (if applicable), mailing address, telephone, email, and sponsoring organization (if any) with their communications. The deadline for receipt of the requested information is January 28, 2022. Responses to this notice will be posted at: *https://ntp.niehs.nih.gov/go/niceatm-data.* Persons submitting responses will be identified on the web page by name and affiliation or sponsoring organization, if applicable.

Responses to this request are voluntary. No proprietary, classified, confidential, or sensitive information should be included in responses. This request for information is for planning purposes only and is not a solicitation for applications or an obligation on the part of the U.S. Government to provide support for any ideas identified in response to the request. Please note that the U.S. Government will not pay for the preparation of any information submitted or for its use of that information.

Background Information on NICEATM: NICEATM conducts data analyses, workshops, independent validation studies, and other activities to assess new, revised, and alternative test methods and strategies. NICEATM also provides support for the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM). The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) provides authority for ICCVAM and NICEATM involvement in activities relevant to the development of alternative test methods. Information about NICEATM and ICCVAM can be found at *https://ntp.niehs.nih.gov/go/niceatm* and *https://ntp.niehs.nih.gov/go/iccvam.*

Dated: December 13, 2021.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2021–27581 Filed 12–20–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2185]

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 March 21, 2022.

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–2185, 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.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Boone County, Kentucky and Incorporated Areas Project: 18–04–0021S Preliminary Date: March 10, 2020 and May 28, 2021	
City of Florence	Boone County Administration Building, 2950 Washington Street, Room 312, Burlington, KY 41005.
City of Union	Boone County Administration Building, 2950 Washington Street, Room 312, Burlington, KY 41005.
City of Walton	Boone County Administration Building, 2950 Washington Street, Room 312, Burlington, KY 41005.
Unincorporated Areas of Boone County	Boone County Administration Building, 2950 Washington Street, Room 312, Burlington, KY 41005.
Carroll County, Kentucky and Incorporated Areas Project: 18–04–0021S Preliminary Date: March 10, 2020	
City of Carrollton	Carroll County Emergency Operation Center, 829 Polk Street, Carrollton, KY 41008.
City of Ghent	Carroll County Emergency Operation Center, 829 Polk Street, Carrollton, KY 41008.
Unincorporated Areas of Carroll County	Carroll County Emergency Operation Center, 829 Polk Street, Carrollton, KY 41008.
Gallatin County, Kentucky and Incorporated Areas Project: 18–04–0021S Preliminary Date: March 10, 2020	
City of Glencoe	Town Council, 112 North Main Street, Glencoe, KY 41046.
City of Warsaw	City Hall, 303 East Main Street, Warsaw, KY 41095.
Unincorporated Areas of Gallatin County	Office of Gallatin County Executive Judge, 200 Washington Street, Warsaw, KY 41095.

[FR Doc. 2021–27617 Filed 12–20–21; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.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: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations 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.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, 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.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Adams (FEMA Docket No.: B–2153).	Unincorporated areas of Adams County (20–08–0723P).	The Honorable Eva J. Henry, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, Suite C5000A, Brighton, CO 80601.	Adams County Community and Economic Development, 4430 Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601.	Oct. 28, 2021	080001
Eagle (FEMA Docket No.: B–2164).	Unincorporated areas of Eagle County (21–08–0109P).	Mr. Jeff Shroll, Eagle County Manager, P.O. Box 850, Eagle, CO 81631.	Eagle County Engineering Department, 500 Broadway Street, Eagle, CO 81631.	Nov. 5, 2021	080051
El Paso (FEMA Docket No.: B–2153).	City of Colorado Springs (20–08–0822P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	Oct. 27, 2021	080060
Weld (FEMA Docket No.: B–2153).	Town of Windsor (21–08–0116P).	The Honorable Paul Rennemeyer, Mayor, Town of Windsor, 301 Walnut Street Windsor, CO 80550.	Town Hall, 301 Walnut Street, Windsor, CO 80550.	Nov. 1, 2021	080264
Weld (FEMA Docket No.: B–2153).	Unincorporated areas of Weld County (21–08–0116P).	The Honorable Steve Moreno, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80631.	Weld County Administration Building, 1150 O Street, Greeley, CO 80631.	Nov. 1, 2021	080266
Connecticut: Middlesex (FEMA Docket No.: B–2161).	Town of Clinton (21–01–0179P).	Mr. Karl Kilduff, Manager, Town of Clinton, 54 East Main Street Clinton, CT 06413.	Planning and Zoning Department, 54 East Main Street, Clinton, CT 06413.	Nov. 12, 2021	090061
Florida:					
Bay (FEMA Docket No.: B–2161).	City of Panama City (20–04–4646P).	Mr. Mark McQueen, Manager, City of Panama City, 501 Harrison Avenue Panama City, FL 32401.	City Hall, 501 Harrison Avenue, Panama City, FL 32401.	Nov. 10, 2021	120012
Bay (FEMA Docket No.: B–2161).	Unincorporated areas of Bay County (20–04–4646P).	The Honorable Philip ''Griff'' Griffitts, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	Nov. 10, 2021	120004
Lee (FEMA Docket No.: B–2161).	Town of Fort Myers Beach (21–04–3079P).	The Honorable Ray Murphy, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Nov. 10, 2021	120673
Leon (FEMA Docket No.: B–2159).	City of Tallahassee (21–04–3156X).	The Honorable John E. Dailey, Mayor, City of Tallahassee, 300 South Adams Street, Tallahassee, FL 32301.	Stormwater Management Department, 408 North Adams Street, Tallahassee, FL 32301.	Nov. 4, 2021	120144
Leon (FEMA Docket No.: B–2159).	Unincorporated areas of Leon County (21–04–3156X).	The Honorable Rick Minor, Chairman, Leon County Commission, 301 South Monroe Street, Tallahassee, FL 32301.	Department of Development Support and Environmental Management, 435 North Macomb Street, 2nd Floor, Tallahassee, FL 32301.	Nov. 4, 2021	120143
Monroe (FEMA Docket No.: B–2159).	City of Key Colony Beach (21–04–2856P).	The Honorable Ron Sutton, Mayor, City of Key Colony Beach, 600 West Ocean Drive, Key Colony Beach, FL 33051.	City Hall, 600 West Ocean Drive, Key Colony Beach, FL 33051.	Nov. 8, 2021	125121
Monroe (FEMA Docket No.: B–2159).	Unincorporated areas of Monroe County (21–04–3074P).	The Honorable Michelle Coldiron, Mayor, Monroe County Board of Commissioners, 25 Ships Way, Big Pine Key, FL 33043.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Nov. 12, 2021	125129
Pasco (FEMA Docket No.: B–2159).	Unincorporated areas of Pasco County (20–04–5876P).	The Honorable Dan Biles, Pasco County Administrator, 8731 Citizens Drive, Suite 350, New Port Richey, FL 34654.	Pasco county Government Center 8731 Citizens Drive New Port Richey, FL 34654.	Nov. 1, 2021	120230
Georgia: Columbia (FEMA Docket No.: B–2159).	City of Harlem (21–04–3151P).	The Honorable Roxanne Whitaker, Mayor, City of Harlem, P.O. Box 99 Harlem, GA 30814.	City Hall, 320 North Louisville Street, Harlem, GA 30814.	Nov. 12, 2021	130266
Maryland: Frederick (FEMA Docket No.: B–2159).	City of Frederick (21–03–0422P).	The Honorable Michael O'Connor, Mayor, City of Frederick, 101 North Court Street, Frederick, MD 21701.	Engineering Department, 140 West Patrick Street, 3rd Floor, Frederick, MD 21701.	Nov. 1, 2021	240030

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Nevada: Nye (FEMA Docket No.: B–2159).	Unincorporated areas of Nye County (21–09–0364P).	The Honorable Debra Strickland, Chair, Nye County Board of Commissioners, 2100 East Walt Williams Drive, Suite 100, Pahrump, NV 89048.	Nye County Planning Department, 250 North Highway 160, Suite 1, Pahrump, NV 89050.	Nov. 1, 2021	320018
Rhode Island: Washington (FEMA Docket No.: B–2159).	Town of Charlestown (21–01–0755P).	The Honorable Deborah A. Carney, President, Town of Charlestown Council, 4540 South County Trail, Charlestown, RI 02813.	Building/Zoning and Floodplain Management Department, 4540 South County Trail, Charlestown, RI 02813.	Oct. 29, 2021	445395
South Carolina: Horry (FEMA Docket No.: B–2153).	City of North Myrtle Beach (21–04–0914P).	Mr. Michael Mahaney, Manager, City of North Myrtle Beach, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	Planning and Development Department, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	Oct. 27, 2021	450110
Texas:					
Collin (FEMA Docket No.: B–2153).	City of Plano (21–06–0228P).	The Honorable John B. Muns, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	City Hall, 1520 K Avenue, Plano, TX 75074.	Nov. 5, 2021	480140
Rockwall (FEMA Docket No.: B–2153).	City of Fate (21–06–0525P).	The Honorable David Billings, Mayor, City of Fate, 1900 C.D. Boren Parkway, Fate, TX 75087.	Planning and Development Department, 1900 C.D. Boren Parkway, Fate, TX 75087.	Nov. 1, 2021	480544
Rockwall (FEMA Docket No.: B–2159).	City of Rockwall (20–06–3796P).	Ms. Mary Smith, Interim City Manager, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	Planning and Zoning Department, 385 South Goliad Street, Rockwall, TX 75087.	Nov. 1, 2021	480547

[FR Doc. 2021–27607 Filed 12–20–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2188]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

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 specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

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).

These 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. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arkansas:						
Benton	City of Bentonville (21–06–0748P).	The Honorable Stephanie Orman, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	City Hall, 3200 Southwest Municipal Drive, Bentonville, AR 72712.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2022	050012
Benton	City of Centerton (21–06–0748P).	The Honorable Bill Edwards, Mayor, City of Centerton, P.O. Box 208, Centerton, AR 72719.	City Hall, 290 Main Street, Centerton, AR 72719.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2022	050399
Benton	Unincorporated areas of Benton County (21–06–0748P).	The Honorable Barry Moehring, Benton County Judge, 215 East Central Avenue, Bentonville, AR 72712.	Benton County Planning Department, 2113 West Walnut Street, Rogers, AR 72756.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2022	050419
Colorado:						
Douglas	Unincorporated areas of Douglas County (21–08–0569P).	The Honorable Lora A. Thomas, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Public Works Department, Engineering Division, Castle Rock, CO 80104.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 18, 2022	080049
El Paso	City of Colorado Springs (21–08–0258P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2022	080060
El Paso	Unincorporated areas of El Paso County (21–08–0258P).	The Honorable Stan VanderWerf, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2022	080059
El Paso	Unincorporated areas of El Paso County (21–08–0534P).	The Honorable Stan VanderWerf, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 22, 2022	080059
Connecticut: Fairfield.	Town of Greenwich (21–01–1019P).	The Honorable Fred Camillo, First Selectman, Town of Greenwich Board of Selectmen, 101 Field Point Road, Greenwich, CT 06830.	Planning and Zoning Department, 101 Field Point Road, Greenwich, CT 06830.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 9, 2022	090008
Florida:						
Collier	City of Naples (21–04–5172P).	The Honorable Teresa Heitmann, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 15, 2022	125130
Lee	City of Bonita Springs (21–04–5316P).	The Honorable Rick Steinmeyer, Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Bonita Springs, FL 34135.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 18, 2022	120680

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Lee	Town of Fort Myers Beach (21–04–5796P).	The Honorable Ray Murphy, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 21, 2022	120673
Monroe	Unincorporated areas of Monroe County (21–04–5290P).	The Honorable Michelle Coldiron, Mayor, Monroe County Board of Commissioners, 25 Ships Way, Big Pine Key, FL 33043.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2022	125129
Osceola	Unincorporated areas of Osceola County (20–04–3793P).	The Honorable Brandon Arrington, Chairman, Osceola County Commission, District 3, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Public Works Department, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 18, 2022	120189
Pasco	Unincorporated areas of Pasco County (21–04–2454P).	Mr. Dan Biles, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Administration Building, 8731 Citizens Drive, New Port Richey, FL 34654.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 17, 2022	120230
Sarasota	City of Sarasota (21–04–5236P).	The Honorable Hagen Brody, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 17, 2022	125150
Sumter	City of Wildwood (20–04–3751P).	The Honorable Ed Wolf, Mayor, City of Wildwood, 100 North Main Street, Wildwood, FL 34785.	Development Services Department, 100 North Main Street, Wildwood, FL 34785.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 18, 2022	120299
Sumter	Unincorporated areas of Sumter County (20–04–3751P).	The Honorable Garry Breeden, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	Sumter County Development Services Department, 7375 Powell Road, Wildwood, FL 34785.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 18, 2022	120296
Montana: Stillwater.	Unincorporated areas of Stillwater County (21–08–0555P).	The Honorable Mark Crago, Chairman, Stillwater County Board of Commissioners, P.O. Box 970, Columbus, MT 59019.	Stillwater County South Annex, 17 North 4th Street, Columbus, MT 59019.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 25, 2022	300078
North Carolina: Wake.	Town of Apex (20–04–4719P).	The Honorable Jacques Gilbert, Mayor, Town of Apex, P.O. Box 250, Apex, NC 27502.	Engineering Department, 73 Hunter Street, Apex, NC 27502.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 23, 2021	370467
Wake	Town of Cary (20–04–4719P).	The Honorable Harold Weinbrecht, Mayor, Town of Cary, P.O. Box 8005, Cary, NC 27512.	Stormwater Services Division, 316 North Academy Street, Cary, NC 27513.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 23, 2021	370238
Wake	Unincorporated areas of Wake County (20–04–4719P).	The Honorable Matt Calabria, Chairman, Wake County Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County Environmental, Services Department, 336 Fayetteville Street, Raleigh, NC 27601.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 23, 2021	370368
South Carolina:						
Aiken	City of Aiken (21–04–3558P).	Mr. Stuart Bedenbaugh, Administrator, City of Aiken, 214 Park Avenue Southwest, Aiken, SC 29801.	Geographic Information Systems (GIS) Department, 245 Dupont Drive, Aiken, SC 29801.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 7, 2022	450003
Orangeburg	Unincorporated areas of Orangeburg County (22–04–0230P).	The Honorable Johnnie Wright, Sr., Chairman, Orangeburg County Council, 1437 Amelia Street, Orangeburg, SC 29115.	Orangeburg County Community Development Department, 1437 Amelia Street, Orangeburg, SC 29115.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 30, 2022	450160
South Dakota:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Minnehaha	City of Hartford (21–08–0753P).	The Honorable Jeremy Menning, Mayor, City of Hartford, 125 North Main Avenue, Hartford, SD 57033.	City Hall, 125 North Main Avenue, Hartford, SD 57033.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2022	460180
Minnehaha	Unincorporated areas of Minnehaha County (21–08–0753P).	The Honorable Dean Karsky, Chairman, Minnehaha County Board of Commissioners, 415 North Dakota Avenue, Sioux Falls, SD 57104.	Minnehaha County Planning Department, 415 North Dakota Avenue, Sioux Falls, SD 57104.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2022	460057
Tennessee:						
Maury	City of Spring Hill (20–04–3873P).	The Honorable Jim Hagaman, Mayor, City of Spring Hill, P.O. Box 789, Spring Hill, TN 37174.	Building Codes Department, 5000 Northfield Lane, Suite 520, Spring Hill, TN 37174.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 17, 2022	470278
Maury	Unincorporated areas of Maury County (20–04–3873P).	The Honorable Andy Ogles, Mayor, Maury County, 41 Public Square, Columbia, TN 38401.	Maury County, Building Department, 5 Public Square, Columbia, TN 38401.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 17, 2022	470123
Texas:						
Collin	City of Allen (21–06–1539P).	The Honorable Ken Fulk, Mayor, City of Allen, 305 Century Parkway, 1st Floor, Allen, TX 75013.	Engineering and Traffic Department, 305 Century Parkway, Allen, TX 75013.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 18, 2022	480131
Collin	City of Plano (21–06–1659P).	The Honorable John B. Muns, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	City Hall, 1520 K Avenue, Plano, TX 75074.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 21, 2022	480140
Comal	City of Bulverde (21–06–1446P).	The Honorable Bill Krawietz, Mayor, City of Bulverde, 30360 Cougar Bend, Bulverde, TX 78163.	City Hall, 30360 Cougar Bend, Bulverde, TX 78163.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2022	481681
Comal	Unincorporated areas of Comal County (21–06–1446P).	The Honorable Sherman Krause, Comal County Judge, 100 Main Plaza, New Braunfels, TX 78130.	Comal County Engineering Department, 195 David Jonas Drive, New Braunfels, TX 78132.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2022	481681
Denton	City of Carrollton (21–06–1854P).	The Honorable Kevin Falconer, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75006.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2022	480167
Denton	City of Lewisville (21–06–1854P).	The Honorable T. J. Gilmore, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	Engineering Department, 151 West Church Street, Lewisville, TX 75057.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2022	480195
Denton	Unincorporated areas of Denton County (21–06–1854P).	The Honorable Andy Eads, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Public Works, Engineering Department, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2022	480774
Montgomery	City of Conroe (21–06–1521P).	The Honorable Jody Czajkoski, Mayor, City of Conroe, 300 West Davis Street, Conroe, TX 77301.	City Hall, 700 Metcalf Street, Conroe, TX 77301.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 7, 2022	480484
Rockwall	City of Royse City (21–06–0684P).	The Honorable Clay Ellis, Mayor Pro Term, City of Royse City, P.O. Box 638, Royse City, TX 75189.	Engineering Department, 305 North Arch Street, Royse City, TX 75189.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 4, 2022	480548
Utah: Washington.	City of St. George (21–08–0603P).	The Honorable Michele Randall, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	City Hall, 175 East 200 North, St. George, UT 84770.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2022	490177
Virginia:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Independent City.	City of Charlottesville (21–03–0301P).	Mr. Sam Sanders, Deputy Manager, City of Charlottesville, P.O. Box 911, Charlottesville, VA 22902.	Public Works Engineering Division, 610 East Market Street, Charlottesville, VA 22902.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2022	510033
Albemarle	Unincorporated areas of Albemarle County (21–03–0301P).	The Honorable Ned L. Gallaway, Chairman, Albemarle County Board of Supervisors, 401 McIntire Road, Charlottesville, VA 22902.	Albemarle County Community Development Department, 401 McIntire Road, Charlottesville, VA 22902.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2022	510006
Henrico	Unincorporated areas of Henrico County (21–03–0879P).	Mr. John A. Vithoulkas, Henrico County Manager, P.O. Box 90775, Henrico, VA 23273.	Henrico County Administration Annex Building, 4305 East Parham Road, Henrico, VA 23228.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 10, 2022	510077

[FR Doc. 2021–27615 Filed 12–20–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2184]

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 March 21, 2022.

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–2184, 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.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
King William County, Virginia and Incorporated Areas Project: 19–03–0010S Preliminary Date: June 1, 2021	
Town of West Point.	Town Hall, 802 Main Street, West Point, VA 23181.
Unincorporated Areas of King William County.	King William County Administration Building, Planning and Zoning Department, 180 Horse Landing Road, King William, VA 23086.

[FR Doc. 2021–27618 Filed 12–20–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.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: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations 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.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, 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.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov*.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Connecticut: Fairfield (FEMA Docket No.: B–2159).	City of Stamford (21–01–0442P).	The Honorable David R. Martin, Mayor, City of Stamford, 888 Washington Boulevard, 10th Floor, Stamford, CT 06901.	Environmental Protection Board, 888 Washington Boulevard, 7th Floor, Stamford, CT 06901.	Nov. 16, 2021	090015
Florida:					
Collier (FEMA Docket No.: B–2161).	City of Naples (21–04–3345P).	The Honorable Teresa Heitmann, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	Nov. 29, 2021	125130
Duval (FEMA Docket No.: B–2161).	City of Jacksonville (21–04–0334P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Department, 214 North Hogan Street, Jacksonville, FL 32202.	Nov. 17, 2021	120077

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Sarasota (FEMA Docket No.: B–2161).	Unincorporated areas of Sarasota County (21–04–3524P).	The Honorable Alan Maio, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Nov. 24, 2021	125144
Seminole (FEMA Docket No.: B–2161).	City of Lake Mary (21–04–1242P).	The Honorable David J. Mealor, Mayor, City of Lake Mary, 100 North Country Club Road, Lake Mary, FL 32746.	Public Works Department, 911 Wallace Court, Lake Mary, FL 32746.	Nov. 22, 2021	120416
Volusia (FEMA Docket No.: B–2159).	City of Daytona Beach (21–04–3150P).	The Honorable Derrick L. Henry, Mayor, City of Daytona Beach, 301 South Ridgewood Avenue, Room 200, Daytona Beach, FL 32114.	Utilities Department, 125 Basin Street, Suite 100, Daytona Beach, FL 32114.	Nov. 17, 2021	125099
Volusia (FEMA Docket No.: B–2164).	City of DeBary (21–04–0102P).	The Honorable Karen Chasez, Mayor, City of DeBary, 403 River Drive, DeBary, FL 32713.	City Hall, 16 Columbia Road, DeBary, FL 32713.	Nov. 24, 2021	120672
Louisiana: LaSalle (FEMA Docket No.: B–2159).	Unincorporated areas of LaSalle Parish (21–06–2196P).	Mr. Robert Fowler, LaSalle Parish President, P.O. Box 1288, Jena, LA 71342.	LaSalle Parish Courthouse, 1050 Courthouse Street, Room 13, Jena, LA 71342.	Nov. 18, 2021	220112
Maine: Aroostook (FEMA Docket No.: B–2161).	Town of Fort Kent (21–01–0663P).	Ms. Suzie Paradis, Manager, Town of Fort Kent, 416 West Main Street, Fort Kent, ME 04743.	Town Hall, 416 West Main Street, Fort Kent, ME 04743.	Nov. 26, 2021	230019
Massachusetts:					
Plymouth (FEMA Docket No.: B–2159).	Town of Carver (20–01–0491P).	Mr. Richard LaFond, Town of Carver Administrator, 108 Main Street, Carver, MA 02330.	Town Hall, 108 Main Street, Carver, MA 02330.	Nov. 26, 2021	250262
Plymouth (FEMA Docket No.: B–2159).	Town of Pembroke (20–01–0491P).	Mr. William D. Chenard, Town of Pembroke, Manager, 100 Center Street, Pembroke, MA 02359.	Town Hall, 100 Center Street, Pembroke, MA 02359.	Nov. 26, 2021	250277
New Mexico: Santa Fe (FEMA Docket No.: B–2159).	Unincorporated areas of Santa Fe County (21–06–1246P).	Ms. Katherine Miller, Santa Fe County Manager, 102 Grant Avenue, Santa Fe, NM 87501.	Santa Fe County Building and Development Services Department, 102 Grant Avenue, Santa Fe, NM 87501.	Nov. 17, 2021	350069
North Dakota:					
Ransom (FEMA Docket No.: B–2161).	City of Lisbon (20–08–0874P).	The Honorable Tim Meyer, Mayor, City of Lisbon, P.O. Box 1079, Lisbon, ND 58054.	City Hall, 423 Main Street, Lisbon, ND 58054.	Nov. 16, 2021	380091
Ransom (FEMA Docket No.: B–2161).	Unincorporated areas of Ransom County (20–08–0874P).	The Honorable Norm Hansen, Chairman, Ransom County Board of Commissioners, P.O. Box 668, Lisbon, ND 58054.	Ransom County Courthouse, 204 5th Avenue West, Lisbon, ND 58054.	Nov. 16, 2021	380089
Pennsylvania:					
Columbia (FEMA Docket No.: B–2161).	Town of Bloomsburg (21–03–0940P).	The Honorable William Kreisher, Mayor, Town of Bloomsburg, 301 East 2nd Street, Bloomsburg, PA 17815.	Town Hall, 301 East 2nd Street, Bloomsburg, PA 17815.	Nov. 24, 2021	420339
Columbia (FEMA Docket No.: B–2161).	Township of Catawissa (21–03–0940P).	The Honorable James Kitchen, Chairman, Township of Catawissa Board of Supervisors, 153 Old Reading Road, Catawissa, PA 17820.	Township Hall, 153 Old Reading Road, Catawissa, PA 17820.	Nov. 24, 2021	420342
Texas:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Brazoria and Harris (FEMA Docket No.: B–2161).	City of Pearland (19–06–2864P).	The Honorable Tom Reid, Mayor, City of Pearland, 3519 Liberty Drive, Pearland, TX 77581.	City Hall, 3519 Liberty Drive, Pearland, TX 77581.	Nov. 22, 2021	480077
Dallas (FEMA Docket No.: B–2159).	City of Rowlett (20–06–2314P).	The Honorable Tammy Dana-Bashian, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	Community Development Department, 5702 Rowlett Road, Rowlett, TX 75089.	Nov. 19, 2021	480185
Harris (FEMA Docket No.: B–2161).	City of Houston (19–06–2864P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, Houston, TX 77002.	Nov. 22, 2021	480296
Harris (FEMA Docket No.: B–2161).	Unincorporated areas of Harris County (19–06–2864P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Nov. 22, 2021	480287
Harris (FEMA Docket No.: B–2161).	Unincorporated areas of Harris County (20–06–0474P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77002.	Nov. 22, 2021	480287
Kendall (FEMA Docket No.: B–2171).	Unincorporated areas of Kendall County (21–06–0592P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Courthouse, 201 East San Antonio Avenue, Suite 100, Boerne, TX 78006.	Nov. 17, 2021	480417
Burnet (FEMA Docket No.: B–2159).	Unincorporated areas of Burnet County (21–06–1501P).	The Honorable James Oakley, Burnet County Judge, 220 South Pierce Street, Burnet, TX 78611.	Burnet County Development Services Department, 133 East Jackson Street, Burnet, TX 78611.	Nov. 18, 2021	481209
Llano (FEMA Docket No.: B–2159).	Unincorporated areas of Llano County (21–06–1501P).	The Honorable Ron Cunningham, Llano County Judge, 801 Ford Street, Room 101, Llano, TX 78643.	Llano County Land Development and Emergency Management Department, 100 West Sandstone Street, Suite 200A, Llano, TX 78643.	Nov. 18, 2021	481234
Montgomery (FEMA Docket No.: B–2164).	City of Conroe (21–06–0972P).	The Honorable Jody Czajkoski, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	City Hall, 700 Metcalf Street, Conroe, TX 77301.	Nov. 26, 2021	480484
Montgomery (FEMA Docket No.: B–2164).	City of Shenandoah (21–06–0972P).	The Honorable Ritch Wheeler, Mayor, City of Shenandoah, 29955 I–45 North, Shenandoah, TX 77381.	City Hall, 29955 I–45 North, Shenandoah, TX 77381.	Nov. 26, 2021	481256
Montgomery (FEMA Docket No.: B–2164).	Unincorporated areas of Montgomery County (21–06–0972P).	The Honorable Mark J. Keough, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Court House, 501 North Thompson Street, Suite 103, Conroe, TX 77301.	Nov. 26, 2021	480483
Travis (FEMA Docket No.: B–2159).	City of Pflugerville (20–06–3449P).	The Honorable Victor Gonzales, Mayor, City of Pflugerville, 100 East Main Street, Suite 300, Pflugerville, TX 78691.	Development Services Department, 201–B East Pecan Street, Pflugerville, TX 78691.	Nov. 22, 2021	481028

[FR Doc. 2021–27610 Filed 12–20–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2180]

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 March 21, 2022.

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–2180, 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.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
New London County, Connecticut (All Jurisdictions) **Project: 17–01–1012S Preliminary Date: July 17, 2020**	
Borough of Jewett City	Town's Clerk's Office, 28 Main Street, Jewett City, CT 06351.
Town of Griswold	Town Clerk's Office, 28 Main Street, Griswold, CT 06351.
Town of Lisbon	Town Hall, 1 Newent Road, Lisbon, CT 06351.
Town of North Stonington	Town Clerk's Office, 40 Main Street, North Stonington, CT 06359.
Town of Preston	Town Hall, 389 Route 2, Preston, CT 06365.
Town of Voluntown	Town Hall, Town Clerk's Office, 115 Main Street, Voluntown, CT 06384.

Community	Community map repository address
Windham County, Connecticut (All Jurisdictions) **Project: 17–01–1012S Preliminary Date: July 17, 2020**	
Borough of Danielson	Killingly Town Hall, 1st Floor, 172 Main Street, Killingly, CT 06239.
Town of Brooklyn	Town Hall, 4 Wolf Den Road, Brooklyn, CT 06234.
Town of Killingly	Town Hall, 1st Floor, 172 Main Street, Killingly, CT 06239.
Town of Plainfield	Town Hall, 8 Community Avenue, Plainfield, CT 06374.
Town of Pomfret	Town of Pomfret Emergency Management Department, 5 Haven Road, Pomfret Center, CT 06259.
Town of Putnam	Town Hall, 200 Church Street, Putnam, CT 06260.
Town of Sterling	Town of Sterling Land Use Department, 1183 Plainfield Pike, Oneco, CT 06373.
Town of Thompson	Thompson Town Clerk's Office, 815 Riverside Drive, North Grosvenordale, CT 06255.
Hampden County, Massachusetts (All Jurisdictions) **Project: 17–01–1012S Preliminary Date: July 17, 2020**	
Town of Brimfield	Building Department, 23 Main Street, Brimfield, MA 01010.
Town of Holland	Town Hall, 27 Sturbridge Road, Holland, MA 01521.
Town of Wales	Town Hall, 3 Hollow Road, Wales, MA 01081.
Worcester County, Massachusetts (All Jurisdictions) **Project: 17–01–1012S Preliminary Date: July 17, 2020**	
Town of Auburn	Conservation Commission, 104 Central Street, Second Floor, Auburn, MA 01501.
Town of Charlton	Office of Town Administrator, 37 Main Street, Charlton, MA 01507.
Town of Douglas	Town Clerk's Office, 29 Depot Street, Douglas, MA 01516.
Town of Dudley	Board of Selectmen's Office, 71 West Main Street, Dudley, MA 01571.
Town of Leicester	Town Clerk's Office, 3 Washburn Square, Leicester, MA 01524.
Town of Oxford	Town Hall, 325 Main Street, Oxford, MA 01540.
Town of Southbridge	Town Clerk's Office, 41 Elm Street, Southbridge, MA 01550.
Town of Spencer	Conservation Office, 157 Main Street, Spencer, MA 01562.
Town of Sturbridge	Planning Department, 301 Main Street, Sturbridge, MA 01566.
Town of Sutton	Town Hall, 4 Uxbridge Road, Sutton, MA 01590.
Town of Webster	Conservation Office, 350 Main Street, Webster, MA 01570.
Kent County, Rhode Island (All Jurisdictions) **Project: 17–01–1012S Preliminary Date: July 17, 2020**	
Town of Coventry	Town Clerk's Office, 1670 Flat River Road, Coventry, RI 02816.
Town of West Greenwich	Town Hall, 280 Victory Highway, West Greenwich, RI 02817.
Providence County, Rhode Island (All Jurisdictions) **Project: 17–01–1012S Preliminary Date: July 17, 2020**	
Town of Burrillville	Town of Burrillville Building Department, 144 Harrisville Main Street, Harrisville, RI 02830.
Town of Foster	Town Hall, 181 Howard Hill Road, Foster, RI 02825.
Town of Glocester	Glocester Town Hall, Town Clerk's Office, 1145 Putnam Pike, Chepachet, RI 02814.
Washington County, Rhode Island (All Jurisdictions) **Project: 17–01–1012S Preliminary Date: July 17, 2020**	
Town of Exeter	Town Hall, Town Clerk's Office, 675 Ten Rod Road, Exeter, RI 02822.

[FR Doc. 2021–27612 Filed 12–20–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002]

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 March 8, 2022 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.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Delaware County, Iowa and Incorporated Areas Docket No.: FEMA–B–1911 and FEMA–B–2068	
City of Colesburg	City Hall, 304 Main Street, Colesburg, IA 52035.
City of Delaware	City Hall, 110 Washington Street, Delaware, IA 52036.
City of Delhi	City Hall, 311 Franklin Street, Delhi, IA 52223.
City of Dundee	Fire Station/Community Room, 117 North Center Street, Dundee, IA 52038.
City of Earlville	City Office, 19 Northern Avenue, Earlville, IA 52041.
City of Greeley	City Hall/Fire Station, 214 East 2nd Street, Greeley, IA 52050.
City of Hopkinton	City Hall, 115 1st Street Southeast, Hopkinton, IA 52237.
City of Manchester	City Hall, 208 East Main Street, Manchester, IA 52057.
City of Masonville	City Hall, 606 Gordon Street, Masonville, IA 50654.
City of Ryan	City Hall, 405 Franklin Street, Ryan, IA 52330.
Unincorporated Areas of Delaware County	Delaware County Engineering Office, 2139 Highway 38, Manchester, IA 52057.
Anderson County, Kansas and Incorporated Areas Docket No.: FEMA–B–2061	
City of Colony	City Hall, 339 Cherry Street, Colony, KS 66015.
City of Garnett	City Hall, 131 West 5th Avenue, Garnett, KS 66032.
City of Greeley	City Hall, 112 West Brown Avenue , Greeley, KS 66033.
City of Kincaid	City Hall, 500 5th Avenue, Kincaid, KS 66039.
City of Lone Elm	Lone Elm City Hall, 303 2nd Street, Kincaid, KS 66039.
City of Westphalia	Anderson County Courthouse, 100 East 4th Avenue, Garnett, KS 66032.
Unincorporated Areas of Anderson County	Anderson County Courthouse, 100 East 4th Avenue, Garnett, KS 66032.
Franklin County, Kansas and Incorporated Areas Docket No.: FEMA–B–2068	
City of Lane	City Hall, 600 3rd Street, Lane, KS 66042.
City of Ottawa	City Hall, 101 South Hickory Street, Ottawa, KS 66067.
City of Pomona	City Hall, 219 Jefferson Street, Pomona, KS 66076.
City of Princeton	City Hall, 316 Galveston Street, Princeton, KS 66078.
City of Rantoul	City Hall, 120 East Main Street, Rantoul, KS 66079.
City of Wellsville	City Hall, 411 Main Street, Wellsville, KS 66092.
City of Williamsburg	City Hall, 123 West William Street, Williamsburg, KS 66095.
Unincorporated Areas of Franklin County	Franklin County Courthouse, 315 South Main Street, Ottawa, KS 66067.
Greene County, Ohio and Incorporated Areas Docket No.: FEMA–B–2031	
City of Beavercreek	Government Center, 1368 Research Park Drive, Beavercreek, OH 45432.
City of Bellbrook	Administrative Offices, 15 East Franklin Street, Bellbrook, OH 45305.
City of Centerville	Municipal Government Center, 100 West Spring Valley Road, Centerville, OH 45458.
City of Fairborn	Government Center, 44 West Hebble Avenue, Fairborn, OH 45324.

Community	Community map repository address
City of Kettering	Government Center, 3600 Shroyer Road, Kettering, OH 45429.
City of Xenia	City Administration Building, 107 East Main Street, Xenia, OH 45385.
Unincorporated Areas of Greene County	667 Dayton-Xenia Road, Xenia, OH 45385.
Village of Cedarville	152 West Cedar Street, Cedarville, OH 45314.
Village of Clifton	143 Clinton Street, Clifton, OH 45316.
Village of Jamestown	Municipal Building, 84 Seaman Drive, Jamestown, OH 45335.
Village of Spring Valley	7 West Main Street, Spring Valley, OH 45370.
Village of Yellow Springs	100 Dayton Street, Yellow Springs, OH 45387.

[FR Doc. 2021–27608 Filed 12–20–21; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2021–0002; Internal Agency Docket No. FEMA–B–2186]

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 March 21, 2022.

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–2186, 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.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Buchanan County, Missouri and Incorporated Areas Project: 19–07–0077S Preliminary Date: April 30, 2021	
City of Easton	City Hall, 106 North Woodward Street, Easton, MO 64443.
City of Rushville	Buchanan County Emergency Management Office, Room 102, 411 Jules Street, St. Joseph, MO 64501.
City of St. Joseph	City Hall, 1100 Frederick Avenue, Room 107, St. Joseph, MO 64501.
Town of Agency	Buchanan County Emergency Management Office, Room 102, 411 Jules Street, St. Joseph, MO 64501.
Village of Lewis and Clark	Lewis and Clark Village Hall, 101 Lakeshore Drive, Rushville, MO 64484.
Unincorporated Areas of Buchanan County	Buchanan County Emergency Management Office, Room 102, 411 Jules Street, St. Joseph, MO 64501.
Pettis County, Missouri and Incorporated Areas Project: 18–07–0018S Preliminary Date: October 1, 2021	
City of Sedalia	City Hall, 200 South Osage Avenue, Sedalia, MO 65301.
Unincorporated Areas of Pettis County	Pettis County Courthouse, 415 South Ohio Avenue, Suite 212, Sedalia, MO 65301.
Clinton County, New York (All Jurisdictions) Project: 18–02–0003S Preliminary Date: August 10, 2021	
Town of Altona	Town Hall, 3124 Miner Farm Road, Altona, NY 12910.
Town of Black Brook	Black Brook Town Hall, 18 North Main Street, Ausable, NY 12912.
Town of Champlain	Town Hall, 10729 State Route 9, Champlain, NY 12919.
Town of Chazy	Town Hall, 9631 State Route 9, Chazy, NY 12921.
Town of Clinton	Clinton Town Hall, 23 Smith Street, Churubusco, NY 12923.
Town of Dannemora	Dannemora Town Court, 78 Higby Road, Ellenburg Depot, NY 12935.
Town of Ellenburg	Ellenburg Town Municipal Building, 16 Saint Edmunds Way, Ellenburg Center, NY 12934.
Town of Mooers	Town Hall, 2508 State Route 11, Mooers, NY 12958.
Town of Peru	Town Hall, 3036 Main Street, Peru, NY 12972.
Town of Plattsburgh	Town Hall, 151 Banker Road, Plattsburgh, NY 12901.
Town of Saranac	Town Hall, 3662 Route 3, Saranac, NY 12981.
Town of Schuyler Falls	Schuyler Falls Town Hall, 997 Mason Street, Morrisonville, NY 12962.
Village of Champlain	Village of Champlain Office, 11104 State Route 9, Champlain, NY 12919.

[FR Doc. 2021–27606 Filed 12–20–21; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2005–20118]

Extension of Agency Information Collection Activity Under OMB Review: Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0029, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection is necessary to comply with a requirement for individuals to successfully complete a security threat assessment before operating an aircraft to or from the three Maryland airports (Maryland Three Airports) that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone, or serving as an airport security coordinator at one of these three airports.

DATES: Send your comments by January 20, 2022. A comment to OMB is most effective 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 Review—Open for Public Comments'' or by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 29, 2021, 86 FR 53977.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0029.

Forms(s): TSA Form No. 418, MD–3 PIN Application.

Affected Public: Airports and pilots operating an aircraft to or from one of three Maryland airports, and airport employees who serve as an airport security coordinator at one of these three Maryland airports.

Abstract: TSA's regulations set forth security measures that apply to flight operations at the Maryland Three airports (College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field). *See* 49 CFR part 1562. Under these regulations, the following individuals must provide personal information and fingerprints to TSA to conduct a security threat assessment: (1) Pilots who fly to or from the Maryland Three airports; and (2) airport employees who serve as security coordinators at one of these airports. A successfully-completed security threat assessment is required for a pilot to fly to or from the Maryland Three airports, or for an airport employee to serve as a security coordinator at one of these airports. TSA provides an electronic option for the submission of the FAA Flight Standards District Offices vetting information and for final approval of the application.

Number of Respondents: 369.

Estimated Annual Burden Hours: An estimated 2,122 hours annually.

Dated: December 15, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2021–27592 Filed 12–20–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0013, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This collection involves surveying travelers to measure customer satisfaction with aviation security in an effort to more efficiently manage TSA's security screening performance at airports.

DATES: Send your comments by January 20, 2022. A comment to OMB is most effective 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 Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on August 23, 2021, 86 FR 47134.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Aviation Security Customer Satisfaction Performance Measurement.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0013.

Forms(s): Survey.

Affected Public: Traveling public.

Abstract: TSA conducts passenger surveys at airports nationwide. Passengers are invited, though not required, to complete and return surveys by: (1) Using a web-based portal on their own electronic devices or a device provided by TSA, (2) responding to TSA personnel capturing verbal responses, or (3) responding in writing to the survey questions on a customer satisfaction card and depositing the card in a drop-box at the airport. Each survey includes up to 10 questions pulled from a list of questions. Each question promotes a quality response so that TSA can identify areas in need of improvement. All questions concern aspects of the passenger's security screening experience. TSA is revising the information collection by amending the list of questions used in the survey. OMB previously approved a total of 82 questions. TSA is reducing the number of questions to 46 and revising the list of questions to align with OMB Circular No. A–11's focus areas, such as trust and overall satisfaction, and allow for more meaningful data collection.

Number of Respondents: 9,600.

Estimated Annual Burden Hours: An estimated 800 hours annually.

Dated: December 16, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2021–27597 Filed 12–20–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7039–N–08]

60-Day Notice of Proposed Information Collection: Federal Labor Standards Monitoring Review Guides; OMB Control No.: 2501–Pending

AGENCY: Office of Davis-Bacon and Labor Standards, Field Policy and Management, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the new information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 22, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Patricia Wright, Program Analyst, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, Room 7108, or by email at *patricia.wright@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Anna Guido, Reports Management Officer, QMAC, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 402–5535 (this is not a toll free number) or email Anna Guido at *anna.p.guido@hud.gov* for copies of the proposed forms and other available information.

A. Overview of Information Collection

Title of Information Collection: Federal Labor Standards Monitoring Review Guides.

OMB Approval Number: Pending.

Type of Request: New.

Form Number:

- HUD–4741 Federal Labor Standards Agency On-Site Monitoring Review Guide.
- HUD–4742 Federal Labor Standards Agency Remove Monitoring Review Guide.
- HUD–4743 Federal Labor Standards State CDBG and HOME Monitoring Review Guide.

Description of the need for the information and proposed use: HUD will use the information collected to ensure Local Contracting Agencies (Public Housing Agencies, Tribally Designated Housing Entities, Department of Hawaiian Home Lands, and HUD grantees) are compliant with Federal labor standards provisions. Based on the information provided, a HUD labor standards specialist determines if there are any findings or concerns (non-compliance with statutory, regulatory, and program requirements) that need to be addressed. If there are findings or concerns, the labor standards specialist will work with the Local Contracting Agency (LCA) to resolve the violation until the LCA is compliant again.

Respondents: HUD recipients of public housing financial assistance, certain HUD. recipients of housing and community development financial assistance, certain other HUD grantees.

Estimated Number of Respondents:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Total cost
HUD–4741 On-Site Monitoring Review Guide	66.00	1.00	66.00	0.50	33.00	$42.01	$1,386.33
HUD–4742 Remote Monitoring Review Guide	66.00	1.00	66.00	8.00	528.00	42.01	22,181.28
HUD–4743 State CDBG/HOME Monitoring Review Guide	65.00	1.00	65.00	0.50	32.50	42.01	1,365.33
Total	197.00		197.00	9.00	593.50		24,932.94

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Krista Mills,

Director, Office of Field Policy and Management.

[FR Doc. 2021–27627 Filed 12–20–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON05000.L16100000.DU0000; COC 72907]

Notice of Intent To Prepare a Resource Management Plan Amendment and Associated Environmental Assessment for an Alternate Route for the Gateway South Transmission Line at the Colorado/Utah Border

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of

1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) White River Field Office, Meeker, Colorado, intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Assessment (EA) for an Alternate Route for the Gateway South Transmission Line at the Colorado/Utah Border. This notice announces the beginning of the scoping process to solicit public comments on the scope of the analysis, including issues and alternatives, and to provide comments on the planning criteria.

DATES: Comments on the planning criteria must be received by January 20, 2022. Information about the project, including issues, alternatives, and the planning criteria, is available on ePlanning at: *https://go.usa.gov/xHM8U*.

ADDRESSES: You may submit comments on the issues, alternatives, or planning criteria by either of the following methods:

- *Online via ePlanning: https://go.usa.gov/xHM8U*.
- *Mail:* ATTN: Heather Sauls, BLM White River Field Office, 220 E Market St., Meeker, CO 81641.

FOR FURTHER INFORMATION CONTACT: Heather Sauls, Planning & Environmental Coordinator; telephone: 970–878–3855; address: 220 E Market St., Meeker, CO 81641; email: *hsauls@blm.gov*.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Sauls during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this Federal action is to respond to a right-of-way (ROW) application for construction, operation, maintenance, and termination of a proposed transmission line re-route and associated facilities on Federal land. The Applicant is PacifiCorp, doing business as Rocky Mountain Power.

Background

In December 2016, the BLM issued a Record of Decision (ROD) to approve the Energy Gateway South Transmission Line Project (GWS), which includes a 416-mile, single circuit 500-kilovolt (kV) alternating current transmission line that traverses Wyoming, Colorado, and Utah. In January 2017, the BLM issued a 30-year renewable ROW grant to the Applicant for this project and a 10-year ROW grant for temporary construction sites.

The route alignment approved in the ROD follows the Agency Preferred Alternative in the Final Environmental Impact Statement (EIS). The ROD also authorized relocating an approximate 2-mile portion of an existing power line to eliminate multiple line crossings in a short distance and avoid the Raven Ridge Area of Critical Environmental Concern (ACEC). Specifically, the ROD approved relocating the Bears Ears to Bonanza 345 kV transmission line (operated by the Western Area Power Administration (WAPA)) to the north side of the approved GWS ROW.

During public review of the Draft EIS in 2014, WAPA submitted comments related to safety and reliability ''since it appears likely that the proposed 500 kV transmission line will intersect and cross [WAPA] facilities and/or share a right-of-way corridor.'' Comments focused on the proposed GWS project's potential for interaction with existing WAPA lines, including maintaining electrical safety clearances during construction, structural review of any new structures that would be placed within 100 feet of a WAPA tower foundation, and ensuring uninterrupted access to WAPA structures during construction of the GWS line. The BLM provided a copy of WAPA's comments to the Applicant (GWS Final EIS, Appendix P, page P1–58 to P1–66) and assumed that these issues were resolved.

However, after the BLM issued the ROW grant for the GWS line, the Applicant began detailed engineering designs in preparation for construction of the power line. It became clear that the complexities of moving or crossing the Bears Ears line may have been underestimated, especially when compared to amending the White River RMP to allow for the GWS line to span the Raven Ridge ACEC (from tower locations placed outside of the ACEC).

The Raven Ridge ACEC was designated to provide additional management for special status plant species, remnant vegetation associations, paleontological resources, and fragile soils.

Proposed Action

In March 2021, the Applicant submitted a proposal to the BLM for an alternate route for the GWS line at the Colorado-Utah border. Under this scenario, there would be no change to the location of the existing Bears-Ears line. Rather, approximately 3 miles of the approved GWS line would be re-routed to the south of the Bears-Ears line and span the Raven Ridge ACEC (a shift in the approved ROW alignment to the south).

Possible Alternatives

The analysis in this EA is focused on potential alignments of an approximately 3-mile section of the GWS transmission line at the Colorado-Utah border. The GWS transmission line has not yet been constructed.

Alternative A is the No Action Alternative and would implement the BLM's decision from the ROD for the Energy Gateway South Transmission Project (2016). Under Alternative A, the GWS 500 kV transmission line would be routed around the Raven Ridge ACEC (northwest), and the Bears Ears 345 kV transmission line would be relocated outside of the Raven Ride ACEC to the north of the approved location of the GWS line.

Alternative B is the Applicant's Preferred Alternative. Like Alternative C, there would be no change to the location of the existing Bears-Ears line. Under Alternative B, the GWS line would parallel the Bears-Ears line (to the south) and span the Raven Ridge ACEC. Alternative B would require an amendment to the ROW grant as well as an amendment to the White River RMP since the Raven Ridge ACEC is managed as a ROW exclusion area. The RMP amendment would be to change the management within the ACEC along the proposed GWS ROW corridor from a ROW exclusion area to a ROW avoidance area to allow for the GWS power line to span the Raven Ridge ACEC from tower locations outside of the ACEC. There would be no change to the Raven Ridge ACEC boundary (43 CFR 1610.4–2).

Alternative C would have the GWS line follow an almost identical alignment to what was approved in the ROD, but without moving the Bears-Ears line out of the Raven Ridge ACEC. Thus, Alternative C would require the GWS line to cross the Bears-Ears line at two locations within approximately 1.5 miles, which would result in additional surface disturbance and may require an amendment to the temporary construction ROW.

Lead and Cooperating Agencies

The BLM is the lead Federal agency for the EA. The BLM has invited the following agencies to participate as Cooperating Agencies: U.S. Fish and Wildlife Service, Western Area Power Administration, National Park Service, State of Colorado, State of Utah, Rio Blanco County (Colorado), and Uintah County (Utah). The National Park

Service and the State of Colorado declined cooperating agency status due to relatively limited potential impacts to resources of interest.

Responsible Officials

The project area includes the BLM's White River Field Office in Rio Blanco County, Colorado and the Vernal Field Office in Uintah County, Utah.

Since only the White River RMP would require an amendment, the BLM Colorado State Director is the responsible official who will decide whether to amend the 1997 White River RMP to allow the power line to span the Raven Ridge ACEC. After a decision is made concerning the ROW exclusion area, the BLM Wyoming State Director is the responsible official who will decide whether to amend the existing right-of-way grants for the GWS power line (since this is the responsible official who issued the original GWS ROW grants in Wyoming, Colorado, and Utah).

Nature of Decision To Be Made

The BLM will use the analysis in this EA to inform the following: Identification of any significant environmental impacts associated with the proposed action that may warrant further analysis in a Supplemental EIS; the decision on whether to approve or deny the proposed amendment to the White River RMP to allow the GWS power line to span the Raven Ridge ACEC; and the decision on whether to approve or deny the proposed GWS ROW grant amendment.

Preliminary Issues

The BLM has identified the following primary issues to consider in the EA:

- Would moving or crossing the existing Bears Ears to Bonanza 345 kV power line result in service interruptions?
- How would surface-disturbing activities associated with power line construction affect vegetation and noxious/invasive weeds?
- Would power-line construction activities affect habitat for special status plant species?
- How would surface-disturbing activities associated with power-line construction affect scientifically important paleontological resources?
- Would the various power-line alignments affect the resources managed for in the Raven Ridge ACEC?

Permits or Licenses Required

Alternatives B and C would require an amendment to the approved Gateway South ROW grant.

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the EA. The BLM is also seeking substantive comments on the planning criteria. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's environmental analysis of the proposed re-route of the power line. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Before including your address, phone number, email address, or other personal identifiable information in your comment, you should be aware that your entire comment, including your personal identifiable information, may be made publicly available at any time, and we cannot guarantee that we will be able to withhold this information from public view.

(Authority: 43 CFR 1610.2(c)).

Jamie E. Connell,

BLM Colorado State Director.

[FR Doc. 2021–27554 Filed 12–20–21; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000.L1440000.BJ0000.212.HAG 22–0006]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing, January 20, 2022.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Mary Hartel, telephone: (503) 808–6131, email: *mhartel@blm.gov,* Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact Ms. Hartel during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the BLM, Oregon State Office, Portland, Oregon:

Willamette Meridian, Oregon

T. 34 S., R. 3 E. accepted November 23, 2021
T. 20 S., R. 4 W., accepted November 23, 2021
T. 37 S., R. 3 W., accepted November 23, 2021
T. 15 S., R. 7 W., accepted November 23, 2021
T. 24 S., R. 6 W., accepted November 23, 2021
T. 33 S., R. 1 W., accepted November 23, 2021

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/Washington, Bureau of Land Management. 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 filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/Washington during regular business hours; 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 a protest, if not filed with the notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

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)

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2021–27613 Filed 12–20–21; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[223.LLHQ350000.L13400000.PQ0000]

Call for Nominations or Expressions of Interest for Solar Leasing Areas on Public Lands in the States of Colorado, New Mexico, and Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations and expressions of interest.

SUMMARY: The Bureau of Land Management (BLM), State Offices in Colorado, New Mexico, and Nevada are soliciting written expressions of interest (EOIs) or Nominations identifying tracts of land (parcels) for solar project development within the following solar energy zones (SEZs) on public lands: Antonito Southeast SEZ, DeTilla Gulch SEZ, and Los Mogotes East SEZ within Colorado; Dry Lake Valley North SEZ, Gold Point SEZ, and Millers SEZ within Nevada; and Afton SEZ within New Mexico. These SEZs have a combined total land size of approximately 89,589 acres.

DATES: The BLM will accept written expressions of interest or nominations through January 20, 2022.

ADDRESSES: Hard-copy submission of written EOIs or Nominations must be submitted to the appropriate soliciting BLM office address listed as follows:

For solicitations by BLM Colorado, hard-copy submission of EOI or Nomination may be mailed to: BLM Colorado State Office, Attention: Benjamin Gruber, 2850 Youngfield St., Lakewood, CO 80215. EOIs for BLM Colorado solicitations may be emailed to: *begruber@blm.gov.*

For solicitations by BLM Nevada, hard-copy submission of EOI or Nomination may be mailed to: BLM Nevada State Office, Attention: Greg Helseth, 1340 Financial Blvd., Reno, NV 89502. EOIs for BLM Nevada solicitations may be emailed to: *ghelseth@blm.gov.*

For solicitations by BLM New Mexico, hard-copy submission of EOI or Nomination may be mailed to: BLM New Mexico State Office, Attention: Sarah Naranjo, 301 Dinosaur Trail, Santa Fe, NM 87508. EOIs for BLM New Mexico solicitations may be emailed to: *snaranjo@blm.gov.*

FOR FURTHER INFORMATION CONTACT: For more information related to solicitations in this notice by BLM Colorado, please contact Benjamin Gruber, at (303) 239–3923 or *begruber@blm.gov;* solicitations by BLM Nevada, please contact Greg Helseth, at (775) 861–6477 or *ghelseth@blm.gov;* and solicitations by BLM New Mexico, please contact Sarah Naranjo, at (505) 954–2200 or *snaranjo@blm.gov.* People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The SEZs being solicited for EOIs or Nominations are listed by name and legally described under the BLM State Office with jurisdiction over those public lands. To be acceptable, an EOI or Nomination must be received (not postmarked) by the BLM State Office of jurisdiction by the specified date in this notice (see **DATES**) and must include and conform to all requirements under Federal regulations at 43 CFR 2809.11. The BLM will not consider EOIs or Nominations that are incomplete or that do not conform to regulatory requirements. The BLM may reject submissions for cause.

BLM Colorado Solicitation

Antonito Southeast SEZ

The developable area includes 9,712 acres, more or less.

See legal description for the entire SEZ in Public Land Order (PLO) 7818, 78 FR 40501

Federal URL: *https://www.federalregister.gov/d/2013-16215/p-262*

De Tilla Gulch SEZ

The developable area includes 1,064 acres, more or less.

See legal description for the entire SEZ in Public Land Order (PLO) 7818, 78 FR 40501

https://www.federalregister.gov/d/2013-16215/p-294

Los Mogotes East SEZ

The developable area includes 2,650 acres, more or less.

See legal description for the entire SEZ in Public Land Order (PLO) 7818, 78 FR 40501

https://www.federalregister.gov/d/2013-16215/p-287

BLM Nevada Solicitations

Dry Lake Valley North SEZ

The developable area includes 25,069 acres, more or less.

See legal description for the entire SEZ in Public Land Order (PLO) 7818, 78 FR 40502

https://www.federalregister.gov/d/2013-16215/p-344

Gold Point SEZ

The developable area includes 4,596 acres, more or less.

See legal description for the entire SEZ in Public Land Order (PLO) 7818, 78 FR 40502

https://www.federalregister.gov/d/2013-16215/p-381

Millers SEZ

The developable area includes 16,534 acres, more or less.

See legal description for the entire SEZ in Public Land Order (PLO) 7818, 78 FR 40502

https://www.federalregister.gov/d/2013-16215/p-400

BLM New Mexico Solicitation

Afton SEZ

The developable area includes 29,964 acres, more or less.

See legal description for the entire SEZ in Public Land Order (PLO) 7818, 78 FR 40502

https://www.federalregister.gov/d/2013-16215/p-431

The 2012 Western Solar Plan amended BLM resource management plans (RMPs) to designate SEZs on public land determined to be suitable for utility-scale solar energy development, including the Antonito Southeast SEZ, DeTilla Gulch SEZ, and Los Mogotes East SEZ in the San Luis Valley Public Lands Center RMP (CO); the Dry Lake Valley North SEZ in the Ely RMP (NV); the Gold Point SEZ and the Millers SEZ in the Tonopah RMP (NV); and the Afton SEZ in the Mimbres RMP (NM).

The 2012 Western Solar Plan is available on the BLM website at: *https://blmsolar.anl.gov/documents/docs/peis/Solar_PEIS_ROD.pdf.*

Additional information for each SEZs listed in this notice is available on the

BLM website at: *https://blmsolar.anl.gov/sez/*.

The BLM will evaluate EOIs and Nominations as provided for in 43 CFR 2809.11 after January 20, 2022. If the BLM receives multiple EOIs or Nominations that overlap or otherwise compete with one another, the BLM may hold a competitive leasing process through a notice of competitive offer in accordance with 43 CFR 2809.13. If no competing EOIs or Nominations are received in a given SEZ, the BLM will presume a future notice of competitive offer, under 43 CFR 2809.13, would receive no bids. As such, if no acceptable EOIs or Nominations for a SEZ are received, and if the authorized officer determines that doing so is in the public interest, the BLM may accept and process non-competitive solar development applications within the areas described in this notice, as provided in 43 CFR 2800 subparts 2803, 2804, and 2805.

(Authority: 43 CFR 2809)

Nicholas Douglas,

Assistant Director of Energy, Minerals, and Realty Management.

[FR Doc. 2021–27515 Filed 12–20–21; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

Certain Knitted Footwear, DN 3580; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest; Correction

AGENCY: U.S. International Trade Commission.

ACTION: Notice; correction.

SUMMARY: Correction is made to the date of receipt of complaint.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December 15, 2021 (86 FR 71281) in FR Doc. 2021–27070, under **SUPPLEMENTARY INFORMATION**, the date of the receipt of complaint should read: December 8, 2021.

Issued: December 15, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–27534 Filed 12–20–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Refrigerator Water Filtration Devices and Components Thereof, DN 3582;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of LG Electronics Inc. and LG Electronics Alabama, Inc., on December 15, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain refrigerator water filtration devices and components thereof. The complainant names as respondents: ClearWater Filters of Lakewood, NJ; Express Parts LLC d/b/a Express Parts !!! of Keyport, NJ; FRESHLAB LLC, of Gainesville, FL; Zhang Ping d/b/a ICE Water Filter of China; Jiangsu Angkua Environmental Technical Co., Ltd., of China; Liu Qi d/b/a LQQY of China; Lvliangsh ilishiquhuiliwujinbaihuoshan Ghang d/b/a LYLYMX of China; Ninbo Haishu Bichun Technology Co., Ltd. d/b/a Ninbo Hai Shu Bi Chun Ke Ji You Xian Gong Si d/b/a Pureza Filters of Elmhurst, IL; Ninbo Haishu Keze Replacement Equipment Co., Ltd. d/b/a Ningboshihaishukezejinghuashebeiyou Xiangongsi d/b/a Kozero Filter of China; Ningbo Bichun Technology Co., Ltd. of China; Ningbo Haishu Shun' Anjie Water Purification Equipment LLC of China; Pursafet Water Filter (Wuhan) Inc. of China; Shenzen Hangling E-Commerce Co., Ltd d/b/a Shenzhenshilinghangdianzhish angwuyouxiangongshi d/b/a BEST BELVITA of Elmhurst, IL; Shenzhen Yu Tian Qi Technology Co., Ltd., d/b/a Shen Zhen Shi Yu Tian Qi Ke Ji You Xian Gong Si d/b/a GLACIERFRESH of China; Aicuiying d/b/a BELVITA Water of China; iSave Strategic Marketing Group LLC d/b/a iSave of China; Qinghaishunzexiaofangjiance youxiangongsi d/b/a EZEEY of China; ZhenPingXianJiaXuan YaZhuBaoFuZhuangGongYiPinYouXia d/b/a JiaXuanYaZhuBaoFuZhuang of China; All Filters LLC d/b/a AllFilters of Salt Lake City, UT; GT Sourcing Inc. d/b/a GT Sourcing of Monsey, NY; JJ Imports LLC d/b/a Prime Filters of Elmwood Park, NJ; Tianjin Tianchuang Best Pure Environmental Science and Technology Co., Ltd. d/b/a Tianjin Tiangchuang Bestpure Huanbao Keji Co. Ltd d/b/a Healthy Home of China; Top Pure (USA) Inc. d/b/a Toppure d/b/a ICEPURE of Pico Rivera, CA; W&L Trading LLC d/b/a Aqualink of Frisco, TX; Yunda H&H Tech (Tianjin) Co., Ltd. d/b/a Tianjin Yuanda Gongmao Youxian Gongsi d/b/a PUREPLUS of China; Refresh Filters LLC b/d/a Refresh My Water of New York, NY; Qingdao Ecopure Filter Co., Ltd d/b/a WaterdropDirect of China; Qingdao Maxwell Commercial and Trading Company Ltd d/b/a Water Purity Expert of China; Qingdao Uniwell Trading Co., Ltd. d/b/a Qingdao Youniwei Shang Mao You Xian Gong Si d/b/a Uniwell Filter of China. The complainant requests that the Commission issue a general exclusion order, cease and desist orders and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically

requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3582'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). 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. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 15, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–27547 Filed 12–20–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–940]

Bulk Manufacturer of Controlled Substances Application: Organix Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Organix Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 22, 2022. Such persons may also file a written request for a hearing on the application on or before February 22, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on September 16, 2021, Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801–2029, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Lysergic acid diethylamide	7315	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I
3,4,5- Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
3,4-Methylenedioxyamphetamine	7400	I

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Controlled substance	Drug code	Schedule
3,4-Methylenedioxymethamphetamine	7405	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Alpha-Methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C–D)	7508	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C–H)	7517	I
2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C–I)	7518	I
Heroin	9200	I
Morphine	9300	II

The company plans to synthesize the above listed controlled substances for distribution to its customers. In reference to dug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–27635 Filed 12–20–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 01–22]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Thursday, January 13, 2022, at 10:00 a.m. EST.

PLACE: This meeting will be held by teleconference. There will be no physical meeting place.

STATUS: Open. Members of the public who wish to observe the meeting via teleconference should contact Patricia M. Hall, Foreign Claims Settlement Commission, Tele: (202) 616–6975, two business days in advance of the meeting. Individuals will be given call-in information upon notice of attendance to the Commission.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, advance notices of intention to observe an open meeting, and requests for teleconference dial-in information may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St. NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Jeremy R. LaFrancois,

Chief Administrative Counsel.

[FR Doc. 2021–27760 Filed 12–17–21; 2:00 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Air Act

On December 13, 2021, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Rhode Island, in the lawsuit entitled *United States* v. *City of Woonsocket and Synagro Northeast, LLC,* Civil Action No. 1:21–c–491.

The United States filed this lawsuit under Sections 113(b) and 129(f) of the Clean Air Act, 42 U.S.C. 7413(b), 7429(f) and 40 CFR part 62, subpart LLL, against the owner and operator of a sewage sludge incinerator at a municipal wastewater treatment facility in Woonsocket, Rhode Island. The complaint seeks civil penalties and injunctive relief arising from alleged violations of requirements to (1) submit monthly status reports, a final control plan, and a site-specific monitoring plan; (2) perform required testing; (3) meet emission limits for sulfur dioxide and hydrochloric acid; and (4) establish and meet operating limits. The consent decree requires the settling defendants to pay a civil penalty of $373,660, plus interest, and to take measures to bring the facility into compliance.

By this notice, the Department of Justice opens a period of public comment on the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *City of Woonsocket and Synagro Northeast, LLC,* D.J. Ref. No. 90–5–2–1–12275. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* Paper copies of the consent decree are available upon written request and payment of reproduction costs. Such requests and payments should be addressed to:

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611

With each such request, please enclose a check or money order for $10.75 (25 cents per page reproduction cost) per paper copy, payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–27524 Filed 12–20–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

[Docket No. DOL–2021–0006]

Telecommunications Interagency Working Group (TIWG)

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Request for nominations for membership on the Telecommunications Interagency Working Group.

SUMMARY: The Secretary of Labor requests nominations for membership on the Telecommunications Interagency Working Group (TIWG).

DATES: Submit (send or transmit) nominations for TIWG by December 30, 2021.

ADDRESSES: You may submit nominations, including attachments, electronically to *TelecomWorkingGroup@dol.gov.*

Instructions. All nominations and supporting materials must include the agency name and docket number for this **Federal Register** document (Docket No. DOL–2021–0006).

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Ms. Amanda McClure, U.S. Department of Labor; 200 Constitution Avenue NW, Washington, DC 20210; telephone (202) 693–4676; email *McClure.Amanda.C@dol.gov.*

For general information about TIWG and TIWG membership: Ms. Valeria Treves, OSEC; 200 Constitution Avenue NW, Washington, DC 20210; telephone: 202–631–1132; email: *treves.valeria@dol.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of Labor invites interested persons to submit nominations for membership on TIWG.

A. Background

Section 60602 of the Infrastructure Investment and Jobs Act directed the Chair of the Federal Communications Commission (''Chair''), in partnership with the Secretary of Labor (''Secretary''), to form TIWG ''to develop recommendations to address the workforce needs of the telecommunications industry.'' Infrastructure Investment and Jobs Act, Public Law 117–58, 60602, 135 Stat. 429 (Nov. 15, 2021) (to be codified at 47 U.S.C. 344) (''Infrastructure Investment and Jobs Act''). TIWG must be established by January 14, 2022, at which point the majority of members must be appointed. TIWG must prepare a report with ''recommendations to address the workforce needs of the telecommunications industry, including the safety of that workforce'' not later than one year after its establishment that will:

(1) Determine whether, and if so how, any Federal laws, regulations, guidance, policies, or practices, or any budgetary constraints, may be amended to strengthen the ability of institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or for-profit businesses to establish, adopt, or expand programs intended to address the workforce needs of the telecommunications industry, including the workforce needed to build and maintain the 5G wireless infrastructure necessary to support 5G wireless technology;

(2) Identify potential policies and programs that could encourage and improve coordination among Federal agencies, between Federal agencies and States, and among States, on telecommunications workforce needs;

(3) Identify ways in which existing Federal programs, including programs that help facilitate the employment of veterans and military personnel transitioning into civilian life, could be leveraged to help address the workforce needs of the telecommunications industry;

(4) Identify ways to improve recruitment in workforce development programs in the telecommunications industry;

(5) Identify Federal incentives that could be provided to institutions of higher education, for-profit businesses, State workforce development boards established under section 101 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111), or other relevant stakeholders to establish or adopt new programs, expand current programs, or partner with registered apprenticeship programs, to address the workforce needs of the telecommunications industry, including such needs in rural areas;

(6) Identify ways to improve the safety of telecommunications workers, including tower climbers; and

(7) Identify ways that trends in wages, benefits, and working conditions in the telecommunications industry impact recruitment of employees in the sector.''

The statute provides that the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to TIWG.

B. TIWG Membership

Pursuant to section 60602(d) of the Infrastructure Investment and Jobs Act, the Secretary will select three members of TIWG from outside organizations. Accordingly, the Department seeks nominations and expressions of interest from individuals and organizations interested in consideration under one or more of the following categories:

- A representative of a labor organization representing the telecommunications workforce;
- A representative of a registered apprenticeship program in construction or maintenance; and
- A public interest advocate for tower climber safety.

In addition to one member from each of the above-mentioned categories, TIWG will comprise the following membership selected from individuals or organizations: (i) A representative of a telecommunications industry association, appointed by the Chair of the FCC; (ii) a representative of a Native American Tribe or Tribal organization, appointed by the Chair; (iii) a representative of a rural telecommunications carrier, appointed by the Chair; (iv) a telecommunications contractor firm, appointed by the Chair; and (v) a representative of an institution of higher education, appointed by the Secretary of Education. The membership will also be comprised of the following federal agency representatives: (i) A representative of the FCC, appointed by the Chair; (ii) a representative of the Directorate of Construction of the Occupational Safety and Health Administration, appointed by the Secretary of Labor; (iii) a representative of the National Telecommunications and Information Administration, appointed by the Assistant Secretary of Commerce for Communications and Information; and (iv) a representative of the Department of Education, appointed by the Secretary of Education.

Members must be willing to commit to serving on TIWG for one year. While the chair and a vice chair, which TIWG will name, will be responsible for organizing the business of the working group, the time commitment for participation in TIWG or any subgroup, if established, may be substantial. However, meetings may be conducted informally, using suitable technology to facilitate the meetings.

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse TIWG membership. Any interested person or organization may nominate one or more individuals for membership on TIWG. Interested persons are also invited and encouraged to submit statements in support of nominees.

C. Submission Requirements

Nominations must include the following information:

- Name, title, and organization of the nominee and a description of the organization, sector, or other interest the nominee will represent;
- Nominee's mailing address, email address, and telephone number;
- Nominee's résumé or curriculum vitae, including relevant organizations and associations;
- A statement summarizing the nominee's qualifications and reasons why the nominee should be appointed to TIWG; and
- A statement, if the nominee will represent a specific organization, describing the organization as well as the benefit of having the organization represented on TIWG.

D. Member Selection

The Secretary will select TIWG members on the basis of their experience, knowledge, and competence in the field as appropriate for each of the three slots. Although the Federal Advisory Committee Act does not apply to the TIWG, nominees will be evaluated for potential conflicts of interests. Information received through this nomination process, in addition to other relevant sources for information, will assist the Secretary in appointing members to TIWG. In selecting TIWG members, the Secretary will consider individuals nominated in response to this **Federal Register** document, as well as other qualified individuals.

Authority and Signature

Rajesh D. Nayak, Assistant Secretary for Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this document.

Signed at Washington, DC, on December 17, 2021.

Rajesh D. Nayak,

Assistant Secretary for Policy, Office of the Assistant Secretary for Policy.

[FR Doc. 2021–27755 Filed 12–17–21; 4:15 pm]

BILLING CODE 4510–HX–P

OFFICE OF MANAGEMENT AND BUDGET

North American Industry Classification System—Revision for 2022; Update of Statistical Policy Directive No. 8, North American Industry Classification System: Classification of Establishments; and Elimination of Statistical Policy Directive No. 9, Standard Industrial Classification of Enterprises

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Notice of NAICS 2022 Final Decisions; Update of Statistical Policy Directive No. 8, North American Industry Classification System: Classification of Establishments; and Elimination of Statistical Policy Directive No. 9, Standard Industrial Classification of Enterprises.

SUMMARY: The Office of Management and Budget (OMB) announces its final decisions to accept the recommendations of the Economic Classification Policy Committee (ECPC), as outlined in the July 2, 2021, **Federal Register** notice. OMB accepts the ECPC recommendations for the 2022 revisions to the North American Industry Classification System (NAICS), as well as the recommendations to update OMB Statistical Policy Directive No. 8, *North American Industry Classification System: Classification of Establishments* and to eliminate OMB Statistical Policy Directive No. 9, *Standard Industrial Classification of Enterprises.* In large part, the series of revisions for NAICS are designed to address decreasing usefulness of employing the mode of delivery (online versus in store/print) as an industry delineation criterion in the Wholesale Trade, Retail Trade, and Information sectors. In short, the internet has developed from a specialized activity to a generic method of delivery for goods and services. Therefore, the 2022 revisions to NAICS reflect a deemphasis on the delivery method as an industry function used in NAICS classification. In addition, OMB has accepted the ECPC recommendations with respect to biobased products manufacturing and renewable chemicals manufacturing topic areas, including the decision to continue research and outreach in this important emerging area. There are four parts in the **SUPPLEMENTARY INFORMATION** section below, which provide more information. Part I summarizes the background of NAICS and this revision cycle. Part II contains a summary of public comments in response to the July 2, 2021, **Federal Register** notice. Part III includes a summary of the ECPC recommendations. Part IV outlines OMB's final decisions.

DATES: *Effective Date for 2022 NAICS United States codes and Statistical Policy Directives:* Federal statistical establishment data published for reference years beginning on or after January 1, 2022, should be published using the 2022 NAICS United States codes. Publication of *NAICS United States, 2022 Manual* is planned for January 2022 on the NAICS website at *www.census.gov/naic*s. The updated Statistical Policy Directive No. 8, *North American Industry Classification System: Classification of Establishments,* will be effective immediately and will be posted on the OMB Statistical Programs and Standards website at *www.whitehouse.gov/omb/information-regulatory-affairs/statistical-programs-standards/.* Statistical Policy Directive No. 9, *Standard Industrial Classification of Enterprises,* will be eliminated effective immediately.

ADDRESSES: Correspondence about the adoption and implementation of the 2022 NAICS as shown in the July 2, 2021, **Federal Register** notice should be sent to: Office of the Chief Statistician, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; email: *econ.naics2022@census.gov.*

Inquiries about the content of industries or requests for electronic copies of the 2022 NAICS tables that cannot be satisfied by use of the NAICS website should be sent by email to: *econ.naics2022@census.gov.*

Electronic Availability: **Federal Register** notices are available electronically at *www.federalregister.gov/.* This document and the July 2, 2021, **Federal Register** notice are also available on the NAICS website at *www.census.gov/naics.* The revision for 2022 will result in a number of code and title changes for NAICS. For that reason, a full list of NAICS 2022 industry codes and titles will be posted on the NAICS website referenced above prior to publication of the *NAICS United States, 2022 Manual* for reference and implementation planning. The NAICS website referenced above also contains previous NAICS United States **Federal Register** notices, ECPC Issues Papers, ECPC Reports, the structures, industry definitions, and related documents for previous versions of NAICS United States.

FOR FURTHER INFORMATION CONTACT: NAICS classification staff may be reached by email at *econ.naics2022@census.gov.*

For information about this notice, contact Kerrie Leslie, Office of Management and Budget, 9215 New Executive Office Building, 725 17th St. NW, Washington, DC 20503, telephone (202) 395–1093.

SUPPLEMENTARY INFORMATION:

I. Background: The North American Industry Classification System (NAICS) is a system for classifying establishments (individual business locations) by type of economic activity. Mexico's Instituto Nacional de Estadística y Geografía (INEGI), Statistics Canada, and the United States Office of Management and Budget (OMB), through its interagency Economic Classification Policy Committee (ECPC), jointly developed NAICS in 1997 and continue to collaborate on NAICS to make the industry statistics produced by the three countries comparable. NAICS helps ensure that establishment data produced across the Federal statistical system are comparable and can be used together in analysis.

It is important to note that NAICS is designed and maintained solely for statistical purposes to improve and keep current this Federal statistical standard. Consequently, although the classification may also be used for various nonstatistical purposes (*e.g.,* for administrative, regulatory, or taxation functions), the requirements of government agencies or private users that choose to use NAICS for nonstatistical purposes play no role in its development or revision.

For the 2022 revision, Canada, Mexico, and the United States focused on new and emerging industries, as well as the continued usefulness of employing the mode of delivery (online versus in store/print) as an industry delineation criterion in the Wholesale Trade, Retail Trade, and Information sectors.

The July 2, 2021, **Federal Register** notice: (1) Summarized the background for the proposed revisions to NAICS 2017 in Part I; (2) contained a summary of public comments to the February 26, 2020, **Federal Register** notice (85 FR 11120) regarding priorities for changes to NAICS in 2022, the ECPC recommendation to update OMB Statistical Policy Directive No. 8, Standard Industrial Classification of Establishments, and the ECPC recommendation to withdraw OMB Statistical Policy Directive No. 9, Standard Industrial Classification of Enterprises in Part II; (3) included a list of title changes for NAICS industries that clarify, but do not change, the existing content of the industries in Part III; and (4) provided a comprehensive listing of changes for national industries and their links to NAICS 2017 industries in Part IV.

II. Summary of Comments Received: Twenty-nine public comments were received in response to the ECPC proposals presented in the July 2, 2021, **Federal Register** notice (86 FR 35350). The public comments received are available for public view on *www.regulations.gov.* Comments received were supportive of proposed changes, suggested changes that the ECPC believed would be incompatible with the principles of NAICS or with other proposals that were recommended, or were outside the scope of the NAICS revision. Comments addressed numerous topic areas, including:

- *Employing the mode of delivery (online versus in store/print) as an industry delineation criterion.* OMB received very little response in this topic area. One commenter supported the ECPC recommended changes and a couple others indicated slight opposition, citing decreased usefulness of some uses of the data.

The following two areas received the most public comments

- *Biobased products manufacturing and renewable chemicals manufacturin*g. Five commenters disagreed with the ECPC recommendations, which were to create a Compost Manufacturing industry, to not create any other new NAICS industries for biobased products manufacturers and renewable chemicals manufacturers, and to create numerous North American Product Classification System (NAPCS) product codes for these areas. Some of these commenters noted the requirement in the 2018 Farm Bill for the Department of Commerce and Department of Agriculture to work together toward developing NAICS codes for these topic areas.
- *Cannabis.* Five commenters advocated for more cannabis-specific industry classifications, and one commenter requested alignment with Canada for these detailed industries.

No comments were received on the proposed update to Statistical Policy Directive No. 8 or the elimination of Statistical Policy Directive No. 9.

III. ECPC Recommendations: The ECPC reviewed the comments received in response to the July 2, 2021, **Federal Register** notice. ECPC review was guided by the NAICS classification principles and with consideration of impacts on trilateral NAICS agreements with Canada and Mexico, as these measures provide an important way in which to coordinate the measurement of business activity across the three countries. Detailed ECPC responses to each comment are available on the NAICS website at *www.census.gov/naics.*

Ultimately, the ECPC made no changes to its recommendations to OMB for 2022 NAICS codes or titles. However, the ECPC did make some minor revisions to its recommendations for Corresponding Index Entries.[1]

IV. Final Decisions: OMB considered the comments submitted in direct response to the July 2, 2021, **Federal Register** notice and the recommendations from the ECPC. OMB believes that the approach taken by the ECPC for these revisions is responsive to the needs identified by Federal statistical agencies and stakeholders more broadly, while adhering to the longstanding principles governing updates to the NAICS. In addition, OMB agrees with the ECPC approach for nascent industries of introducing new product codes for NAPCS, in line with previous practice.

Given the substantive comments received in opposition to the ECPC recommendations for biobased products manufacturing and renewable chemicals manufacturing, OMB is providing more explanation for its decision to accept these ECPC recommendations. OMB understands the importance of these growing topic areas; however, evidence to date suggests that further delineating the relevant industries at this time would risk the ability of Federal statistical agencies to publish industry data at this granular level given the small size of the potential industries. Further delineation would also jeopardize existing time series' continuity. Instead, creating new product codes for NAPCS allows Federal statistical agencies to begin collecting and publishing more granular information about products relevant to these topic areas, allowing Federal statistical agencies and stakeholders to track the size and scope of these growing topic areas, which will help inform any future relevant NAICS revisions. OMB believes creating new product codes for NAPCS is an important initial step, and notes that this approach aligns with past implementation for other nascent industries. OMB also appreciates and

[1] A Corresponding Index Entry complements the definition of the NAICS industry by providing specific, illustrative examples to clarify the work that is captured in the NAICS industry.

agrees with the ECPC about the importance of continued research and stakeholder engagement on these topic areas toward maintaining a relevant and objective statistical classification standard.

Therefore, OMB has decided to accept all ECPC recommendations outlined in the July 2, 2021 **Federal Register** notice, making no changes to the scope and substance of those recommendations.

Under the authority of the *Budget and Accounting Procedures Act* of 1950 (31 U.S.C. 1104(d)) and the *Paperwork Reduction Act* of 1995 (44 U.S.C. 3504(e)), OMB hereby announces its final decisions for adoption of NAICS revisions for 2022; for its update of Statistical Policy Directive No. 8, *North American Industry Classification System: Classification of Establishments*; and for elimination of Statistical Policy Directive No. 9, *Standard Industrial Classification of Enterprises*.

Sharon I. Block,

Associate Administrator, Office of Information and Regulatory Affairs.

Statistical Policy Directive No. 8

North American Industry Classification System: Classification of Establishments

The North American Industry Classification System (NAICS) is to be used to classify reporting establishments by types of industrial activity in which they are engaged. Details are presented in the North American Industry Classification System, United States, issued by the Office of Management and Budget, as amended and revised in the future. Revisions are considered every five years in calendar years ending with 2 and 7.

1. Use for Federal Nonstatistical Program Purposes

NAICS shall not be used in the administration of any regulatory, administrative, or tax program unless the Secretary (Administrator) has first determined that the use of such industry definition is appropriate to the implementation of the program's objectives. If the term ''North American Industry Classification System'' (NAICS) is to be used in the operative text of a statute or regulation to define industry (or trade or commerce), language similar to the following should be used to assure sufficient flexibility: ''An industry or grouping of industries shall mean a North American Industry Classification System industry or grouping of industries as defined by the Office of Management and Budget subject to such modifications with respect to individual industries or groupings of industries as the Secretary (Administrator) may determine to be appropriate for the purpose of this Act (regulation).'' The use, interpretation, and application of NAICS for nonstatistical purposes is controlled by and defined by the agencies or regulations that use the statistical standard for those nonstatistical purposes.

2. Titles and Descriptions

The North American Industry Classification System, United States, Manual includes titles and descriptions of the industries and an alphabetic index of illustrative activities classified to industries. It is available online at: *www.census.gov/naics*.

[FR Doc. 2021–27536 Filed 12–20–21; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Policy for Setting the Normal Operating Level

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: In May 2021, the NCUA Board (Board) invited comment on the policy to set the National Credit Union Share Insurance Fund (Share Insurance Fund) Normal Operating Level (NOL). The Board requested comment on eight specific factors that impact the calculation of the NOL. This final notice responds to comments on these factors as well as other subjects on which the Board received comment in the notice.

FOR FURTHER INFORMATION CONTACT: Russell Moore or Amy Ward, Risk Analysis Officers, National Credit Union Administration, Office of Examination, and Insurance at (703) 518–6383 or (703) 819–1770.

SUPPLEMENTARY INFORMATION:

I. Background

On September 28, 2017, the Board approved the following actions: [1]

- Closing the Temporary Corporate Credit Union Stabilization Fund (Stabilization Fund) and distributing its funds, property, and other assets and liabilities to the Share Insurance Fund, effective October 1, 2017.
- Setting the NOL of the Insurance Fund to 1.39 percent, effective September 28, 2017.[2]
- Adopting the policy for setting the NOL, as outlined below.

Policy for Setting the NOL

The policy for setting the NOL was adopted in 2017 and established a periodic review of the equity needs of the Share Insurance Fund, the results of which are communicated to stakeholders.[3] At least annually, NCUA staff reviews the level at which the NOL is set and reports this information to the Board. Board action is only necessary when a change in the NOL is warranted. The policy establishes that any change to the NOL of more than one basis point shall be made only after a public announcement of the proposed adjustment, with an opportunity for comment.[4] For any such adjustment, the NCUA would issue a report and request for comment that includes data supporting the proposed adjustment. The policy established the following objectives for the Board to satisfy when setting the NOL:

- Retain public confidence in federal share insurance;
- Prevent impairment of the one percent contributed capital deposit; [5] and
- Ensure the Share Insurance Fund can withstand a moderate recession without the equity ratio declining below 1.20 percent over a five-year period.

The current economic landscape and pending resolution of the obligations associated with the corporate credit union asset management estates and NCUA Guaranteed Notes (NGN) Program, discussed later in this document, warrant a re-evaluation of the NCUA's current NOL policy.

II. Legal Authority

Pursuant to the Federal Credit Union Act (Act), the NOL is an equity ratio specified by the Board, which may not be less than 1.20 percent and not more than 1.50 percent.[6] The Board has historically set the NOL as the target equity ratio for the Share Insurance Fund.

The Share Insurance Fund's calendar year-end equity ratio is part of the statutory basis to determine whether the

[1] 82 FR 46298 (Oct. 4, 2017).

[2] The Board last set the NOL at 1.38 percent on December 9, 2019. The Board retained the 1.38 percent NOL at its December 17, 2020, meeting.

[3] As noted, the Board adopted this policy for setting the NOL in 2017. The Board emphasizes that, as a general statement of the NCUA's policy regarding setting the NOL, the Board is not required to follow the notice-and-comment rulemaking process when revising this policy. *See* 5 U.S.C. 553(b)(3)(a). Nevertheless, the Board voluntarily solicited public input on this policy.

[4] One basis point is one hundredth of one percent.

[5] Federally insured credit unions are required to maintain a deposit equal to one percent of their insured shares with the Share Insurance Fund. 12 U.S.C. 1782(c)(1)(A)(i).

[6] 12 U.S.C. 1782(h)(4).

NCUA must make a distribution to insured credit unions.[7] The Act states:

''The Board shall [. . .] effect a pro rata distribution to insured credit unions after each calendar year if, as of the end of that calendar year—

- Any loans to the Fund from the Federal Government, and any interest on those loans, have been repaid;
- The Fund's equity ratio exceeds the [NOL] and
- The Fund's available assets ratio exceeds 1.0 percent.'' [8]

The above provisions of the Act are generally implemented at 12 CFR part 741 of the NCUA's regulations.

III. Current Normal Operating Level Methodology and Process

To implement the current approved policy, the NCUA developed a calculation based on scenarios using the following factors:

- The modeled performance of the Share Insurance Fund over a five-year period, assuming a moderate recession.
- The modeled potential decline in value of the Share Insurance Fund's claims on the corporate asset management estates in a moderate recession; and
- The projected equity ratio decline through the end of the following year, assuming no economic downturn.

The stress scenario entails estimating three primary drivers of outcomes: insurance losses, insured share growth, and yield on investments. Additionally, the risk associated with the Share Insurance Fund's claims on, and obligations related to, the asset management estates of the five failed corporate credit unions is a factor in this analysis. The Share Insurance Fund's exposure related to the asset management estates of the five failed corporate credit unions has substantially declined since the last NGN trust matured on June 12, 2021. Though the amount of time needed to fully liquidate all the assets and satisfy all the liabilities of the corporate asset management estates will depend on market factors and ongoing litigation, the risk has significantly declined and will continue to decline and end as the residual assets are liquidated and the estates closed. More information regarding the NGN program and the Corporate System Resolution may be found on the NCUA's public website.

The NCUA's stress analysis is based on the Federal Reserve's adverse economic scenario and applied to the primary drivers. However, the Federal Reserve did not publish an adverse scenario in 2020 or 2021; therefore, the NCUA developed an adverse scenario based on the average of the Federal Reserve's baseline and severely adverse economic scenarios. Historically, this has been a reasonable proxy for a moderate recession. The absence of an adverse scenario published by the Federal Reserve and the pending completion of the corporate resolution program warrant a re-evaluation of the current NOL policy.

IV. Comments on Normal Operating Level and Responses

The Board sought comment on the policy and approach for setting the NOL of the Share Insurance Fund. Commenters were encouraged to discuss any other relevant issues for the Board to consider. Specifically, the Board was interested in comments addressing the following factors:

- Should a moderate recession be the basis for evaluating the Share Insurance Fund performance during an economic downturn, or should the NCUA change the policy to consider a severe recession?
- What data source(s) should the NCUA use for determining the characteristics of a potential moderate or severe recession—the Federal Reserve scenario, an independent source, or the NCUA's judgment?
- Should the NCUA continue modeling the performance of the Share Insurance Fund over a five-year period? Should the period be longer or shorter?
- How should the NCUA utilize the modeled potential decline in value of the Share Insurance Fund's claims on the corporate asset management estates going forward, until the estates are fully resolved?
- Should the NCUA continue to incorporate in the NOL analysis the projected equity ratio decline through the end of the following year without an economic downturn? Should this period be longer or shorter, or not factored into the analysis at all?
- Given forecasting uncertainties and timing challenges, would it be reasonable for the NCUA to change the requirement to request public comment only if the NOL were to change by a larger amount than just one basis point?
- Should the NOL be re-evaluated in the midst of an economic downturn or should it be left unchanged until the onset of an economic recovery?
- Should the NOL be re-evaluated on qualitative factors based on the COVID–19 pandemic?
- Is there any other information that the Board should consider when setting the NOL?

The Board received 23 comment letters from credit union leagues, trade associations, credit unions, and credit union service organizations.

Moderate or Severe Recession

Most commenters stated a moderate recession is an appropriate basis for evaluating the Share Insurance Fund's performance during an economic downturn. Commenters who did not support using a severe recession cited the few numbers of severe recessions recorded in U.S. history and noted that the low probability of losses stemming from a severe economic event reduces the utility of a severe recession as a basis for modeling. The commenters noted that the majority of the losses to the Share Insurance Fund have been from fraud, concentration risk, etc., and not from severe economic factors; thus, a model based on a severe recession would not be useful. Commenters expressed that NCUA's own capital planning requirements for credit unions do not require credit unions to build capital to accommodate high impact, low probability events. The Board agrees with the commenters and will retain the moderate recession scenario as the basis for modeling the NOL.

Data Sources

Commenters emphasized the need for NCUA to use an independent source to provide data for NCUA's modeling of a potential moderate or severe recession. The majority of commenters supported continuing to use the Federal Reserve as this independent source, due to its credibility in the industry and its wide use among other banking agencies. Several commenters favored an independent source other than the Federal Reserve or some combination of the Federal Reserve and independent sources. Most commenters recommended the Board not use NCUA judgement as an exclusive means for modeling a moderate and severe recession. Several commenters believed NCUA judgment would be acceptable as a backup means to define a moderate recession when the specific Federal Reserve scenario was not available.

Several commenters did express concern that the Federal Reserve data includes bank losses, which historically have been greater than credit union losses, and the impact this would have on modeling for credit unions. The Board emphasizes the Federal Reserve

[7] The equity ratio is also part of the statutory basis for determining whether a premium or Share Insurance Fund restoration plan is necessary. The unprecedented share growth related to the pandemic resulted in an equity ratio of 1.26 percent as of December 31, 2020, and an equity ratio of 1.23 percent as of June 30, 2021.

[8] 12 U.S.C. 1782(c)(3)(A). This section is also subject to 12 U.S.C. 1790e(e).

data used in the modeling process is broad macroeconomic assumptions and is not specific to any one industry. The Board believes the Federal Reserve scenarios are the best choice due to their public availability and wide acceptance. Other independent sources may not be readily available for public scrutiny or require subscriptions to be able to view. Based on the feedback, the Board believes the NCUA's methodology of using an average of the Federal Reserve's baseline and severely adverse scenarios to approximate a moderate recession is the best alternative.

Modeling Period

While commenters supported the current use of a moderate recession in the modeling process, many commenters recommended the Board shorten its modeling period from the current policy of five years to a shorter period of 18 months to three years. Commenters suggested the current five-year period is no longer applicable because it was put in place in 2017 to account for the remaining maturity of the NGN Program, which was set to mature in 2021. Commenters expressed that a shorter modeling period is also more appropriate because the duration of economic recessions was less than five years. Commenters emphasized the applicability of a shorter period, noting the Federal Reserve baseline and severely adverse recession scenarios are based on 13 quarter terms. Other commenters that supported using a longer period than five years suggested modeling consistent with business and economic cycle trends that typically exceed five years.

The Board disagrees with commenters that state the Share Insurance Fund's performance horizon should be less than five years. As outlined in its July 2017 Notice and discussed at the July 2017 Board meeting, a five-year horizon for modeling the Share Insurance Fund was selected for several reasons. One compelling reason is that the National Bureau of Economic Research—the not-for-profit research organization that establishes the beginning and end of U.S. business cycles—has calculated that, from 1854 through 2020, the United States has averaged 59 months from the peak of one business cycle to the next. If the modern era (1945 to 2020) is considered, this cycle extends to 75 months.

Though a recession may end, the economy may remain weak during the recovery period. A struggling economy also poses risks to credit unions, and a thorough analysis of the Share Insurance Fund's equity position needs to account for the period of continued economic weakness, which more realistically reflects a recession's effects on the credit union industry. A primary reason the NCUA's projections extend the Federal Reserve's 39-month (13 quarters) scenario to 60 months is that it may take more than 39 months for the effects of the recession and the weak recovery to produce losses. Five years is also consistent with the agency's strategic planning cycle. Therefore, the Board plans to retain a modeling horizon of five years.

Potential Decline in Value of the Share Insurance Fund's Claims on the Corporate Asset Management Estates

Many commenters recommended eliminating the modeled potential decline in value of the Share Insurance Fund's claims on corporate asset management estates since the estates are almost fully resolved and no longer pose a material impact to the modeled results. Commenters felt any remaining impact of the corporate resolution program is likely immaterial and therefore not needed in the analysis.

The Board agrees with the commenters. The last NGN certificate matured in June of 2021. The remaining assets of the corporate asset management estates have not been fully liquidated yet, but the Board agrees this component in the NOL calculation can be eliminated as the exposure has significantly declined and will be fully resolved within the next modeling period.

Decline in the Equity Ratio Through the End of the Following Year Without an Economic Downturn

The majority of comments on this issue supported eliminating the projected equity ratio decline from the NOL analysis through the end of the following year without an economic downturn. The rationale provided was the near completion of the NGN Program, which negates the need to analyze the projected equity ratio decline through the end of the following year as a backstop to ensure the Share Insurance Fund could stay above 1.2 percent under a moderate recession during the remaining life of the NGNs. One commenter supported retaining the analysis and suggested that the NCUA standardize the period used in the forecast.

The Board agrees with the commenters. This component of the NOL calculation was originally intended to protect against a decline in the equity ratio while the NGNs were outstanding. The NGNs have all matured, and while there are remaining Legacy Assets, the impact of a decline in their value is no longer significant to this analysis.

Public Comment Only if the Normal Operating Level Were To Change by a Larger Amount Than One Basis Point

Fourteen commenters offered comments on NCUA's current policy of notifying and requesting public comment in the event the NOL changes by more than one basis point. Nine of these commenters favored keeping this requirement in the policy, with most citing the potential impact on credit unions and transparency as the basis for their view. One commenter expressed that even one basis point reflects a large dollar amount and has a material impact on individual credit unions.

The current policy to notify and request comment is necessary to provide transparency involving actions taken regarding the management of the Share Insurance Fund. Commenters believe it is sound public policy to provide stakeholders the opportunity to participate in considerations of even modest adjustments to the NOL and other adjustments that impact the Share Insurance Fund (referring to the Overhead Transfer Rate). One commenter supported continuation of the notice and comment practice but suggested a range of three to five basis points would provide the Board sufficient latitude to adjust the NOL without a full comment period.

Two commenters stated public comment is warranted any time the NOL calculation results in an NOL above 1.3 percent. Individual commenters expressed the following:

- NCUA eliminating the comment requirement for a one basis point change is concerning because it may trigger NCUA to make a series of one basis point increases without the opportunity for public comment.
- Public comment is only necessary if the change prompts a required premium for all credit unions.
- Public comment should be required for all NOL changes, regardless of amount.

Many of the commenters stressed the importance for the Board to consider setting the NOL at a level that achieves a balance between a stable Share Insurance Fund equity position and minimizing financial strain on credit unions. Commenters noted that preserving as much members' equity as possible supports a credit union's mission of providing products and services to their members. Commenters also noted the majority of credit unions are well capitalized and pose little risk to the Share Insurance Fund. Credit unions with higher risk to the Share

Insurance Fund are properly identified and working toward resolution, as evidenced by the low number of failures that pose a cost to the Share Insurance Fund.

Many commenters expressed the prolonged history and adequacy of a NOL of 1.3 percent, stating the Board is provided sufficient tools within the Act (premiums and distributions) to manage the Share Insurance Fund's equity within the statutory range of 1.2 percent and 1.5 percent. Many of these commenters cited the more recent NOLs the Board set at 1.39 percent in 2017 and 1.38 percent in 2019 were based on the closure of the Temporary Corporate Credit Union Stabilization Fund (Stabilization Fund) and the consolidation of the Stabilization Funds' assets and liabilities into the Share Insurance Fund. In the commenters' view, these do not reflect an appropriate NOL going forward.

Other commenters expressed concern over NCUA's budget. These commenters focused on the agency's need to manage expenses to reduce the Share Insurance Funds' obligation to fund a portion of NCUA's operating budget, thus maintaining higher levels of equity in the Share Insurance Fund and minimizing the credit union industry's obligation.

The Board agrees public comment, although not required, could be helpful when considering a change to the NOL policy or methodology. The Board also wishes to clarify two points that may have confused some commenters. Several commenters stated public comment should be requested anytime the NOL results in a premium or potential premium. The NOL does not trigger a premium, but rather establishes the point above which a distribution is required. The actual equity ratio is measured against the NOL to determine if a distribution is required. The Board may only levy premiums when the Share Insurance Fund's actual equity ratio falls below 1.30 percent. Even if the actual equity ratio is below 1.30 percent, the Board weighs other factors, including financial projections, prior to determining whether to assess a premium.

The Board believes the NOL must be set based on a quantitative and qualitative analysis, with the quantitative analysis being the primary driver in setting the NOL and the qualitative factors considered by the Board, as appropriate. The Board agrees with commenters that a request for public comment, although not required, is helpful if the NOL changes. The Board will continue seeking public comment when the NOL changes by more than one basis point.

Should the NOL be re-evaluated in the midst of an economic downturn or should it be left unchanged until the onset of an economic recovery?

Ten commenters responded to the issue of whether the NCUA should reevaluate the NOL in an economic downturn or leave it unchanged until the onset of an economic recovery. Three commenters stated the NOL should be continuously evaluated and one stated the NOL should not be changed. The remaining commenters emphasized the need for the process to be standardized and for NCUA to strike a balance between safeguarding the Share Insurance Fund and avoiding overburdening credit unions and their members.

The Board believes the current process is standardized and based on the risk inherent in the Share Insurance Fund. The recent economic downturn due to the COVID–19 pandemic resulted in unusual share growth and volatility in the financial markets. The Board will continue to apply a standardized approach to calculating the NOL while also using experience and judgment to determine if the NOL should remain unchanged under such circumstances.

Should the Normal Operating Level be re-evaluated on qualitative factors based on the COVID–19 pandemic?

Ten commenters responded to the question regarding whether the NOL should be re-evaluated on qualitative factors based on the COVID–19 pandemic. Seven commenters stated the NCUA should not re-evaluate the NOL based on abnormal events with a high level of uncertainty. Several commenters stated they were opposed to the inclusion of qualitative factors as it would reduce transparency. Three commenters stated some support for evaluating factors due to an economic downturn. One commenter stated the NOL should be evaluated holistically, accounting for both data and environmental factors. Another commenter expressed support for a policy that is based on historical record that all U.S. recessions would last only a few months, as has generally been the case since the Great Depression. Finally, one commenter reiterated that the NOL should always be re-evaluated based on qualitative factors, but the policy should be to look beyond the numbers and make decisions based on actual or perceived risk to the Share Insurance Fund and the credit union industry.

The Board agrees the NOL policy should not be constructed to react to single events such as the current pandemic and the methodology should be quantitative and qualitative, with the quantitative analysis being the primary driver in setting the NOL and the qualitative factors considered by the Board, as appropriate. In terms of qualitative factors, the Board reserves the right to consider environmental factors in the decision to change the NOL or retain it at its current level given all available information. Unusual non-quantitative factors affecting the decision regarding the NOL may be disclosed if the impact is material.

Is there any other information that the Board should consider when setting the NOL?

Fourteen commenters offered responses regarding additional information the Board should consider when setting the NOL. Nine commenters suggested the Board set the NOL at the pre-2017 level of 1.30 percent. The rationales presented include:

- The risk from the merger of the Stabilization Fund no longer exists,
- The Board cannot assess a premium when the equity ratio is above 1.30 percent, and
- The NCUA should not hold more equity than legally required, except for identifiable losses.

Commenters also voiced opposition to any statutory changes removing the 1.50 percent NOL ceiling or removing the restriction on premiums when the equity ratio is at or above 1.30 percent. Several commenters stated the NCUA should convert all Share Insurance Fund accounting to private generally accepted accounting principles (GAAP) to allow for earlier recognition of the one percent capitalization deposit adjustment. One commenter stated that, if the NCUA wanted to manage to a NOL higher than 1.30 percent, there would be a couple of options, including but not limited to cutting operating expenses, increasing investment yields, or using its borrowing authority. Finally, one commenter recommended the Board reconsider the current NOL policy objectives. The commenter stated the NOL does not prevent impairment of the contributed capital deposit and setting the NOL has very little to do with public confidence in federal share insurance and the equity ratio declining below 1.20 percent over a five-year period. What matters is identifying and preparing for risks that threaten the Share Insurance Fund's equity ratio.

The Board does not agree with arbitrarily setting the NOL. The NOL represents the level of equity the Share Insurance Fund should have to meet the

policy objectives based on a robust modeling of risk.

While commenters provided feedback opposing any statutory changes removing the 1.50 percent ceiling on the equity ratio or the 1.30 percent cap on the Board's ability to charge a premium, the Board has determined these comments are outside the scope of this request. These changes would be a matter for Congress to decide. However, the current statutory restrictions are a constraint on the Board's ability to pursue a counter-cyclical approach to managing the Share Insurance Fund.

Regarding changing the accounting methodology for the Share Insurance Fund, the NCUA offers the following response. GAAP treatment does not directly tie to the NOL policy and is considered beyond the scope of this request. This can be considered separately as appropriate.

With respect to the audit, the NCUA's Office of Inspector General engages an independent auditor to express an opinion on the NCUA's financial statements based on their audit and in accordance with auditing standards. The 2020 audit opinion indicated the Share Insurance Fund's financial statements present fairly, in all material respects, the financial position of the Share Insurance Fund in accordance with U.S. GAAP. Share Insurance Fund footnote disclosure numbers eight and fourteen include detailed financial information about the NGN program and the Asset Management Estate Fiduciary Revenues, Expenses, Assets and Liabilities. These footnote disclosures and the amounts contained within them are fully audited as part of the Share Insurance Fund's financial statement audit.

With regard to the comments stating that if the NCUA wanted to manage to an NOL higher than 1.30 percent there would be a couple of options, including cutting operating expenses, increasing investment yields, or using its borrowing authority, the Board notes that it controls operating expenses to the extent possible consistent with having sufficient resources to achieve the agency's mission. The Board has limited options to increase investment yields, as those are determined by the market and the Share Insurance Fund is limited by law to investing in ''any interest-bearing securities of the United States or in any securities guaranteed as to both principal and interest by the United States or in bonds or other obligations which are lawful investments for fiduciary, trust, and public funds of the United States.'' [9] Finally, borrowing funds on behalf of the Share Insurance Fund would be a liability and would not increase the equity ratio.

Regarding the commenter who offered specific comments on the NOL policy objectives, the Board offers the following responses: The Board believes having a robust methodology to determine what level of equity the Share Insurance Fund would need to prevent impairment of the one percent capitalization deposit, and to prevent it from falling below 1.20 percent over five years in a moderate recession, bolsters public confidence. The Board agrees that it is important to identify and prepare for risks that threaten the Share Insurance Fund. The NOL policy is designed to determine the risk to Share Insurance Fund under a stressed environment, which is when losses generally occur.

[9] 12 U.S.C. 1783(c).

Final Action

The Board will retain the current objectives for setting the NOL. When setting the NOL, the Board will seek to satisfy the following objectives:

- Retain public confidence in federal share insurance;
- Prevent impairment of the one percent contributed capital deposit; and
- Maintain the Share Insurance Fund through a moderate recession without the equity ratio declining below 1.20 percent over a five-year period.

The impact of changes in value of the corporate asset management estates and the decline in the equity ratio through the end of the following year without an economic downturn will be removed from the NOL calculation. The Board will continue to use a decline in the Share Insurance Fund's equity in a moderate recession to estimate the additional equity needed to prevent the equity ratio from falling below 1.20 percent. Any change to the normal operating level of more than 1 basis point shall be made only after a public announcement of the proposed adjustment and opportunity for comment. In soliciting comment, the NCUA will issue a public report, including data supporting the proposal.

By the National Credit Union Administration Board on December 16, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2021–27639 Filed 12–20–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

Civil Penalty Adjustments for 2022

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of civil penalty adjustments for 2022.

SUMMARY: The National Endowment for the Humanities is giving notice of the adjusted maximum and minimum civil monetary penalties that it may impose, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, for violations of its New Restrictions on Lobbying and Program Fraud Civil Remedies Act regulations. The updated penalty amounts are adjusted for inflation and are effective from January 15, 2022, through January 14, 2023.

DATES: The updated civil penalties in this notice are applicable to penalties assessed on or after January 15, 2022, if the associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *gencounsel@neh.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Inflation Adjustment Act),[1] directs each Executive agency to make an annual inflation adjustment for each civil monetary penalty provided by law within the jurisdiction of the agency, and to publish notice of each such adjustment in the **Federal Register**. An agency adjusts a civil monetary penalty by increasing the maximum amount of such penalty (or the range of minimum and maximum amounts, as applicable) by the percentage by which the Consumer Price Index for All Urban Consumers (CPI–U) for the month of October preceding the date of adjustment (in this case, October 2021) exceeds the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment (in this case, October 2020), then rounding each amount to the nearest dollar.

The National Endowment for the Humanities (NEH) administers two civil monetary penalties subject to adjustment pursuant to the Inflation Adjustment Act: A civil monetary penalty that NEH may impose for violation of its New Restrictions on Lobbying regulation (the Lobbying Civil Monetary Penalty)[2] and a civil monetary penalty that NEH may impose under its Program Fraud Civil Remedies Act Regulations (the PFCRA Civil Monetary Penalty).[3] Each regulation provides for adjustment of its respective civil monetary penalty by notice in the **Federal Register**.[4]

2. 2022 Adjustments for Inflation

The CPI–U for October 2021 was 276.589, and the CPI–U for October 2020 was 260.388. Between October 2020 and October 2021, the CPI–U increased by 6.222 percent.[5] Therefore, NEH will adjust each civil monetary penalty amount by multiplying it by 1.06222 and rounding to the nearest dollar.

A. 2022 Adjustment to Lobbying Civil Monetary Penalty

For 2021, the Lobbying Civil Monetary Penalty had a minimum amount of $20,731 and a maximum amount of $207,314.[6] Therefore, the adjusted minimum Lobbying Civil Monetary Penalty for 2022 is $22,021 ($20,731 multiplied by 1.06222) and the adjusted maximum Lobbying Civil Monetary Penalty for 2022 is $220,213 ($207,314 multiplied by 1.06222).

Thus, the Lobbying Civil Monetary Penalty, following the 2022 adjustment, has a minimum amount of $22,021 and a maximum amount of $220,213.

TABLE 1—ANNUAL ADJUSTMENTS TO LOBBYING CIVIL MONETARY PENALTY, 2016–2022

Year	Baseline penalty range	Applicable multiplier based on percent increase in CPI–U	New baseline penalty range
2016	$10,000–$100,000	[7] 1.89361	$18,936–$189,361
2017	18,936–189,361	[8] 1.01636	19,246–192,459
2018	19,246–192,459	[9] 1.02041	19,639–196,387
2019	19,639–196,387	[10] 1.02522	20,134–201,340
2020	20,134–201,340	[11] 1.01764	20,489–204,892
2021	20,489–204,892	[12] 1.01182	20,731–207,314
2022	20,731–207,314	[13] 1.06222	22,021–220,213

B. 2022 Adjustment to PFCRA Civil Monetary Penalty

For 2021, the PFCRA Civil Monetary Penalty had a maximum amount of $11,803.[14] Therefore, the new, post-adjustment minimum penalty for 2022 under NEH's PFCRA regulation is $12,537 ($11,803 multiplied by 1.06222).

[1] 28 U.S.C. 2461 note.

[2] 45 CFR 1168.400(a), (b), (e).

[3] 45 CFR 1174.3(a), (b).

[4] 45 CFR 1168.400(g), 1174.3(f).

[5] OMB Memorandum M–22–07 (December 15, 2021).

[6] Table 1 details the annual adjustments to the Lobbying Civil Monetary Penalty for years 2016–2022. NEH made the adjustments for years 2016–2020 when it amended its New Restrictions on Lobbying regulation on April 21, 2020. 85 FR 22025.

[7] OMB Memorandum M–16–06 (February 24, 2016).

[8] OMB Memorandum M–17–11 (December 16, 2016).

[9] OMB Memorandum M–18–03 (December 15, 2017).

[10] OMB Memorandum M–19–04 (December 14, 2018).

[11] OMB Memorandum M–20–05 (December 16, 2019).

[12] OMB Memorandum M–21–10 (December 23, 2020).

[13] OMB Memorandum M–22–07 (December 15, 2021).

[14] Table 2 details the annual adjustments to PFCRA Civil Monetary Penalties for years 2016–2022. NEH made the adjustments for 2016–2021 when it adopted its Program Fraud Civil Monetary Penalties Act Regulations. 86 FR 44626.

TABLE 2—ANNUAL ADJUSTMENTS TO PFCRA CIVIL MONETARY PENALTIES, 2016–2022

Year	Baseline maximum penalty	Applicable multiplier based on percent increase in CPI–U	New baseline maximum penalty
2016	$5,000	[15] 2.15628	$10,781
2017	10,781	[16] 1.01636	10,957
2018	10,957	[17] 1.02041	11,181
2019	11,181	[18] 1.02522	11,463
2020	11,463	[19] 1.01764	11,665
2021	11,665	[20] 1.01182	11,803
2021	11,803	[21] 1.06222	12,537

Dated: December 16, 2021.

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2021–27621 Filed 12–20–21; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

RIN 3145–AA58

Notice on Penalty Inflation Adjustments for Civil Monetary Penalties

AGENCY: National Science Foundation.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2022.

SUMMARY: The National Science Foundation (NSF or Foundation) is providing notice of its adjusted maximum civil monetary penalties, effective January 15, 2022. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

FOR FURTHER INFORMATION CONTACT: Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703.292.5055.

SUPPLEMENTARY INFORMATION: On June 27, 2016, NSF published an interim final rule amending its regulations to adjust, for inflation, the maximum civil monetary penalties that may be imposed for violations of the Antarctic Conservation Act of 1978 (ACA), as amended, 16 U.S.C. 2401 *et seq.,* and the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801, *et seq.* These adjustments are required by the 2015 Act. The 2015 Act also requires agencies to make subsequent annual adjustments for inflation. Pursuant to OMB guidance dated December 15, 2021, the cost-of-living adjustment multiplier for 2022 is 1.06222. Accordingly, the 2022 annual inflation adjustments for the maximum penalties under the ACA are $18,898 ($17,791 × 1.06222) for violations and $31,980($30,107 × 1.06222) for knowing violations of the ACA. Finally, the 2022 annual inflation adjustment for the maximum penalty for violations under PFCRA is $12,537 ($11,803 × 1.06222).

Dated: December 16, 2021.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–27583 Filed 12–20–21; 8:45 am]

BILLING CODE 7555–01–P

[15] OMB Memorandum M–16–06 (February 24, 2016).

[16] OMB Memorandum M–17–11 (December 16, 2016).

[17] OMB Memorandum M–18–03 (December 15, 2017).

[18] OMB Memorandum M–19–04 (December 14, 2018).

[19] OMB Memorandum M–20–05 (December 16, 2019).

[20] OMB Memorandum M–21–10 (December 23, 2020).

[21] OMB Memorandum M–22–07 (December 15, 2021).

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244; NRC–2021–0223]

Exelon Generation Company, LLC; R.E. Ginna Nuclear Power Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to an October 6, 2021, request from Exelon Generation Company, LLC, as supplemented by letter dated November 15, 2021, which requested a one-time exemption from the NRC regulations, to postpone the conduct of the offsite portions of the R.E. Ginna Nuclear Power Plant biennial emergency preparedness (EP) exercise until a date prior to July 20, 2022.

DATES: The exemption was issued on December 15, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0223 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0223. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: V. Sreenivas, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2597, email: *V.Sreenivas@nrc.gov*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: December 16, 2021.

For the Nuclear Regulatory Commission.

Venkataiah Sreenivas,

Project Manager, Plant Licensing Branch 1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Nuclear Regulatory Commission

Docket No. 50–244

Exelon Generation Company, LLC; R.E. Ginna Nuclear Power Plant; Exemption

I. Background

Exelon Generation Company, LLC (Exelon or the licensee) is the holder of Facility Operating License No. DPR–18, which authorizes operation of the R.E. Ginna Nuclear Power Plant (Ginna). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Wayne County, New York.

II. Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix E, Section IV.F.2.c requires that ''Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan.'' By letter dated October 6, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML21279A112), as supplemented by letter dated November 15, 2021 (ADAMS Accession No. ML21320A054), the licensee requested an exemption from this requirement that would allow the licensee to delay conduct of certain offsite portions of a biennial emergency preparedness (EP) exercise required to be completed by December 31, 2021 to be completed prior to July 20, 2022.[1] The licensee's request states that because of a series of Hurricanes/Tropical Storms (Henri and Ida) that struck the State of New York during the period of August 21–23, 2021 and September 1–3, 2021, causing significant widespread damage throughout the State and leading to Presidential Disaster Declarations, as well as the impact on State and local resources from Henri and Ida and the continued Coronavirus Disease 2019 (COVID–19) public health emergency, the licensee was unable to find a suitable time agreeable with Offsite Response Organizations (OROs) to complete the necessary offsite exercise objective by the end of Calendar Year (CY) 2021, and an exemption is being pursued.

By letter dated August 24, 2021 (ADAMS Accession No. ML21236A114), the NRC was notified by Exelon that the State of New York Office of Emergency Management (OEM), Wayne and Monroe Counties, and other affected OROs would not be available to participate in the scheduled August 24, 2021 biennial EP exercise due to the aftermath of Hurricane/Tropical Storm Henri, which occurred during the period of August 21–23, 2021. Exelon still conducted its biennial EP exercise for the Ginna facility as scheduled; however, only the onsite portions of the exercise were performed. The August 24, 2021 letter to the NRC also stated that Exelon would pursue regulatory relief if arrangements with OROs and Federal stakeholders could not be made prior to the end of CY 2021 so that necessary offsite exercise criteria/objectives could be demonstrated.

Based on recent discussions between Exelon, supporting OROs, and Federal stakeholders, it was determined that rescheduling participation to complete the applicable offsite exercise objectives would not be feasible prior to the end of CY 2021 due to the impacts on the availability of the OROs and Federal stakeholders caused by the significant devastation from Hurricane/Tropical Storm Henri and later Ida and the continued COVID–19 public health emergency. On September 1, 2021, a teleconference was held with representatives from the State of New York OEM, Exelon, Federal Emergency Management Agency (FEMA), and other supporting OROs related to deferring/postponing the completion of ORO exercise criteria/objectives until sometime in 2022. Subsequently, in a telephone conversation between Exelon and FEMA representatives on October 1, 2021, FEMA indicated that they were not opposed to postponing FEMA-evaluated exercise criteria/objectives until CY 2022. FEMA noted that completion of the remaining exercise criteria/objectives must occur prior to July 20, 2022.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, Appendix E, when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

A. The Exemption is Authorized by Law

This exemption would accommodate the impacts on the licensee's offsite response organizations from Hurricanes Henri and Ida and the continued COVID–19 public health emergency by postponing the select functions of the offsite portion of the exercise from the previously scheduled date of August 24, 2021 until a date prior to July 20, 2022.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50, Appendix E. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR part 50, Appendix E, Section IV.F.2.c is to ensure that the emergency organization personnel are familiar with their duties, to identify and correct any weaknesses that may exist in the licensee's EP Program, and to test and maintain interfaces among affected State and local authorities and the licensee. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. The last Ginna full participation biennial EP exercise was conducted on August 20, 2019. Conducting the remaining offsite portions of the Ginna biennial EP exercise after CY 2021 places the exercise outside of the required biennium. Since the last biennial EP exercise on August 20, 2019, the licensee has conducted nine (9) full-scale, integrated performance indicator drills as well as numerous training sessions with the State and local response organizations. These drills and training sessions exercised all the proposed rescheduled offsite functions and support the licensee's assertion that it has a continuing level of engagement to ensure that the emergency organization personnel are familiar with their duties, to identify and correct any weaknesses that may exist in the licensee's EP Program, and to test and maintain interfaces among affected State and local authorities and the licensee. The NRC staff has determined the licensee has met the purposes underlying the 10 CFR part 50, Appendix E, Section IV.F.2.c requirement by having conducted these series of drills and training sessions.

In addition, no new accident precursors are created by allowing the licensee to postpone the selected offsite portions of the exercise from CY 2021 until a date prior to July 20, 2022. Thus, the probability and consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The proposed exemption would allow rescheduling of the specific offsite portions of the biennial EP exercise from the previously scheduled date of August 24, 2021 until a date prior to July 20, 2022. This change to the biennial EP exercise schedule has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

D. Special Circumstances

In order to grant exemptions in accordance with 10 CFR 50.12, special circumstances must be present. Special circumstances per

[1] The licensee's application requests deferral of offsite portions of the EP exercise until a date no later than July 20, 2022. However, also stated in the initial application and supplement, FEMA and the State of New York state the exercise must be completed prior to July 20, 2022. The licensee states in its supplement that it agrees to the timeframe of FEMA and the State of New York. Therefore, the staff interprets the request as supplemented to be completion of the exercise prior to July 20, 2022.

10 CFR 50.12 that apply to this exemption request are 10 CFR 50.12(a)(2)(ii) and (v). Special circumstances, per 10 CFR 50.12(a)(2)(ii), are present when: ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' Section IV.F.2.c of 10 CFR part 50, Appendix E requires licensees to exercise offsite plans biennially with full or partial participation by each offsite authority having a role under the plan. The underlying purposes of 10 CFR part 50, Appendix E, Section IV.F.2.c requiring licensees to exercise offsite plans with offsite authority participation is to ensure that the emergency organization personnel are familiar with their duties, to identify and correct any weaknesses that may exist in the licensee's EP Program, and to test and maintain interfaces among affected State and local authorities, and the licensee. Although the affected OROs and FEMA were unable to participate in the scheduled exercise for August 24, 2021, no NRC findings (ADAMS Accession No. ML 19263A647) nor FEMA deficiencies (ADAMS Accession No. ML21307A042) were identified at the previous biennial EP exercise conducted on August 20, 2019. As previously discussed, the licensee has conducted nine (9) full-scale, integrated performance indicator drills as well as numerous training sessions with the State and local response organizations in 2019 through 2021. The NRC staff has determined that the licensee's drill performances and training sessions have been adequate to ensure that the emergency organization personnel are familiar with their duties, to identify and correct any weaknesses that may exist in the licensee's EP Program, and to test and maintain interfaces among affected State and local authorities and the licensee during this period, satisfying the underlying purpose of the rule.

To accommodate the scheduling of exercises, the NRC has allowed licensees the flexibility to schedule their exercises at any time during the biennial calendar year. This provides a 13- to 35-month window to schedule exercises while still meeting the biennial requirement. This one-time change in the exercise schedule increases the interval between biennial exercises, however conducting the postponed exercise on a date prior to July 20, 2022, falls within the 35-month window, thus meeting the intent of the regulation.

Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. Exelon requests a temporary, one-time exemption for the evaluation of certain offsite elements/objectives from the CY 2021 biennial EP exercise at Ginna. Based on discussions between Exelon, supporting OROs, and Federal stakeholders, it was determined that rescheduling participation to complete the applicable offsite exercise objectives would not be feasible prior to the end of CY 2021 due to the impacts on the availability of the OROs and Federal stakeholders caused by the significant devastation from Hurricane/Tropical Storm Henri and later Ida and the continued COVID–19 public health emergency. On September 1, 2021, a teleconference was held with representatives from the State of New York OEM, Exelon, FEMA, and other supporting OROs related to deferring/postponing the completion of ORO exercise criteria/objectives until sometime in CY 2022. Subsequently, in a telephone conversation between Exelon and FEMA representatives on October 1, 2021, FEMA indicated that they were not opposed to postponing FEMA-evaluated exercise criteria/objectives until CY 2022. FEMA noted that completion of the remaining exercise criteria/objectives must occur prior to July 20, 2022. Attachment two to the licensee's application documents that the State of New York OEM was unable to find a suitable window of available dates in CY 2021 to accommodate the offsite portions of the Ginna biennial EP exercise. Attachment four to the licensee's application documents the scheduling conflicts identified by the State of New York OEM preventing the exercise from occurring in CY 2021. Therefore, the licensee has made good faith efforts to comply with the regulations. Granting the requested exemption from the 10 CFR part 50, Appendix E, Section IV.F.2.c requirement to conduct the specific offsite portions of the biennial EP exercise in CY 2022, instead of CY 2021, would provide only temporary relief from the applicable regulations. Additionally, the licensee has acknowledged returning to the previous biennial EP exercise schedule of every odd year and conducting the next follow-on biennial EP exercise in CY 2023, which will include both onsite and offsite participation.

Granting the exemption would still achieve the underlying purpose of 10 CFR part 50, Appendix E, Section IV.F.2.c, the licensee has made a good faith effort to comply with the regulation, and the exemption would grant only temporary relief from the applicable regulation. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and (v) exist for the granting of an exemption.

E. Environmental Considerations

NRC approval of the requested exemption is categorically excluded under 10 CFR 51.22(c)(25), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements.

The NRC staff also determined that approval of this exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, change any of the assumptions or limits used in the licensee's safety analyses, or introduce any new failure modes. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because this exemption does not affect any effluent release limits as provided in the licensee's technical specifications or by the regulations in 10 CFR part 20, ''Standards for Protection Against Radiation.'' There is no significant increase in individual or cumulative public or occupational radiation exposure because this exemption does not affect limits on the release of any radioactive material, or the limits provided in 10 CFR part 20 for radiation exposure to workers or members of the public.

There is no significant construction impact because this exemption does not involve any changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the licensee's safety analysis. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the requested exemption.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, 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, special circumstances are present. Therefore, the Commission hereby grants Exelon Generation Company, LLC an exemption from the requirements of 10 CFR part 50, Appendix E, Section IV.F.2.c. to conduct the specific offsite portion of the Ginna biennial EP exercise required for CY 2021, permitting that part of the exercise to be conducted in coordination with FEMA, NRC Region I and Ginna by a date prior to July 20, 2022. This exemption expires on July 20, 2022, or when the offsite biennial EP exercise is performed in CY 2022, whichever occurs first.

Dated at Rockville, Maryland, this 15th day of December 2021.

For the Nuclear Regulatory Commission.

Bo M. Pham,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–27574 Filed 12–20–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0096]

Control of Heavy Loads at Nuclear Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Regulatory

Guide (RG) 1.244 (Revision 0), ''Control of Heavy Loads at Nuclear Facilities.'' RG 1.244 is a new regulatory guide to endorse selected national consensus standards related to heavy load handling that replace NRC technical reports. The national consensus standards provide greater flexibility in the selection of lifting equipment and have incorporated recent operating experience to provide a more accurate risk-informed perspective of heavy load handling activities.

DATES: Revision 0 to RG 1.244 is available on December 21, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0096 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0096. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

Revision 0 to RG 1.244 and the regulatory analysis may be found in ADAMS under Accession Nos. ML21006A346 and ML21006A337, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Steven R. Jones, Office of Nuclear Reactor Regulation, telephone: 301–415–2712, email: *Steve.Jones@nrc.gov*; or Stanley Gardocki, Office of Nuclear Regulatory Research, telephone: 301–415–1067, email: *Stanley.Gardocki@nrc.gov*. Both are staff members at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a new guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

RG 1.244 was issued with a temporary identification of Draft Regulatory Guide, DG–1381, ADAMS Accession No, ML21006A335.

II. Additional Information

The NRC published a notice of the availability of DG–1381 in the **Federal Register** on May 5, 2021 (86 FR 23750) for a 30-day public comment period. The public comment period was extended and closed on July 5, 2021. Public comments and the staff responses to the public comments on DG–1381 are available in ADAMS under Accession No. ML21244A455.

This new regulatory guide provides guidance for control of heavy loads at nuclear facilities to provide reasonable assurance safety functions would be accomplished following handling system equipment failure. The NRC has provided guidance in technical reports NUREG–0612, ''Control of Heavy Loads in Nuclear Power Plants,'' dated August 1980 (ADAMS Accession No. ML070250180) and NUREG–0554, ''Single Failure-Proof Cranes for Nuclear Power Plants,'' dated May 1979 (ADAMS Accession No. ML110450636). However, this guidance has not been updated and does not reflect a current risk-informed perspective regarding heavy load handling activities. To provide updated guidance, the NRC is issuing RG 1.244 which endorses, with clarifications, the following consensus standards:

- American Society of Mechanical Engineers (ASME) Standard (Std.) NML–1, ''Rules for the Movement of Loads Using Overhead Handling Equipment in Nuclear Facilities,'' 2019.
- ASME Std. NOG–1, ''Rules for Construction of Overhead and Gantry Cranes (Top Running Bridge, Multiple Girder),'' 2020.
- ASME Std. BTH–1, ''Design of Below-the-Hook Lifting Devices,'' 2017, Chapters 1 through 3.

The use of consensus standards where available is consistent with NRC Commission Policy and provides updated information reflecting operating experience.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Issuance of this RG does not constitute backfitting as defined in Section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants.'' As explained in this regulatory guide, applicants and licensees are not required to comply with the positions set forth in this regulatory guide.

Dated: December 15, 2021.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Branch Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2021–27550 Filed 12–20–21; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-day notice and request for comments.

SUMMARY: The Peace Corps will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval. In accordance with the Paperwork Reduction Act of 1995, we are

requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment in the **Federal Register**.

DATES: Submit comments on or before January 20, 2022.

ADDRESSES: Comments should be addressed to Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Virginia Burke at (202) 692–1887, or the Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Interview Rating Tool Form.

OMB Control Number: 0420–0555.

Agency Form Number: PC–2134.

Type of Request: Reinstatement, with change, of a previously approved information collection for which approval has expired, for three years.

Originating Office: Office of Volunteer Recruitment and Selection.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public: Rating Tool Interview Form.

(a) *Annual Estimated Number of Respondents:* 10,000.

(b) *Frequency of Response:* One time.

(c) *Estimated Average Burden per Response:* 90 minutes.

(d) *Annual estimated Total Reporting Burden:* 15,000 hours.

(e) *Estimated annual cost to respondents:* 0.00.

General description of collection and purpose: The Peace Corps will use the information as an integral part of the selection process to learn whether an applicant possesses the necessary characteristics and skills to serve as a Peace Corps Volunteer. A Placement Officer conducts an interview with an applicant and fills out the form during the course of the interview. The information is then used to determine if the Office of Volunteer Recruitment and Selection will issue an invitation to the applicant. The Information Collection expired on January 31, 2021. We are seeking reinstatement with change of this information collection and a three-year clearance.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 10, 2021.

Virginia Burke,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2021–27196 Filed 12–20–21; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2022–37; Order No. 6064]

Inbound Competitive Multi-Service Agreements With Foreign Postal Operators

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent filing by the Postal Service that it has entered into the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators (FPOs). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 22, 2021.

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. Summary of the FPO–USPS Agreement FY22–3
III. Notice of Commission Action
IV. Ordering Paragraphs

I. Introduction

On December 14, 2021, the Postal Service filed a notice with the Commission pursuant to 39 CFR 3035.105 and Order No. 546,[1] concerning the inbound portions of an Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (FPO) which the Postal Service seeks to include within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010–34 product).[2]

II. Summary of the FPO–USPS Agreement FY22–3

The FPO–USPS Agreement FY22–3 is intended to become effective on January 1, 2022, and will, unless terminated earlier, expire on December 31, 2022. Except as otherwise agreed by contract, the FPO exchanges mail with the Postal Service and applies the Universal Postal Convention and Universal Postal Convention Regulations to those exchanges. The competitive services offered by the Postal Service to the FPO in FPO–USPS Agreement FY22–3 include rates for inbound tracked packets. Notice at 6. The Postal Service states that ''[m]any rates will be based on a per-piece and per-kilo structure and in Special Drawing Rights. . . .'' *Id.* (footnote omitted). Only the inbound portions of the FPO–USPS Agreement FY22–3 that concern competitive products are included in the proposal filed in this docket. *Id.* Outbound delivery of competitive postal products within the FPO's country have not previously been presented to the Commission and are not presented in this Notice. *Id.*

Accompanying the Notice are:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal;
- Attachment 2—a redacted copy of FPO–USPS Agreement FY22–3;
- Attachment 3—a copy of the Governors' Decision No. 19–1;
- Attachment 4—a certified statement required by 39 CFR 3035.105(c)(2); and
- Supporting financial documentation as separate Excel files.

The Postal Service asserts that ''[t]he FPO–USPS Agreement FY22–3 is functionally equivalent to the baseline agreement filed in Docket No. MC2010–34 because the terms of this agreement are similar in scope and purpose to the terms of the CP2010–95 Agreement'' that is used for functional equivalency analyses of the Inbound Competitive

[1] Docket Nos. MC2010–34 and CP2010–95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Service Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

[2] *See* Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator—FY22–3, December 14, 2021, at 1 (Notice). The Postal Service refers to the agreement as ''FPO–USPS Agreement FY22–3.'' *Id.*

Multi-Service Agreement with Foreign Postal Operators 1 product.[3]

Additionally, the Postal Service asserts that the FPO–USPS Agreement FY22–3 is in compliance with 39 U.S.C. 3633. Notice at 9. The Postal Service states further that the FPO–USPS Agreement FY22–3 is essentially an updated version of the FPO–USPS Agreement FY20–2, which was previously included in the Inbound Competitive Multi-Service Agreements with Postal Operators 1 product.[4]

The Postal Service asserts that its proposed addition of FPO–USPS Agreement FY22–3 to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product is also supported by prior Commission determinations that bilateral agreements with FPOs and negotiated service agreements should be included in the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. Notice at 3–4.

III. Notice of Commission Action

The Commission establishes Docket No. CP2022–37 for consideration of the Notice pertaining to FPO–USPS Agreement FY22–3 and the related rates and classifications. The Commission invites comments on whether the Postal Service's filing is consistent with the requirements of 39 U.S.C. 3633 and 39 CFR 3035.105 and whether it is functionally equivalent to the baseline agreement included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product (MC2010–34). Comments are due no later than December 22, 2021. Public portions of this filing can be accessed via the Commission's website (*www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

[3] Notice at 3. An agreement (the CP2010–95 Agreement) was originally presented to the Commission in Docket No. CP2010–95 for inclusion in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Order No. 546 at 8–10. The CP2010–95 Agreement was subsequently accepted by the Commission as the baseline agreement for functional equivalency analyses of the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. Docket No. CP2011–69, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011, at 5 (Order No. 840). *See also* Notice at 7–9.

[4] Notice at 3. *See* Docket No. CP2020–167, Order Approving Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operator—FY20–2, June 22, 2020, at 7 (Order No. 5560).

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2022–37 for consideration of the matters raised in this docket.
2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments are due no later than December 22, 2021.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2021–27514 Filed 12–20–21; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–31 and CP2022–38]

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:* December 23, 2021.

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:

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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).:* MC2022–31 and CP2022–38; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial EPacket Contract 11 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 15, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* December 23, 2021.

[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).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–27616 Filed 12–20–21; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93788; File No. SR–NYSEArca–2021–90]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of Grayscale Bitcoin Trust (BTC) Under NYSE Arca Rule 8.201–E

December 15, 2021.

On October 19, 2021, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on November 8, 2021.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 23, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates February 6, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2021–90).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27543 Filed 12–20–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93504 (Nov. 2, 2021), 86 FR 61804. Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93795; File No. SR–ICC–2021–022]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC End-of-Day Price Discovery Policies and Procedures

December 15, 2021.

I. Introduction

On October 13, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise ICC's End-of-Day Price Discovery Policies and Procedures (the ''Pricing Policy''). The Pricing Policy formalizes ICC's end-of-day (''EOD'') price discovery process that provides prices for cleared credit default swap (''CDS'') contracts based on submissions from ICC's Clearing Participants.[3] The proposed rule change was published for comment in the **Federal Register** on November 2, 2021.[4] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

As part of ICC's current EOD price discovery process to obtain reliable, market-driven prices of cleared CDS instruments, ICC Clearing Participants (''CPs'') are required to submit daily EOD prices for cleared single name CDS instruments, index CDS instruments, and options on index CDS instruments related to their open positions at ICC in accordance with the Pricing Policy. ICC uses the resulting EOD prices for risk management purposes. ICC is proposing to revise the Pricing Policy with respect to CPs' EOD price submissions for index CDS instruments (''index submissions'').[5]

The Pricing Policy currently allows CPs to provide index submissions in either spread convention or price convention. The proposed rule change would remove the ability for CPs to provide index submissions in spread convention and would require CPs to provide all index submissions in price convention, which ICC explains would standardize its instrument submission requirements and allow ICC to avoid converting between spread and price.[6] ICC represents that it intends to implement the proposed rule change in a phased approach following Commission approval and the completion of any other required governance or internal processes.[7] The proposed specific amendments are summarized as follows.

ICC proposes to amend Subsection 2.2.3 of the Pricing Policy, which sets out the submission format requirements for index instruments. Currently, index submissions may be provided in spread convention or price convention depending on the instrument, as illustrated in Table 8. Under the proposed changes, index submissions would be provided only in price convention, which has two acceptable types, price or upfront. The proposed changes remove Table 8 and language regarding the submission of recovery rates, which relate to submissions provided in spread terms. ICC proposes minor changes to renumber the tables in the Pricing Policy accordingly, and to spell out an abbreviated term ''RR'' as ''recovery rate'' in this subsection.

ICC proposes to amend Subsection 2.2.4 related to the standardization of submissions. Currently, the cross-and-lock algorithm used by ICC to determine EOD prices and potential trades requires inputs in bid-offer format and executes in price terms or spread terms depending on the convention for the considered instrument. Currently, ICC standardizes CP submissions into bid-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Pricing Policy.

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC End-of-Day Price Discovery Policies and Procedures, Exchange Act Release No. 93432 (Oct. 27, 2021); 86 FR 60493 (Nov. 2, 2021) (SR–ICC–2021–022) (''Notice'').

[5] The description herein is substantially excerpted from the Notice.

[6] *See* Notice at 60494.

[7] *Id.*

offer format in either price or spread terms, depending on the convention. Under the proposed changes, the cross-and-lock algorithm would execute in price terms only. The proposed changes would remove language referencing spread terms and distinguishing between price and spread terms. The proposed changes also would remove language differentiating between submissions in price or spread in subpart (a) of Subsection 2.2.4.

ICC proposes similar changes to Subsection 2.3 (End-of-Day Levels and Potential-Trades). As proposed, ICC would no longer determine EOD levels in terms of either spread or price. Specifically, the proposed changes would remove language requiring ICC to execute the cross-and-lock algorithm in spread-space for index instruments with a quote convention of spread, in price-space for index instruments with a quote convention of price, and in price-space for all single name and index option instruments. Under Subsection 2.3.1(g) of the Pricing Policy, ICC currently adjusts outlying submission trade prices for index option, single name, and index instruments with a cross-and-lock convention of price and outlying submission trade spreads for index instruments with a cross-and-lock convention of spread. For index instruments with a cross-and-lock convention of spread, ICC performs a conversion between trade price and spread. The proposed changes would remove the need for ICC to adjust outlying submission trade spreads, including the need for a conversion between trade price and spread.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[8] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act and Rule 17Ad–22(e)(6)(iv) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[10]

As noted above, the proposed rule change would amend several subsections of the Pricing Policy to require CPs to provide all index submissions in price convention rather than in spread convention. Specifically, in Subsection 2.2.3, ICC would remove Table 8 given that ICC's submission requirements for index instruments would no longer accommodate spread convention, and also related language regarding the submission of recovery rates, which relate to submissions provided in spread terms. In Subsection 2.2.4, ICC would amend the cross-and-lock algorithm to execute in price terms (rather than in price or spread terms depending on the convention for the considered instrument), and remove language referencing spread terms and other language that distinguishes or differentiates between price and spread terms. In Subsection 2.3, ICC would remove language requiring ICC to execute the cross-and-lock algorithm in spread-space for index instruments with a quote convention of spread, in price-space for index instruments with a quote convention of price, and in price-space for all single name and index option instruments, and also eliminate the need to adjust outlying submission trade spreads, including the need for conversion between trade price and spread for index instruments with a cross-and-lock convention of spread.

The Commission believes that these aspects of the proposed rule change would simplify the EOD price discovery process for index CDS instruments with standardized submission requirements, and thereby facilitate ICC's risk management of such instruments. Specifically, the Commission believes that, by requiring CPs to provide all index submissions in price convention, ICC would avoid spending additional time and resources for adjusting outlying submission trade spreads and converting between trade price and spread, thereby helping to reduce potential operational risks and inefficiencies in ICC's EOD price discovery and risk management processes for cleared index CDS instruments. The Commission believes that reducing operational risk and inefficiencies by simplifying the EOD submission process would, in turn, enhance the efficiency of ICC's EOD price discovery process and help promote the prompt and accurate clearance and settlement of index CDS.

As noted above, the proposed rule change includes administrative revisions designed to support the substantive changes relating to simplification of the EOD submission process (*e.g.,* removal of Table 8; deletion of language regarding the submission of recovery rates; renumbering of other tables in the Pricing Policy; and providing a complete reference to an abbreviated term). The Commission believes that these administrative changes would also promote the prompt and accurate clearance and settlement of such instruments to the extent such changes support the substantive changes described above.

Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(e)(6)(iv) Under the Act

Rule 17Ad–22(e)(6)(iv)[12] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable. The Commission believes the proposed rule change, by amending several subsections of the Pricing Policy, as described above, to require CPs to provide all index submissions only in price convention rather than allowing submission in either price or spread, should help ICC establish more timely price data on which it may rely when calculating margin requirements that will account for the risks posed by index CDS instruments as part of its overall risk-based margin system and risk management processes.

The Commission believes that the proposed rule change is therefore consistent with Rule 17Ad–22(e)(6)(iv).[13]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act and Rule 17Ad–22(e)(6)(iv) thereunder.[14]

[8] 15 U.S.C. 78s(b)(2)(C).

[9] 17 CFR 240.17Ad–22(e)(6)(iv).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(6)(iv).

[13] 17 CFR 240.17Ad–22(e)(6)(iv).

[14] 17 CFR 240.17Ad–22(e)(6)(iv).

It is therefore ordered pursuant to Section 19(b)(2) of the Act [15] that the proposed rule change (SR–ICC–2021–022), be, and hereby is, approved.[16]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27546 Filed 12–20–21; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93789; File No. SR–NASDAQ–2021–099]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Nasdaq Rule 5815 Regarding the Use of a Panel Monitor Following a Compliance Determination by a Nasdaq Listings Qualification Hearings Panel

December 15, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 10, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5815 regarding the use of a Panel Monitor following a compliance determination by a Nasdaq Listings Qualification Hearings Panel.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq administers a series of rules that govern the initial and continued listing qualifications required of companies listed on the Exchange.[3] In the event that a company fails to maintain compliance with the Listing Rules, Nasdaq Listings Qualifications Staff (''Staff'') will issue a notification informing the company of the deficiency. Where allowed by Nasdaq's rules, Staff's notification may provide for a cure or compliance period or allow the company to submit a plan of compliance for Staff to review.

However, where a company has previously been deficient with a listing requirement and regained compliance pursuant to an exception (''exception'') [4] from a continued listing standard granted by an industry Hearings Panel (''Hearings Panel'') pursuant to Rule 5815(c)(1)(A), under certain circumstances, Nasdaq rules do not allow that company a cure or compliance period or the opportunity to submit a plan to regain compliance in the event it incurs another deficiency within one year of regaining compliance with a previous deficiency. Instead, Exchange Rules 5815(d)(4)(A) or (B) apply. Both rules set out a process by which Staff will issue a Delisting Determination [5] for a company that fails to maintain compliance with one or more listing requirements within one year of having regained compliance with one or more listing requirements pursuant to an exception granted by a Hearings Panel. Once a Delisting Determination letter has been issued to a company pursuant to Rules 5815(d)(4)(A) or 5815(d)(4)(B), the company may then request a hearing before a Hearings Panel to argue in favor of maintaining its Exchange listing. Unless specifically outlined in proposed Rule 5815(d)(4)(C), the process for conducting a review of a Staff Delisting Determination will continue to be governed by Rule 5815.

Rule 5815(d)(4)(A), entitled ''Hearings Panel Monitor,'' provides a Hearings Panel with discretion to monitor a company for a period of up to one year after the date a company regains compliance with a listing standard if it concludes that there is a likelihood that a company will fail to maintain compliance with one or more listing standards during that period (including requirements with which the company was not previously deficient). During this one-year monitoring period, Staff will monitor the company, to confirm compliance with all listing requirements. While Staff monitors all listed companies for compliance with the Exchange's listing standards, if Staff identifies a deficiency with any listing requirement for companies that are being monitored under Rule 5815(d)(4)(A), staff may not provide the company with a cure or compliance period, nor the opportunity to submit a plan to regain compliance with the deficiency. Instead, Staff will issue a Delisting Determination for these companies.

Rule 5815(d)(4)(B) provides that a company that received an exception from a Hearings Panel with respect to the stockholder's equity requirement, periodic filing requirement or a bid price requirement where the company was ineligible for a bid price compliance period under Listing Rule 5810(c)(3)(A)(iii) or (iv), and subsequently regained compliance with the listing requirement that was the subject of the exception, will not be allowed a cure or compliance period or the opportunity to submit a plan of compliance for Staff to review as allowed under Listing Rule 5810(c)(2) if, within one year of regaining compliance, the company subsequently

[3] *See* Nasdaq Rules 5300, 5400, and 5500 Series, outlining requirements for companies seeking to conduct an initial listing on Nasdaq Global Select Market, Nasdaq Global Market and Nasdaq Capital Market, respectively, as well as requirements for continued listing once an initial listing has been completed.

[4] See Rule 5815(c)(1): When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate: (A) Grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted.

[5] See Rule 5805(h): ''Staff Delisting Determination'' or ''Delisting Determination'' is a written determination by the Listing Qualifications Department to delist a listed Company's securities for failure to meet a continued listing standard.

becomes deficient in the same requirement that was the subject of the exception. While limiting the grounds for an immediate Delisting Determination to a recurrence of the initial deficiency in one or more of the three enumerated areas in the rule that gave rise to the previous hearing before the Hearings Panel (*i.e.,* the stockholder's equity requirement, periodic filing requirement or a bid price requirement where the company was ineligible for a bid price compliance period under Listing Rule 5810(c)(3)(A)(iii) or (iv)), Rule 5815(d)(4)(B) also requires Staff to issue a Delisting Determination to the company without providing an opportunity for a cure or compliance period or the opportunity to submit a plan of compliance for Staff to review. While entitled ''No Hearings Panel Monitor,'' the rule amounts to what is in effect a mandatory Hearings Panel Monitor.

The Exchange proposes to amend Rule 5815(d)(4) to clarify the instances under which a Hearings Panel may impose a Panel Monitor and when the implementation of a Panel Monitor is mandatory. In particular, the Exchange proposes to modify, among other changes, the headings to Rules 5815(d)(4)(A) and (B) to ''Discretionary'' and ''Mandatory,'' respectively, to accurately describe the scope of the Panel's authority to implement the Panel Monitor.[6] The Exchange also proposes adding a reference to Rule 5810(c)(3) to clarify that Listings Qualifications Staff will not be permitted to provide a company under a Hearings Panel Monitor with a cure or compliance period after it has receive a Delisting Determination. While the original language in both 5815(d)(4)(A) and (B) included language regarding Staff's inability to afford a company under a Hearings Panel Monitor a cure or compliance period, the current rules do not specifically include a reference to Rule 5810(c)(3) itself. The addition of a specific reference to Rule 5810(c)(3) will remove any potential confusion regarding this point.

Rules 5815(d)(4)(A) and (B) each describe the specific procedures for use of a Panel Monitor. Rule 5815(d)(4)(A) states that in the event a company under a Panel Monitor fails to maintain compliance with a listing requirement, the Hearings Department will schedule a new hearing, with the original Hearings Panel or a new panel if the original panel is unavailable. The rule text also notes that the hearing may be oral or written, at the company's election. The text finally notes that the Hearings Panel will consider the company's compliance history when rendering a decision. The Exchange proposes to amend Rule 5815(d)(4)(A) to remove each of these provisions and add them in proposed Rule 5815(d)(4)(C) which will apply to both 5815(d)(4)(A) and (B).

Under the proposed language, in the event a company under a Panel Monitor fails to maintain compliance with any listing standard, Staff will issue a Delisting Determination. The company must then determine if it wishes to seek an appeal from this determination. The proposed rule change will correct the erroneous inclusion of language in the rule requiring the Hearings Department to promptly schedule a hearing without first receiving a request for appeal from the company.[7] The Exchange proposes removing the language regarding whether the hearing will be oral or written and the language noting that the Hearings Panel may consider the company's compliance history when rendering a decision in order to add that language to proposed Rule 5815(d)(4)(C), a new sub-paragraph that will outline procedures applicable to both instances in which a Panel Monitor has been employed. The Exchange also proposes adding a reference to Rule 5810(c)(3) to remove any confusion that may be created by the current Rule 5815(d)(4)(A) and (B) which both reference the Listings Qualifications Department's inability to grant additional time for the Company to regain compliance despite the specified cure or compliance period allowed for under Rule 5810(c)(3).

The Exchange proposes amending Rule 5815(d)(4)(B) to change the heading from ''No Hearings Panel Monitor'' to ''Mandatory Hearings Panel Monitor.'' Despite the fact that the title is ''No Hearings Panel Monitor'', the rule itself actually outlines a process that calls for the mandatory use of a Hearings Panel Monitor. The proposed new title will remove any confusion brought about by this language. The proposed rule changes also include adding language to the body of the rule specifically calling for the Hearings Panel to impose a Hearings Panel Monitor for a period of one year from the date the company regained compliance with the stockholders' equity, periodic filing or certain bid price listing standards. The Exchange also proposes adding language that will align the language in both Rules 5815(d)(4)(A) and (B) regarding the inability of Staff to grant the company a cure or compliance period or submit a plan to regain compliance. Again, the Exchange proposes adding a specific reference to Rule 5810(c)(3) to clarify that Listings Qualifications Staff will not have the ability to provide a Company under a Hearings Panel Monitor subject to a Delisting Determination additional time to regain compliance with respect to any deficiency. While the current rule prohibits such an extension of time, the Exchange thought it prudent to specifically reference Rule 5810(c)(3) to avoid any possible confusion.

The Exchange also proposes removing language currently found in Rules 5815(d)(4)(A) and (B) which outlines the process that will apply to either situation in which a Panel Monitor has been implemented and add this language in Proposed Rule 5815(d)(4)(C).[8] Specifically, the proposed language will outline how a company may seek an appeal of a Staff Delisting Determination, that the Hearings Department will schedule a hearing with the original Hearings Panel or a new Hearings Panel if the original Hearings Panel is unavailable, that the hearing may be written or oral, and that the Hearings Panel will consider the company's compliance history when rendering its decision. Unless specifically addressed in proposed Rule 5815(d)(4)(C), the procedures for requesting and preparing for a review by a Hearings Panel will continue to be governed by Rule 5815.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the

[6] Staff is not aware of the reason for the original language in Rule 5815(d)(4)(B) stating that that rule would not call for a Panel Monitor.

[7] Historically the Hearings Department has not immediately scheduled a new hearing for a company under a Panel Monitor that has received a Delisting Determination from Staff. A new hearing would not be scheduled until the company in question had requested an appeal from the Delisting Determination. The proposed rule change will simply codify the existing practice of the Hearings Department.

[8] Rule 5815(c)(4)(B) in its present form includes language regarding a company's ability to request a review by a Hearings Panel and the fact that a company's compliance history will be considered by the Hearings Panel when it renders a decision. Rule 5815(c)(4)(B) does not contain language found in 5815(c)(4)(A) regarding Staff issuing a Delisting Determination and the Hearings Department promptly scheduling a hearing upon a company's failure to maintain compliance with a relevant listing standard during the one-year monitoring period, nor the use of the original or new Hearings Panel nor the ability of the hearing to be in written or oral form, at the company's election. Each of the provisions just outlined will apply to both 5815(c)(4)(A) and (B) through the implementation of proposed Rule 5815(c)(4)(C).

[9] 15 U.S.C. 78f(b).

objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by removing any ambiguity as to when a Hearings Panel has the discretion to implement a Hearings Panel Monitor and when the use of a Hearings Panel Monitor is mandatory. The proposed rule will not change the operation of the Hearings Panel Monitor, but will provide clarification as to when a Hearings Panel may impose a Hearings Panel Monitor and when the use of a Hearings Panel Monitor is mandatory under Rule 5815(d)(4)(A) or 5815(d)(4)(B), which are designed to protect investors and the public interest. Under the proposed change to Rule 5815(d)(4)(A), the ability of a Panel to continue to monitor a company's continued compliance for up to one year after the compliance date will remain unchanged during which time the company will not be permitted to provide the Listing Qualifications Department with a plan of compliance with respect to any deficiency that arises during the monitor period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. Similarly, under the proposed change to Rule 5815(d)(4)(B), companies that regain compliance with the shareholder equity, periodic filing or certain bid price requirements will continue to be prohibited from submitting a plan of compliance or be afforded a compliance period to cure the deficiency under Listing Rule 5810(c)(2) or (3) within one year of regaining compliance with the listing requirement in question. The rule change will simply clarify that Rule 5815(d)(4)(B) calls for the mandatory use of a Hearings Panel Monitor.

Nasdaq believes that the prosed rule change's clarification of the mandatory nature of the Hearings Panel Monitor when a company has regained compliance with the shareholders' equity, periodic filing or certain bid price rules will promote fair and orderly markets by eliminating confusion. Nasdaq also believes that the alignment of language used in Rules 5815(d)(4)(A) and (B), including creating a new Rule 5815(d)(4)(C), will also eliminate confusion that could arise due to previous differences in the wording between the similar sections and will ensure that all companies that are subject to a Hearings Panel Monitor, whether required by rule or imposed at the discretion of the Hearings Panel, will be treated in the same manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not expected to have any impact on competition among listed companies nor on competition between exchanges. The proposed rule change will apply equally to all companies that are subject to Panel Monitors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–099 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–099. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–099, and should be submitted on or before January 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

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[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93786; File No. SR–BOX–2021–14]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, in Connection With the Proposed Establishment of BSTX as a Facility of the Exchange

December 15, 2021.

On June 7, 2021, BOX Exchange LLC (''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules in connection with the establishment of BSTX LLC as a facility of the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 24, 2021.[3] On August 3, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 16, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On September 21, 2021, the Commission published the proposed rule change, as modified by Amendment No. 1, for notice and comment and instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7]

Section 19(b)(2) of the Act [8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on June 24, 2021.[9] December 21, 2021 is 180 days from that date, and February 19, 2022 is 240 days from that date. The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates February 19, 2022 as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No.1 (File No. SR–BOX–2021–14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92206 (June 17, 2021), 86 FR 33402 (''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-box-2021-14/srbox202114.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92556, 86 FR 43572 (August 9, 2021). The Commission designated September 22, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-box-2021-14/srbox202114-9251558-250847.pdf.*

[7] *See* Securities Exchange Act Release No. 93094 (September 21, 2021), 86 FR 53365 (September 27, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Notice, *supra* note 3.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93787; File No. SR–LTSE–2021–08]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Modify and Expand the Package of Products and Services Provided to Companies and Clarify Existing Practice Under Rule 14.602

December 15, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2021, Long-Term Stock Exchange, Inc. (''LTSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify and expand the package of products and services provided to Companies under LTSE Rule 14.602 and clarify existing practice under Rule 14.602 with respect to providing Company-specific web pages on the Exchange's website in connection with listing on the Exchange.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange offers complimentary promotional services and listing ceremonies under Rule 14.602 in connection with a Company's approval for listing on the Exchange. The promotional services are tailored to meet the needs of the Company, and allow the Company access to media services that would support the creation of press releases, articles, videos, and podcasts featuring the Company and its personnel.[3] These promotional services

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91054 (February 3, 2021), 86 FR 8812 (February 9, 2021) (SR–LTSE–2020–22) (regarding provision of promotional services and listing ceremonies for listed companies).

also include assistance with distributing such content on traditional and social media platforms, including websites operated by the Exchange.[4] The Exchange also proposes to amend Rule 14.602 to clarify existing practice with respect to providing Company-specific web pages on the Exchange's website in connection with listing on the Exchange.

Under existing Rule 14.602, the Exchange also offers each Company a complimentary listing ceremony to commemorate its listing on the Exchange. A full suite of these promotional services and listing ceremonies are developed through the Exchange's affiliate company, LTSE Services, Inc. (''LTSE Services'') [5] and offered to each Company approved to list on the Exchange. Some Companies may choose to avail themselves of all such services, whereas others may choose only a subset of services or none.

Since Rule 14.602 was approved, two companies have listed on LTSE.[6] Based on LTSE's experience with offering the services discussed above under Rule 14.602, in response to the need for continued services to the listed Companies and in light of the overall competitive landscape, LTSE proposes to offer additional products and services consistent with LTSE's objective of promoting long-term value creation for companies and their investors.[7] Certain of these products and services are being offered to listed Companies on a continual basis as long as they remain listed on LTSE, while others are time-limited, being offered on a complimentary basis for a predetermined period, as further described below. All such products and services are optional for Companies. The proposed rule change would amend LTSE Rule 14.602 to include the following additional products and services:

(1) Ongoing Promotional Services

As noted above, LTSE currently offers certain complimentary promotional services to listed Companies in connection with listing on the Exchange. Specifically, LTSE provides each listed Company with a dedicated section on the Exchange's website featuring information about the Company, including publicly available data and links to each Company's long-term policies.[8] The proposed rule change would clarify the inclusion of such Company-specific web pages as part of the Exchange's offerings in connection with listing on the Exchange and offer these services on an ongoing basis to listed Companies at no charge, in a manner generally consistent with what was done at the time of initial listing. This ongoing offering would ensure that information remains current and relevant, by providing updated Company-specific news, developments and content. As is the case with the current promotional services, all updates to Company-specific web pages on the Exchange's website will be managed by LTSE Services, subject to review and approval by the Exchange and the listed Company. These services have a retail value of approximately $5,000 per year.[9]

(2) Capital Markets Reports

The Exchange has arranged for LTSE Services to provide each listed Company with complimentary capital markets reports. The capital markets reports will be issued periodically, at a minimum one report each calendar year, and will provide tailored investor and capital markets insights and analytics which are relevant to each listed Company and its market sector. Specifically, the capital markets reports will include a summary evaluation of the Company's current investor base, providing specific metrics analyzing the Environmental, Social and Governance (''ESG'') profile of each underlying investor. Each report will highlight investor behavior and provide insights on their likely strategic priorities so that Companies can better understand their current status. The capital markets reports have a retail value of approximately $5,000 per year.[10]

(3) Capital Market Solutions

The Exchange has arranged for LTSE Services to provide each listed Company with up to one year of complimentary Capital Market Solutions (''CM Solutions''). The CM Solutions has two components: (i) An Investor Alignment Solution, and (ii) the Long-Term Investor Platform (''LTIP''). The Investor Alignment Solution provides Companies with detailed investor analytics and insights into investor behavior to enable them to evaluate the behaviors of select investors and provide them with a deeper understanding of the ESG landscape and their positioning. For each receiving Company, LTSE Services analyzes the ESG profile of investors in order to understand and identify relevant sources of capital to aid the Company in honing and achieving strategic priorities. A highly-experienced, multi-disciplinary team is deployed to support this long-term governance and capital markets strategy. The Exchange believes that the Investor Alignment Solution furthers the Exchange's goal of facilitating long-term focus and value creation for companies and investors.[11] The Investor Alignment Solution has a retail value of approximately $150,000 per year.[12]

The LTIP is a software platform that assists Companies in their efforts to identify and support those shareholders whose investments in the Company have a long-term horizon and focus. LTSE believes that Companies and their

[4] *Id.* at 8812. Placing promotional content on the Exchange's website was explicitly contemplated by the SR–LTSE–2020–22 filing. Generally, such promotional services appear to be commonly provided by other listing exchanges. *See, e.g., The NYSE Listed Company Network,* New York Stock Exchange LLC, *available at https://www.nyse.com/network* (last visited December 2, 2021) (featuring blog posts and videos about listed companies on NYSE).

[5] As noted in the order approving LTSE as a national securities exchange, LTSE maintains a commercial relationship with LTSE Services to leverage the company's technological expertise to support the Exchange's software needs. *See* In the Matter of the Application of Long Term Stock Exchange, Inc.; for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission, Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841, 21842 (May 15, 2019). LTSE Services also provides communications and marketing services to the Exchange.

[6] *See* ''The Long-Term Stock Exchange Announces First Listing Commitments,'' (June 24, 2021) *available at: https://ltse.com/articles/asana-twilio-to-list-pr.*

[7] The products and services in the proposed rule change would be comparable to provisions in the Nasdaq Stock Market LLC (''Nasdaq'') Listing Rule IM–5900–7 and the New York Stock Exchange (''NYSE'') Listed Company Manual Section 907 (Products and Services Available to Issuers). For example, under listings rule IM–5900–7 Nasdaq offers certain listed companies investor relations websites and market analytic tools. Similarly, NYSE also offers market analytics and web hosting related services under the NYSE Listed Company Manual Section 907. LTSE's proposed Company-specific web page updates are also geared towards supporting engagement between Companies and investors. LTSE's proposed capital market reports are Company-specific market analytic reports based on LTSE Services' proprietary data analytics and insights.

[8] *See* ''Meet the Companies Listed on the Long-Term Stock Exchange,'' *available at: https://ltse.com/companies* (last visited December 2, 2021). This content was initially posted to the Exchange's website in connection with dually listing two companies on the Exchange on August 26, 2021.

[9] This retail value is based on market rate estimates by LTSE Services.

[10] This retail value is based on market rate estimates by LTSE Services.

[11] LTSE Rule 14.425(a) requires Companies to adopt and publish the following policies: A Long-Term Stakeholder Policy; a Long-Term Strategy Policy; a Long-Term Compensation Policy; a Long-Term Board Policy; and a Long-Term Investor Policy (collectively, the ''Policies''). Each of the Policies must be consistent with the set of principles articulated in LTSE Rule 14.425(b) (collectively, the ''Principles''). These Policies and Principles are a key differentiator for the Exchange.

[12] This retail value reflects LTSE Services' current price list.

long-term investors may mutually benefit when the investors are registered shareholders with the ownership of shares listed on the records maintained by the issuer or its transfer agent. Being a registered shareholder provides a direct relationship with the issuer and facilitates the solicitation of proxies, and the recording of proxy votes by removing the intermediation provided by (i) DTC's nominee, Cede & Co., and (ii) the DTC participant which owns a pro rata interest in the ''fungible bulk'' of securities held at DTC.[13] LTSE believes that a direct relationship between a Company and its investors fosters alignment towards long-term success. Additionally, shares registered on the records of the issuer or its transfer agent are not eligible for stock loan to support short sales because the broker is no longer the registered owner of the shares and thus it is unable to lend them to facilitate short selling. Furthermore, such direct registration also avoids the fees paid by Companies to broker-dealers for the distribution of their proxy materials to beneficial owners.[14]

The primary means by which shareholders become registered owners is through the Direct Registration System (''DRS'') operated by DTC.[15] In particular, LTSE Rule 14.208 (Direct Registration Program) requires that all securities listed on the Exchange (except securities which are book-entry only, or certain foreign issuers) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act.[16]

The LTIP is a platform that provides Companies with a means to upload and effectively manage and utilize their registered shareholder data received from their transfer agent. For example, the LTIP allows Companies to more easily track, analyze and utilize registered shareholder data in support of their investor relations, strategic initiatives, board review and governance functions.[17] Additionally, as part of the LTIP, LTSE Services will assist Companies with methods of outreach to and education of existing or potential investors regarding the process for becoming a registered shareholder, including the need for an investor to work with their broker-dealer to complete a submission to the DRS Profile System maintained by the DTC.[18] The LTIP Solution has a retail value of approximately $150,000 per year if purchased on an individual basis.[19]

Listed Companies will have the option to receive CM Solutions on a complimentary basis for a one-year term. Any Company that has already received CM Solutions prior to listing on the Exchange will have the option of an up to one-year credit for such services (or combination of a credit and complimentary services, depending on the length of the prior subscription) (referred to collectively as ''the complimentary one-year period'').[20] The one-year credit for such Companies is intended to provide them with the same general benefit as Companies that do not utilize CM Solutions prior to listing. Listed Companies may avail themselves of the complimentary one-year period at any time for a continuous one-year period after listing. Listed Companies may elect to receive either the Investor Alignment Solution, the LTIP or both during this complimentary one-year period. However, these services cannot be utilized during separate one-year periods on a complimentary or credit basis. Currently listed Companies will become eligible for the complimentary CM Solutions upon the effectiveness of this proposed rule change. If a listed Company ceases to be listed on the Exchange, the complimentary services will end as of the date of de-listing, even if less than a one-year period.

If they elect to utilize the one-year credit, listed Companies that received CM Solutions prior to listing would no longer be eligible for the one year of complimentary CM Solutions that listed Companies that were not prior subscribers of such services may choose to utilize. Similarly, if Companies purchased less than 12 months of CM Solutions prior to listing and elected to be credited for those months after listing and receive CM Solutions on a complimentary basis for the remainder of the one-year period. [sic] Such Companies would not be eligible for an additional one year of complimentary CM Solutions.

The Exchange believes that offering the capital markets reports, CM Solutions and ongoing promotional services, as described above, will serve as meaningful tools for supporting long-term value creation for Companies and their investors. However, Companies are not required to use these services as a condition of listing and they may choose not to avail themselves of any of these services or a subset at their discretion. At the end of the one-year complimentary period for CM Solutions, Companies may choose to renew these services on a contractual basis with LTSE Services and pay for them in regular course, or discontinue them. The capital markets reports and ongoing promotional services can be discontinued at the Company's discretion at any time. If a listed Company chooses to discontinue any of these services, there would be no effect on the Company's continued listing on the Exchange. LTSE notes that no listed Company will be required to pay higher fees as a result of the proposed amendments and represents that providing the proposed services will have no impact on the resources available for its regulatory programs. LTSE also represents that no confidential trading or regulatory information generated or received by the Exchange will be shared with LTSE Services or leveraged for the provision of its products and services.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[13] *See* Concept Release on the U.S. Proxy System, 75 FR 42981, at 42986 (proposed July 22, 2010) for a discussion of the differences in the proxy system between registered owners and beneficial owners.

[14] *Id.* at 42995 (''One of the most persistent concerns that has been expressed to the Commission's staff, particularly by issuers, involves the structure and size of fees charged for the distribution of proxy materials to beneficial owners''). *See also,* Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Securities Exchange Act Release No. 93169 (September 29, 2021), 86 FR 57478, 57503 (proposed December 14, 2021), (noting the importance of transparency in the proxy voting process for investors, issuers, analysts and proxy advisory firms and aligning incentives of corporate executives and investors).

[15] Registered owners can hold their securities either in certificated form or in uncertificated form (*i.e.,* book entry) form, such as uncertificated securities held through the DRS. *See* Transfer Agent Regulations, Securities Exchange Act Release No. 76743 (December 22, 2015), 80 FR 81947, 81957 (proposed 12/31/2015).

[16] DTCC is the only registered clearing agency offering a Direct Registration Program. *See* Securities Transactions Settlement, Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12921, 12932 (proposed March 18, 2004) (''The culmination of these efforts is the establishment of the Direct Registration System (''DRS''), which is operated by DTC'').

[17] The registered shareholder information in LTIP is proprietary to the Company and viewable only by the Company and its authorized agents.

[18] Any outreach to existing or potential investors is entirely at the discretion of the Company and will be conducted exclusively by the Company; no personnel from LTSE Services or LTSE will have any role in communicating with investors on behalf of the Company. The LTIP also will, based on customer demand, provide a means for the Company to communicate with registered shareholders who choose to participate on the Company's LTIP account.

[19] This retail value reflects LTSE Services' current price list.

[20] If a Company purchased less than 12 months of CM Solutions prior to listing, the Company will have a credit for the number of months of CM Solutions purchased prior to listing and receive CM Solutions for the remainder of the one-year period on a complimentary basis.

the provisions of Section 6 of the Act,[21] in general, and furthers the objectives of Section 6(b)(4) of the Act,[22] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[23] in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is fair and reasonable to offer products and services to companies. The Exchange believes that the existing U.S. exchange listing market for operating companies is essentially a duopoly with the vast majority of operating companies listed on U.S. securities exchanges listing on the New York Stock Exchange (''NYSE'') or Nasdaq Stock Market LLC (''Nasdaq''). The Exchange faces competition from NYSE and Nasdaq as a new entrant into the exchange listing market, and believes that offering such products and services to companies would enhance the value proposition for listing, allow the Exchange to more effectively attract companies to list on the Exchange and retain its listings. The Exchange believes that to the extent the Exchange's listing program is successful, it will provide a competitive alternative, which will thereby benefit companies and investors, and remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with the protection of investors and the public interest. Other exchanges also acknowledge the competition in the market for listing services and they compete, in part, by offering products and services to companies.[24] Like other exchanges, LTSE also believes that it is fair and reasonable to offer complimentary services to attract and retain listings as part of this competition. LTSE believes offering the proposed capital markets reports and CM Solutions promote just and equitable principles of trade and protects investors and the public interest by enhancing companies' engagement with shareholders for the purpose of long-term value creation. These services are also a reflection of the Exchange's differentiated listing standards, which are explicitly designed to promote long-term focus and value creation,[25] and are central to LTSE's mission of reducing short-termism in the capital markets.[26]

Similarly, LTSE believes that offering Company-specific web page updates, as described above, to listed Companies promotes just and equitable principles of trade and protects investors and the public interest by providing a supplementary outlet for information regarding Company developments to stakeholders.

The Exchange believes that its proposed rule change is fair and not unfairly discriminatory because the products and services will be offered equally and on the same terms and conditions to all similarly situated listed Companies, *i.e.,* those that received the CM Solutions prior to listing versus those that had not, on the same terms and conditions. Thus, listed Companies that were pre-existing customers of CM Solutions will be treated the same as each other, while all listed Companies that had not received CM Solutions prior to listing will be provided the same one-year complimentary CM Solutions to be utilized at their discretion. The Exchange also recognizes the potential for unfair discrimination between Companies that were subscribers of CM Solutions prior to listing and listed Companies that were not, given that the prior subscribers may not wish to utilize an additional complimentary year of such service upon listing. Thus, the Exchange believes that a credit for one year of services for prior subscribers of CM Solutions will promote parity with Companies who elect to receive these complimentary services only after listing on the Exchange. The one-year credit ensures that both sets of companies receive one year's worth of complimentary CM Solutions. The scope of products and services provided by the Exchange ultimately will depend on which products and services the Company selects insofar as these are optional for each Company.

LTSE represents, and this proposed rule change will help ensure, that individual listed Companies are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Exchange Act.[27]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, and as discussed in the Statutory Basis section, LTSE believes that the proposed rule change will enhance competition by facilitating LTSE's listing program which will allow the Exchange to provide companies with another listing option, thereby promoting intermarket competition between exchanges in furtherance of the principles of Section 11A(a)(1) of the Act[28] in that it is designed to promote fair competition between exchange markets by offering a new listing market to compete with Nasdaq and NYSE. As noted above, LTSE faces competition in the market for listing services, and aims to compete by offering valuable services to companies. The proposed rule change reflects that competition, but does not impose any burden on the competition with other exchanges. Other exchanges can also offer similar services to companies,[29] thereby increasing competition to the benefit of those companies and their stakeholders. Moreover, as a dual listing venue, LTSE expects to face competition from existing exchanges because companies have a choice to list their securities solely on a primary listing venue. Consequently, the degree to which LTSE's products and services could impose any burden on intermarket competition is extremely limited, and LTSE does not believe that such offerings would impose any burden on competing venues that is not necessary or appropriate in furtherance of the purposes of the Act.

LTSE also does not believe that the proposed rule change will result in any burden on intramarket competition since LTSE will offer the products and services on the same terms and conditions to similarly situated companies. Listed Companies that were pre-existing customers of CM Solutions will have the option of utilizing the one-year credit on the same terms as each other, while all listed Companies that

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(4).

[23] 15 U.S.C. 78f(b)(5).

[24] *See,* Securities Exchange Act Release No. 90955 (January 19, 2021), 86 FR 7155, 7157 (January 26, 2021) (noting that ''Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition.'').

[25] *See* Policies and Principles noted in LTSE Rule 14.425.

[26] *See* Securities Exchange Act Release No. 86722 (August 21, 2019), 84 FR 44953 (August 27, 2019) (order approving proposed rule change to adopt LTSE Rule 14.425).

[27] *See* Securities Exchange Act Release No. 79366, 81 FR 85663, 85665 (November 21, 2016) (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20)).

[28] 15 U.S.C. 78k–1(a)(1).

[29] *See* Nasdaq Listing Rule IM–5900–7 and NYSE Listed Company Manual Section 907.

had not received CM Solutions prior to listing will be provided the same one-year complimentary CM Solutions to be utilized at their discretion. Consequently, LTSE does not believe that the proposal will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LTSE–2021–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–LTSE–2021–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–LTSE–2021–08, and should be submitted on or before January 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27542 Filed 12–20–21; 8:45 am]

BILLING CODE 8011–01–P

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93790; File No. SR–NYSEArca–2021–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETP Trust Under NYSE Arca Rule 8.201–E

December 15, 2021.

On October 14, 2021, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Bitwise Bitcoin ETP Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on November 3, 2021.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 18, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and any comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates February 1, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2021–89).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–27545 Filed 12–20–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93445 (Oct. 28, 2021), 86 FR 60695.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 33–11014/December 15, 2021; Securities Exchange Act of 1934 Release No. 34–93785/December 15, 2021]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2022

The Sarbanes-Oxley Act of 2002, as amended (the ''Sarbanes-Oxley Act''),[1] established the Public Company Accounting Oversight Board (''PCAOB''

[1] 15 U.S.C. 7201 *et seq.*

or the ''Board'') to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'')[2] amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Securities and Exchange Commission (the ''Commission''). The PCAOB is to accomplish these goals through the registration of public accounting firms, standard setting, inspections, and investigation and disciplinary programs. The PCAOB is subject to the comprehensive oversight of the Commission.

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate ''recoverable budget expenses,'' which may include operating, capital, and accrued items. The PCAOB's annual budget and accounting support fee are subject to approval by the Commission. In addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission. Rule 190 of Regulation P (the ''Budget Rule'') governs the Commission's review and approval of PCAOB budgets and annual accounting support fees.[3] The Budget Rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to provide on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the Budget Rule, in March 2021 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2022 budget year. In response, the Commission provided the PCAOB with economic assumptions and general budgetary guidance for the 2022 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Office of the Chief Accountant and Office of Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects, and budget estimates and participated in several meetings with staff of the PCAOB to further develop the understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a ''passback'' letter to the PCAOB on October 29, 2021. On November 23, 2021, the PCAOB adopted its 2022 budget and accounting support fee during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2022 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2022 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2022.

Given the change in leadership of the PCAOB and potential changes to its priorities for 2022 and beyond, the Commission requests the PCAOB to perform an assessment of the PCAOB Strategic Plan by June 30, 2022 and provide the Commission staff with a report detailing the results of the assessment.

The Commission continues to emphasize the importance of the PCAOB's identification of efficiencies and process improvements. Accordingly, the Commission requests the Board evaluate its operational efficiency, improvements, and budgetary needs and submit such assessments to the Commission in connection with the 2023 budget cycle.

Continuing uncertainty surrounding the impact of COVID–19 on the PCAOB's operations reinforces the importance of continued coordination between the SEC and PCAOB. The Commission directs the PCAOB during 2022 to continue to hold monthly meetings, as necessary, with the Commission's staff to discuss important policy initiatives, changes related to program areas, and significant impacts to the PCAOB's 2022 budget, including significant differences between actual and budgeted amounts and anticipated cost-savings. Separately, the Commission requests the PCAOB to continue its written quarterly updates on recent activities, including strategic initiatives, for the PCAOB's Office of Economic and Risk Analysis, Office of Data, Security, and Technology, and Division of Registration and Inspections. The Commission expects the PCAOB Board to make itself available to meet with individual Commissioners on these and other topics. Further, the Commission requests that the PCAOB submit its 2021 annual report to the Commission by March 31, 2022.

The Commission understands that the Office of Management and Budget (''OMB'') has determined that the 2022 budget of the PCAOB is subject to sequestration under the Budget Control Act of 2011.[4] For 2021, the PCAOB sequestered $16.4 million. That amount will become available in 2022. For 2022, the sequestration amount will be 5.7% or $17.7 million. Consequently, we expect the PCAOB will have approximately $1.3 million less funds available from the 2021 sequestration for spending in 2022. Accordingly, the PCAOB decreased its accounting support fee for 2022 by approximately $1.3 million.

The Commission has determined that the PCAOB's 2022 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2022 are approved.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–27529 Filed 12–20–21; 8:45 am]

BILLING CODE 8011–01–P

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] 17 CFR 202.190.

[4] *OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2021,* February 10, 2020, *available at https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration_report_FY21_2-10-20.pdf.*

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17167 and #17168; CALIFORNIA Disaster Number CA–00345]

Presidential Declaration of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of CALIFORNIA (FEMA–4619–DR), dated 09/12/2021. *Incident:* Wildfires to include the Cache Fire. *Incident Period:* 08/14/2021 through 10/21/2021.

DATES: Issued on 12/14/2021.

Physical Loan Application Deadline Date: 11/12/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 09/12/2021, is hereby amended to change the incident description from Caldor Fire to Wildfires to include the Cache Fire. All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–27629 Filed 12–20–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17258 and #17259; Connecticut Disaster Number CT–00054]

Presidential Declaration Amendment of a Major Disaster for the State of Connecticut

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4629–DR), dated 10/30/2021. *Incident:* Remnants of Hurricane Ida. *Incident Period:* 09/01/2021 through 09/02/2021.

DATES: Issued on 12/15/2021.

Physical Loan Application Deadline Date: 01/28/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 08/01/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Connecticut, dated 10/30/2021, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/28/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–27553 Filed 12–20–21; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2021–0053]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes an extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

Comments: *https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2021–0053]

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

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2021–0053].

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 22, 2022. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Surveys in Accordance with E.O. 12862 for the Social Security Administration—0960–0526. Under the auspices of Executive Order 12862, Setting Customer Service Standards, SSA conducts multiple customer satisfaction surveys each year. These voluntary customer satisfaction assessments include paper, internet, and telephone surveys; mailed questionnaires; and customer comment cards. The purpose of these questionnaires is to assess customer satisfaction with the timeliness, appropriateness, access, and overall quality of existing SSA services and proposed modifications or new versions of services. The respondents are recipients of SSA services (including most members of the public), professionals, and individuals who work on behalf of SSA beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

	Number of respondents (burden for all activities within that year)	Frequency of response	Range of response times (minutes)	Burden (burden for all activities within that year; reported in hours)
Year 1	1,290,304	1	3–90	615,549

	Number of respondents (burden for all activities within that year)	Frequency of response	Range of response times (minutes)	Burden (burden for all activities within that year; reported in hours)
Year 2	1,290.304	1	3–90	615,549
Year 3	1,290.304	1	3–90	615,549
Totals	3,870,912			1,846647

Dated: December 16, 2021.

Eric Lowman,

Acting Reports Clearance Officer, Office of Legislative Development and Operations, Social Security Administration.

[FR Doc. 2021–27575 Filed 12–20–21; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Proposed Changes to the Slate of Industry Trade Advisory Committees

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Trade Representative and the Secretary of Commerce (Secretary) plan to establish a new four-year charter term for the Industry Trade Advisory Committees (ITACs) beginning in February 2022. As part of the re-chartering process, the U.S. Trade Representative and the Secretary are proposing changes to the current slate of ITACs and invite interested parties to submit their view on these changes.

DATES: The deadline for submission of written comments is December 30, 2021.

ADDRESSES: We strongly encourage electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*). Follow the submission instructions in section II below. The docket number is USTR–2021–0022. For alternatives to on-line submissions, please contact Ethan Holmes, Director of Private Sector Engagement, at *ethan.m.holmes@ustr.eop.gov,* before transmitting a comment and in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Ethan Holmes, Director of Private Sector Engagement, at *ethan.m.holmes@ustr.eop.gov* or (202) 881–9185. You can find additional information about the ITACs on the International Trade Administration website at: *www.trade.gov/industry-trade-advisory-center.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155), establishes a private-sector trade advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(c)(2) (19 U.S.C. 2155(c)(2)) directs the President to establish sectoral or functional trade advisory committees as appropriate, comprised of representatives of all industry, labor, agricultural, and services interests (including small business interests) in the sector or functional area. These committees provide detailed policy and technical advice, information, and recommendations regarding trade barriers, negotiation of trade agreements, and implementation of existing trade agreements affecting industry sectors, and perform other advisory functions relevant to U.S. trade policy matters as requested. In organizing these committees, the U.S. Trade Representative and the relevant Secretary consult with interested private organizations and consider:

- Patterns of actual or potential competition between United States industry and agriculture and foreign enterprise in international trade.
- the character of the nontariff barriers and other distortions affecting such competition.
- the necessity for reasonable limits on the number and size of advisory committees.
- in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this authority, the U.S. Trade Representative and the Secretary established the ITACs to provide detailed policy and technical advice, information, and recommendations on trade policy matters including:

- Negotiating objectives and bargaining positions before entering into trade agreements.
- the impact of the implementation of trade agreements on the relevant sector.
- matters concerning the operation of any trade agreement once entered into.
- other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

The nonpartisan, industry input provided by the ITACs is important in developing unified trade policy objectives and positions when the United States negotiates and implements trade agreements. The ITACs address market-access problems, trade barriers, tariffs, discriminatory foreign procurement practices, and information, marketing, and advocacy needs of their industry sector. With limited statutory exceptions, the ITACs are subject to the provisions of the Federal Advisory Committee Act.

The charters of the current ITACs expire in February 2022, and the U.S. Trade Representative and Secretary intend to renew the ITACs for new four-year charter terms beginning in February 2022 and ending in February 2026. The list of ITACs for the current 2018–2022 charter term is as follows:

ITAC 1: Aerospace Equipment
ITAC 2: Automotive Equipment and Capital Goods
ITAC 3: Chemicals, Pharmaceuticals, Health/Science Products and Services
ITAC 4: Consumer Goods
ITAC 5: Forest Products, Building Materials, Construction, and Nonferrous Metals
ITAC 6: Energy and Energy Services
ITAC 7: Steel
ITAC 8: Digital Economy
ITAC 9: Small and Minority Business
ITAC 10: Services
ITAC 11: Textiles and Clothing
ITAC 12: Customs Matters and Trade Facilitation
ITAC 13: Intellectual Property Rights
ITAC 14: Standards and Technical Trade Barriers

For the 2022–2026 charter term, the U.S. Trade Representative and the Secretary propose to restructure the ITACs as follows based on the nature of the U.S. industry in various sectors, the level of interest in serving on an ITAC (using the number of members and applications for appointment during the 2018–2022 charter terms), the level of activity of each ITAC (using the number of meetings and recommendations

submitted during the 2018–2022 charter terms), and constraints on the resources to support and engage with the ITACs:

- Dividing the current Industry Trade Advisory on Forest Products, Building Materials, Construction, and Nonferrous Metals into two separate committees with amended names: Industry Trade Advisory Committee on Critical Minerals and Nonferrous Metals (ITAC 5), and Industry Trade Advisory Committee on Forest Products and Building Materials (new ITAC 8).
- Changing the name of the ITAC on Small and Minority Business (ITAC 8) to the Industry Trade Advisory Committee on Small, Minority, and Woman-led Business to more accurately reflect the full scope of the ITAC's work.
- Establishing a Committee of Chairs of the ITACs to facilitate cross-sharing of information and provide a powerful tool to gather timely cross-cutting input across sectors.

This restructuring would result in 12 sectoral ITACs and 3 functional ITACs for the new four-year charter term, and an ITAC Committee of Chairs. The proposed slate of ITACs:

Committee of Chairs of the Industry Trade Advisory Committees

ITAC 1: Aerospace Equipment
ITAC 2: Automotive Equipment and Capital Goods
ITAC 3: Chemicals, Pharmaceuticals, Health/Science Products and Services
ITAC 4: Consumer Goods
ITAC 5: Critical Minerals and Nonferrous Metals
ITAC 6: Digital Economy
ITAC 7: Energy and Energy Services
ITAC 8: Forest Products and Building Materials
ITAC 9: Small, Minority, and Woman-led Business
ITAC 10: Services
ITAC 11: Steel
ITAC 12: Textiles and Clothing
ITAC 13: Customs Matters and Trade Facilitation
ITAC 14: Intellectual Property Rights
ITAC 15: Standards and Technical Trade Barriers

II. Request for Comments/Submission Instructions

In accordance with Section 135(c)(2)(A) (19 U.S.C. 2155(c)(2)) of the Trade Act, we invite written comments on the proposed changes to the slate of ITACs for the 2022–2026 charter term. The deadline for submitting comments is December 29, 2021.

All submissions must be in English and sent electronically via *Regulations.gov* using docket number USTR–2021–0022. To submit comments, locate the docket (folder) by entering the number USTR–2021–0022 in the 'enter keyword or ID' window at the *Regulations.gov* home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the link entitled 'comment'.

Please provide comments in an attached document prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the 'type comment' field. You should name the file using the name of the person or entity submitting the comments. For further information on using *Regulations.gov,* please select 'how to use *Regulations.gov*' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

As noted, USTR strongly urges commenters to submit comments through *Regulations.gov*. You must make any alternative arrangements before transmitting a document and in advance of the relevant deadline by contacting Ethan Holmes, Director of Private Sector Engagement, at *ethan.m.holmes@ustr.eop.gov.*

USTR will place comments in the docket and they will be open to public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering Docket Number USTR–2021–0022 in the 'search' field on the home page.

Sirat Attapit,

Assistant United States Trade Representative for Intergovernmental Affairs and Public Engagement, Office of the United States Trade Representative.

[FR Doc. 2021–27537 Filed 12–20–21; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2021–1159]

Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Primary, Cargo, and Nonprimary Entitlement Funds Available to Date for Fiscal Year 2022.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Federal Register notice.

SUMMARY: This action announces February 15, 2022, as the deadline for each airport sponsor to notify the FAA if it will use its Fiscal Year (FY) 2022 entitlement funds to accomplish Airport Improvement Program (AIP) eligible projects. Each sponsor has previously identified to the FAA such projects through the Airports Capital Improvement Plan process. This action further announces April 11, 2022, as the deadline for an airport sponsor to submit a final grant application, based on bids, for grants that will be funded with FY 2022 entitlements funds only.

FOR FURTHER INFORMATION CONTACT: David F. Cushing, Manager, Airports Financial Assistance Division, APP–500, at (202) 267–8827

SUPPLEMENTARY INFORMATION: Title 49 U.S.C. 47105(f) provides that the sponsor of an airport for which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the airport sponsor's intent to submit a grant application for its available entitlement funds. Therefore, the FAA is hereby notifying such airport sponsors of the steps required to ensure that the FAA has sufficient time to carry over and convert remaining entitlement funds.

The AIP grant program is authorized by Public Law 115–254, the ''FAA Reauthorization Act of 2018,'' enacted on October 5, 2018, which permits the FAA to make grants for planning and airport development and airport noise compatibility under the AIP through September 30, 2023. The funds allocated to the FAA to fund the AIP grant program are appropriated by an annual Appropriations Act. Funding for the FY 2022 AIP will be contingent upon the amounts appropriated by Congress and any requirements included in an annual Appropriations Act, once enacted. Apportioned funds will be subject to allocation formulas prescribed by 49 U.S.C. 47114 and any other applicable legislative text.

This notice applies only to sponsors of airports that have entitlement funds

appropriated for FY 2022 to use on eligible and justified projects. State aviation agencies participating in the FAA's State Block Grant Program, as prescribed by 49 U.S.C. 47128, are responsible for notifying the FAA which covered nonprimary airports in their programs will be using their entitlement funds for eligible and justified projects.

An airport sponsor intending to apply for any of its available entitlement funds, including those unused, but still available in accordance with 49 U.S.C. 47117 from prior years, must notify the FAA of its intent to submit a grant application by 12 p.m. prevailing local time on Tuesday, February 15, 2022.

This notice must be in writing and stipulate the total amount the sponsor intends to use for eligible and justified projects during FY 2022, including those entitlement funds not obligated from prior years that remain available in accordance with 49 U.S.C. 47117 (also known as protected carryover). These notifications are critical to ensure efficient planning and administration of the AIP. The final grant application deadline for entitlement funds only is Monday, April 11, 2022. The final grant application funding requests should be based on bids, not estimates. As prescribed under 49 U.S.C. 47117, the FAA will carryover the remainder of available entitlement funds after June 1, 2022. These funds will not be available again to the airport sponsor until the beginning of FY 2023. Dates are subject to possible adjustment based on future legislation. As of the publication of this notice, past appropriations for the FAA expired on September 30, 2021, and the FAA is currently under a Continuing Resolution (CR) until February 18, 2022. However, FAA authorizing legislation expires on September 30, 2023 and the FAA will continue its planning process during the current and any future CR.

The FAA has determined these deadlines will expedite and facilitate the FY 2022 grant-making process.

Issued in Washington, DC, on December 15, 2021.

Robert John Craven,

Director, Office of Airport Planning and Programming.

[FR Doc. 2021–27533 Filed 12–20–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0186]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Rosco Vision, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from Rosco Vision, Inc (Rosco) to allow motor carriers to operate commercial motor vehicles (CMVs) equipped with the company's Digital Camera Monitor System installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSR).

DATES: Comments must be received on or before January 20, 2022.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2021–0186 using any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday–Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory 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.*

Public participation: The *http://www.regulations.gov* website is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* website as well as the DOT's *http://docketsinfo.dot.gov* website. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

I. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA is required to publish notice of exemption requests in the **Federal Register** (49 U.S.C. 31315(b)(6)(A)). This notice seeks public comment on the request posted to the docket referenced above; the Agency takes no position on its merits. FMCSA will review the request and all comments submitted to the docket before deciding whether to grant or deny the exemption.

II. Rosco's Application for Exemption

Section 393.80(a) of the FMCSRs requires that each bus, truck, and truck-tractor be equipped with two rear-vision mirrors, one at each side. The mirrors must be positioned to reflect to the driver a view of the highway to the rear and the area along both sides of the CMV. Section 393.80(a) cross-references the National Highway Traffic Safety

Administration's standard for mirrors on motor vehicles (49 CFR 571.111, Federal Motor Vehicle Safety Standard [FMVSS] No. 111). Paragraph S7.1 of FMVSS No. 111 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a gross vehicle weight rating (GVWR) greater than 4,536 kg and less than 11,340 kg and each bus, other than a school bus, with a GVWR of more than 4,536 kg. Paragraph S8.1 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a GVWR of 11,340 kg or more. Rosco have applied for an exemption from 393.80(a) to allow motor carriers to operate CMVs equipped with the company's Digital Camera Monitor System installed as an alternative to the two rear-vision mirrors required by the FMCSRs. A copy of the application is included in the docket referenced at the beginning of this notice.

III. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on the application for an exemption from 49 CFR 393.80(a). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments.

FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–27528 Filed 12–20–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2021–0107]

Pipeline Safety: Random Drug Testing Rate; Management Information System Reporting; and Obtaining Drug and Alcohol Management Information System Sign-In Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of calendar year 2022 minimum annual percentage rate for random drug testing, reminder for operators to report contractor Management Information System (MIS) data using PHMSA Supplemental Instructions, and reminder of method for operators to obtain username and password for electronic reporting.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 50 percent during calendar year 2022. Operators are reminded that drug and alcohol (D&A) testing information must be submitted for contractors who are performing or are ready to perform covered functions. For calendar year 2021 reporting, the username and password for the Drug and Alcohol Management Information System (DAMIS) will be available in the PHMSA Portal.

DATES: Effective January 1, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Wayne Lemoi, Drug & Alcohol Program Manager, Office of Pipeline Safety, by phone at 909–937–7232 or by email at *wayne.lemoi@dot.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Calendar Year 2022 Minimum Annual Percentage Rate for Random Drug Testing

Operators of gas, hazardous liquid, and carbon dioxide pipelines, liquefied natural gas (LNG) plants, and underground natural gas storage facilities must randomly select and test a percentage of all covered employees for prohibited drug use in accordance with 49 Code of Federal Regulations (CFR) part 199. Pursuant to § 199.105(c)(1), the PHMSA minimum annual random drug testing rate for all covered employees is 50 percent. The Administrator can adjust this random drug testing rate based on the reported positive rate in the industry's random drug tests, which is submitted in operators' annual MIS reports as required by § 199.119(a). In accordance with § 199.105(c)(3), if the reported positive drug test rate is below 1 percent for 2 consecutive years, the Administrator can reduce the random drug testing rate to 25 percent of all covered employees. While the random drug test positive rate for the pipeline industry was reported at less than 1 percent in calendar year 2020, the positive rate for calendar year 2019 was greater than 1 percent. Accordingly, the minimum annual random drug testing rate for calendar year 2022 is maintained at 50 percent of all covered employees.

Reminder for Operators To Report Contractor MIS Data

In 2021, PHMSA released new *PHMSA Supplemental Instructions* for *DOT Drug & Alcohol Management Information System Reporting* online. These instructions provide operators with the appropriate process for collecting and reporting annual D&A MIS testing data for contractors. The *Supplemental Instructions* help ensure that PHMSA can identify all the contractors who performed D&A covered functions for a specific pipeline operator; identify all the pipeline operators for whom a specific contractor performed D&A covered functions; and, has received a complete and accurate D&A MIS report for each contractor who performed D&A covered functions on any PHMSA-regulated pipeline or facility in the applicable calendar year.

Pursuant to §§ 199.119(a) and 199.229(a), an operator having more than 50 covered employees is a large operator and an operator having 50 or fewer covered employees is a small operator. While contractor employees are covered employees per the regulations in § 199.3 and must be treated as such with regards to part 199, contractor employees are not included in the calculation to determine if an operator is a large or small operator.

Large operators are always required to submit annual MIS reports whereas small operators are only required to submit MIS reports upon written request from PHMSA. If a small operator has submitted a MIS report for calendar year 2019 or 2020, the PHMSA Portal message may state that no MIS report is required for calendar year 2021. If a small operator has grown to more than 50 covered employees during calendar year 2021, the PHMSA Portal message will include instructions for how to obtain a DAMIS username and password for the 2021 calendar year reporting period.

If an operator is required to submit a MIS report in accordance with part 199,

that report is not complete until PHMSA receives a MIS data report for each contractor that performed covered functions as defined in § 199.3. Operators must submit operator and contractor employee testing data in separate MIS reports to avoid duplicative reporting and inaccurate data that could affect the positive rate for the pipeline industry.

Reminder of Method for Operators To Obtain Username and Password for Electronic Reporting

By early January 2022, the username and password required for an operator to access DAMIS and enter calendar year 2021 data will be available to all operator staff with access to the PHMSA Portal. Pipeline operators have been submitting reports required by 49 CFR parts 191 and 195 through the PHMSA Portal (*https://portal.phmsa.dot.gov/pipeline*) since 2011. PHMSA determined that distributing information via the Portal would be more effective than the previous mailing process.

When the DAMIS username and password are available in the PHMSA Portal, all registered users will receive an email to that effect. If operator staff responsible for submitting MIS reports do not receive the DAMIS information, they should coordinate with other registered PHMSA Portal users within their company to obtain the DAMIS username and password. Registered PHMSA Portal users for an operator typically include operator staff or consultants who submit annual and incident reports through PHMSA F 7000- and 7100-series forms. Operators that have not previously registered staff in the PHMSA Portal for the reporting purposes of parts 191 and 195 can register users by following the instructions at: *https://portal.phmsa.dot.gov/PHMSAPortal2/staticContentRedesign/howto/PortalAccountCreation.pdf.*

Issued in Washington, DC, on December 15, 2021, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2021–27504 Filed 12–20–21; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action

On December 15, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals:

1. FAT YIP, Chuen (a.k.a. CHUAN FA, Ye; a.k.a. FA YE, Chuan); DOB 03 Aug 1953; nationality China; citizen China; Gender Male (individual) [ILLICIT-DRUGS-EO].

   Sanctioned pursuant to section 1(a)(i) of Executive Order of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," (the "Order"), for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Entities:

1. GUERREROS UNIDOS, Mexico [ILLICIT-DRUGS-EO].

   Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. HEBEI ATUN TRADING CO., LTD. (a.k.a. "HBATUN"), Haiyuetiandi B906, Qiaoxi Street, Shijazhuang City, Hebei, China; Room 1102, Bldg. D Haiyuetiandi, No. 66 Yuhua West Road, Qiaoxi District, Shijiazhuang, Hebei Province, China; Unified Social Credit Code (USCC) 91130104MA09YL9T2W (China) [ILLICIT-DRUGS-EO].

   Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. HEBEI HUANHAO BIOTECHNOLOGY CO., LTD., Room 1801, The MixC, Qiaoxi District, Shijiazhuang City, Hebei Province, 050000, China; Unified Social Credit Code (USCC) 91130104MA07T43608 (China) [ILLICIT-DRUGS-EO]. LOS ROJOS, Mexico [ILLICIT-DRUGS-EO].

   Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. LOS ROJOS, Mexico [ILLICIT-DRUGS-EO].

   Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

5. PRIMEIRO COMANDO DA CAPITAL (a.k.a. "FIRST CAPITAL COMMAND"; a.k.a. "PCC"), Brazil [ILLICIT-DRUGS-EO].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

6. SHANGHAI CISHUN FINE CHEMICAL CO, LTD. (Chinese Simplified: 上海驰顺精细化工有限公司) (a.k.a. SHANGHAI FAST-FINE CHEMICALS CO., LTD.; a.k.a. SHANGHAI JUAN-CHEM.INDUSTRY CO., LTD.), No. 555, Lansong Road, Pudong New Area, Shanghai 200120, China; Room 103, No. 1800 Hangjin Road, Pudong New District, Shanghai, China; Email Address 1160437003@qq.com; Unified Social Credit Code (USCC) 91310115MA1K41CK14 (China) [ILLICIT-DRUGS-EO].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

7. WUHAN YUANCHENG GONGCHUANG TECHNOLOGY CO., LTD. (Chinese Traditional: 武汉远成共创科技有限公司), No. 426, Zhongshan Road, Wuchang District, Wuhan, Hubei, China; No. 425 Zhongshan Road, Wuchang District, Wuhan, Hubei, China; Registration Number 420106000105666 (China) [ILLICIT-DRUGS-EO].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

BILLING CODE 4810–AL–C

Additionally, on December 15, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked pursuant to the relevant sanctions authority listed below. The property and interests in property of these persons also continue to be also be blocked pursuant to the Foreign Narcotics Kingpin Designation Act and/or Executive Order 13581 of July 25, 2011, ''Blocking Property of Transnational Criminal Organizations,'' and they will appear on the SDN List as follows:

Individuals

1. GUZMAN LOPEZ, Ovidio (a.k.a. ''El Raton''; a.k.a. ''Raton Nuevo''), Mexico; DOB 29 Mar 1990; POB Culiacan, Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. GULO900329HSLZPV09 (Mexico) (individual) [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. GUZMAN SALAZAR, Ivan Archivaldo (a.k.a. ''Chapito''), Mexico; DOB 1980; POB Sinaloa, Mexico; nationality Mexico; Gender Male (individual) [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. GUZMAN SALAZAR, Jesus Alfredo (a.k.a. ''Alfredillo''; a.k.a. ''JAGS''), Mexico; DOB 17 May 1986; POB Zapopan, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. GUSJ860517HJCZLS06 (Mexico) (individual) [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. MEZA FLORES, Fausto Isidro (a.k.a. ''ISIDRO, Chapito''; a.k.a. ''ISIDRO, Chapo''), Sinaloa, Mexico; DOB 19 Jun 1982; POB Navojoa, Sonora, Mexico; nationality Mexico; Gender Male; C.U.R.P. MEFF820619HSRZLS08 (Mexico) (individual) [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

5. OSEGUERA CERVANTES, Nemesio (a.k.a. OSEGUERA CERVANTES, Ruben; a.k.a. ''Mencho''), Mexico; DOB 17 Jul 1966; alt. DOB 17 Jul 1964; POB Naranjo de Chila, Aguililla, Michoacan, Mexico; nationality Mexico; Gender Male (individual) [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

6. TREVINO MORALES, Miguel (Latin: TREVIÑO MORALES, Miguel) (a.k.a. TREVINO MORALES, Miguel Angel; a.k.a. ''40''), Calle Veracruz 825, Nuevo Laredo, Tamaulipas, Mexico; Calle Mina No. 6111, Nuevo Laredo, Tamaulipas, Mexico; Calle Nayarit 3404, en la esquina de Nayarit y Ocampo, Nuevo Laredo, Tamaulipas, Mexico; Calle 15 de Septiembre y Leandro Valle, Nuevo Laredo, Tamaulipas, Mexico; Avenida Tecnologico 17, entre Calle Pedro Perezo Ibarra y Fraccionamiento Tecnologica, Nuevo Laredo, Tamaulipas, Mexico; Amapola 3003, Col. Primavera, Nuevo Laredo, Tamaulipas, Mexico; Rancho Soledad, Anahuac, Nuevo Leon, Mexico; Rancho Rancherias, Anahuac, Nuevo Leon, Mexico; Reynosa, Tamaulipas, Mexico; DOB 28 Jun 1973; alt. DOB 18 Nov 1970; alt. DOB 25 Jan 1973; alt. DOB 15 Jul 1976; POB Nuevo Laredo, Tamaulipas, Mexico; alt. POB Tamaulipas, Mexico; nationality Mexico; citizen Mexico; Gender Male; R.F.C. TRMM730628 (Mexico) (individual) [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

7. TREVINO MORALES, Omar (Latin: TREVIÑO MORALES, Omar) (a.k.a. TREVINO MORALES, Alejandro; a.k.a. TREVINO MORALES, Omar Alejandro; a.k.a. TREVINO MORALES, Oscar Omar; a.k.a. ''42''), Colonia Militar, Nuevo Laredo, Tamaulipas, Mexico; Reynosa, Tamaulipas, Mexico; Coahuila, Mexico; DOB 26 Jan 1974; POB Nuevo Laredo, Tamaulipas, Mexico; nationality Mexico; citizen Mexico; Gender Male (individual) [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

8. USUGA DAVID, Dairo Antonio (a.k.a. ''OTONIEL''), Colombia; DOB 15 Sep 1971; POB Necocli, Antioquia, Colombia; nationality Colombia; citizen Colombia; Gender Male; Cedula No. 71980054 (Colombia) (individual) [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

9. ZAMBADA GARCIA, Ismael (a.k.a. HERNANDEZ GARCIA, Javier; a.k.a. LOPEZ LANDEROS, Geronimo; a.k.a. ZAMBADA GARCIA, Ismael Mario; a.k.a. ZAMBADA, El Mayo; a.k.a. ''El Mayo''; a.k.a. ''Mayo''), Mexico; DOB 1948; POB Sinaloa, Mexico; nationality Mexico; Gender Male (individual) [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Entities:

1. BELTRAN LEYVA ORGANIZATION (a.k.a. ''BLO''), Mexico [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. JUAREZ CARTEL (a.k.a. CARTEL DE JUAREZ; a.k.a. ''CARRILLO FUENTES DRUG TRAFFICKING ORGANIZATION''; a.k.a. ''LA LINEA''; a.k.a. ''VCFO''), Mexico [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. CARTEL DE JALISCO NUEVA GENERACION (a.k.a. CJNG; a.k.a. JALISCO NEW GENERATION CARTEL; a.k.a. NEW GENERATION CARTEL OF JALISCO), Mexico [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. CLAN DEL GOLFO (a.k.a. BANDA CRIMINAL DE URABA; a.k.a. CLAN USUGA; a.k.a. GULF CLAN; a.k.a. LOS AUTODEFENSAS GAITANISTAS DE COLOMBIA; a.k.a. LOS URABENOS (Latin: LOS URABEÑOS)), Colombia [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

5. GULF CARTEL (a.k.a. CARTEL DEL GOLFO; a.k.a. OSIEL CARDENAS-GUILLEN ORGANIZATION; a.k.a. ''CDG''), Mexico [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

6. LA FAMILIA MICHOACANA, Michoacan, Mexico; Guerrero, Mexico [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

7. LOS ZETAS (a.k.a. CARTEL DEL NORESTE; a.k.a. ''CDN''; a.k.a. ''NORTHEAST CARTEL''), Mexico [SDNTK] [TCO] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

8. SINALOA CARTEL (a.k.a. CARTEL DE SINALOA; f.k.a. ''GUADALAJARA CARTEL''; f.k.a. ''MEXICAN FEDERATION''), Mexico [SDNTK] [ILLICIT-DRUGS-E.O.].

Sanctioned pursuant to section 1(a)(i) of the Order for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Dated: December 15, 2021.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021–27503 Filed 12–20–21; 8:45 am]

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DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Internal Revenue Service (IRS) Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S,1120–SF, 1120–FSC, 1120–L,1120–PC, 1120–REIT, 1120–RIC, 1120–POL, and Related Attachments

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 20, 2022 to be assured of consideration.

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: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: Today, over 90 percent of all business entity tax returns are prepared using software by the taxpayer or with preparer assistance. These are forms used by business taxpayers. These include Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL, and related schedules, that business entity taxpayers attach to their tax returns (see Appendix A for this notice). In addition, there are numerous OMB control numbers that report burden already included in this OMB control number. In order to eliminate this duplicative burden reporting, 163 OMB control numbers are being obsoleted. See Appendix B for information on the obsoleted OMB control numbers and the burden that was previously reported under those numbers.

Tax Compliance Burden

Tax compliance burden is defined as the time and money taxpayers spend to comply with their tax filing responsibilities. Time-related activities include recordkeeping, tax planning, gathering tax materials, learning about the law and what you need to do, and completing and submitting the return. Out-of-pocket costs include expenses such as purchasing tax software, paying a third-party preparer, and printing and postage. Tax compliance burden does not include a taxpayer's tax liability, economic inefficiencies caused by sub-optimal choices related to tax deductions or credits, or psychological costs.

PRA Submission to OMB

Title: U.S. Business Income Tax Return.

OMB Control Number: 1545–0123.

Form Numbers: Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL and all attachments to these forms.

Abstract: These forms are used by businesses to report their income tax liability.

Current Actions: There have been changes in regulatory guidance related to various forms approved under this approval package during the past year. There has been additions and removals of forms included in this approval package. This approval package is being submitted for renewal purposes only.

Type of Review: Revision of currently approved collections.

Affected Public: Corporations and Pass-Through Entities.

Estimated Number of Respondents: 12,300,000.

Total Estimated Time: 1,138,000,000 hours.

Estimated Time per Respondent: 92 hours.

Total Estimated Out-of-Pocket Costs: $48,303,000,000.

Total Monetized Burden: $104,218,000,000.

Note: Amounts below are for estimates for FY 2022. Reported time and cost burdens are national averages and do not necessarily reflect a ''typical case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Totals may not add due to rounding.

FISCAL YEAR 2022 ICB ESTIMATES FOR FORM 1120 AND 1065 SERIES OF RETURNS AND FORMS AND SCHEDULES

	FY 22		FY 21
Number of Taxpayers	12,300,000	500,000	11,800,000
Burden in Hours	1,138,000,000	53,000,000	1,085,000,000
Burden in Dollars	48,303,000,000	4,024,000,000	44,279,000,000
Monetized Total Burden	104,218,000,000	8,415,000,000	95,803,000,000

Tables 1, 2, and 3 below show the burden model estimates for each of the three classifications of business taxpayers: Partnerships (Table 1), corporations (Table 2) and S corporations (Table 3). As the tables show, the average filing compliance is different for the three forms of business. Showing a combined average burden for all businesses would understate the burden for corporations and overstate the burden for the two pass-through entities (partnerships and corporations). In addition, the burden for small and large businesses is shown separately for each type of business entity in order to clearly convey the substantially higher burden faced by the largest businesses.

TABLE 1—TAXPAYER BURDEN FOR ENTITIES TAXED AS PARTNERSHIPS

Forms 1065, 1066, and all attachments				
Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
All Partnerships	4.8	85	$3,900	$7,900
Small	4.5	75	2,800	5,300
Other *	0.3	245	20,600	45,900

* "Other" is defined as one having end-of-year assets greater than $10 million. A large business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that does not meet the definition of a large business.

TABLE 2—TAXPAYER BURDEN FOR ENTITIES TAXED AS TAXABLE CORPORATIONS

Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL, and all attachments				
Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
All Taxable Corporations	2.1	140	$6,100	$15,100
Small	2.0	90	3,100	6,400
Large *	0.1	895	49,700	142,600

* A "large" business is defined as one having end-of-year assets greater than $10 million. A "large" business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that does not meet the definition of a large business.

TABLE 3—TAXPAYER BURDEN FOR ENTITIES TAXED AS PASS-THROUGH CORPORATIONS

Forms 1120–REIT, 1120–RIC, 1120–S, and all attachments				
Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
All Pass-Through Corporations	5.4	80	$3,100	$6,400
Small	5.3	80	2,800	5,800
Large *	0.1	330	24,500	58,500

* A "large" business is defined as one having end-of-year assets greater than $10 million. A "large" business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that does not meet the definition of a large business.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 44 U.S.C. 3501 et seq.

Dated: December 15, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

Appendix A

Product	Title
Form 1042	Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
Form 1042 (SCH Q)	Schedule Q (Form 1042).
Form 1042–S	Foreign Person's U.S. Source Income Subject to Withholding.
Form 1042–T	Annual Summary and Transmittal of Forms 1042–S.
Form 1065	U.S. Return of Partnership Income.
Form 1065 (SCH B–1)	Information for Partners Owning 50% or More of the Partnership.
Form 1065 (SCH B–2)	Election Out of the Centralized Partnership Audit Regime.
Form 1065 (SCH C)	Additional Information for Schedule M–3 Filers.
Form 1065 (SCH D)	Capital Gains and Losses.

Product	Title
Form 1065 (SCH K–1)	Partner's Share of Income, Deductions, Credits, etc.
Form 1065 (SCH K–2)	Partner's Distributive Share Items-International.
Form 1065 (SCH K–3)	Partner's Share of Income, Deductions, Credits, etc.—International.
Form 1065 (SCH M–3)	Net Income (Loss) Reconciliation for Certain Partnerships.
Form 1065X	Amended Return or Administrative Adjustment Request (AAR).
Form 1066	U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.
Form 1066 (SCH Q)	Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.
Form 1118	Foreign Tax Credit-Corporations.
Form 1118 (SCH I)	Reduction of Foreign Oil and Gas Taxes.
Form 1118 (SCH J)	Adjustments to Separate Limitation Income (Loss) Categories for Determining Numerators of Limitation Fractions, Year-End Recharacterization Balances, and Overall Foreign and Domestic Loss Account Balances.
Form 1118 (SCH K)	Foreign Tax Carryover Reconciliation Schedule.
Form 1120	U.S. Corporation Income Tax Return.
Form 1120 (SCH B)	Additional Information for Schedule M–3 Filers.
Form 1120 (SCH D)	Capital Gains and Losses.
Form 1120 (SCH G)	Information on Certain Persons Owning the Corporation's Voting Stock.
Form 1120 (SCH H)	Section 280H Limitations for a Personal Service Corporation (PSC).
Form 1120 (SCH M–3)	Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million of More.
Form 1120 (SCH N)	Foreign Operations of U.S. Corporations.
Form 1120 (SCH O)	Consent Plan and Apportionment Schedule for a Controlled Group.
Form 1120 (SCH PH)	U.S. Personal Holding Company (PHC) Tax.
Form 1120 (SCH UTP)	Uncertain Tax Position Statement.
Form 1120–C	U.S. Income Tax Return for Cooperative Associations.
Form 1120F	U.S. Income Tax Return of a Foreign Corporation.
Form 1120–F (SCH H)	Deductions Allocated to Effectively Connected Income Under Regulations Section 1.861–8.
Form 1120–F (SCH I)	Interest Expense Allocation Under Regulations Section 1.882–5.
Form 1120–F (SCH M1 & M2)	Reconciliation of Income (Loss) and Analysis of Unappropriated Retained Earnings per Books.
Form 1120–F (SCH M–3)	Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of $10 Million or More.
Form 1120–F (SCH P)	List of Foreign Partner Interests in Partnerships.
Form 1120–F (SCH S)	Exclusion of Income From the International Operation of Ships or Aircraft Under Section 883.
Form 1120–F (SCH V)	List of Vessels or Aircraft, Operators, and Owners.
Form 1120–FSC	U.S. Income Tax Return of a Foreign Sales Corporation.
Form 1120FSC (SCH P)	Transfer Price or Commission.
Form 1120–H	U.S. Income Tax Return for Homeowners Associations.
Form 1120–IC–DISC	Interest Charge Domestic International Sales Corporation Return.
Form 1120–IC–DISC (SCH K)	Shareholder's Statement of IC–DISC Distributions.
Form 1120–IC–DISC (SCH P)	Intercompany Transfer Price or Commission.
Form 1120–IC–DISC (SCH Q)	Borrower's Certificate of Compliance With the Rules for Producer's Loans.
Form 1120–L	U.S. Life Insurance Company Income Tax Return.
Form 1120–L (SCH M–3)	Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of $10 Million or More.
Form 1120–ND *	Return for Nuclear Decommissioning Funds and Certain Related Persons.
Form 1120–PC	U.S. Property and Casualty Insurance Company Income Tax Return.
Form 1120–PC (SCH M–3)	Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of $10 Million or More.
Form 1120–POL	U.S. Income Tax Return for Certain Political Organizations.
Form 1120–REIT	U.S. Income Tax Return for Real Estate Investment Trusts.
Form 1120–RIC	U.S. Income Tax Return for Regulated Investment Companies.
Form 1120S	U.S. Income Tax Return for an S Corporation.
Form 1120S (SCH B–1)	Information on Certain Shareholders of an S Corporation.
Form 1120S (SCH D)	Capital Gains and Losses and Built-In Gains.
Form 1120S (SCH K–1)	Shareholder's Share of Income, Deductions, Credits, etc.
Form 1120S (SCH M–3)	Net Income (Loss) Reconciliation for S Corporations With Total Assets of $10 Million or More.
Form 1120–SF	U.S. Income Tax Return for Settlement Funds (Under Section 468B).
Form 1120–W	Estimated Tax for Corporations.
Form 1120–X	Amended U.S. Corporation Income Tax Return.
Form 1122	Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return.
Form 1125–A	Cost of Goods Sold.
Form 1125–E	Compensation of Officers.
Form 1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.
Form 1128	Application to Adopt, Change, or Retain a Tax Year.
Form 1138	Extension of Time For Payment of Taxes By a Corporation Expecting a Net Operating Loss Carryback.
Form 1139	Corporation Application for Tentative Refund.
Form 2220	Underpayment of Estimated Tax By Corporations.
Form 2438	Undistributed Capital Gains Tax Return.
Form 2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
Form 2553	Election by a Small Business Corporation.
Form 2848	Power of Attorney and Declaration of Representative.
Form 3115	Application for Change in Accounting Method.
Form 3468	Investment Credit.
Form 3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
Form 3520–A	Annual Return of Foreign Trust With a U.S. Owner.
Form 3800	General Business Credit.

Product	Title
Form 4136	Credit for Federal Tax Paid on Fuels.
Form 4255	Recapture of Investment Credit.
Form 4466	Corporation Application for Quick Refund of Overpayment of Estimated Tax.
Form 4562	Depreciation and Amortization (Including Information on Listed Property).
Form 4684	Casualties and Thefts.
Form 4797	Sales of Business Property.
Form 4810	Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).
Form 4876A	Election to Be Treated as an Interest Charge DISC.
Form 5452	Corporate Report of Nondividend Distributions.
Form 5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
Form 5471 (SCH E)	Income, War Profits, and Excess Profits Taxes Paid or Accrued.
Form 5471 (SCH H)	Current Earnings and Profits.
Form 5471 (SCH I–1)	Information for Global Intangible Low-Taxed Income.
Form 5471 (SCH J)	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
Form 5471 (SCH M)	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
Form 5471 (SCH O)	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
Form 5471 (SCH P)	Previously Taxed Earnings and Profits of U.S. Shareholder of Certain Foreign Corporations.
Form 5471 (SCH Q)	CFC Income by CFC Income Groups.
Form 5471 (SCH R)	Distributions From a Foreign Corporations.
Form 5472	Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.
Form 56	Notice Concerning Fiduciary Relationship.
Form 56F	Notice Concerning Fiduciary Relationship of Financial Institution.
Form 5713	International Boycott Report.
Form 5713 (SCH A)	International Boycott Factor (Section 999(c)(1)).
Form 5713 (SCH B)	Specifically, Attributable Taxes and Income (Section 999(c)(2)).
Form 5713 (SCH C)	Tax Effect of the International Boycott Provisions.
Form 5735	American Samoa Economic Development Credit.
Form 5735 Schedule P	Allocation of Income and Expenses Under Section 936(h)(5).
Form 5884	Work Opportunity Credit.
Form 5884–A	Credits for Affected Midwestern Disaster Area Employers (for Employers Affected by Hurricane Harvey, Irma, or Maria or Certain California Wildfires).
Form 6198	At-Risk Limitations.
Form 6478	Biofuel Producer Credit.
Form 6627	Environmental Taxes.
Form 6765	Credit for Increasing Research Activities.
Form 6781	Gains and Losses From Section 1256 Contracts and Straddles.
Form 7004	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
Form 8023	Elections Under Section 338 for Corporations Making Qualified Stock Purchases.
Form 8050	Direct Deposit Corporate Tax Refund.
Form 8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
Form 8275	Disclosure Statement.
Form 8275R	Regulation Disclosure Statement.
Form 8283	Noncash Charitable Contributions.
Form 8288	U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288A	Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288B	Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8300	Report of Cash Payments Over $10,000 Received In a Trade or Business.
Form 8302	Electronic Deposit of Tax Refund of $1 Million or More.
Form 8308	Report of a Sale or Exchange of Certain Partnership Interests.
Form 8329	Lender's Information Return for Mortgage Credit Certificates (MCCs).
Form 8404	Interest Charge on DISC-Related Deferred Tax Liability.
Form 8453–C	U.S. Corporation Income Tax Declaration for an IRS e-file Return.
Form 8453–I	Foreign Corporation Income Tax Declaration for an IRS e-file Return.
Form 8453–PE	U.S. Partnership Declaration for an IRS e-file Return.
Form 8453–S	U.S. S Corporation Income Tax Declaration for an IRS e-file Return.
Form 851	Affiliations Schedule.
Form 8586	Low-Income Housing Credit.
Form 8594	Asset Acquisition Statement Under Section 1060.
Form 8609	Low-Income Housing Credit Allocation and Certification.
Form 8609–A	Annual Statement for Low-Income Housing Credit.
Form 8611	Recapture of Low-Income Housing Credit.
Form 8621	Information Return By Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
Form 8621–A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
Form 8655	Reporting Agent Authorization.
Form 8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
Form 8703	Annual Certification of a Residential Rental Project.
Form 8716	Election To Have a Tax Year Other Than a Required Tax Year.
Form 8752	Required Payment or Refund Under Section 7519.
Form 8804	Annual Return for Partnership Withholding Tax (Section 1446).
Form 8804 (SCH A)	Penalty for Underpayment of Estimated Section 1446 Tax for Partnerships.
Form 8804–C	Certificate of Partner-Level Items to Reduce Section 1446 Withholding.

Product	Title
Form 8804–W	Installment Payments of Section 1446 Tax for Partnerships.
Form 8805	Foreign Partner's Information Statement of Section 1446 Withholding tax.
Form 8806	Information Return for Acquisition of Control or Substantial Change in Capital Structure.
Form 8810	Corporate Passive Activity Loss and Credit Limitations.
Form 8813	Partnership Withholding Tax Payment Voucher (Section 1446).
Form 8816	Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.
Form 8819	Dollar Election Under Section 985.
Form 8820	Orphan Drug Credit.
Form 8822B	Change of Address—Business.
Form 8824	Like-Kind Exchanges.
Form 8825	Rental Real Estate Income and Expenses of a Partnership or an S Corporation.
Form 8826	Disabled Access Credit.
Form 8827	Credit for Prior Year Minimum Tax-Corporations.
Form 8830	Enhanced Oil Recovery Credit.
Form 8832	Entity Classification Election.
Form 8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
Form 8834	Qualified Electric Vehicle Credit.
Form 8835	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.
Form 8838	Consent to Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.
Form 8838–P	Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)).
Form 8842	Election to Use Different Annualization Periods for Corporate Estimated Tax.
Form 8844	Empowerment Zone Employment Credit.
Form 8845	Indian Employment Credit.
Form 8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
Form 8848	Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).
Form 8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).
Form 8858 (SCH M)	Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer or Other Related Entities.
Form 8864	Biodiesel and Renewable Diesel Fuels Credit.
Form 8865	Return of U.S. Persons With Respect to Certain Foreign Partnerships.
Form 8865 (SCH G)	Statement of Application for the Gain Deferral Method Under Section 721(c).
Form 8865 (SCH H)	Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721 (c).
Form 8865 (SCH K–1)	Partner's Share of Income, Deductions, Credits, etc.
Form 8865 (SCH K–2)	Partner's Distributive Share Items—International.
Form 8865 (SCH K–3)	Partner's Share of Income, Deductions, Credits, etc.—International.
Form 8865 (SCH O)	Transfer of Property to a Foreign Partnership.
Form 8865 (SCH P)	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
Form 8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
Form 8869	Qualified Subchapter S Subsidiary Election.
Form 8873	Extraterritorial Income Exclusion.
Form 8874	New Markets Credit.
Form 8875	Taxable REIT Subsidiary Election.
Form 8878–A	IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.
Form 8879–C	IRS e-file Signature Authorization for Form 1120.
Form 8879–I	IRS e-file Signature Authorization for Form 1120–F.
Form 8879–PE	IRS e-file Signature Authorization for Form 1065.
Form 8879–S	IRS e-file Signature Authorization for Form 1120S.
Form 8881	Credit for Small Employer Pension Plan Startup Costs.
Form 8882	Credit for Employer-Provided Childcare Facilities and Services.
Form 8883	Asset Allocation Statement Under Section 338.
Form 8886	Reportable Transaction Disclosure Statement.
Form 8896	Low Sulfur Diesel Fuel Production Credit.
Form 8900	Qualified Railroad Track Maintenance Credit.
Form 8902	Alternative Tax on Qualified Shipping Activities.
Form 8903	Domestic Production Activities Deduction.
Form 8906	Distilled Spirits Credit.
Form 8908	Energy Efficient Home Credit.
Form 8910	Alternative Motor Vehicle Credit.
Form 8911	Alternative Fuel Vehicle Refueling Property Credit.
Form 8912	Credit to Holders of Tax Credit Bonds.
Form 8916	Reconciliation of Schedule M–3 Taxable Income with Tax Return Taxable Income for Mixed Groups.
Form 8916–A	Supplemental Attachment to Schedule M–3.
Form 8918	Material Advisor Disclosure Statement.
Form 8923	Mining Rescue Team Training Credit.
Form 8925	Report of Employer-Owned Life Insurance Contracts.
Form 8927	Determination Under Section 860(e)(4) by a Qualified Investment Entity.
Form 8932	Credit for Employer Differential Wage Payments.
Form 8933	Carbon Oxide Sequestration Credit.
Form 8936	Qualified Plug-In Electric Drive Motor Vehicle Credit.
Form 8937	Report of Organizational Actions Affecting Basis of Securities.
Form 8938	Statement of Foreign Financial Assets.

Product	Title
Form 8941	Credit for Small Employer Health Insurance Premiums.
Form 8947	Report of Branded Prescription Drug Information.
Form 8966	FATCA Report.
Form 8966–C	Cover Sheet for Form 8966 Paper Submissions.
Form 8979	Partnership Representative Revocation/Resignation and Designation.
Form 8990	Limitation on Business Interest Expense IRC 163(j).
Form 8991	Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts.
Form 8992	U.S Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI).
Form 8992 SCH–B	Calculation of Global Intangible Low-Taxed Income (GILTI) for Members of a U.S. Consolidated Group who are U.S. Shareholders of a CFC.
Form 8993	Section 250 Deduction for Foreign-Derived Intangible Income (FDII)and Global Intangible Low-Taxed Income (GILTI).
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Form 8995–A	Qualified Business Income Deduction.
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Form 965–B	Corporate and Real Estate Investment Trust (REIT) Report of Net 965 Tax Liability and REIT Report of Net 965 Amounts.
Form 965–C	Transfer Agreement Under Section 965(h)(3).
Form 965–D	Transfer Agreement Under 965(i)(2).
Form 965–E	Consent Agreement Under 965(i)(4)(D).
Form 965 (SCH–A)	U.S. Shareholder's Section 965(a) Inclusion Amount.
Form 965 (SCH–B)	Deferred Foreign Income Corporation's Earnings and Profits (E&P).
Form 965 (SCH–C)	U.S. Shareholder's Aggregate Foreign Earnings and Profits Deficit.
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Form 982	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).
Form SS–4	Application for Employer Identification Number.
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Form T (TIMBER)	Forest Activities Schedule.
Form W–8BEN	Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individual).
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Appendix B

OMB numbers that will no longer be separately reported in order to eliminate duplicate burden reporting. For business filers, the following OMB numbers are or will be retired resulting in a total reduction of 48,912,072 reported burden hours.

Burden hours	OMB No.	Title
1,005	1545–0731	Definition of an S Corporation.
41	1545–0746	LR–100–78 (Final) Creditability of Foreign Taxes.
205	1545–0755	Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.
37,922,688	* 1545–0771	TD 8864 (Final); EE–63–88 (Final and temp regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; IA–140–86 (Temporary) Fringe Benefits Treas reg 1.274.
3,104	1545–0807	(TD 7533) Final, DISC Rules on Procedure and Administration; Rules on Export Trade Corporations, and (TD 7896) Final, Income from Trade Shows.
8,125	1545–0879	TD 8426—Certain Returned Magazines, Paperbacks or Records (IA–195–78).

Burden hours	OMB No.	Title
978	1545–1018	FI–27–89 (Temporary and Final) Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; FI–61–91 (Final) Allocation of Allocable Investment.
1,025	1545–1041	TD 8316 Cooperative Housing Corporations.
50,417	1545–1068	T.D. 8618—Definition of a Controlled Foreign Corporation, Foreign Base Company Income, and Foreign Personal Holding Company Income of a Controlled Foreign Corporation (INTL–362–88).
12,694	1545–1070	Effectively connected income and the branch profits tax.
3,250	1545–1072	INTL–952–86 (Final—TD 8410) and TD 8228 Allocation and Apportionment of Interest Expense and Certain Other Expenses.
1,620	* 1545–1083	Treatment of Dual Consolidated Losses.
40	1545–1093	Final Minimum Tax-Tax Benefit Rule (TD 8416).
4,008	1545–1102	PS–19–92 (TD 9420—Final) Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.
19,830	* 1545–1130	Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.
1,500	1545–1138	TD–8350 (Final) Requirements For Investments to Qualify under Section 936(d)(4) as Investments in Qualified Caribbean Basin Countries.
70	* 1545–1146	Applicable Conventions Under the Accelerated Cost.
640,000	1545–1191	Information with Respect to Certain Foreign-Owned Corporations—IRC Section 6038A.
662	1545–1218	CO–25–96 (TD 8824—Final) Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following.
1,000	1545–1224	T. D. 8337 (Final) Allocation and Apportionment of Deduction for State Income Taxes (INTL–112–88).
1,000	* 1545–1233	Adjusted Current Earnings (IA–14–91) (Final).
2,000	* 1545–1237	REG–209831–96 (TD 8823) Consolidated Returns—Limitation on the Use of Certain Losses and Deductions.
49,950	* 1545–1251	TD 8437—Limitations on Percentage Depletion in the Case of Oil and Gas Wells.
50	1545–1254	TD 8396—Conclusive Presumption of Worthlessness of Debts Held by Banks (FI–34–91).
1	* 1545–1260	CO–62–89 (Final) Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryfowards.
2,390	1545–1271	Treatment of transfers of stock or securities to foreign corporations.
200	1545–1275	Limitations on net operating loss carryforwards and certain built-in losses following ownership change.
2,070	1545–1287	FI–3–91 (TD 8456—Final) Capitalization of Certain Policy Acquisition Expenses.
625	1545–1290	TD 8513—Bad Debt Reserves of Banks.
3,542	1545–1299	TD 8459—Settlement Funds.
2,200	1545–1300	Treatment of Acquisition of Certain Financial Institutions: Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.
322	1545–1308	TD 8449 (Final) Election, Revocation, Termination, and Tax Effect of Subchapter S Status.
63	1545–1324	CO–88–90 (TD 8530) Limitation on Net Operating Loss Carryforwards and Certain Built-in Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction.
5	1545–1338	Election Out of Subchapter K for Producers of Natural Gas—TD 8578.
18,600	* 1545–1344	TD 8560 (CO–30–92) Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless (Final).
2,000	1545–1352	TD 8586 (Final) Treatment of Gain From Disposition of Certain Natural Resource Recapture Property.
104,899	1545–1357	PS–78–91 (TD 8521) (TD 8859) Procedures for Monitoring Compliance with Low-Income Housing Credit Requirements; PS–50–92 Rules to Carry Out the Purposes of Section 42 and for Correcting.
9,350	1545–1364	Methods to Determine Taxable Income in connection with a Cost Sharing Arrangement—IRC Section 482.
20,000	1545–1412	FI–54–93 (Final) Clear Reflection of Income in the Case of Hedging Transactions.
4,332	* 1545–1417	Form 8845—Indian Employment Credit.
1,050	1545–1433	Consolidated and Controlled Groups-Intercompany Transactions and Related Rules.
875	1545–1434	CO–26–96 (Final) Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.
333	1545–1438	TD 8643 (Final) Distributions of Stock and Stock Rights.
10,000	1545–1440	TD 8611, Conduit Arrangements Regulations—Final (INTL–64–93).
2,000	* 1545–1447	CO–46–94 (TD 8594—Final) Losses on Small Business Stock.
1,250	1545–1476	Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction.
171,050	1545–1480	TD 8985—Hedging Transactions.
2,500	1545–1491	TD 8746—Amortizable Bond Premium.
1,000	1545–1493	TD 8684—Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.

Burden hours	OMB No.	Title
212,500	1545–1507	(TD 8701)—Treatment of Shareholders of Certain Passive Investment Companies; (TD 8178)—Passive Foreign Investment Companies.
326,436	* 1545–1522	Revenue Procedure 2017–52, 2017–1, 2017–3 Rulings and determination letters.
10,467	1545–1530	Rev. Proc. 2007–32—Tip Rate Determination Agreement (Gaming Industry); Gaming Industry Tip Compliance Agreement Program.
10,000	* 1545–1539	REG–208172–91 (TD 8787—final) Basis Reduction Due to Discharge of Indebtedness.
18,553	* 1545–1541	Revenue Procedure 97–27, Changes in Methods of Accounting.
278,622	* 1545–1546	Revenue Procedure 97–33, EFTPS (Electronic Federal Tax Payment System).
50,000	* 1545–1548	Rev. Proc. 2013–30, Uniform Late S Corporation Election Revenue Procedure.
296,896	1545–1549	Tip Reporting Alternative Commitment (TRAC) Agreement and Tip Rate Determination (TRDA) for Use in the Food and Beverage Industry.
30,580	1545–1551	Changes in Methods of Accounting (RP 2016–29).
623	1545–1555	REG–115795–97 (Final) General Rules for Making and Maintaining Qualified Electing Fund Elections.
500	1545–1556	TD 8786—Source of Income From Sales of Inventory Partly From Sources Within a Possession of the U.S.; Also, Source of Income Derived From Certain Purchases From a Corp. Electing Sec. 936.
1,000	1545–1558	Rev. Proc. 98–46 (modifies Rev. Proc. 97–43)—Procedures for Electing Out of Exemptions Under Section 1.475(c)–1; and Rev. Rul. 97–39, Mark-to-Market Accounting Method for Dealers in Securities.
100,000	1545–1559	Revenue Procedures 98–46 and 97–44, LIFO Conformity Requirement.
2,000	1545–1566	Notice 2010–46, Prevention of Over-Withholding of U.S. Tax Avoidance With Respect to Certain Substitute Dividend Payments.
904,000	1545–1588	Adjustments Following Sales of Partnership Interests.
10,110	* 1545–1590	REG–251698–96 (T.D. 8869—Final) Subchapter S Subsidiaries.
500	* 1545–1617	REG–124069–02 (Final) Section 6038—Returns Required with Respect to Controlled Foreign Partnerships; REG–118966–97 (Final) Information Reporting with Respect to Certain Foreign Partnership.
3,000	1545–1634	TD 9595 (REG–141399–07) Consolidated Overall Foreign Losses, Separate Limitation Losses, and Overall Domestic Losses.
500	1545–1641	Rev. Proc. 99–17—Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.
50	1545–1642	TD 8853 (Final), Recharacterizing Financing Arrangements Involving Fast-Pay Stock.
1	1545–1646	TD 8851—Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.
75	* 1545–1647	Revenue Procedure 2001–21 Debt Roll-Ups.
1,620	* 1545–1657	Revenue Procedure 99–32—Conforming Adjustments Subsequent to Section 482 Allocations.
25	1545–1658	Purchase Price Allocations in Deemed Actual Asset Acquisitions.
10,000	1545–1661	Qualified lessee construction allowances for short-term leases.
1,500	1545–1671	REG–209709–94 (Final—TD 8865) Amortization of Intangible Property.
70	1545–1672	T.D. 9047—Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).
470	1545–1675	Treatment of taxable income of a residual interest holder in excess of daily accruals.
23,900	1545–1677	Exclusions From Gross Income of Foreign Corporations.
13,134	1545–1684	Pre-Filing Agreements Program.
400	* 1545–1690	Notice 2000–28, Coal Exports.
400	1545–1699	TD 9715; Rev. Proc. 2015–26 (Formerly TD 9002; Rev Proc 2002–43), Agent for Consolidated Group.
3,200	1545–1701	Revenue Procedure 2000–37—Reverse Like-kind Exchanges (as modified by Rev Proc. 2004–51).
2,000	1545–1706	TD 9315—Section 1503(d) Closing Agreement Requests.
1,800	1545–1711	TD 9273—Stock Transfer Rules: Carryover of Earnings and Taxes (REG–116050–99).
4,877	1545–1714	Tip Reporting Alternative Commitment (TRAC) for most industries.
870	1545–1716	Employer-Designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC)—Notice 2001–1.
1,897	1545–1717	Tip Rate Determination Agreement (TRDA) for Most Industries.
1,250	1545–1718	Source of Income from Certain Space and Ocean Activities; Source of Communications Income (TD 9305—final).
15	1545–1730	Manner of making election to terminate tax-exempt bond financing.
19	1545–1731	Extraterritorial Income Exclusion Elections.
1,318	1545–1736	Advanced Insurance Commissions—Revenue Procedure 2001–24.
500	1545–1748	Changes in Accounting Periods—REG–106917–99 (TD 8669/Final).
5,950	1545–1752	Revenue Procedure 2008–38, Revenue Procedure 2008–39, Revenue Procedure 2008–40, Revenue Procedure 2008–41, Revenue Procedure 2008–42.
100,000	1545–1756	Revenue Procedure 2001–56, Demonstration Automobile Use.
530,090	1545–1765	T.D. 9171, New Markets Tax Credit.
500	1545–1768	Revenue Procedure 2003–84, Optional Election to Make Monthly Sec. 706 Allocations.

Burden hours	OMB No.	Title
7,700	1545–1774	Extensions of Time to Elect Method for Determining Allowable Loss.
100	1545–1784	Rev Proc 2002–32 as Modified by Rev Proc 2006–21, Waiver of 60-month Bar on Reconsolidation after Disaffiliation.
600	1545–1786	Changes in Periods of Accounting.
300	1545–1799	Notice 2002–69, Interest Rates and Appropriate Foreign Loss Payment Patterns For Determining the Qualified Insurance Income of Certain Controlled Corporations under Section 954(f).
7,500	* 1545–1801	Revenue Procedure 2002–67, Settlement of Section 351 Contingent Liability Tax Shelter Cases.
300	1545–1820	Revenue Procedure 2003–33, Section 9100 Relief for 338 Elections.
15,000	* 1545–1828	TD 9048; 9254—Guidance under Section 1502; Suspension of Losses on Certain Stock Disposition (REG–131478–02).
100	1545–1831	TD 9157 (Final) Guidance Regarding the Treatment of Certain Contingent Payment Debt Instruments w/one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.
625	* 1545–1833	Revenue Procedure 2003–37, Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Interest Expense Apportionment.
8,600	1545–1834	Revenue Procedure 2003–39, Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.
2,000	* 1545–1837	Revenue Procedure 2003–36, Industry Issue Resolution Program.
3,200	1545–1847	Revenue Procedure 2004–29—Statistical Sampling in Sec. 274 Context.
24,000	* 1545–1855	TD 9285—Limitation on Use of the Nonaccrual-Experience Method of Accounting Under Section 448(d)(5).
50	1545–1861	Revenue Procedure 2004–19—Probable or Prospective Reserves Safe Harbor.
3,000	1545–1870	TD 9107—Guidance Regarding Deduction and Capitalization of Expenditures.
1,500	1545–1893	Rollover of Gain from Qualified Small Business Stock to Another Qualified Small Business Stock.
3,000	1545–1905	TD 9289 (Final) Treatment of Disregarded Entities Under Section 752.
200	1545–1906	TD 9210—LIFO Recapture Under Section 1363(d).
76,190	1545–1915	Notice 2005–4, Fuel Tax Guidance, as modified.
552,100	1545–1939	Notification Requirement for Transfer of Partnership Interest in Electing Investment Partnership (EIP).
52,182	1545–1945	26 U.S. Code § 475—Mark to market accounting method for dealers in securities.
2,765	1545–1946	T.D. 9315 (Final) Dual Consolidated Loss Regulations.
250	1545–1965	TD 9360 (REG–133446–03) (Final) Guidance on Passive Foreign Company (PFIC) Purging Elections.
1,985	* 1545–1983	Qualified Railroad Track Maintenance Credit.
3,034,765	* 1545–1986	Notice 2006–47, Elections Created or Effected by the American Jobs Creation Act of 2004.
12	* 1545–1990	Application of Section 338 to Insurance Companies.
150	* 1545–2001	Rev. Proc. 2006–16, Renewal Community Depreciation Provisions.
1,700	* 1545–2002	Notice 2006–25 (superseded by Notice 2007–53), Qualifying Gasification Project Program.
4,950	1545–2003	Notice 2006–24, Qualifying Advanced Coal Project Program.
3,761	1545–2004	Deduction for Energy Efficient Commercial Buildings.
171,160	* 1545–2008	Nonconventional Source Fuel Credit.
25	* 1545–2014	TD 9452—Application of Separate Limitations to Dividends from Noncontrolled Section 902 Corporations.
500	1545–2017	Notice 2006–46 Announcement of Rules to be included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.
375,000	1545–2019	TD 9451—Guidance Necessary to Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules (TD 9329).
200	1545–2028	Fuel Cell Motor Vehicle Credit.
35	1545–2030	REG–120509–06 (TD 9465—Final), Determination of Interest Expense Deduction of Foreign Corporations.
100	1545–2036	Taxation and Reporting of REIT Excess Inclusion Income by REITs, RICs, and Other Pass-Through Entities (Notice 2006–97).
2,400	1545–2072	Revenue Procedure 2007–35—Statistical Sampling for Purposes of Section 199.
2,500	1545–2091	TD 9512 (Final)—Nuclear Decommissioning Funds.
25	1545–2096	Loss on Subsidiary Stock—REG–157711–02 (TD 9424—Final).
120	1545–2103	Election to Expense Certain Refineries.
3,000	1545–2110	REG–127770–07 (Final), Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit.
26,000	1545–2114	S Corporation Guidance under AJCA of 2004 (TD 9422 Final—REG–143326–05).
389,330	* 1545–2122	Form 8931—Agricultural Chemicals Security Credit.
1,000	1545–2125	REG–143544–04 Regulations Enabling Elections for Certain Transaction Under Section 336(e).
2,700	* 1545–2133	Rev. Proc. 2009–16, Section 168(k)(4) Election Procedures and Rev. Proc. 2009–33, Section 168(k)(4) Extension Property Elections.
350	* 1545–2134	Notice 2009–41—Credit for Residential Energy Efficient Property.
100	1545–2145	Notice 2009–52, Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination with Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.
300,000	1545–2147	Internal Revenue Code Section 108(i) Election.

Burden hours	OMB No.	Title
4,500	1545–2149	Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Stewardship Expense (TD 9456).
250	1545–2150	Notice 2009–58, Manufacturers' Certification of Specified Plug-in Electric Vehicles.
550,000	1545–2151	Qualifying Advanced Energy Project Credit—Notice 2013–12.
180	1545–2153	Notice 2009–83—Credit for Carbon Dioxide Sequestration Under Section 45Q.
1,000	*1545–2155	TD 9469 (REG–102822–08) Section 108 Reduction of Tax Attributes for S Corporations.
36,000	1545–2156	Revenue Procedure 2010–13, Disclosure of Activities Grouped under Section 469.
1,500	1545–2158	Notice 2010–54: Production Tax Credit for Refined Coal.
5,988	1545–2165	Notice of Medical Necessity Criteria under the Mental Health Parity and Addiction Equity Act of 2008.
3,260	1545–2183	Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f). (TD 9614 & 9615).
694,750	1545–2186	TD 9504, Basis Reporting by Securities Brokers and Basis Determination for Stock; TD 9616, TD9713, and TD 9750.
1,000	1545–2194	Rules for Certain Rental Real Estate Activities.
1,800	1545–2209	REG–112805–10—Branded Prescription Drugs.
403,177	1545–2242	REG–135491–10—Updating of Employer Identification Numbers.
200	1545–2245	REG–160873–04—American Jobs Creation Act Modifications to Section 6708, Failure to Maintain List of Advisees With Respect to Reportable Transactions.
75,000	1545–2247	TD 9633—Limitations on Duplication of Net Built-in Losses.
400	1545–2259	Performance & Quality for Small Wind Energy Property.
1,800	1545–2276	Safe Harbor for Inadvertent Normalization Violations.
48,912,072	Total:	

*Discontinued in FY21.

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Part II

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Automatic Commercial Ice Makers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0006]

RIN 1904–AD81

Energy Conservation Program: Test Procedure for Automatic Commercial Ice Makers

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedure for automatic commercial ice makers (''ACIMs''; ''ice makers'') to update incorporated references to the latest version of the industry standards; establish relative humidity and water hardness test conditions; provide additional detail regarding certain test conditions, settings, setup requirements, and calculations; include a voluntary measurement of potable water use; clarify certification and reporting requirements; and add enforcement provisions. This notice of proposed rulemaking (''NOPR'') also proposes to provide additional detail to the DOE test procedure to improve the representativeness and repeatability of the current ACIM test procedure. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than February 22, 2022. See section V, ''Public Participation,'' for details. DOE will hold a webinar on Monday, January 24, 2022, from 1:00 p.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, it will be cancelled.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–TP–0006, by any of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Email: ACIM2017TP0006@ee.DOE.gov.* Include the docket number EERE–2017–BT–TP–0006 in the subject line of the message.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing corona virus 2019 (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=53&action=viewlive.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting (if one is held), contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference the following industry standards into 10 CFR part 431:

Air Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 810–2016 with Addendum 1, ''Performance Rating of Automatic Commercial Ice-Makers,'' approved January 2018; and

American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') Standard 29–2015, ''Method of Testing Automatic Ice Makers,'' approved April 30, 2015.

Copies of AHRI standards can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, (703) 524–8800, *ahri@ahrinet.org,* or *http://www.ahrinet.org.*

Copies of ASHRAE standards can be purchased from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329, (404) 636–8400, *ashrae@ashrae.org,* or *www.ashrae.org.*

For a further discussion of these standards, see section IV.M of this document.

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I. Authority and Background

ACIMs are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(F)) DOE's energy conservation standards and test procedures for ACIMs are currently prescribed at 10 CFR 431.136 and 10 CFR 431.134, respectively. The following sections discuss DOE's authority to establish test procedures for ACIMs and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[2] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes ACIMs, the subject of this document. (42 U.S.C. 6311(1)(F))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA prescribed the first Federal test procedure for ACIMs, directing that the ACIM test procedure shall be the AHRI Standard 810–2003, ''Performance Rating of Automatic Commercial Ice-Makers'' (''AHRI Standard 810–2003''). (42 U.S.C. 6314(a)(7)(A)) EPCA requires if AHRI Standard 810–2003 is amended, that DOE must amend the Federal test procedures as necessary to be consistent with the amended AHRI standard, unless DOE determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures to be representative of actual energy efficiency and to not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(7)(B)(i))

EPCA also requires that at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including ACIMs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this NOPR in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(a)(1)(A)(ii))

B. Background

DOE's existing test procedures for ACIMs appear at Title 10 of the Code of Federal Regulations (''CFR'') part 431, section 134.

In a January 11, 2012 test procedure final rule (''January 2012 final rule''), DOE satisfied its statutory obligation under 42 U.S.C. 6314(a)(7)(B) to amend the ACIM test procedure by incorporating by reference the following: AHRI Standard 810–2007 with Addendum 1 ''2007 Standard for Performance Rating of Automatic Commercial Ice Makers'' (''AHRI Standard 810–2007'') and ANSI/ASHRAE Standard 29–2009 ''Method of Testing Automatic Ice Makers,'' (including Errata Sheets issued April 8, 2010 and April 21, 2010), approved January 28, 2009 (''ASHRAE Standard 29–2009''). 77 FR 1591. Consistent with the updated AHRI Standard 810–2007, the amended DOE test procedure provides for the testing of equipment with capacities from 50 to 4,000 lb/24 h. The updated DOE test procedure also (1) provides test methods for continuous type ice makers and batch type ice makers that produce ice types other than cubes, (2) standardizes the measurement of energy and water use for continuous type ice makers with respect to ice hardness, (3) clarifies the test method and reporting requirements

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

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

for remote condensing ice makers designed for connection to remote compressor racks, and (4) discontinues the use of an energy use rate calculation and instead references the calculation of energy use per 100 pounds of ice as specified in ASHRAE Standard 29–2009. *Id.* The amended test procedure was required to be used for representations of energy use beginning on January 7, 2013. *Id.*

On March 19, 2019, DOE published a Request for Information (''RFI'') to solicit comment and information to inform DOE's determination of whether to propose amendments to the current ACIM test procedure. 84 FR 9979 (''March 2019 RFI''). DOE requested comment regarding new versions of the industry standards that the current DOE test procedure incorporates by reference; consideration of additional specifications and amendments that may improve the accuracy of the test procedure or reduce the testing burden on manufacturers; and any additional topics that may inform DOE's decisions in a test procedure rulemaking, including methods to reduce regulatory burden while ensuring the procedure's accuracy. *Id.*

DOE received comments in response to the March 2019 RFI from the interested parties listed in Table I.1.

TABLE I.1—MARCH 2019 RFI WRITTEN COMMENTS

Organization(s)	Reference in this NOPR	Organization type
Howe Corporation	Howe	Manufacturer.
Air-Conditioning, Heating, & Refrigeration Institute	AHRI	Trade Association.
Appliance Standards Awareness Project (''ASAP''), Natural Resources Defense Council (''NRDC''), Northwest Energy Efficiency Alliance (''NEEA'').	Joint Commenters	Energy Efficiency Organizations.
Brema Group S.p.A	Brema	Manufacturer.
Hoshizaki America, Inc	Hoshizaki	Manufacturer.

A parenthetical reference at the end of a quoted or paraphrased comment provides the location of the item in the public record.[3]

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update 10 CFR 429.45, ''Automatic commercial ice makers;'' 10 CFR 429.134, ''Product-specific enforcement provisions,'' 10 CFR 431.132, ''Definitions concerning automatic commercial ice makers;'' 10 CFR 431.133, ''Materials incorporated by reference;'' and 10 CFR 431.134, ''Uniform test methods for the measurement of energy and water consumption of automatic commercial ice makers'' as follows:

(1) Updating the referenced methods of test to AHRI Standard 810–2016 and ASHRAE Standard 29–2015, except for the provisions as discussed;

(2) Including definitions and test requirements for low-capacity ACIMs;

(3) Incorporating changes to improve test procedure representativeness, accuracy, and precision, which include: Clarifying calorimeter constant test instructions; specifying ambient temperature measurement requirements; establishing a relative humidity test condition; establishing an allowable range of water hardness; clarifying the stability requirements that were updated in ASHRAE Standard 29–2015; clarifying water pressure requirements; and increasing the tolerance on capacity collection time;

(4) Specifying certain test settings, conditions, and installations, including: Clarifying ice hardness test conditions; clarifying baffle use for testing; amending clearance requirements; clarifying automatic purge control settings; and providing instructions for testing ACIMs with automatic dispensers;

(5) Including voluntary provisions for measuring potable water use;

(6) Including clarifying language for calculations, rounding requirements, sampling plan calculations, and certification instructions; and

(7) Adding language to the equipment-specific enforcement provisions.

DOE's proposed actions are summarized in Table II.1 compared to the current test procedure as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
References industry standard AHRI Standard 810–2007, which refers to ASHRAE Standard 29–2009.	Updates reference to industry standard AHRI Standard 810–2016, which refers to ASHRAE Standard 29–2015.	Adopt latest industry standards.
Scope includes ACIMs with capacities between 50 and 4,000 lb/24 h.	Includes definitions for low-capacity ACIMs and expands test procedure scope to cover all ACIMs with capacities up to 4,000 lb/24 h; includes additional instructions to allow for testing low-capacity ACIMs.	Ensures representative, repeatable, and reproducible measures of performance for ACIMs currently not in scope.
Does not specify the ambient & water temperature and water pressure when harvesting ice to be used in determining the ice hardness factor.	Specifies that the harvested ice used to determine the ice hardness factor must be produced at the Standard Rating Conditions presented in section 5.1.2 of AHRI Standard 810–2016.	Harmonize with industry standard; improves representativeness, repeatability, and reproducibility.

[3] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to consider amended test procedures for ACIMs (EERE–2017–BT–TP–0006, which is maintained at *www.regulations.gov/#!docketDetail;D=EERE-2017-BT-TP-0006*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE—Continued

Current DOE test procedure	Proposed test procedure	Attribution
Does not specify where to measure the temperature of the ice block used to determine the calorimeter constant.	Specifies that the temperature measurement location must be at approximately the geometric center of the block of ice and that any water on the block of ice must be wiped off the surface prior to placement in the calorimeter.	Improves representativeness, repeatability, and reproducibility.
Capacity measurements begin after the unit has been stabilized.	All cycles or samples used for the capacity test meet the stability criteria.	Clarify industry TP to reduce test burden while maintaining representative results; harmonize with industry standard.
Continuous ACIMs shall be considered stabilized when the weights of three consecutive 14.4-minute samples taken within a 1.5-hour period do not vary by more than ±2 percent.	Continuous ACIMs shall be considered stabilized when the weights of two consecutive 15.0 min ±9.0 s samples having no more than 5 minutes between the end of a sample and the start of the next sample do not vary more than ±2 percent or 0.055 pounds, whichever is greater.	Harmonizes with industry TP update, but timing tolerance increased by DOE to reduce test burden while maintaining representative results.
Does not specify relative humidity test condition	Adds relative humidity test condition of 35 ±5.0 percent.	Improves representativeness, repeatability, and reproducibility.
Does not specify water hardness test condition	Specifies that water for testing must have a maximum water hardness of 180 mg of calcium carbonate per liter of water (180 mg/L).	Improves representativeness, repeatability, and reproducibility.
Use of baffles and purge setting addressed in guidance.	Incorporates existing guidance into the test procedure; allow for an alternate ambient measurement location instead of shielding the thermocouple and for rear clearances which are less than the required inlet measurement distance.	Improves representativeness, repeatability, and reproducibility.
ACIMs shall be tested with a clearance of 18 inches on all four sides.	ACIMs shall be tested according to the manufacturer's specified minimum rear clearances requirements, or 3 feet from the rear of the ACIMs, whichever is less; all other sides of the ACIMs and all sides of the remote condensers, if applicable, shall be tested with a minimum clearance of 3 feet or the minimum clearance specified by the manufacturer, whichever is greater.	Improves representativeness, repeatability, and reproducibility and updates certain requirements to harmonize with industry standard.
Does not specify use of weighted/unweighted sensors to measure ambient temperature.	Specifies that unweighted sensors shall be used for all ambient temperature measurements.	Improves representativeness, repeatability, and reproducibility.
Does not specify how to measure water inlet pressure requirements.	Specifies that the water pressure shall be measured within 8 inches of the ACIM and be within the allowable range within 5 seconds of water flowing into the ACIM.	Improves representativeness, repeatability, and reproducibility.
Does not specify how to collect capacity samples for ACIMs with dispensers.	Provides instruction to test certain ACIMs with an automatic dispenser with an empty internal bin at the start of the test and to allow for the continuous production and dispensing of ice, with samples collected from the dispenser through a conduit connected to an external bin one-half full of ice.	In response to waiver.
Does not specifically reference potable water usage.	Includes voluntary reference to potable water use in 10 CFR 431.134 based on AHRI 810–2016.	Harmonize with industry standard; improves representativeness, repeatability, and reproducibility.
Rounds energy use in multiples of 0.1 kWh/100 lb and harvest rate to the nearest 1 lb/24 h.	Rounds energy use in multiples of 0.01 kWh/100 lb; rounds harvest rate to the nearest 0.1 lb/24 h for ACIMs with harvest rates of 50 lb/24 h or less.	Harmonize with latest industry standard; improves representativeness, repeatability, and reproducibility.
Does not specify if intermediate values used in calculations should be rounded.	Clarifies that the calculations of intermediate values be performed with raw measured data and only the final results be rounded; clarifies that the energy use, condenser water use, and potable water use (if voluntarily measured) be calculated by averaging the calculated values for the three measured samples for each respective metric.	Improves representativeness, repeatability, and reproducibility.
Does not specify how to calculate the percent difference between two measurements.	Specifies that the percent difference between two measurements be calculated by taking the absolute difference between two measurements and divide by the average of the two measurements.	Improves representativeness, repeatability, and reproducibility.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE—Continued

Current DOE test procedure	Proposed test procedure	Attribution
References ''maximum energy use'' and ''maximum condenser water use'' at 10 CFR 429.45, no reference to water use in sampling plan.	Removes ''maximum'' from the referenced terms; adds reference to condenser water use in sampling plan.	Improves clarity.
Defines ''cube type ice'' at 10 CFR 431.132	Removes ''cube type ice'' from 10 CFR 431.132; removes reference to cube type ice in the definition of ''batch type ice maker''.	Improves clarity.
Does not specify how the represented value of harvest rate for each basic model should be determined based on the test sample.	The represented value of harvest rate for the basic model is determined as the mean of the harvest rate for each tested unit.	Improves representativeness, repeatability, and reproducibility.
Does not specify rounding requirements for represented values in 10 CFR 429.45.	Specifies that represented values determined in 10 CFR 429.45 must be rounded consistent with the test procedure rounding instructions, upon the compliance date of any amended standards.	Improves representativeness, repeatability, and reproducibility.
No equipment-specific enforcement provisions	The certified harvest rate will be considered for determination of the maximum energy consumption and maximum condenser water use levels only if the average measured harvest rate is within five percent of the certified harvest rate, otherwise the measured harvest rate will be used to determine the applicable standards.	Improves clarity.

DOE has tentatively determined that while the proposed amendments would introduce additional test requirements compared to the current approach, the impact to the measured efficiency of certified ACIMs is expected to be de minimis. Accordingly, DOE does not expect that manufacturers would be required to re-test or re-certify existing ACIM models as a result of the proposals in this NOPR. Additionally, for low-capacity ACIMs, testing according to the proposed test procedure would not be required until the compliance date of any energy conservation standards for that equipment. DOE expects that any low-capacity ACIM manufacturers currently making representations of energy consumption are already doing so according to the existing DOE test procedure, and similarly would not be required to re-test their equipment according to the proposed test procedure. While DOE does not expect that manufacturers would incur additional cost as a result of the proposed test procedure, DOE provides a discussion of testing costs in section III.F.1 of this NOPR. DOE has also tentatively determined that the proposed test procedure would not be unduly burdensome to conduct. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

In the following sections, DOE describes the proposed amendments to the test procedures for ACIMs. This proposal reflects DOE's review of the updates to the referenced industry test procedures and the comments received in response to the March 2019 RFI and other relevant information. DOE seeks input from the public to assist with its evaluation of proposed amendments to the test procedures for ACIMs. In addition, DOE welcomes comments on other relevant issues that may not specifically be identified in this document.

A. Scope

DOE defines automatic commercial ice maker as ''a factory-made assembly (not necessarily shipped in 1 package) that (1) consists of a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting ice; and (2) may include means for storing ice, dispensing ice, or storing and dispensing ice.'' 10 CFR 431.132 (see also, 42 U.S.C. 6311(19)). The existing DOE test procedure for ACIMs applies to both batch-type and continuous-type ice makers [4] with harvest rates between 50 and 4,000 lb/24 h. DOE further subdivides the batch-type and continuous-type equipment ACIM categories into several distinct equipment classes based on the equipment configuration, condenser cooling method, and harvest rate in pounds per 24 hours (lb/24 h), as shown in Table III.1. See also, 10 CFR 431.136(c) and (d). ACIM configurations include individual ice-making heads, remote condensing equipment (both with and without a remote compressor), and self-contained equipment. Ice-making heads and self-contained equipment can be air- or water-cooled; however, DOE prescribes standards only for remote condensing equipment that are air-cooled. Self-contained ACIMs include a means for storing ice, while ice-making heads and remote condensing equipment are typically paired with separate ice storage bins. At 10 CFR 431.132, DOE defines these related components, as well as several metrics related to ACIMs.

[4] A batch type ice maker is defined as an ice maker that has alternate freezing and harvesting periods, including ACIMs that produce cube type ice and other batch technologies. 10 CFR 431.132. Batch type ice makers also produce tube type ice and fragmented ice. A continuous-type ice maker is defined as an ice maker that continually freezes and harvests ice at the same time. *Id.* Continuous type ice makers primarily produce flake and nugget ice.

TABLE III.1—SUMMARY OF ACIM EQUIPMENT CLASSES

Equipment configuration	Condenser cooling	Ice-making mechanism	Harvest rate (lb/24 h)
Ice-Making Head	Water	Batch	<300 ≥300 and >850 ≥850 and <1,500 ≥1,500 and <2,500 ≥2,500 and <4,000
		Continuous	<801 ≥801 and >2,500 ≥2,500 and >4,000
	Air	Batch	<300 ≥300 and >800 ≥800 and <1,500 ≥1,500 and <4,000
		Continuous	<310 ≥310 and >820 ≥820 and <4,000
Remote-Condensing (but not remote compressor).	Air	Batch	<988 ≥988 and <4,000
		Continuous	<800 ≥800 and <4,000
Remote-Condensing and Remote Compressor.	Air	Batch	<930 ≥930 and <4,000
		Continuous	<800 ≥800 and <4,000
Self-Contained	Water	Batch	<200 ≥200 and <2,500 ≥2,500 and <4,000
		Continuous	<900 ≥900 and <2,500 ≥2,500 and <4,000
	Air	Batch	<110 ≥110 and <200 ≥200 and <4,000
		Continuous	<200 ≥200 and <700 ≥700 and <4,000

The regulatory and statutory definitions of ACIM are not limited by harvest rate (*i.e.,* capacity). (*See* 10 CFR 431.132 and 42 U.S.C. 6311(19), respectively.) However, the scope of DOE's test procedure is limited explicitly to ACIMs with capacities between 50 and 4,000 lb/24 h. 10 CFR 431.134(a). DOE is aware of ACIMs available in the market with harvest rates less than or equal to 50 lb/24 h (hereafter referred to as ''low-capacity ACIMs'').

DOE had previously considered test procedures for low-capacity ACIMs in a December 16, 2014 NOPR for test procedures for miscellaneous refrigeration products. 79 FR 74894 (''December 2014 MREF Test Procedure NOPR'').[5] In a supplemental notice of proposed determination regarding miscellaneous refrigeration products coverage, DOE noted that a working group established to consider test procedures and standards for miscellaneous refrigeration products made two observations: (1) Ice makers are fundamentally different from the other product categories considered as miscellaneous refrigeration products; and (2) ice makers are covered as commercial equipment and there is no clear differentiation between consumer and commercial ice makers. 81 FR 11454, 11456 (Mar. 4, 2016). In a 2016 final rule, DOE determined that low-capacity ACIMs were significantly different from the other product categories considered, and low-capacity ACIMs were not included in the scope of coverage or test procedure for miscellaneous refrigeration products. 81 FR 46773 (July 18, 2016).

In response to the March 2019 RFI, the Joint Commenters supported the establishment of a test procedure for low-capacity ACIMs, stating that such a test procedure would ensure that information provided to consumers about harvest rates and/or efficiency is based on a standardized test method. They asserted that these smaller units could likely be tested with a test procedure similar to the existing test procedure for larger-capacity units. (Joint Commenters, No. 2 at p. 1)

[5] Available at *www.regulations.gov/document?D=EERE-2013-BT-TP-0029-0011.*

On December 8, 2020, DOE published an early assessment review for amended energy conservation standards for miscellaneous refrigeration products (''December 2020 MREF Standards RFI''). In response to the December 2020 MREF Standards RFI, ASAP and NEEA supported establishing standards for low-capacity ACIMs through the ACIM rulemaking.[6]

In the December 2014 MREF Test Procedure NOPR, DOE stated that it is aware that manufacturers are using the DOE ACIM test procedure to represent the energy use of consumer ice makers (*i.e.,* low-capacity ACIMs). 79 FR 74894, 74916. DOE also stated that it is unaware of any test procedure that has been specifically developed for consumer ice makers (*i.e.,* low-capacity ACIMs). *Id.* DOE is still unaware of an industry test procedure for testing and rating low-capacity ACIMs.

As stated previously, DOE is aware of low-capacity ACIM models available on the market. The energy performance of these models is typically either not specified or is based on the existing industry test procedures. However, the lack of a DOE test procedure could allow for manufacturers to make performance claims using other unknown test procedures, which could result in inconsistent ratings from model to model. Establishing a test procedure for low-capacity ACIMs would allow purchasers to make more informed decisions regarding the performance of low-capacity ACIMs as compared to the currently covered ACIM equipment, if a low-capacity ACIM manufacturer chooses to make a representation of energy efficiency or energy use. Low-capacity ACIMs are not currently subject to DOE testing or energy conservation standards. As such, manufacturers would not be required to test low-capacity ACIMs until such time as DOE establishes energy conservation standards for such equipment. Under the proposed test procedure, were a manufacturer to choose to make representations of the energy efficiency or energy use of a low-capacity ACIM energy, beginning 360 days after a final rule, were DOE to finalize the proposal, manufacturers would be required to base such representations on the DOE test procedure. (42 U.S.C. 6314(d)) DOE is proposing test procedures for low-capacity ACIMs in this NOPR.

Issue 1: DOE requests comment on the proposal to include test procedure provisions for low-capacity ACIMs within the scope of the ACIM test procedure.

Issue 2: DOE seeks information on whether there is an industry test procedure for testing and rating low-capacity ACIMs. If so, DOE requests information on how such a test procedure addresses (or could address) the specific features of low-capacity ACIMs that are not present in higher-capacity ACIMs, such that the test procedure produces results that are representative of an average use cycle.

B. Definitions

As noted, 10 CFR 431.132 provides definitions concerning ACIMs. DOE proposes new definitions to support test procedure amendments proposed elsewhere in this document, as discussed in the following paragraphs.

1. Refrigerated Storage ACIM

Typical self-contained ACIMs have an ice storage bin that is insulated but provides no active refrigeration. As a result, the ice melts at a certain rate and the ice maker must periodically replenish the melted ice. Conversely, some self-contained low-capacity ACIMs feature a refrigerated storage bin that prevents melting of the stored ice. Because of the additional refrigeration system components, ACIMs with a refrigerated storage bin (*i.e.,* refrigerated storage ACIMs) have different energy use characteristics than ACIMs without refrigerated storage. DOE is proposing amendments specific to refrigerated storage ACIMs, as explained in Section III.D.1.b of this NOPR.

To effectively differentiate refrigerated storage ACIMs from ACIMs with unrefrigerated storage bins, and to support the proposed test provisions for refrigerated storage ACIMs, DOE proposes to add the following definition to 10 CFR 431.132 for refrigerated storage ACIMs:

A ''refrigerated storage automatic commercial ice maker'' is an automatic commercial ice maker that has a refrigeration system that actively refrigerates the self-contained storage bin.

Issue 3: DOE requests comment on the proposed definition for refrigerated storage automatic commercial ice maker.

2. Portable ACIM

Some low-capacity ACIMs are ''portable'' and do not require connection to water supply plumbing to operate. Instead, these units contain a reservoir that the user manually fills with water prior to operation and must refill when it becomes empty. In the December 2014 MREF Test Procedure NOPR, DOE proposed to define ''portable ice maker'' as an ice maker that does not require connection to a water supply and instead has one or more reservoirs that would be manually supplied with water. 79 FR 74894, 74916. DOE noted that the lack of a fixed water connection and the small size of these units contribute to their portability. *Id.* DOE did not receive comments on the proposed definition for portable ice makers in response to the December 2014 MREF Test Procedure NOPR.

In this NOPR, DOE proposes a definition for portable ice maker as proposed in the December 2014 MREF Test Procedure NOPR, but with additional specification that ACIMs with an optional connection to a water supply line would not be considered portable ACIMs (*i.e.,* a unit would be considered portable if the water supplied to the unit is only via one or more reservoirs). DOE proposes to add the following definition to 10 CFR 431.132 for portable ACIMs:

''Portable automatic commercial ice maker'' means an automatic commercial ice maker that does not have a means to connect to a water supply line and has one or more reservoirs that are manually supplied with water.

Issue 4: DOE requests comment on the proposed definition for portable automatic commercial ice maker.

3. Industry Standard Definitions

In addition to the definitions specified at 10 CFR 431.132, the current DOE test procedure at 10 CFR 431.134 references section 3, ''Definitions'' of AHRI Standard 810–2007, which includes many of the same terms DOE defines at 10 CFR 431.132 and 10 CFR 431.134. To avoid potential confusion regarding multiple definitions of similar terms, DOE is proposing to clarify in 10 CFR 431.134 that where definitions in AHRI Standard 810 conflict with those in DOE's regulations, the DOE definitions take precedence.

AHRI Standard 810–2016 updated its definition of ''Energy Consumption Rate'' to require expressing the rate in multiples of 0.01 kWh/100 lb of ice. To maintain consistency with the industry standard, DOE is proposing to incorporate this same rounding requirement in its definition of ''Energy use'' at 10 CFR 431.132 instead of the current requirement of multiples of 0.1 kWh/100 lb of ice.

AHRI Standard 810–2016 also deleted its definition of ''Cubes Type Ice Maker'' and replaced it with a definition of ''Batch Type Ice-Maker.'' To be consistent with this industry update, DOE is proposing to remove the

[6] See documents number 4 and 7 available at *www.regulations.gov/document/EERE-2020-BT-STD-0039-0001/comment.*

reference to cubes type ice maker in the definition of ''Batch type ice maker'' in 10 CFR 431.132. DOE is also proposing to remove ''Cube type ice'' from the list of DOE definitions at 10 CFR 431.132, consistent with the industry standard update.

Issue 5: DOE requests comment on its proposal to amend 10 CFR 431.132 to revise the definitions of ''Batch type ice maker'' and ''Energy Use'' and delete the definition of ''Cube type ice,'' consistent with updates to AHRI Standard 810–2016. DOE also requests feedback on the proposed clarification that the DOE definitions take precedence over any conflicting industry standard definitions.

The following section discusses additional updates included in the latest versions of the industry standards.

C. Industry Test Standards Incorporated by Reference

The existing DOE ACIM test procedure incorporates by reference AHRI Standard 810–2007 and ASHRAE Standard 29–2009. 10 CFR 431.134(b). Since publication of the January 2012 final rule, both AHRI and ASHRAE have published new versions of the referenced standards. The most recent versions are AHRI Standard 810–2016 and ASHRAE Standard 29–2015 (reaffirmed in 2018). The 2018 reaffirmed version of ASHRAE Standard 29–2015 has no changes compared to the 2015 version of the standard. DOE has reviewed the most recent versions of both AHRI Standard 810 and ASHRAE Standard 29 and has compared the updated versions of these industry standards to those currently incorporated by reference in the ACIM test procedure.

The updates in ASHRAE Standard 29–2015 provide additional specificity to several aspects of the test method. In general, these updates increase the precision and improve the repeatability of the test method, but do not fundamentally change the testing process, conditions, or results. In addition, ASHRAE made several grammatical, editorial, and formatting changes to improve the clarity of the test method. DOE summarizes these changes in Table III.2.

TABLE III.2—SUMMARY OF CHANGES BETWEEN ASHRAE STANDARD 29–2009 AND ASHRAE STANDARD 29–2015

Requirement	ASHRAE standard 29–2009	ASHRAE standard 29–2015
Test Room Operations	None	No changes to the test room shall be made during operation of the ice maker under test that would impact the vertical ambient temperature gradient or the ambient air movement.
Temperature Measuring Instruments.	Accuracy of ±1.0 °F and resolution of ≤2.0 °F	Accuracy and resolution of ±1.0 °F; where accuracy greater than ±1.0 °F, the resolution shall be at least equal to the accuracy requirement.
Harvest Water Collection	None	Harvest water shall be captured by a non-perforated pan located below the perforated pan.
Ice Collection Container Specification.	''Perforated pan, bucket, or wire basket'' and ''non-perforated pan or bucket''.	Requirements regarding water retention weight and perforation size for perforated pans and ''solid surface'' for non-perforated pan.
Pressure Measuring Instruments.	None	Accuracy of and resolution of ±2.0 percent of the quantity measured.
Sampling Rate	None	Maximum interval between data samples of 5 sec.
Supply Water Temperature and Pressure.	±1 °F (water supply temperature)	±1 °F (water supply temperature) and ''within 8 in. of the ice maker . . . within the specified range'' (water pressure) during water fill interval.
Inlet Air Temperature Measurement.	Measure a minimum of 2 places, centered 1 ft from the air inlet(s).	Measure at a location geometrically center to the inlet area at a distance 1 ft from each inlet.
Clearances	18 inches on all sides	3 ft or the minimum clearance allowed by the manufacturer, whichever is greater.
Stabilization Criteria	Three consecutive 14.4 min samples (continuous) taken within a 1.5 hr period or two consecutive batches (batch) do not vary by more than ±2 percent.	Two consecutive 15.0 min ±2.5 sec samples taken within 5 mins of each other within 2 percent or 0.055 lbs (continuous) or calculated 24-hour ice production rate from two consecutive batches within ±2 percent or 2.2 lb (batch).
Capacity Test Ice Collection	Three consecutive 14.4 min samples (continuous) or batches (batch).	Specifies that batch ice must be weighed 30 ±2.5 s after collection and continuous ice samples must be within 5 mins of each other.
Calorimetry Testing	(1) Room temperature is not specified	(1) Room temperature shall be within 65–75 °F during the entire procedure.
	(2) To determine the calorimeter constant, 30 lbs of water must be added.	(2) To determine the calorimeter constant, add a quantity of water 5 times the mass of ice (see #4 below).
	(3) Rate of stirring is described as ''vigorously''	(3) Rate of stirring is to be 1 ±0.5 revolutions/second.
	(4) To determine the calorimeter constant, 6 lbs of ice must be added.	(4) To determine the calorimeter constant, add a mass of ice between 50–200% of the rated ice production for a period of 15 minutes of the ice maker to be tested, or 6 lbs, whichever is less.
	(5) The block of ice is seasoned at room temperature. A temperature measurement location is not specified for the block of ice.	(5) The block of pure ice must reach an equilibrium temperature measured by a thermocouple embedded in the interior of the block and is free of trapped water.
	(6) To determine the calorimeter constant, it is not explicitly stated to continue stirring for 15 minutes after the ice has melted.	(6) To determine the calorimeter constant, continue stirring after ice has disappeared for 15 minutes.

TABLE III.2—SUMMARY OF CHANGES BETWEEN ASHRAE STANDARD 29–2009 AND ASHRAE STANDARD 29–2015—Continued

Requirement	ASHRAE standard 29–2009	ASHRAE standard 29–2015
	(7) The calorimeter constant shall be determined twice, at the beginning and at the end of the daily tests.	(7) The calorimeter constant shall be determined, at a minimum, each time the temperature measuring and weighting instruments are calibrated or if there is a change to the container or stirring apparatus.
	(8) The calorimeter constant shall be no greater than 1.02.	(8) The calorimeter constant must be within 1.0–1.02.
	(9) To determine the net cooling effect, the water must stand in the calorimeter for 1 min before adding harvested ice.	(9) To determine the net cooling effect, stir the water for 15 minutes prior to the addition of the harvested ice.
	(10) Section 7.2.3 specifies that the ice sample used for calorimetry testing shall be intercepted in a manner similar to that prescribed in Section 7.2.2 (7.2.2 reads: Record the required data (see Section 8).), except that the sample size shall be suitable for the test.	(10) Section 7.2.4 specifies that the ice sample used for calorimetry testing shall be intercepted using a non-perforated container, precooled to ice temperature, and collected from a stabilized ice maker over a time period of 15 min or until 6 lbs has been captured.
Recorded Data	Specifies 7 discrete elements be recorded	Specifies that ambient temperature gradient (at rest), maximum air-circulation velocity (at rest), and water pressure must also be recorded.

* AHRI Standard 810–2007 specifies the inlet water pressure of 30.0 ±3.0 psig.

DOE also reviewed the updates to AHRI Standard 810–2016 and identified the following revisions: New definitions for, among others, ice hardness factor and potable water use rate; and an updated rounding requirement for energy consumption rate (from 0.1 kilowatt hours per 100 pounds (''kWh/100 lb'') to 0.01 kWh/100 lb). The changes to AHRI Standard 810–2016 are primarily clerical in nature and provide greater consistency in the use of terms and specific definitions for those terms.

In the March 2019 RFI, DOE requested comment on updating the DOE test procedure to incorporate by reference the latest industry standards—AHRI Standard 810–2016 and ASHRAE Standard 29–2015. Additionally, DOE requested comment on the benefits and burdens of adopting any industry/voluntary consensus-based or other appropriate test procedure.

Generally, commenters supported incorporating by reference the latest industry standards. AHRI commented that incorporating the current editions of ASHRAE 29 and AHRI 810 would capture the most accurate and repeatable energy usage of ACIM in the marketplace today and that the updates to the consensus standards produce accurate results without unduly burdensome testing requirements for laboratories or manufacturers. (AHRI, No. 5 at p. 2) AHRI stated that testing burden is most manageable when industry standards are implemented with effective dates that allow manufacturers and testing facilities to adjust and upgrade accordingly. (AHRI, No. 5 at p. 9) AHRI also stated that the industry committee weighs the potential improvement in testing accuracy associated with tightening the tolerances and increasing the instrumentation accuracies with the increase in testing burden and costs. AHRI commented that the current process identified all of these factors when considering each individual change to the standard. (AHRI, No. 5 at p. 8)

Hoshizaki commented in support of updating the test procedure to the most recent versions of AHRI 810 and ASHRAE 29 and does not support incorporating any additional requirements. (Hoshizaki, No. 4 at p. 1)

Howe also commented in support of moving forward with the updates to both AHRI 810–2016 and ASHRAE Standard 29–2015 to their current released versions with changes as outlined in the March 2019 RFI, stating that the updates to the standard will improve the accuracy of the energy testing and will not increase testing burden. Howe also warned that compulsory adoptions of revisions to AHRI and ASHRAE standards could potentially favor the interests of the corporations involved in the industry revisions process. Howe stated that confirming any test procedure changes in DOE's rulemaking would ensure that all ACIM manufacturers have an opportunity to participate in the adoption of those changes. (Howe, No. 6 at p. 3)

DOE also compared the latest version of ASHRAE Standard 29–2015 to the requirements in the current DOE test procedure in 10 CFR 431.134. These test methods specify different conditions for calorimetry testing of continuous ice makers. Specifically, the current DOE test procedure requires an ambient air temperature of 70 ±1 °F, with an initial water temperature of 90 ±1 °F. 10 CFR 431.134(b)(2)(ii). ASHRAE Standard 29–2015 states in Appendix A3 that room temperature shall be kept between 65 °F and 75 °F, and that the water temperature is 20 °F ±1 °F above room temperature.

In the March 2019 RFI, DOE also noted that third-party test laboratories have had difficulty achieving the calorimeter constant value as specified in ASHRAE Standard 29–2009 (*i.e.,* no greater than 1.02, and therefore also the requirements in ASHRAE Standard 29–2015, in the range of 1.00 to 1.02), and that amended instructions regarding the calorimeter constant may reduce testing burden while maintaining the accuracy of the test procedure. 84 FR 9979, 9982.

In response to the March 2019 RFI, Hoshizaki commented that the method used in ASHRAE Standard 29–2015 to determine the calorimeter constant is labor intensive but repeatable. (Hoshizaki, No. 4 at p. 1) AHRI and Howe commented that manufacturers and third-party laboratories that are currently testing in accordance with the updated industry standard have been able to achieve repeatable results and have not seen variance outside of the allowable range when using the updated industry testing methods. (AHRI, No. 5 at p. 3; Howe, No. 6 at p. 3) Howe also opposed increasing the range of acceptable values for the calorimeter constant for ASHRAE Standard 29–2015, stating that the calorimeter constant has a direct relationship with the calculation of the ice hardness from the net cooling effect test, and increasing the range of acceptable values can result in inaccurate ice

hardness adjustment factors that will be applied to energy and condenser water use, which would add significant uncertainty that should be avoided. (Howe, No. 6 at p. 3)

Brema commented that DOE should define a common tool for calorimetric verification to be performed as a preliminary check, before beginning the energy consumption test. (Brema, No. 3 at p. 2) Howe commented that DOE should discuss requiring a specific container that is verified by third-party laboratories for calorimeter testing to aid in consistency between testing facilities. (Howe, No. 6 at p. 3)

Howe noted that ice hardness values above 100 percent are possible if ice produced by an ice maker is sensibly cooled after the phase change is complete, and that in ASHRAE Standard 29–2015, for example, this would show a ''latent heat'' capacity above 144 Btu/lb because there is not a calculation showing the sensible heat removed to sub-cool the ice below its fusion temperature. (Howe, No. 6 at p. 4)

DOE has tentatively determined that the current ambient and water condition requirements for calorimetry testing in the DOE test procedure are appropriate because they provide more precise and repeatable measurements than the tolerances described in ASHRAE Standard 29–2015. Additionally, manufacturers have been meeting the requirements to maintain 70 °F ±1 °F ambient air temperature and 90 °F ±1 °F initial water temperature for calorimetry testing as part of the current DOE test procedure in 10 CFR 431.134. The current DOE test approach also is consistent with the industry test standard requirements, *i.e.,* a test performed at the DOE required temperature conditions meets the temperature conditions specified in ASHRAE Standard 29–2015. Therefore, DOE is not proposing to amend the 70 °F ±1 °F ambient air temperature and 90 °F ±1 °F initial water temperature requirements for calorimetry testing. DOE is proposing to explicitly provide that the harvested ice used to determine the ice hardness factor be produced at the Standard Rating Conditions specified in Section 5.2.1 of AHRI Standard 810–2016. These conditions are provided in the industry standard, indicating that they are currently used by manufacturers and therefore this clarification would not change how manufacturers test. In response to Howe's comment, this proposed approach accounts for the ice quality and corresponding cooling effect for any ice samples, including those that may be sub-cooled below 32 °F.

Additionally, added specificity may be needed to accurately determine the calorimeter constant. DOE has found that the lack of specificity as to the location of the temperature measurement of the block of pure ice may lead to variation in the resulting calorimeter constant. Therefore, DOE is proposing to specify that the block of pure ice, as specified in Section A2.e of ASHRAE Standard 29–2015, is measured by a thermocouple embedded at approximately the geometric center of the interior of the block. Furthermore, DOE is proposing to specify that any liquid water present on the block of ice must be wiped off the surface of the block before placing the block into the calorimeter.

In response to the March 2019 RFI comments, DOE is not proposing to define specific test equipment for the calorimeter to allow laboratories the flexibility to use available equipment and to avoid the potential lack of availability of specific test equipment.

In this NOPR, DOE is proposing to adopt by reference AHRI Standard 810–2016 and ASHRAE Standard 29–2015 (note that AHRI Standard 810–2016 refers to ASHRAE Standard 29–2015 and not the 2018 re-affirmed version) as the basis for DOE's ACIM test procedure, with additional proposed provisions for calorimetry testing as discussed previously in this section and the additional proposed provisions discussed in the later sections of this NOPR.

As noted earlier in this section, the updates in ASHRAE Standard 29–2015 provide additional specificity to several aspects of the test method. In general, these updates increase the precision and improve the repeatability of the test method, but do not fundamentally change the testing process, conditions, or results. Additionally, the changes to AHRI Standard 810–2016 are primarily clerical in nature and provide greater consistency in the use of terms and specific definitions for those terms. Accordingly, DOE does not expect that the proposed references to the updated industry standards would result in changes to measured performance as compared to the existing test procedure.

Issue 6: DOE requests comment on its proposal to maintain the current specifications of 70 °F ±1 °F ambient air temperature and 90 °F ±1 °F initial water temperature for calorimetry testing. DOE also requests comment on its proposal to clarify that the harvested ice used to determine the ice hardness factor be collected from the ACIM under test at the Standard Rating Conditions specified in Section 5.2.1 of AHRI Standard 810–2016.

Issue 7: DOE requests comment on its proposal to clarify that the temperature of the block of pure ice, as specified in Section A2.e. of ASHRAE Standard 29–2015, is measured by a thermocouple embedded at approximately the geometric center of the interior of the block. DOE also requests comment on its proposal to clarify that any water that remains on the block of ice must be wiped off the surface of the block before placing the ice into the calorimeter.

Issue 8: DOE requests comment on its proposal to adopt by reference AHRI Standard 810–2016 and ASHRAE Standard 29–2015, except for the provisions for calorimetry testing as discussed previously, for all ACIMs.

D. Additional Proposed Amendments

DOE conducted testing to identify whether ASHRAE Standard 29–2015 and AHRI Standard 810–2016 could potentially benefit from additional detail and to investigate topics discussed in the March 2019 RFI. The testing and initial findings are discussed along with any corresponding proposed amendments in the following sections.

1. Low-Capacity ACIMs

DOE examined the comments received in response to the December 2014 MREF TP NOPR to consider what test method would be appropriate for low-capacity ACIMs. During the December 2014 MREF TP NOPR public meeting, True Manufacturing commented that there are very few differences between ice makers with harvest rates less than 50 lb/24 h and those with harvest rates greater than 50 lb/24 h. (Public Meeting Transcript, No. EERE–2013–BT–TP–0029–0014 at p. 31) Hoshizaki commented in response to the December 2014 MREF TP NOPR that the ASHRAE 29 test needs to be evaluated for accuracy for units that make less than 50 lb/24 h, as they are outside the listed scope of the standard. (Hoshizaki, No. EERE–2013–BT–TP–0029–0011 at p. 1)

DOE evaluated the provisions in its existing ACIM test procedure to determine if any modifications are necessary to ensure the proposed test method would provide representative and repeatable measures of performance for low-capacity ACIMs and would not be unduly burdensome to conduct. DOE also evaluated the provisions in AHRI Standard 810–2016 and ASHRAE Standard 29–2015 to determine their applicability to low-capacity ACIMs.

During investigative testing of batch type low-capacity ACIMs, DOE observed that the ice collection container requirements in section 5.5.2(a) of ASHRAE Standard 29–2015 may not be

appropriate for this equipment. Section 5.5.2(a) requires that the collection container have a water retention weight that is no more than 1.0 percent of that of the smallest batch of ice for which the container is used. For low-capacity batch type ACIMs, the weight of ice in each batch is significantly lower than for other higher capacity ACIMs. Accordingly, 1.0 percent of an individual batch represents a very small weight for low-capacity ACIMs. For example, one such low-capacity ACIM has a typical batch weight of 0.087 pounds; 1.0 percent of that would be 0.00087 pounds, the equivalent of 0.080 teaspoons of water. The water retention weight of a typical very small collection container is approximately 0.0030 pounds. DOE was not able to identify collection containers that would meet this threshold for the low-capacity ACIMs with the lowest batch weights.

From its test sample, DOE determined that a water retention weight of no more than 4.0 percent would allow for testing low-capacity ACIMs with the lowest batch weights with a typical collection container. Accordingly, DOE is proposing that the water retention requirement in section 5.5.2(a) not apply to batch type low-capacity ACIMs, and instead to require a water retention weight of no more than 4.0 percent of the smallest batch of ice for which the container is used.

a. Portable ACIMs

For portable ACIMs, DOE has initially determined that some provisions for measuring and maintaining inlet water conditions in ASHRAE Standard 29–2015 are not appropriate: *i.e.,* sections 5.4, 5.6, 6.2 and 6.3. These sections include instrument specifications, test conditions, and measurement instructions regarding inlet water flow, pressure, and temperature. These sections are not applicable to portable ACIMs because such equipment do not have a fixed water connection, and therefore the conditions in these sections would not provide representative conditions for portable ACIMs. Portable ACIMs instead require that the fill reservoir be manually filled with a maximum volume of water that is recommended by the manufacturer.

To determine typical operation and the corresponding need for additional test procedure instructions regarding the water supply for portable ACIMs, DOE conducted tests on portable ACIMs according to the requirements of AHRI Standard 810–2016 and ASHRAE Standard 29–2015, except for sections 5.4, 5.6, 6.2, and 6.3 of ASHRAE Standard 29–2015. From this testing, DOE has initially determined that additional instructions are needed regarding supply water characteristics and filling the water reservoirs in portable ACIMs.

Section 5.2.1 of AHRI 810–2016 specifies an inlet water temperature of 70.0 °F for ACIM testing. Because portable ACIMs do not have a continuous water supply, the water filled in the water reservoir is not maintained at a constant temperature; the temperature may change after the initial fill based on heat transfer with the ambient air and the other components of the ACIM. Accordingly, DOE has initially determined that specifying only the initial fill temperature of the water supplied to the reservoir is most representative of typical use. DOE proposes to establish the initial water temperature in a separate external container before transferring the water to the water reservoir. In DOE's experience, using an external container to establish and verify the initial water temperature is significantly less burdensome than measuring and adjusting the water temperature within the water reservoir itself. Therefore, DOE proposes that the initial water temperature condition be established in an external container and verified by inserting a temperature sensor into approximately the geometric center of the water in the external container. The initial water temperature would be defined as 70 °F ±1.0 °F, consistent with the condition as specified in section 5.2.1 of AHRI Standard 810–2016 and the tolerance as specified in section 6.2 of ASHRAE Standard 29–2015.

Portable ACIM users may have an option of filling the reservoirs to varying levels. To determine the appropriate fill level for testing, DOE reviewed operating instructions for portable ACIMs available from a range of manufacturers. DOE observed that the operating instructions typically instruct the user to fill to the maximum specified level, or to any level up to the maximum. To ensure repeatable and reproducible test results, DOE has initially determined that filling the water reservoir to the maximum volume of water as specified by the manufacturer is representative of typical use. In addition, specifying a consistent fill level for testing at the maximum fill level would limit variability associated with reservoir water temperature and would ensure the portable ACIM has sufficient water to conduct the test.

In summary, DOE proposes that portable ACIMs be subject to the test procedure as proposed in this NOPR, except that sections 5.4, 5.6, 6.2, and 6.3 of ASHRAE Standard 29–2015 would not apply. DOE proposes to provide the following additional test instructions necessary for testing portable ACIMs: Ensure that the ice storage bin is empty; fill an external container with water; establish a water temperature in the external container is consistent with the requirements of section 5.2.1 of AHRI Standard 810–2016 and the tolerance specified in section 6.2 of ASHRAE Standard 29–2015 (*i.e.,* 70 °F ±1.0 °F); verify the water temperature in the external container by inserting a temperature sensor into approximately the geometric center of the water; after establishing water temperature, immediately transfer the water to the portable ACIM reservoir and fill the reservoir to the maximum level as specified by the manufacturer.

Issue 9: DOE requests comment on its proposal that portable ACIMs be subject to the test procedure as proposed in this NOPR, except that sections 5.4, 5.6, 6.2, and 6.3 of ASHRAE Standard 29–2015 do not apply. DOE requests comment on its proposal that the potable water reservoir be filled to the maximum level of potable water as recommend by the manufacturer with an initial water temperature of 70 °F ±1.0 °F. DOE requests comment on its proposal that the initial water temperature be established in an external container and verified by inserting a temperature sensor into approximately the geometric center of the water in the external container.

DOE has also initially determined that additional instructions are needed for portable ACIMs to meet the requirements of section 6.6 of ASHRAE Standard 29–2015, which requires that ''bins shall be used when testing and shall be filled one-half full with ice.'' Because section 6.6 of ASHRAE Standard 29–2015 does not specify how the bin would be filled with ice, a laboratory may fill the ice storage bin one-half full of externally produced ice (*i.e.,* ice that was made by a separate ACIM), for example to avoid waiting for the unit under test to produce enough ice to fill the bin one-half full prior to initiating the start of the test. Using externally produced ice does not directly affect the performance of a non-portable ACIM because the conditions within the ice storage bin do not have a direct impact on the incoming potable water temperature.

In contrast, the conditions within the ice storage bin of a portable ACIM do directly impact performance because portable ACIMs typically recycle the melt water (at 32 degrees) from the internal ice storage bin and combine it with water from the reservoir (initially at 70 degrees) to make additional ice.

Accordingly, any externally produced ice introduced to a portable ACIM to fill the bin one-half full prior to testing could affect the performance of the system during the test when compared to the tested performance using ice produced by the portable ACIM under test.

To limit test variability that could occur due to the introduction of externally produced ice, DOE proposes that for portable ACIMs, the ice storage bin must be empty prior to the initial water fill, and the unit under test must be operated to produce ice into the ice storage bin until the bin is one-half full (*i.e.,* precluding the use of externally produced ice to fill the bin one-half full prior to testing). DOE proposes to define one-half full as half of the vertical dimension of the storage bin, based on the maximum possible fill level. Once the ice storage bin is one-half full of ice, testing would proceed according to section 7 of ASHRAE Standard 29–2015, consistent with non-portable ACIM testing.

Issue 10: DOE requests comment on its proposal that portable ACIMs have the ice storage bin empty prior to the initial reservoir fill and then produce ice into the ice storage bin until the bin is one-half full, at which point testing would proceed according to section 7 of ASHRAE Standard 29–2015. DOE requests comment on its proposal to define one-half full as half of the vertical dimension of the storage bin based on the maximum ice fill level within the storage bin.

b. Refrigerated Storage ACIMs

DOE has initially determined that refrigerated storage ACIMs can be tested according to the current DOE ACIM test procedure as well as AHRI Standard 810–2016 and ASHRAE Standard 29–2015. DOE investigated whether additional specification was necessary to ensure that these test methods would provide representative and repeatable results for refrigerated storage ACIMs and would not be unduly burdensome to conduct.

DOE identified two aspects of refrigerated storage ACIM testing that may need further specification to limit variability: Door openings for refrigerated storage ACIMs and refrigeration set point controls.

Door opening durations may affect the measured performance of refrigerated storage ACIMs more than non-refrigerated storage ACIMs because the refrigeration system provides cooling for the entire self-contained storage bin rather than only for the ice making evaporator. Thus, when opening the storage container door to collect ice from refrigerated storage ACIMs, some portion of cold air from the storage container will likely be replaced by higher temperature ambient air. Both the duration and the extent of the door opening can contribute to this air exchange within the storage container. Therefore, specifying the duration and the extent of the door opening would limit variability from test to test, thus promoting repeatable and reproducible test results.

From investigative testing, DOE has determined that the process of opening the bin door, carefully removing or replacing the ice collection container, and closing the door can be readily performed in under 10 seconds. DOE therefore proposes that for refrigerated storage ACIMs, any storage bin door openings shall be conducted with the door in the fully open position for 10 ±1 seconds. DOE proposes to specify that ''fully open'' means opened to an angle of not less than 75 degrees (or to the maximum angle possible, if that is less than 75 degrees), which is consistent with the definition for fully open in ANSI/ASHRAE Standard 72–2018, ''Method of Testing Open and Closed Commercial Refrigerators and Freezers.'' To ensure a consistent number of door openings, DOE also proposes to specify that door openings would occur only when collecting the ice sample and when returning the empty collection container to the ice storage compartment (*i.e.,* two separate door openings per sample collection).

Issue 11: DOE requests comment on its proposal to specify that door openings must only occur on self-contained refrigerated storage ACIMs to collect samples after each cycle, and that the door shall be in the fully open position for 10.0 ±1.0 seconds to collect the sample. DOE also requests comment on its proposal to specify that ''fully open'' means opening a door to an angle of not less than 75 degrees.

Refrigeration set point controls may also affect the measured performance of refrigerated storage ACIMs, if the controls can be adjusted by the user to maintain different storage compartment temperatures. DOE investigated whether refrigerated storage ACIMs allow the user to adjust the refrigeration set point of the ACIM and if so, how. DOE reviewed user manuals for several refrigerated storage ACIMs and found that the models either do not allow the user to adjust the refrigeration set point, or have a factory preset temperature control that can be adjusted by the user, but not in an easily accessible manner (*e.g.,* temperature control screws adjustable only with a screwdriver or accessible behind grilles). The ability to adjust the refrigeration set point on some refrigerated storage ACIMs does not appear to be a setting that users would typically adjust and is likely used only for troubleshooting. Based on this information, DOE proposes that the refrigeration set point for testing a refrigerated storage ACIM be consistent with section 4.1.4 of AHRI Standard 810–2016 (*i.e.,* per the manufacturer's written instructions with no adjustment prior to or during the test).

Issue 12: DOE requests comment on its proposal to test refrigerated storage ACIMs consistent with section 4.1.4 of AHRI Standard 810–2016 (*i.e.,* with adjustable temperature settings tested per the manufacturer's written instructions with no adjustment prior to or during the test). DOE requests comment on whether a specific refrigeration set point or internal air temperature should be specified for testing instead of the manufacturer's factory preset refrigeration set point.

2. Stability Criteria

The current DOE test procedure, through reference to section 7.1.1 of ASHRAE Standard 29–2009, defines ACIM stability based on the harvest rate. Specifically, continuous-type ice makers shall be considered stabilized when the weights of three consecutive 14.4-minute samples taken within a 1.5-hour period do not vary by more than ±2 percent. Batch type ice makers are considered stable when the weights from the samples from two consecutive cycles do not vary by more than ±2 percent.

Section 7.1.1 of ASHRAE Standard 29–2015 revised the stabilization criteria to consider continuous-type ice makers stable when the weights of two consecutive 15.0 minute ±2.5 seconds samples do not vary by more than the greater of ±2 percent, or 0.055 pounds. Section 7.1.1. of ASHRAE Standard 29–2015 specifies that batch type ice makers are considered stable when the 24-hour calculated ice production rate from samples taken from two consecutive cycles do not vary by the greater of ±2 percent or 2.2 pounds. Compared to the 2009 version, ASHRAE Standard 29–2015 added absolute stability criteria of 0.055 lb/15 minutes for continuous equipment and 2.2 lb/24 h for batch equipment.

In addition, ASHRAE Standard 29–2009 states that the unit must be stable before the capacity tests are started. This provision was changed in ASHRAE Standard 29–2015, which instead states that the ice maker must be stable for capacity test data to be valid. In application, the stability provision in ASHRAE Standard 29–2009 means that

any cycle or sample after the stability criteria is met is valid to be used for the capacity test. DOE notes that the applicability of the stability criteria in ASHRAE Standard 29–2015 could be understood in one of two ways: (1) Unchanged from ASHRAE Standard 29–2009, meaning that any cycle or sample after the stability criteria are met is valid to be used for the capacity test; or (2) the ice production rate for each cycle used for the capacity test relative to any other cycle or sample used for the capacity test must be within the greater of ±2 percent and 2.2 lb/24 h for batch type ice makers, and each sample used for the capacity test must be within the greater of ±2 percent and 0.055 lb/15 mins for continuous ice makers. The second interpretation limits potential variability compared to the first interpretation because it puts specific limits on the variability between cycles and samples to be used for the capacity tests. The difference in the potential interpretations of the stability provisions in ASHRAE Standard 29–2015 could result in variation in capacity ratings. Additionally, the second interpretation limits test burden by not requiring separate cycles for meeting the stability criteria and for testing performance. Under the second interpretation, the same cycles are used to determine stability and performance. In this NOPR, DOE proposes to expressly provide that the second interpretation be used for determining stability, such that all cycles or samples used for the capacity test are stable. DOE does not expect that this proposal would impact ACIM performance as measured under the existing test procedure as it would not substantively change the cycles required for evaluating performance.

Section 7.1.1 of ASHRAE Standard 29–2015 added a requirement that the duration of each sample for continuous type ice makers be 15.0 minutes ±2.5 seconds. DOE testing indicated that removing the plastic pan or bucket within the tolerance of ±2.5 seconds can be difficult depending on the specific test setup (*e.g.,* removing the container from the ice maker or bin without spilling ice). An increased tolerance would reduce burden on manufacturers to test continuous ice makers, while still sufficiently limiting the variability between samples used for the capacity test to the criteria proposed.

Therefore, DOE proposes to increase the tolerance to collect samples for continuous ice makers from 15.0 minutes ±2.5 seconds to 15.0 minutes ±9.0 seconds. Increasing the tolerance to 9.0 seconds could affect the weight of each sample; however, variability would not increase because the samples used for the capacity test would still need to meet the proposed stability criteria. With the 9-second tolerance, the maximum and minimum allowable collection times would vary by approximately 2 percent, which is consistent with the allowable variation in capacity to determine stability. DOE expects that this proposal would reduce the test burden compared to the ASHRAE Standard 29–2015 approach and would ensure that valid samples can be obtained. Additionally, DOE does not expect that this proposal would affect measured performance as compared to the existing test procedure because the sample collection period as proposed is not substantively different from the existing test procedure approach.

Issue 13: DOE requests comment on its interpretation of Section 7.1.1 of ASHRAE Standard 29–2015 and proposal to require that all cycles or samples used for the capacity test meet the stability criteria.

Issue 14: DOE requests comment on the proposal to increase the tolerance for continuous ice makers to collect samples from 15.0 minutes ±2.5 seconds to 15.0 minutes ±9.0 seconds.

Section 7.1.1 of ASHRAE 29–2015 includes stabilization requirements, which specify: (1) For continuous ACIMs, collected weights must not vary by more than ±2 percent or 25 g (0.055 lb), whichever is greater; or (2) for batch ACIMs, the calculated 24-hour ice production rates must not vary by more than ±2 percent or 1 kg (2.2 lb), whichever is greater.

Based on investigative testing, DOE observed that the absolute stability criteria of 2.2 lb/24 h for batch type ice makers would not necessarily represent stable operation for low-capacity batch ACIMs. DOE conducted a market assessment and observed batch low-capacity ACIMs with harvest rates as low as 7 lb/24 h. Based on this harvest rate of 7 lb/24 h, a 2.2 lb/24 h stability criteria could result in a harvest rate variation of up to 31 percent (*i.e.,* 2.2 lb/24 h divided by 7 lb/24 h). Because of the potential high variability in the stability criteria for low-capacity ACIMs, DOE proposes to not apply the absolute stability criteria specified in ASHRAE 29–2015 to the proposed test procedure for low-capacity ACIMs.

DOE also considered whether applying only the ±2 percent stability criterion would be appropriate for low-capacity ACIMs. Due to the lower overall ice harvest rates, a 2 percent stability requirement represents much smaller weight variations for low-capacity ACIMs. For example, a 2 percent stability requirement for the 7 lb/24 h model represents a variation of 0.14 lb/24 h, which may be difficult to achieve for low-capacity ACIMs.

The 2 percent stability requirement is also not currently applicable to the lowest capacity ACIMs currently in scope for the DOE test procedure (as described, the requirement is 2 percent or 2.2 lb/24 h, whichever is greater). Accordingly, the effective stability requirement for the lowest capacity ACIMs currently in scope is approximately 4 percent (*i.e.,* 2.2 lb/24 h divided by 50 lb/24 h). DOE has initially determined that applying this same percentage (*i.e.,* 4 percent) as the low-capacity ACIM stability requirement would be more appropriate than applying either the 2 percent or 2.2 lb/24 h stability requirements currently defined in Section 7.1.1 of ASHRAE 29–2015. DOE has observed through testing that low-capacity ACIMs are able to achieve stability based on a 4 percent requirement.

Therefore, for consistency (on a percentage basis) with the existing test requirements for small ACIMs currently in scope and to limit test burden, DOE proposes to require a ±4 percent stability criterion (without an absolute stability criterion) for testing low-capacity ACIMs.

Issue 15: DOE requests comment on the proposal to require that all cycles or samples of low-capacity ACIMs used for the capacity test meet a ±4 percent stability criterion and not be subject to an absolute stability criterion.

3. Test Conditions

In the March 2019 RFI, DOE requested comment on potential modifications to the existing standard test conditions, and whether any modifications would improve the accuracy of the test procedure or reduce testing burden. 84 FR 9979, 9984.

Hoshizaki commented that tightening the tolerances for testing would place an undue burden on manufacturers, pointing out that if the tolerance is tightened outside of the manufacturer's existing equipment, it would entail buying new equipment and introduce higher calibration costs for such equipment. (Hoshizaki, No. 4 at p. 2) Howe stated that because equipment is readily available to achieve tighter tolerances, this change would not place an undue burden on manufacturers or third-party testing sites. (Howe, No. 6 at p. 13)

DOE discusses the potential changes to test conditions, including tolerances and instrumentation accuracies, in the following sections.

a. Relative Humidity

Variation in the moisture content of ambient air may affect the energy consumption of ice makers. However, neither the current DOE test procedure, nor AHRI 810–2016 or ASHRAE Standard 29–2015 include requirements to control for moisture content for testing. In contrast, industry test standards for other refrigeration equipment, such as commercial refrigerators, freezers and refrigerator-freezers (''CRE'') and refrigerated bottled or canned beverage vending machines (''BVMs''), have requirements for the moisture content.

In the March 2019 RFI, DOE requested comment on how moisture content of ambient air impacts ACIM performance. 84 FR 9979, 9984. In addition, DOE requested information regarding the burden of specifying a humidity range during testing. *Id.*

AHRI, Howe, and Hoshizaki stated that specifying a set humidity for testing would show a negligible effect for energy testing in ice makers, as the physics of an ice maker naturally involve the machine performing in a humid atmosphere for the freezing and harvesting of ice. (AHRI, No. 5 at p. 5; Howe, No. 6 at p. 9; Hoshizaki, No. 4 at p. 2) Hoshizaki commented that any discussion of humidity or temperatures for testing of ice makers should be handled through the ASHRAE 29 standard committee. (Hoshizaki, No. 4 at p. 2)

The Joint Commenters noted that test procedures for other refrigeration equipment specify standard conditions for relative humidity and wet bulb temperature, and that including these specifications would improve the repeatability and reproducibility of the test procedure by ensuring that similar conditions are being used across test laboratories. Furthermore, the Joint Commenters stated that specifying these standard conditions would prevent manufacturers from testing at conditions that may improve ratings but not be representative of typical field performance. (Joint Commenters, No. 2 at p. 3)

DOE tested three ACIMs in a test chamber with relative humidity at 35, 55 and 75 percent at the standard rating conditions to investigate the effect of relative humidity on energy use. Table III.3 summarizes the results of this testing.

TABLE III.3—COMPARISON OF ENERGY USE RATES AT DIFFERENT RELATIVE HUMIDITY TEST CONDITIONS

Test unit	Type	35% relative humidity (kWh/100 lb)	55% relative humidity (kWh/100 lb)	75% relative humidity (kWh/100 lb)	Difference from 35% relative humidity to 55% relative humidity (%)	Difference from 35% relative humidity to 75% relative humidity (%)
1	Batch	8.27	8.28	8.28	+0.2	+0.2
2	Batch	8.47	10.49	11.47	+24	+35
3	Continuous	4.27	Not Tested	4.43	N/A	+4

These results show a wide range of impacts on performance among the three tested units when relative humidity is varied. Test Unit 1 showed little impact in performance between the two relative humidity test conditions. Whereas, Test Unit 2 showed the greatest variation in performance, with the 55 percent relative humidity test condition resulting in 24 percent greater energy use than the 35 percent relative humidity test condition. Test Unit 3 showed a modest increase in energy use of 4 percent between the 35 percent and 75 percent relative humidity conditions. (Test Unit 3 was not tested at the 55 percent relative humidity condition). DOE has been unable to determine why Test Unit 2 showed significantly greater variation in performance compared to the other test units. Nevertheless, based on these results showing that different relative humidity conditions can result in a wide variation in performance, DOE proposes to specify a relative humidity test condition to ensure repeatable and reproducible test results.

DOE investigated what relative humidity condition would be most appropriate for testing ACIMs. Due to a lack of data regarding typical relative humidity levels for ACIM installations, DOE considered relative humidity conditions used for testing other types of commercial kitchen equipment, such as commercial refrigeration equipment (''CRE''), refrigerated bottled or canned beverage vending machines (''BVMs''), and refrigerated buffet and preparation tables.

The industry test standard for CRE has a requirement to maintain wet-bulb temperature, and the industry test standard for BVM requires that relative humidity be controlled. The relative humidity requirements in the industry standards for CRE and BVM are codified in the current DOE test procedures in Appendix B to Subpart C of 10 CFR 431 and Appendix B to Subpart Q of 10 CFR 431, respectively. ASTM Standard F2143–2016, ''Performance of Refrigerated Buffet and Preparation Tables,'' also includes relative humidity requirements. Based on a review of the test conditions for these other types of commercial food service equipment, DOE is proposing to require a relative humidity of 35 percent for ACIM testing, as discussed further in the following paragraphs. DOE summarizes the other commercial food service equipment test condition requirements along with the proposal for ACIMs in Table III.4.

TABLE III.4—COMPARISON OF RELATIVE HUMIDITY TEST CONDITIONS

Equipment type	Test standard	Ambient temperature (°F)	Wet bulb temperature (°F)	Relative humidity (percent)	Corresponding moisture content (lbs water vapor/lbs dry air)
Commercial Refrigeration Equipment	ASHRAE 72–2005 †	75.2	64.4	*55	0.010
Refrigerated Beverage Vending Machines	ASHRAE 32.1–2010 †	75	No requirement	45	0.008
Refrigerated Buffet and Preparation Tables	ASTM Standard F2143–2016	86	No requirement	35	0.009

TABLE III.4—COMPARISON OF RELATIVE HUMIDITY TEST CONDITIONS—Continued

Equipment type	Test standard	Ambient temperature (°F)	Wet bulb temperature (°F)	Relative humidity (percent)	Corresponding moisture content (lbs water vapor/lbs dry air)
Automatic Commercial Ice Makers	Proposed	90	No requirement	** 35	0.011

* The relative humidity for commercial refrigeration equipment is calculated from the dry bulb temperature and the wet bulb temperature using a pressure of 760 mm of mercury.
** Proposed test condition.
† The test conditions currently incorporated by refence in the DOE test procedures are unchanged in the most recent versions of the industry standards, ASHRAE 72–2018 and ASHRAE 32.1–2017.

DOE has initially determined that establishing a relative humidity test condition at 35 percent would be appropriate for testing ACIMs. A relative humidity of 35 percent would maintain a moisture content similar to the moisture content required in the current DOE test procedures for BVMs and CRE, and the industry test standard for refrigerated buffet and preparation tables. Controlling to 35 percent relative humidity would also limit potential test burden on any ACIM manufacturers that already test and control conditions for the other refrigerated equipment types. DOE is proposing that the relative humidity be maintained and measured at the same location used to confirm ambient dry bulb temperature, or as close as the test setup permits.

DOE also investigated appropriate tolerances on relative humidity. DOE measured and controlled the relative humidity in the test chamber for all tests. DOE observed that relative humidity in the test chamber can vary from the set point during ACIM testing. The largest variation in relative humidity observed in the test chamber, typically by three percentage points, occurred when a self-contained unit was opened to remove and measure the weight of the ice. When the unit was closed, the relative humidity in the test chamber returned to the set level.

DOE considered a test condition tolerance and test operating tolerance on relative humidity. A test condition tolerance is a tolerance that is calculated based on the average of all relative humidity measurements during each freeze cycle. In contrast, a test operating tolerance would apply to all individual measurement during each cycle. The industry standards referenced in Table III.4, ASHRAE 72–2018, ASHRAE 32.1–2017, and ASTM Standard F2143–2016, all require a test condition tolerance. ASHRAE 72–2018 is the only standard mentioned in Table III.4 that also requires a test operating tolerance. To be consistent with the other commercial food service equipment standards, DOE proposes to add a test condition tolerance on the proposed relative humidity test condition of 35 percent.

To establish an appropriate test condition tolerance on relative humidity, DOE first investigated typical accuracies of relative humidity sensors. Accuracies of ±2.0 percent are typical for relative humidity sensors. Additionally, DOE's test procedure for BVMs requires a relative humidity instrument accuracy of ±2.0 percent. See section 1.1 of Appendix B to subpart Q of 10 CFR 431. Similarly, section 6.3 of ASTM Standard F2143–2016 also requires a relative humidity instrument accuracy of ±2.0 percent. A tolerance lower than the instrument measurement accuracy cannot be captured by such an instrument. Therefore, a system with an accuracy of 2 percent cannot measure a tolerance below 2 percent. To ensure that controlling for relative humidity in the test chamber is not unduly burdensome, DOE proposes to require a relative humidity instrument accuracy of ±2.0 percent and to include a test condition tolerance on relative humidity of ±5.0 percent. This is consistent with the tolerances included for relative humidity in ASTM Standard F2143–2016 and the BVM test procedure, and similar to the equivalent tolerance on wet bulb temperature for CRE testing. DOE's testing, including for the other equipment with similar tolerances, has shown that test laboratories are able to maintain relative humidity within the proposed test condition tolerance of ±5.0 percent.

Although a relative humidity requirement is not currently specified in the existing test procedure, DOE does not expect the proposal to affect measured performance of existing ACIM models. As discussed, the test procedures for other refrigeration equipment require testing to an ambient humidity level consistent with that proposed for ACIMs in this NOPR. Additionally, the test facilities required to maintain the necessary ambient test temperature likely already implement humidity controls and DOE expects that existing tests would have been conducted in an ambient relative humidity within the proposed range, despite it not being a requirement in the current test procedure. Accordingly, DOE expects that the proposal would ensure repeatable and reproducible test results, but would not impact measured performance as compared to the existing test procedure.

Issue 16: DOE requests comment on the proposal to control relative humidity at 35 ±5.0 percent. Specifically, DOE requests comment on the representativeness of 35 percent relative humidity in field use conditions, whether manufacturers currently control and measure relative humidity for ACIM testing (and if so, the conditions used for testing), and the burden associated with controlling relative humidity within a tolerance of ±5.0 percent.

b. Water Hardness

ASHRAE Standard 29–2015 and AHRI Standard 810–2016 do not specify the water hardness of the water supply used for testing. The United States Geological Survey (''USGS'') defines water hardness as the concentration of calcium carbonate in milligrams per liter (''mg/L'') of water and lists general guidelines for the classification of water hardness as 0 to 60 mg/L of calcium carbonate for soft water; 61 to 120 mg/L of calcium carbonate for moderately hard water; 121 to 180 mg/L of calcium carbonate for hard water; and more than 180 mg/L of calcium carbonate for very hard water.[7] In the January 2012 final rule, DOE stated that harder water depresses the freezing temperature of water and results in increased energy use to produce the same quantity of ice. 77 FR 1591, 1605. DOE also stated that hard water (*i.e.,* water with a higher concentration of calcium carbonate) can affect energy consumption in the field due to increased scale build up on the heat exchanger surfaces over time, and the use of higher water purge quantities to help flush out dissolved solids to

[7] See *www.usgs.gov/special-topic/water-science-school/science/hardness-water?qt-science_center_objects=0#qt-science_center_objectswater.usgs.gov/owq/hardness-alkalinity.html.*

limit scale build up. *Id.* However, DOE declined to set requirements for water hardness for testing because of insufficient information to allow proper consideration of such a requirement. Specifically, DOE did not have information regarding the impact of variation in water hardness on as-tested performance of ACIMs, and therefore could not justify the additional burden associated with establishing a standardized water hardness requirement at that time. 77 FR 1591, 1605–1606.

In the March 2019 RFI, DOE requested comment on the impact of water hardness on ACIM performance and on the burden associated with controlling for water hardness during testing. 84 FR 9979, 9984–9985.

In response to the March 2019 RFI, the Joint Commenters stated that DOE should specify a value for water hardness in the test procedure that is representative of typical field conditions because water hardness may affect measured energy. They further commented that specifying such a requirement would improve repeatability and reproducibility and would also prevent manufacturers from testing using a water hardness that may improve ratings but not be representative of typical field performance. (Joint Commenters, No. 2 at p. 3)

Hoshizaki commented that testing with a certain water hardness would not be economically feasible for manufacturers and that any discussion about how to incorporate such a requirement without undue burden on manufacturers would be best addressed in the ASHRAE 29 standard committee. (Hoshizaki, No. 4 at p. 2)

AHRI and Howe stated that the amount of total dissolved solids can have an impact on energy and water consumption, but the level of the impact is difficult to ascertain and is most likely insignificant under standard testing conditions on new ACIMs with clean evaporators. (AHRI, No. 5 at p. 6; Howe, No. 6 at p. 10) Brema commented that water hardness should be set to be in the range of the user manual and potability regulations. (Brema, No. 3 at p. 7)

DOE conducted testing to investigate whether changing the water hardness could affect the energy consumption and harvest rate of ACIMs. Testing was conducted on new models (*i.e.,* with clean evaporators prior to accumulation of any significant scale). DOE conducted water hardness tests on two batch type ice makers and one continuous type ice maker.

According to the United States Geological Survey (''USGS''), the vast majority of water hardness in the United States ranges from 0 mg/L to 250 mg/L of calcium carbonate.[8] Given the range of water hardness in the United States, DOE used a water hardness of 42 mg/L of calcium carbonate for a ''soft water'' test (which also represented water readily available at the test facility) and a water hardness of 342 mg/L of calcium carbonate for a ''very hard water'' test (*i.e.,* a 300 mg/L increase relative to the soft water test to represent an extreme comparison case). DOE tested four ACIMs in a test chamber with soft and very hard water hardness at the standard rating conditions to investigate the effect of water hardness on harvest rate and energy use. The results of these tests are summarized in Table III.5.

TABLE III.5—ACIM PERFORMANCE DIFFERENCES OF SOFT WATER COMPARED TO VERY HARD WATER

Unit	Type	Harvest rate with soft water *	Harvest rate with very hard water *	Difference (%)	Energy use with soft water *	Energy use with very hard water *	Difference (%)
1	Batch	95	105	11	10.49	9.43	−10.1
2	Batch	126	131	4	8.28	7.96	−3.9
3	Batch	351	359	2.3	5.73	5.64	−1.6
4	Continuous	562	582	3.4	4.40	4.18	−5.0

* Soft Water was 42 mg/L of calcium carbonate during testing. Very Hard Water was 342 mg/L of calcium carbonate during testing.

These test results show that water hardness can impact measured harvest rates and energy consumption rates, and that very hard water generally resulted in more favorable performance than soft water. DOE acknowledges that the observed test results show the opposite impact on performance than expected and discussed in the January 2012 final rule (*i.e.,* that harder water would be expected to increase energy consumption).

Given that the performance of the tested ACIMs improved with harder water, to limit the potential for testing under favorable conditions not necessarily representative of typical operation, DOE proposes to require that water used for testing have a maximum hardness of 180 mg/L of calcium carbonate. According to the USGS, a majority of the U.S. has ground water with a water hardness equal to or below 180 mg/L of calcium carbonate.[9] Establishing a maximum water hardness of 180 mg/L would ensure that ACIMs are tested with water that is not considered ''very hard'' according to the USGS and that the tested water hardness is within a range representative of water hardness that ACIMs are likely to experience in actual use.

DOE proposes that water hardness must be measured using a water hardness meter with an accuracy of ±10 mg/L or taken from the most recent version of the water quality report that is sent by water suppliers, which is updated at least annually and is accessible at: *ofmpub.epa.gov/apex/safewater/f?p=136:102.* DOE expects that any test facilities in locations with water supply hardness greater than 180 mg/L would likely already incorporate water softening controls, and therefore this proposal is not expected to require updates to existing test facilities. For this same reason, DOE does not expect that this proposal would impact rated performance for any ACIMs tested under the current DOE test procedure.

DOE also notes that this proposal does not conflict with any provisions of the industry test and rating standards and would provide additional specifications to ensure the representativeness of the results and improve the repeatability and reproducibility of the test results.

Issue 17: DOE requests comment on its proposal that water used for ACIM testing have a maximum water hardness of 180 mg/L of calcium carbonate and on whether any test facilities would not have water hardness supplied within the proposed allowable range. If there are such test facilities, DOE requests comment on whether the supply water is softened when testing ACIMs and, if

[8] See *www.usgs.gov/media/images/map-water-hardness-united-states.*

[9] *See water.usgs.gov/owq/hardness-alkalinity.html.*

the water is not softened, the burden associated with implementing controls for water hardness. Additionally, while DOE is proposing that this requirement apply to all water supplied for ACIM testing, DOE requests information on whether this requirement should only be applicable to potable water used to make ice (and not any condenser cooling water).

c. Ambient Temperature Gradient

The current ACIM test procedure incorporates by reference section 5.1.1 of ASHRAE Standard 29–2009, which stipulates that, with the ice maker at rest, the vertical ambient temperature gradient in any foot of vertical distance from 2 inches above the floor or supporting platform to a height of 7 feet above the floor, or to a height of 1 foot above the top of the ice maker cabinet, whichever is greater, shall not exceed 0.5 °F/foot. This language, which is consistent with the requirement in section 5.1.1 of ASHRAE Standard 29–2015, is consistent with the test room requirements for residential refrigerators, as specified in section 7.2 of ANSI–AHAM Standard HRF–1–1979, ''Household Refrigerators, Combination Refrigerator-Freezers, and Household Freezers'' (ANSI/AHAM HRF–1–1979), the version of the AHAM standard that was incorporated by reference in the DOE test procedure for residential refrigerators in a final rule published August 10, 1982. 47 FR 34517. DOE modified the requirements associated with temperature gradient for residential refrigerators, in a final rule published April 21, 2014, to remove the reference to a 7 feet height requirement and require only that the gradient be maintained to a height 1 foot higher than the top of the unit. 79 FR 22320, 22335.

In the March 2019 RFI, DOE requested comment on how manufacturers are demonstrating compliance with the requirements of section 5.1.1 of ASHRAE Standard 29–2009.

AHRI commented that manufacturers confirm compliance of test rooms or cells used for testing with all standards requirements, and that the standard committee and manufacturers deemed the requirements within the method of test to be adequate. (AHRI, No. 5 at p. 7)

Hoshizaki commented that it confirms the compliance of the test room with the requirements before testing, and that there is no need to align the ACIM temperature gradient requirements with other standards because ice makers perform differently than other commercial refrigeration appliances. (Hoshizaki, No. 4 at p. 2)

Howe commented that DOE should consider changing the requirement to limit the temperature measurement to 1 foot above the unit because there are no standard heights for test setups and units, so this change would ensure that the standard is consistent across installations. (Howe, No. 6 at p. 12)

Because DOE did not receive information indicating that a modification to the existing requirements would improve test accuracy or decrease test burden, DOE is not proposing any changes to the ambient temperature gradient requirements. DOE agrees that there are no standard heights for test setups and units; however, the current requirements ensure that the temperature gradient is maintained to at least within 1 foot above the unit under test for all test setups.

Issue 18: DOE requests comment on maintaining the existing ambient temperature gradient requirements, through an updated reference to ASHRAE Standard 29–2015, and on whether any modifications would improve test accuracy or decrease test burden.

d. Ambient Temperature and Water Temperature

The current DOE ACIM test procedure incorporates by reference AHRI 810–2007, which specifies an ambient temperature of 90 °F and a supply water temperature of 70 °F. AHRI 810–2016 provides the same specifications. However, many ice makers may be installed in conditioned environments such as offices, schools, hospitals, hotels, and convenience stores (see 80 FR 4646, 4700 (Jan. 28, 2015)), which may have ambient air temperatures and supply water temperatures higher or lower than those specified in AHRI Standard 810.

In the March 2019 RFI, DOE requested comment on whether the ambient air temperature and water supply temperature specified in AHRI Standard 810–2016, and in the current DOE test procedure, are appropriately representative of those temperatures during an average use cycle or whether different temperature specifications should be considered. 84 FR 9979, 9985. In particular, DOE requested data and information describing the ambient air temperature and supply water temperature of different applications at which ACIM equipment are operated. *Id.*

The Joint Commenters and Brema raised concerns about the representativeness of current ambient temperature conditions, stating that many ice makers are installed in conditioned spaces with ambient temperatures closer to 70 °F. They commented that this would mean that efficiency ratings are not providing appropriately representative information to purchasers, although neither commenter submitted information or data as to actual field conditions. (Joint Commenters, No. 2 at p. 3; Brema, No. 3 at p. 8) The Joint Commenters further commented that DOE should consider testing ice makers at two sets of ambient temperature and supply water temperature conditions because there is likely a significant range of temperatures in the field reflecting different locations and applications. (Joint Commenters, No. 2 at p. 4)

Howe commented that lowering the ambient test temperature without the proper energy accounting will lead customers to choose less energy efficient options from a complete system perspective, because such units are assumed to be within a climate-controlled space. Howe stated that DOE must maintain the test conditions of 90 °F ambient and 70 °F inlet water temperature because the inlet water temperature is representative of the average worst-case supply water that can be seen within the United States, and the ambient temperature ensures customers can understand the true energy costs associated with operation. (Howe, No. 6 at p. 10)

AHRI stated that average use cycles vary greatly per applications based on water and ambient temperatures, and that the test procedure was developed to average outside variable conditions into a snapshot of unit performance under normal operating conditions. AHRI commented that test results provide comparable representation of energy consumption among products. (AHRI, No. 5 at p. 5) AHRI and Hoshizaki commented that the ambient air temperature and water supply temperature specified in AHRI Standard 810 were selected by manufacturers as a good compromise for a replicable, representative test. (AHRI, No. 5 at p. 6; Hoshizaki, No. 4 at p. 2)

DOE acknowledges that ACIMs may be installed and operated in a range of ambient conditions. However, DOE is proposing to maintain the single set of rating conditions currently required in the DOE test procedure. Specifically, DOE is proposing to maintain the reference to AHRI Standard 810, through AHRI Standard 810–2016, for rating conditions because those were selected as representative, repeatable rating conditions of this equipment. As noted, EPCA requires that if AHRI Standard 810 is amended, DOE must

amend the test procedures for ACIM as necessary to be consistent with the amended AHRI test standard, unless DOE determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures regarding representativeness and test burden. (42 U.S.C. 6314(7)(B)) DOE does not have any contrary data or information regarding the representativeness of the conditions specified in AHRI Standard 810–2016.

In addition, the response of ACIM refrigeration systems to varying ambient conditions is different than the response of refrigeration systems in other refrigeration and HVAC equipment. Other refrigeration or HVAC equipment is typically designed to maintain conditions within a space. Accordingly, as ambient conditions change, the refrigeration systems typically cycle (or in the case of variable-speed compressors, adjust speed) to match the varying heat loads. In the case of ACIMs, the refrigeration system continuously operates while actively making ice, as heat is constantly removed from the water throughout the freezing process. As a result, introducing a second lower-temperature test condition would not result in part-load operation for ACIMs and would not additionally differentiate between units based on a part-load response, as is the case for other refrigeration or HVAC equipment. Thus, DOE has tentatively determined that the existing test condition provides representative, repeatable rating conditions for this equipment, and DOE expects that the burden of introducing a second test condition (which would approximately double test duration) would not be justified.

Issue 19: DOE requests comment on its proposal to maintain the existing ambient temperature and water supply temperature requirements. If modifications should be considered to improve test representativeness or decrease test burden, DOE requests supporting data and information.

e. Water Pressure

As discussed in section III.C and shown in Table III.2, ASHRAE Standard 29–2015 now includes water pressure measurement requirements, whereas ASHRAE Standard 29–2009 did not address water pressure. Section 6.3 of ASHRAE Standard 29–2015 directs that the pressure of the supply water be measured within 8 inches of the ACIM and that the pressure remains within the specified range (AHRI Standard 810–2007 and 2016 both specify 30 +/ − 3 psig water supply) during the period of time that water is flowing into the ACIM inlet(s).

Certain ACIMs do not continuously draw water into the unit during the entire test. The portions of the test when the water inlet valve opens may result in a short, transient state when the water pressure falls outside of the allowable tolerance. Eliminating such transient periods would likely require certain laboratories to re-configure their water supply setups. Because of this burden and the relatively low impact of these transient periods on water consumed (*i.e.,* the transient periods are typically very short relative to the overall duration of water flow), DOE is proposing to allow for water pressure to be outside of the specified tolerance for a short period of time when water begins flowing into the unit.

Section 2.4 of the DOE test procedure for consumer dishwashers addresses this same issue by requiring that the specified water pressure be achieved within 2 seconds of opening the water supply valve. 10 CFR 430, Subpart B, Appendix C1. The sampling rate in Section 5.7 of ASHRAE Standard 29–2015 requires a maximum interval between data samples for water pressure of no more than 5 seconds. Therefore, DOE proposes to clarify that water pressure when water is flowing into the ice maker must be within the allowable range within 5 seconds of opening the water supply valve. DOE does not expect that this proposal would impact tested performance under the current DOE test procedure as it provides additional specificity regarding the existing water pressure requirements.

Issue 20: DOE requests comment on its proposal to require that water pressure when water is flowing into the ice maker be within the allowable range within 5 seconds of opening the water supply valve.

4. Test Setup and Equipment Configurations

Since publication of the January 2012 final rule, DOE has issued two final guidance documents addressing certain aspects of the ACIM test procedure: Prohibiting the use of temporary baffles and requiring use of a fixed purge water setting. As discussed in the following paragraphs, DOE has reviewed the guidance documents to determine whether they should be maintained and expressly included in the test procedure. In addition, in reviewing the existing DOE ACIM test procedure, DOE has initially determined that the representativeness and repeatability of the test procedure could be further improved through additional specifications for test installation, ambient temperature measurement, and testing ACIMs with dispensers.

a. Temporary Baffles

After publication of the January 2012 final rule, DOE issued a guidance document on September 24, 2013, regarding the use of temporary baffles during testing.[10] As described in the guidance, a baffle is a partition, usually made of a flat material such as cardboard, plastic, or sheet metal, that reduces or prevents recirculation of warm air from an ice maker's air outlet to its air inlet, or, for remote condensers, from the condenser's air outlet to its inlet. Temporary baffles refer to those installed only temporarily during testing and are not part of the ACIM model as distributed in commerce or installed in the field. During testing, the use of temporary baffles can block recirculation of warm condenser discharge air to the air inlet. This would reduce the average temperature of the air entering the inlet, which would result in lower energy use that would not be representative of the energy use of the unit as operated by the end user.

In the guidance document, DOE expressly stated that installing such temporary baffles is inconsistent with the ACIM test procedure, which states that the unit must be ''set up for testing according to the manufacturer's written instruction provided with the unit'' and that ''no adjustments of any kind shall be made to the test unit prior to or during the test that would affect the ice capacity, energy usage, or water usage of the test sample.'' [11] Therefore, DOE's final guidance stated that the use of baffles to prevent recirculation of air between the air outlet and inlet of the ice maker during testing is not consistent with the DOE test procedure for automatic commercial ice makers, unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions.

In the March 2019 RFI, DOE requested comment on the use of temporary baffles in testing ACIMs and whether DOE should amend the test procedure to permit their use in testing. 84 FR 9979, 9982–9983.

The Joint Commenters commented that the test procedure needs to address testing with temporary baffles, as this guidance would help clarify the intent of the test procedure. (Joint Commenters, No. 2 at p. 1) Hoshizaki,

[10] See *www1.eere.energy.gov/buildings/appliance_standards/pdfs/acim_baffles_faq_2013-9-24final.pdf.*

[11] Section 4.1.4, ''Test Set Up,'' of AHRI Standard 810–2007 and AHRI Standard 810–2016.

AHRI, and Howe commented that temporary baffles may not be used for testing, unless the baffle is found in product marketing, is shipped with the ice maker, and is to be installed according to the manufacturers' installation instructions. (Hoshizaki, No. 4 at p. 1; AHRI, No. 5 at p. 3; Howe, No. 6 at p. 4) Brema commented that all parts that can be removed by the final user should be removed during the energy consumption test. (Brema, No. 3 at p. 4)

Based on the final guidance document and consistent with feedback received in response to the March 2019 RFI, DOE proposes to define the term ''baffle'' consistent with the description in the guidance document and to expressly prohibit the use of baffles when testing of ACIMs unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions. DOE is not proposing that all parts that can be removed by the final user shall be removed for testing. The proposed approach based on manufacturer installation instruction is likely how an ice maker would be installed during use and is most representative of the energy use of ACIMs operated in the field. This proposal does not add any burden or impact measured performance compared to the existing test procedure, as it is consistent with how the test procedure currently must be performed, and based on commenters' feedback, how it is currently being conducted.

Issue 21: DOE requests comment on its proposal to expressly provide that a baffle must not be used when testing ACIMs unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions.

The guidance document issued by DOE on September 24, 2013, also acknowledged that warm air discharged from an ice maker's outlet can affect the ambient air temperature measurement such that it fluctuates outside the maximum allowed ±1 °F or ±2 °F range, and that baffles can prevent such fluctuation. Because temporary baffles are not permitted for use during testing, DOE stated in the guidance document that if the ambient air temperature fluctuations cannot be maintained within the required tolerances, temperature measuring devices may be shielded so that the indicated temperature will not be affected by the intermittent passing of warm discharge air at the measurement location. DOE also stated that the shields must not block recirculation of the warm discharge air into the condenser or ice maker inlet.

Based on the final guidance document, DOE proposes to specify in the test procedure that if the ambient air temperature fluctuations (and relative humidity as discussed in section III.D.3.a) cannot be maintained within the required tolerances, temperature measuring devices (and relative humidity measuring devices) may be shielded to limit the impact of intermittent passing of warm discharge air at the measurement locations. DOE further proposes that if shields are used, they must not block recirculation of the warm discharge air into the condenser or ice maker inlet. DOE does not expect this proposal to impact measured ACIM performance compared to the existing test procedure, as it is consistent with the existing test approach.

Issue 22: DOE requests comment on its proposal to specify that temperature measuring devices may be shielded to limit the impact of intermittent warm discharge air at the measurement locations and that if shields are used, they must not block recirculation of the warm discharge air into the condenser or ice maker air inlet.

Issue 23: DOE requests comment on whether any ACIM models discharge air such that the temperature and relative humidity measuring devices would be unable to maintain the required ambient air temperature or relative humidity tolerances even with the measuring devices shielded. If so, DOE requests comment on whether alternate ambient air temperature and relative humidity measurement locations would be necessary (*e.g.,* the ambient temperature measurement locations for water-cooled ice makers, if those locations are not affected by condenser discharge air) and if the ambient air temperature and relative humidity measured at the alternate locations should be within the same tolerances as would otherwise be required.

b. Purge Settings

Purge water refers to water that is introduced into the ice maker during an ice-making cycle to flush dissolved solids out of the ice maker and prevent scale buildup on the ice maker's wetted surfaces. Ice makers generally allow for setting the purge water controls to provide different amounts of purge water or different frequencies of purge cycles. Different amounts of purge water may be appropriate for different levels of water hardness or contaminants in the ACIM water supply. Most ice makers have manually set purge settings that provide a fixed amount of purge water, but some ice makers include an automatic purge water control setting that automatically adjusts the purge water quantity based on the supply water hardness.

Because purge water is cooled by the ice maker, allowing a different purge water quantity will result in a different measured energy use. To ensure representative and consistent test results for ice makers with automatic purge water controls, on September 25, 2013, DOE issued final guidance stating that ice makers with automatic purge water control should be tested using a fixed purge water setting that is described in the written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness.[12] DOE further stated that the automatic purge setting should not be used for testing.

In the March 2019 RFI, DOE requested comment on what purge settings should be considered for testing for ACIMs with multiple or automatic purge settings and whether any ACIMs exist with automatic purge settings but without a fixed purge setting appropriate for ''normal'' water hardness and, if such a unit exists, how it should be tested. 84 FR 9979, 9983.

The Joint Commenters commented that the test procedure would be more representative of the energy use of ACIM with automatic purge water control settings if these units were tested in such a way that allowed the controls to adjust automatically as they would in the field, stating that automatic purge water control settings may save energy by reducing purge water quantity when the water supply hardness is lower. (Joint Commenters, No. 2 at p. 2)

Howe stated that the test procedure should specify the purge setting associated with the highest energy use, as purge energy use is significant and will impact the energy consumption of an ACIM over its average use cycle. Howe also explained that it is not aware of any automatically sensing purge or flush setting devices. (Howe, No. 6 at p. 5–6)

AHRI commented that purge cycles and their frequency can affect the sensible heat transfer during the test and therefore influence the energy use. (AHRI, No. 5 at p. 3)

Hoshizaki commented that the purge cycle's energy use over a year is negligible compared to the energy used to produce ice. (Hoshizaki, No. 4 at p. 1) Hoshizaki and AHRI commented that ideal purge settings vary based on the

[12] See *www1.eere.energy.gov/buildings/appliance_standards/pdfs/acim_purge_faq_2013-9-25final.pdf.*

water quality of the area, and purge settings are generally set by trained service technicians during installation. (Hoshizaki, No. 4 at p. 1; AHRI, No. 5 at p. 4) Hoshizaki commented that any changes to purge settings for testing should be addressed through ASHRAE 29. (Hoshizaki, No. 4 at p. 1)

Consistent with DOE's existing guidance, DOE proposes that ice makers with automatic purge water control must be tested using a fixed purge water setting that is described in the manufacturer's written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness. Such a control setting is likely to reflect the most typical ACIM installation and operation. Any other automatic purge controls (*i.e.,* those without any user-controllable settings) would operate as they would during normal use. Additionally, while ACIMs may be installed and set up by service technicians based on the installation location, such setup is not appropriate for testing because it may introduce variability in test settings based on the test facility location. Consistent with DOE's existing guidance, DOE is also proposing that purge water settings described in the instructions as suitable for use only with water that has higher or lower than normal hardness (such as distilled water or reverse osmosis water) must not be used for testing.

This proposal does not conflict with any of the setup or installation requirements in AHRI 810–2016. Additionally, this proposal would not add burden to manufacturers or impact ACIM performance as measured under the existing test procedure, as it would codify the final guidance document issued on September 25, 2013, specifying use of a fixed purge setting.

In the March 2019 RFI, DOE also explained that batch ice makers might initiate a flush or purge cycle every 12 hours, and continuous ice makers might pause the ice making operation periodically to accomplish the additional purge. 84 FR 9979, 9983. Testing according to the current test procedure might not include such a purge cycle, and thus the resulting tested energy use might not appropriately represent what an end user would experience in the field. *Id.* DOE requested comment on the presence and frequency of any ''additional'' or ''increased-water'' purge cycles and their impact on energy and water use. *Id.*

The Joint Commenters commented that because purge water is cooled by the ice maker, it contributes to energy use during a representative average use cycle. In addition, the Joint Commenters noted that the previous energy conservation standards rulemaking considered reduced potable water flow as a technology option for reducing energy use. The Joint Commenters further stated that DOE's analysis showed that some or all of the purge water drained from batch ice makers leaves the equipment near 32 °F, which represents lost refrigeration that could potentially have been used to produce more ice. (Joint Commenters, No. 2 at p. 1) The Joint Commenters stated that DOE should investigate how to capture the impact of any ''additional'' or ''increased-water'' purge cycles, including additional purges outside of regular cycling or continuous operation, which may not be captured by the current test procedure. (Joint Commenters, No. 2 at p. 2)

AHRI commented that introducing specifications to require a purge cycle during the test would introduce additional burden to manufacturers, and that all ACIM units should be tested at the factory default settings. (AHRI, No. 5 at p. 4)

Howe commented that the current ACIM test procedure does not allow for the energy use from a flush cycle to be determined, and that the current test procedure results are not representative of the total energy used by the ice maker when flush cycles are considered. Howe stated that some manufacturers allow settings that flush all contents of the evaporator, in which case all of the water/ice product inside of the evaporator is melted by the incoming water to ensure all the dissolved solids in the evaporator are flushed from the system. Howe commented that the energy used by the ice maker to make the chilled water/ice inside of the evaporator at the beginning of the cycle is wasted and not turned into useable ice product for the end user. Howe stated that following the flush, the ACIM will then turn on and need to pull down the evaporator to return to the steady state operating condition. (Howe, No. 6 at p. 6) Howe also suggests that the internal volume of ACIMs that use flush cycles be used to estimate the amount of ice product that is wasted during a flush cycle to determine an energy penalty associated with the flush cycle. (Howe, No. 6 at p. 6)

Brema commented that the purge cycle must be excluded from the average functionality time and not be considered for the energy consumption calculation. (Brema, No. 3 at p. 4)

DOE conducted testing to investigate the energy and water consumption associated with flush or purge cycles. Table III.6 summarizes how a purge cycle contributes to the energy and water consumption of a continuous ACIM.

TABLE III.6—SUMMARY OF ENERGY & WATER CONSUMPTION OF A CONTINUOUS ACIM WITH PURGE CYCLE

Mode	Average power draw (W)	Energy consumption (kWh)	Average water usage (lbs)
Ice Production	936	11.23	*275
Purge (every 12 hours by default)	35	0.01	2.0
Recovery after Purge	1,062	0.08	N/A

*This number represents the harvest weight during the associated operating period. The total amount of water used may be higher. N/A: The water used during the recovery after purge does not differ from normal ice production.

As shown in Table III.6, the purge cycle, including the recovery after purge, consumed 0.09 kWh, representing less than 1 percent of the total energy consumed over a period of normal operation (*i.e.,* ice production, automatic purge cycle, and purge recovery). Additionally, the ACIM consumed 2 gallons of water during the purge cycle, representing less than 1 percent of the total consumed over the period of normal operation.

In comparison, DOE testing of a batch ACIM showed that the purge occurred once every 5 hours under the default setting and coincided with the start of a harvest, resulting in no separate purge cycle. DOE observed an increased batch cycle time for the purge cycle and a corresponding increase in ice collected. DOE also observed that power draw over the purge cycle was consistent with a typical non-purge cycle. As a result, the harvest rate and energy use rate

observed for a purge cycle were similar to those measured over stable non-purge cycles.

DOE also observed that testing to account for the energy and water consumption of purge cycles would require a significant increase in total test time. Table III.7 presents DOE's estimates of the test durations under the existing test approach and under an approach that would account for purge operation.

TABLE III.7—SUMMARY OF ESTIMATED TEST DURATIONS WITH AND WITHOUT INCLUDING PURGE CYCLES

Test unit	Duration (hours)			
	Existing ice production test (without purge)	Existing test total (without purge)	Ice production test (with purge)	Test total (with purge)
Continuous	2	8	12.5	18.5
Batch	2	8	5.5	11.5

As discussed further in section III.F.1.a, DOE estimates a typical ACIM test duration to be 8 hours, including set up, pull-down, and test operation. The period of active ice production measured depends on how quickly the unit achieves stability, but the existing test approach requires measuring at least 5 or 6 ice collection periods (for batch and continuous ACIM, respectively) for confirming stability and conducting the test. DOE observed that the durations of the required ice collection periods were approximately 2 hours for both the continuous and batch ACIM in the test sample. Accounting for purge cycle operation would require extending the test period to capture both stable ice production and normal purge operation. This would require an estimated increase in test duration of 10.5 hours (more than double) for the continuous test unit and 3.5 hours (approximately 44 percent) for the batch test unit.

The energy and water consumption during the flush or purge cycles are very small relative to the energy and water consumed during normal ice production and the additional test burden associated with measuring purge events would be a significant increase in test burden. Therefore, DOE is not proposing to address flush or purge cycles in its test procedure.

Issue 24: DOE requests comment on its proposal to require ACIMs with automatic purge water control to be tested using a fixed purge water setting that is described in the manufacturer's written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness. DOE also requests comment on its initial determination to not account for energy or water used during intermittent flush or purge cycles. DOE continues to request data regarding the energy and water use impacts of purge cycles.

c. Clearances

As discussed in section III.C and shown in Table III.2, the clearance requirements around a unit under test changed between ASHRAE Standard 29–2009 and ASHRAE Standard 29–2015. The current DOE test procedure, through reference to section 6.4 of ASHRAE Standard 29–2009, requires a clearance of 18 inches on all four sides of the test unit, while section 6.5 of ASHRAE Standard 29–2015 requires a minimum clearance of 3 feet to adjacent test chamber walls, or the minimum clearance specified by the manufacturer, whichever is greater.

In response to the March 2019 RFI, Howe commented that it is reasonable for customers to expect units to perform at their ratings when using the minimum clearances as described in the manufacturer literature. Howe recommended that DOE require a clearance of 3 feet, or the minimum clearance allowed by the manufacturer, whichever is less, to better represent an average use cycle. Howe also commented that this clearance should include all machine clearances, not just walls within the test chamber, and that a minimum clearance enclosure be built for testing ACIMs based on the harshest manufacturer-recommended operating installation, without blocking an intake air path to the ice maker. Howe also commented that this setup would not be a large test burden as many manufacturers test units of similar size, and the enclosures could be used over multiple tests. (Howe, No. 6 at p. 4)

DOE conducted testing to assess how the different clearance requirements could affect the measured energy consumption and harvest rate of ACIMs. DOE investigated the performance of ACIMs under four clearance setups: (1) The clearance required by ASHRAE Standard 29–2015, (2) the clearance required by the current DOE test procedure (through reference to ASHRAE Standard 29–2009), (3) all minimum clearances as recommend by the manufacturer, and (4) the rear minimum clearance as recommend by the manufacturer with all other clearances per ASHRAE Standard 29–2015. Table III.8 summarizes how four test units performed under the four clearance setups.

TABLE III.8—SUMMARY OF CLEARANCE IMPACT ON ACIM PERFORMANCE

Test unit	Clearance setup	Harvest rate (lbs of ice/24hrs)	Change in harvest rate (from ASHRAE standard 29–2015)	Energy consumption (kWh/100 lbs of ice)	Change in energy consumption (from ASHRAE standard 29–2015)
1	ASHRAE Standard 29–2015	573	N/A	4.93	N/A
	Current DOE Test Procedure	575	0%	4.97	1%
	Minimum Clearances	548	−4%	5.25	6%
	Minimum Rear Clearance	576	1%	4.94	0%
2	ASHRAE Standard 29–2015	814	N/A	4.46	N/A
	Current DOE Test Procedure	815	0%	4.48	0%
	Minimum Clearances	794	−2%	4.59	3%

TABLE III.8—SUMMARY OF CLEARANCE IMPACT ON ACIM PERFORMANCE—Continued

Test unit	Clearance setup	Harvest rate (lbs of ice/24hrs)	Change in harvest rate (from ASHRAE standard 29–2015)	Energy consumption (kWh/100 lbs of ice)	Change in energy consumption (from ASHRAE standard 29–2015)
	Minimum Rear Clearance	820	1%	−4.41	1%
3	ASHRAE Standard 29–2015	1,164	N/A	4.41	N/A
	Current DOE Test Procedure	1,164	0%	4.46	1%
	Minimum Clearances	1,043	−10%	5.14	17%
	Minimum Rear Clearance	1,149	−1%	4.44	1%
4	ASHRAE Standard 29–2015	1,197	N/A	5.40	N/A
	Current DOE Test Procedure	1,195	0%	5.43	1%
	Minimum Clearances	1,105	−8%	6.04	12%
	Minimum Rear Clearance	1,197	0%	5.39	0%

The tests indicate that the different clearance requirements, except for the installation with all minimum clearances, have little to no impact on the measured performance of ACIMs. The impact observed from the minimum clearance test is likely due to the exhaust air being directed through the test enclosure (*i.e.,* the minimum clearances on the sides, back, and top of the ACIM resulted in an enclosure guiding condenser exhaust air) back to the front air inlet on the ACIM, which results in the ACIM drawing in warmer air than under the three other setup configurations. As described in section III.D.4.a, testing with a temporary baffle to prevent such air flow is not appropriate, so the condenser exhaust re-circulated during this investigative testing.

Based on these test results, an installation configuration that provides only the minimum manufacturer test clearances for all sides represents a worst-case installation for ACIM performance. While manufacturers might provide minimum clearances for all sides of a unit, the expectation may be that units are installed such that one or more of the sides has clearance exceeding the manufacturer minimum.

Similarly, a minimum clearance of 3 feet to adjacent test chamber walls or a clearance of 18 inches on all four sides (as required by ASHRAE Standard 29–2015 and the current DOE test procedure, respectively) may also not be a typical ACIM installation. Because ACIMs are typically installed in commercial food service applications with space constraints, such as commercial kitchens, end users likely install their ACIMs against at least a rear wall using the manufacturer minimum clearance to maximize available working space. Based on the test data in Table III.7, testing according to the manufacturer-specified minimum rear clearance has little to no measured impact on ACIM performance for the four test units. However, because ACIMs may exhaust condenser air from the rear of the unit, an inappropriate manufacturer minimum rear clearance (or lack of manufacturer instructions regarding rear clearance) could adversely affect ACIM performance while being representative of typical use, and should be captured in the tested performance.

Therefore, DOE proposes that ACIMs be tested according to the manufacturer's specified minimum rear clearance requirements, or 3 feet from the rear of the ACIM, whichever is less. DOE is proposing testing be conducted with a minimum clearance of 3 feet or the minimum clearance specified by the manufacturer, whichever is greater, on all other sides of the ACIM and all sides of the remote condenser, if applicable. This clearance for all sides other than the rear of the ACIM is generally consistent with the requirement in ASHRAE Standard 29–2015. As discussed, and shown in the DOE test data, the impact of this proposed change on measured energy use for currently certified ACIMs would likely be de minimis. DOE expects manufacturer installation instructions would typically provide for clearances that would ensure sufficient air flow to avoid any adverse impacts on ACIM performance under the proposed test setup.

DOE is not proposing specific requirements for the wall used to maintain the rear clearance when conducting the test. Test laboratories would be able to satisfy the clearance requirements in any way they choose, as long as the test installation meets the proposed requirements.

Issue 25: DOE requests comment on its proposal to require that ACIMs be tested according to the manufacturer's specified minimum rear clearance requirements, or 3 feet from the rear of the ACIM, whichever is less. All other sides of the ACIM and all sides of the remote condenser, if applicable, shall be tested with a minimum clearance of 3 feet or the minimum clearance specified by the manufacturer, whichever is greater. DOE also requests comment on whether this proposal would affect measured energy use and harvest rate compared to the existing DOE test procedure.

d. Ambient Temperature Measurement

Air temperature fluctuations from the test chamber or the ACIM's condenser exhaust air can potentially affect an ACIM's measured energy consumption and harvest rate.

The current ACIM test procedure, which is based on AHRI Standard 810–2007 and ASHRAE Standard 29–2009, does not specify whether a weighted or unweighted sensor is to be used to measure ambient temperature. A weighted sensor measures the temperature of a high conductivity (isothermal) mass to which it is connected. The mass slows equilibration of the measured temperature with the surrounding air, thus damping out air temperature fluctuations. This may result in a weighted sensor indicating that the fluctuations are within the required temperature tolerances, whereas an unweighted sensor could indicate temperature extremes exceeding the required temperature tolerances. This difference in function of the sensors impacts the application of the required temperature tolerances, *i.e.,* temperature fluctuations that fall outside the required tolerances may not be detected when using a weighted sensor, but would be detected when using an unweighted sensor.

In the March 2019 RFI, DOE requested comment about whether manufacturers use weighted or unweighted temperature measurement instruments to measure ambient temperatures during ice maker testing. DOE also sought comment and data on the benefits and burdens of using unweighted

temperature measurement instruments compared to weighted temperature measurement instruments. 84 FR 9979, 9985.

Hoshizaki commented that it currently uses unweighted temperature measurement instruments to record ambient temperature readings during testing. (Hoshizaki, No. 4 at p. 2) AHRI stated that these unweighted instruments are quick to react to change but can exhibit some fluctuation during readings. AHRI also noted that unweighted instrumentation sufficiently meets the tolerances and requirements set forth in the test procedures and does not increase testing time or instrumentation cost as weighted temperature sensors would. (AHRI, No. 5 at p. 7) Howe recommended that DOE make the type of temperature instrument explicit for each measurement location on the product, noting that an unweighted versus weighted temperature instrument can create uncertainty that will impact the average use cycle energy use. Howe also commented that room temperature could be measured by a weighted temperature device, while the condenser inlet air be measured by an unweighted temperature device, due to the nature of the inlet air directly impacting the performance of the refrigeration system. (Howe, No. 6 at p. 12–13)

DOE conducted testing to evaluate the ability to meet the specified tolerances of ASHRAE Standard 29–2015 using both weighted and unweighted temperature sensors. The temperature fluctuations recorded by weighted temperature sensors may be less than those recorded with unweighted measurement due to damping of the fluctuations by the weighted thermal mass. As such, weighted sensors may give the false impression that ambient temperature tolerances of ±2 °F during the first 5 minutes of each freeze cycle, and not more than ±1 °F thereafter, are met during testing. The measurement of ambient temperature using unweighted sensors provides more representative measures of actual instantaneous ambient temperature conditions than the measurement of weighted sensors. DOE observed in its testing that the ambient temperature was within the tolerances specified in ASHRAE Standard 29–2015 for all freeze cycles when using either weighted or unweighted sensors.

Therefore, DOE proposes to specify that unweighted sensors shall be used to make all ambient temperature measurements. Based on comments, this proposal reflects current industry practice and would not add any burden. This proposal is consistent with AHRI Standard 810–2016 because it specifies the instrumentation for measuring ambient temperature, but does not otherwise change the existing requirements.

Issue 26: DOE requests comment on its proposal to specify that ambient temperature measurements shall be made using unweighted sensors.

The current DOE guidance and proposal in this NOPR regarding the use of temporary baffles, as discussed in section III.D.4.a, illustrate that temporary baffles can reduce or prevent recirculation of warm air from an ACIM's condenser exhaust air to its air inlet. This recirculation of warm air can potentially affect an ACIM's measured energy consumption and harvest rate, and using a temporary baffle for testing is unrepresentative of actual ACIM use. The recirculation of warm air may also affect the ability to maintain ambient temperature within the range specified in AHRI Standard 810–2016 and relative humidity within the range proposed in this NOPR. For example, if the condenser exhaust is warm enough and directed towards the air inlet location (and corresponding ambient temperature measurement), the measured ambient temperature may be warmer than the representative ambient temperature around the unit under test, even with shielding around the temperature sensor.

To evaluate the extent of this potential impact on temperature, DOE tested an ACIM which exhausted its warm condenser air on the side of the ACIM adjacent to the side with the air intake. Three ambient thermocouples were placed 1 foot from the geometric center of each side around the ACIM in addition to the unshielded ambient thermocouple that was placed 1 foot from the air inlet. The unshielded ambient thermocouple that was located 1 foot from the air inlet was used to control the test chamber conditions in accordance with AHRI Standard 810–2016 (*i.e.,* the overall chamber temperature was reduced as necessary to maintain the temperature one foot in front of the air inlet as close to 90 °F as possible). Table III.9 summarizes the results of this testing.

TABLE III.9—AVERAGE AMBIENT TEMPERATURES MEASURED ON EACH SIDE AROUND AN ACIM

Inlet (°F)	Exhaust (°F)	Opposite side of exhaust (°F)	Opposite side of inlet (°F)
89.9	90.2	88.5	88.2

As shown in Table III.9, the air within the chamber had to be reduced below 89 °F (outside the 90 ±1 °F allowable ambient temperature range specified in ASHRAE Standard 29–2015) to maintain the temperature at the air inlet near the specified 90 °F condition. This data suggests that ACIM models that allow the warm condenser exhaust air to recirculate to the air intake may require lower overall ambient test chamber temperatures to maintain the specified condition at the air inlet. As discussed in section III.D.4.a, DOE's guidance regarding temporary baffles states that temperature measuring devices may be shielded so that the indicated temperature will not be affected by the intermittent passing of warm discharge air at the measurement location. DOE also noted that the shields must not block recirculation of the warm discharge air into the condenser or ice maker inlet. The ambient temperature measurement is meant to represent the temperature of the air around the unit under test that is not impacted by unit operation. Because test facilities may have difficulty effectively shielding the air inlet thermocouple from warm discharge air without blocking the recirculation of that air to the ACIM air inlet, DOE is proposing that the ambient temperature may be recorded at an alternative location. DOE proposes that for ACIMs in which warm air discharge impacts the ambient temperature as measured in front of the air inlet (*i.e.,* the warm condenser exhaust airflow is directed to the ambient temperature location in front of the air inlet), the ambient temperature may instead be measured at locations 1 foot from the cabinet, centered with respect to the sides of the cabinet, for each side of the ACIM cabinet with no air discharge or inlet. This proposal is an alternative intended to reduce burden compared to the existing approach implemented in DOE's current test procedure guidance. DOE expects that this proposal would

not impact measured ACIM performance compared to the existing test approach. DOE also proposes that the relative humidity measurement, as proposed in this NOPR, would also be made at the same alternative locations.

Test installation according to the manufacturer's minimum rear clearance requirements, as discussed in section III.D.4.c, may affect the ability to measure the ambient temperature and relative humidity 1 foot from the air inlet if the air intake is through the rear side of the ACIM and the minimum rear clearance is less than 1 foot from the air inlet. Additionally, the alternate measurement location, as proposed earlier in this section, would not be feasible for the rear side of a model with no air discharge or inlet on that side and with a minimum rear clearance of less than 1 foot.

Accordingly, DOE proposes that if a measurement location 1 foot from the rear of an ACIM is not feasible for testing that would otherwise require a measurement at that location, the ambient temperature and relative humidity shall instead be measured 1 foot from the cabinet, centered with respect to the surface(s) of the ACIM, for any surfaces around the perimeter of the ACIM that do not include an air discharge or air inlet. DOE similarly does not expect this proposal to impact current ACIM measurements as it provides an alternative measurement location for the existing ambient temperature and relative humidity requirements.

Issue 27: DOE requests comment on its proposal to allow for an alternate ambient temperature (and relative humidity) measurement location to avoid complications associated with shielding the measurement in front of the air inlet, as currently required. DOE also requests comment on the proposal for measuring ambient temperature and relative humidity for ACIMs for which the proposed rear clearance would preclude temperature measurements at the rear of the unit under test.

e. Ice Cube Settings

DOE is aware that some ice makers have the capability to make various sizes of cubes. The size of the cube can typically be selected on the control panel of the ice maker, for example. Section 5.2 of AHRI Standard 810–2016 states that for machines with adjustable ice cube settings, standard ratings are determined for the largest and the smallest cube settings, and that ratings for intermediate cube settings may be published as application ratings. This is consistent with the current DOE requirement as incorporated by reference in AHRI Standard 810–2007.

In response to the March 2019 RFI, DOE received a comment from Brema suggesting that, if parts of an ACIM can be adjusted by the final user (*e.g.,* electronic settings), the ACIM must be tested with the worst possible configuration. (Brema, No. 3 at p. 4)

DOE is not proposing any change to the existing industry requirement to determine ratings under the largest and smallest cube settings for ACIMs with adjustable ice cube settings. EPCA requires the DOE test procedure to be reasonably designed to produce test results which reflect energy use during a representative average use cycle. The current requirement to test using the largest and smallest cube setting is based on the industry standard, which was developed based on industry's experience with this equipment. There is no information to support that testing at the ''worst possible configuration'' would be representative of an average use cycle. Additionally, the approach suggested by Brema would require manufacturers to test every possible size setting to determine which has the highest energy use rate. As such, DOE is not proposing to change the current requirement to test at both the smallest and largest cube setting, which is the same as the requirement in AHRI Standard 810–2016.

Issue 28: DOE requests comment on maintaining the current requirement to test at the largest and smallest ice cube size settings, consistent with AHRI Standard 810–2016. DOE also requests information on the ice cube size setting typically used by customers with ACIMs with multiple size settings (largest, smallest, default, *etc.*).

f. Ice Makers With Dispensers

DOE is aware of certain self-contained ACIMs that dispense ice to a user through an automatic dispenser when prompted by the user. Testing according to the current DOE test procedure or the updated industry standards as proposed in this NOPR may be difficult or impossible for certain ACIM configurations with automatic dispensers.

Section 6.6 in ASHRAE Standard 29–2015 specifies that an ACIM must have its bin one-half full of ice when collecting capacity measurements. DOE is aware of self-contained ACIMs with dispensers that contain internal storage bins that are not accessible during normal operation (*i.e.,* users access the ice only through use of the dispenser). Because the internal bins are not accessible during normal operation, it can be difficult or impossible to establish a storage bin one-half full of ice for testing. Additionally, isolating the ice produced during testing from the ice initially placed in a one-half full storage bin may be difficult or impossible, depending on the dispenser and internal storage bin configuration.

Section 6.10 of ASHRAE Standard 29–2015 requires that the ACIM be completely assembled with all panels, doors, and lids in their normally closed positions during the test. Additionally, Section 4.1.4 of AHRI Standard 810–2016 requires that the test unit shall be configured for testing per the manufacturer's written instructions provided with the unit. It also requires that no adjustments of any kind shall be made to the test unit prior to or during the test that would affect the ice capacity, energy usage, or water usage of the test sample. Many self-contained ACIMs with dispensers would require removing case panels or the top lid to access the internal ice bin for ice collection or establishing initial test setup. In typical operation, users would access the ice only through the dispenser mechanism.

Through a letter dated January 28, 2020, Hoshizaki America, Inc. (''Hoshizaki'') petitioned for a waiver and interim waiver from the DOE ACIM test procedure at 10 CFR 431.134 for ice/water dispenser ACIM basic models to address the test issues previously described in this section (case number 2020–001 [13]). On July 23, 2020, DOE granted Hoshizaki an interim waiver to test the identified ACIM basic models with a modified test procedure. 85 FR 44529. After providing opportunity for public comment on the interim waiver and reviewing the one comment received, DOE granted Hoshizaki a waiver through a final decision and order published on October 28, 2020, requiring that the subject basic models be tested according to the modified alternate test procedure as follows:

Prior to the start of the test, remove the front panel of the unit under test and insert a bracket to hold the shutter (which allows for the dispensing of ice during the test) completely open for the duration of the test. After inserting the bracket, return the front panel to its original position on the unit under test. Conduct the test procedure as specified in 10 CFR 431.134 except that the internal ice bin for the unit under test shall be empty at the start of the test and intercepted ice samples shall be obtained from a container in an external ice bin that is filled one-half full with

[13] The petition and related documents are available at *www.regulations.gov* in docket EERE–2020–BT–WAV–0005.

ice and is connected to the outlet of the ice dispenser through the minimum length of conduit that can be used. 85 FR 68315.

This waiver granted to Hoshizaki includes instructions for testing the specific basic models addressed in that waiver process. However, other ACIM models with dispensers would likely require similar testing instructions. Moreover, after the granting of any waiver, DOE must publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l). Therefore, DOE proposes to add general test instructions to the DOE test procedure at 10 CFR 431.134(b)(6) to allow for testing such models. DOE is proposing that ACIMs with a dispenser be tested with continuous production and dispensing of ice throughout the stabilization and test periods. If an ACIM with a dispenser is not able to allow for the continuous production and dispensing of ice because of certain mechanisms within the ACIM that prohibit this function, those mechanisms must be overridden to the minimum extent that allows for the continuous production and dispensing of ice. For example, this would allow for the temporary removal of panels or overriding of certain controls, if necessary. The capacity samples would be collected in an external bin one-half full with ice and connected to the outlet of the ice dispenser through the minimal length of conduit that can be used for the required time period as defined in ASHRAE Standard 29–2015. Because of the continuous production and dispensing of ice, these ACIMs would be required to have an empty internal storage bin at the beginning of testing. This would ensure that the collection periods capture only the quantity of ice produced during that period (*i.e.,* this would avoid any ice being collected that was produced prior to the collection period). This proposed approach would address issues with testing ACIM models with automatic dispensers, while allowing a representative measure of how ACIMs with dispensers are typically used. This approach would also minimize test burden by avoiding the need to significantly alter the configurations of these ACIM models for testing (*e.g.,* allowing for access to any internal storage bins during performance testing).

Issue 29: DOE requests comment on its proposal to collect capacity samples for ACIMs with dispensers through the continuous production and dispensing of ice throughout testing, using an empty internal storage bin at the beginning of the test period and collecting the ice sample through the dispenser in an external bin one-half full of ice. DOE also requests comment on its proposal to allow for certain mechanisms within the ACIM that would prohibit the continuous production and dispensing of ice throughout testing to be overridden to the minimum extent that allows for the continuous production and dispensing of ice. DOE seeks information on how manufacturers of these ACIMs currently test and rate this equipment under the existing DOE test procedure, whether the proposal would impact the energy use as currently measured, and on the burden associated with the proposed approach or any alternative test approaches.

g. Remote ACIMs

In the March 2019 RFI, DOE requested comment on whether the current test procedure could be improved to measure energy use more accurately during a representative average use cycle for remote condensing ice makers with dedicated condensing units. 84 FR 9979, 9983–9984. More specifically, DOE requested feedback on whether default refrigerant charging and line set specifications would be necessary absent manufacturer recommendations. *Id.* DOE also sought information on whether any additional test instructions would be needed for remote condensing ice makers. *Id.*

AHRI noted that many units are meant to be installed with specific condensing equipment, and DOE should follow the manufacturer installation and operation instructions to appropriately set up and test the unit. (AHRI, No. 5 at p. 5)

The Joint Commenters commented in support of providing default refrigerant charging and line set specifications, claiming it would provide consistency across testing laboratories and improve test repeatability and reproducibility. The Joint Commenters added that, before doing so, DOE should verify that the minimum requirement of 25 feet of interconnection tubing specified in AHRI 810 is representative of typical field installations. (Joint Commenters, No. 2 at p. 2–3)

Brema commented that the test must be performed according to technical specification and information listed on installation/instruction manufacturer manual. (Brema, No. 3 at p. 5)

Hoshizaki stated that ASHRAE 29 and AHRI 810 specify a minimum 25-foot line set or manufacturer's recommended set and that any additions to the current test method would need to be addressed in the ASHRAE 29 standard committee to verify that it would not be costly and burdensome. (Hoshizaki, No. 4 at p. 2)

Howe requested that DOE mandate refrigerant line size and charge instructions be included by the manufacturer with all remote condensing applications because there are many differences between manufacturers' systems, and a general guideline will not suffice. Howe recommended that the line size length for remote installations continue to be specified in the standard and account for typical remote condensing application in the field. (Howe, No. 6 at p. 8)

In the March 2019 RFI, DOE also requested comment on the appropriate test approach for remote ACIMs intended to be installed without a dedicated condensing unit (*i.e.,* ACIMs intended for use with refrigerant supplied by a remote compressor rack). 84 FR 9979, 9983–9984. DOE sought feedback on what types of these units are available on the market (*i.e.,* batch vs. continuous), whether an enthalpy test approach similar to that used for commercial refrigeration equipment would be appropriate for testing these ice makers, and if so, any additional instructions that would be needed for such testing. *Id.*

The Joint Commenters and Howe commented that DOE should apply a similar approach to remote condensing ice makers designed to be connected to compressor racks as for other types of remote condensing refrigeration equipment, which relies on a refrigerant enthalpy calculation and assumed compressor efficiencies to estimate the energy consumption of the compressor rack. (Joint Commenters, No. 2 at p. 3; Howe, No. 6 at p. 8–9)

AHRI stated that remote condensing ice makers that connect to condensing racks are currently outside the scope of AHRI 810 and ASHRAE 29. (AHRI, No. 5 at p. 5) Hoshizaki and AHRI commented that the market for these remote ACIM with non-dedicated condensing units is very small, and those that do exist are typically continuous. Hoshizaki and AHRI stated that testing units without dedicated compressors or condensers is more difficult due to the wide variety of installation variables. (Hoshizaki, No. 4 at p. 2; AHRI, No. 5 at p. 5)

DOE is not proposing amendments to the existing test procedures for testing remote condensing ACIMs. Based on a review of manufacturer installation instructions for ACIMs with dedicated remote condensing units, manufacturers typically recommend line sets and/or limitations to installation locations.

DOE has preliminarily determined that testing according to the manufacturer recommendations, as is currently required, rather than one specified remote setup, would represent typical use in the field and would produce consistent test results.

Many ACIMs that could be installed with refrigerant supplied by a compressor rack can also be tested with an appropriately sized dedicated condensing unit according to the existing test procedure. For ACIMs installed with a compressor rack, DOE lacks information on typical installation locations, operation, and market availability. As noted in the AHRI and Hoshizaki comments, the market for compressor rack installations is very small. Based on these comments, the existing requirement to test such units with an appropriately sized dedicated condensing unit is representative of typical use. Additionally, as discussed in the January 2012 final rule, any ACIMs designed only for connection to remote compressor racks are out of the scope of DOE's regulations. 77 FR 1591, 1600. Therefore, DOE is not proposing any amendments to its test procedure to address such units.

Issue 30: DOE requests comment on its initial determination that additional test setup and installation instructions are not required for ACIMs with dedicated remote condensing units. DOE seeks information and test data on the range of ACIM performance within the manufacturer-recommended installation parameters to determine whether additional requirements are needed to improve repeatability and reproducibility.

Issue 31: DOE requests comment on its proposal to not establish test procedures for ACIMs intended for installation with a compressor rack. DOE seeks information on the market availability of such equipment, including how manufacturers currently test and rate these units, and the extent to which they are installed with a compressor rack rather than a dedicated condensing unit.

5. Modulating Capacity Ice Makers

An ice maker could be designed to be capable of operating at multiple capacity levels, *i.e.,* a ''modulating capacity ice maker.'' This modulation could be accomplished by using a single compressor with multiple or variable capacities, using multiple compressors, or in some other manner. In the January 2012 final rule, DOE did not establish a test method for measuring the energy use or water consumption of automatic commercial ice makers that are capable of operating at multiple capacities. 77 FR 1591, 1601–1602. The decision to exclude modulating capacity ice makers was based on the lack of existing ACIMs with modulating capacity, as well as limited information regarding how such equipment would function. *Id.*

In the March 2019 RFI, DOE requested comment on the availability of modulating capacity ice makers in the market and, if any are available, DOE requested information on how such equipment functions, including typical capacity ranges and the relative frequency of use at different capacity ranges, and how such equipment is currently tested. 84 FR 9979, 9981.

AHRI and Howe commented that they are not aware of modulating capacity ACIM on the market today. (AHRI, No. 5 at p. 2; Howe, No. 6 at p. 2) AHRI added that if modulating capacity ACIMs become available, equipment manufacturers would provide the ASHRAE 29 committee with information on differences in equipment function. (AHRI, No. 5 at p. 2) Howe commented that future modulating capacity units should take a similar approach as taken in the residential refrigerator industry for features that temporarily introduce varying states of energy use (*i.e.,* they would not be active for testing), with the justification that the customer could not permanently change the capacity of the ice maker. However, Howe commented that any mode that will be consistently used by the customer daily should be accounted for in any measurement of the average use cycle of the product. (Howe, No. 6 at p. 2)

DOE conducted market research and examined publicly available sources to determine the prevalence of modulating capacity ice makers. DOE did not find any modulating capacity ice makers that are currently available in the market. Therefore, DOE is not proposing test procedures for modulating capacity ice makers.

Issue 32: DOE requests comment on its initial determination regarding the lack of availability of modulating capacity ice makers on the market.

6. Standby Energy Use and Energy Use Associated With Ice Storage

The current ACIM test procedure considers only active mode energy use when an ice maker is actively producing ice, and represents that consumption using a metric of energy use per 100 pounds of ice. The existing ACIM test procedure does not address standby energy use associated with continuously powered sensors and controls or ice storage outside of active mode operation. When not actively making ice, an ice maker continues to consume energy to power sensors and controls. In addition, ice that is stored in an integral or paired ice storage bin will melt over time and the ice maker will use additional energy to replace the ice that has melted to keep the bin full. In these ways, standby energy use from control devices and energy use associated with ice storage can impact the daily energy consumption of ACIM equipment.

In the March 2019 RFI, DOE requested data and information on the magnitude of energy use associated with standby energy use and energy use associated with replacing melted ice, as well as the relationship of such values to daily energy consumption of ACIMs. 84 FR 9979, 9986.

The Joint Commenters commented that incorporating standby energy use in the test procedure would provide a better representation of the daily energy consumption of ice makers and would require a minimal addition to test burden. (Joint Commenters, No. 2 at p. 4)

Hoshizaki, AHRI, and Howe commented that standby energy use for ACIMs is negligible. (Hoshizaki, No. 4 at p. 3; AHRI, No. 5 at p. 9; Howe, No. 6 at p. 15)

AHRI commented that standby energy use may be higher in remote condenser units because of the pump down switch, which energizes the compressor in the off-mode to maintain a balanced minimum pressure. (AHRI, No. 5 at p. 9) AHRI further stated that generally, ice makers do not run continuously, but it is possible for the equipment to be installed in restaurant kitchens or hotels where they could be used for an extended period of peak time. Because of the variations in application, AHRI stated that attempting to introduce an average use cycle beyond what is currently in the test procedure would be nearly impossible. (AHRI, No. 5 at p. 5)

Howe commented that all customers have the potential of using the ice maker continuously in operation, so standby loss energy is only relevant if the unit is being turned on and off during its operation. (Howe, No. 6 at p. 15) Howe commented that it is critical that transient behavior be considered in the average use cycle if it is a feature of the ice maker because any interruptions in ice making that are caused by design are within the manufacturer's design and impact energy, potable water, and condenser water use. (Howe, No. 6 at p. 8) Howe stated that, if DOE wants to properly account for all energy used by the ice maker in an average use cycle, the test procedure must include transient processes that are inherent to ice maker operation. (Howe, No. 6 at p. 5) Howe commented that there would

be energy use associated with the standby as the unit rests and the increased energy use during pulldown [14] of the unit once it starts again, which is like the energy use for ice maker flush cycles. If DOE determines that the average use cycle of a product includes the transient process of ice making, standby, pulldown and returning to ice making, Howe proposed that all aspects of that transient process be considered for energy use. (Howe, No. 6 at p. 15) Howe further proposed a potential test method that would account for transient energy consumption. (Howe, No. 6 at p. 6)

Howe further commented in support of developing a test to account for ice melt rate. Howe stated that the utility of any ice produced is dependent on the customer's ability to use the ice before it melts. (Howe, No. 6 at p. 14)

Brema commented that there is no current test to evaluate ice melt, but such a measurement could be integrated with a similar approach used for calorimetric verification. (Brema, No. 3 at p. 12) Brema also commented that DOE should add a measurement of the performance rating of ice storage bins as specified in standard AHRI 820–2017. (Brema, No. 3 at p. 12)

DOE researched available test methods for determining energy use associated with ice storage. The AHRI certification program currently includes rating ice storage bins using AHRI 820–2017, ''Performance Rating of Ice Storage Bins.'' Similar methods are currently referenced in the Australian and Canadian test methods and standards applicable to self-contained ice makers and storage bins.[15] [16] AHRI 820–2017 describes a standardized method for measuring the ''efficiency'' of ice storage bins using a metric called ''Theoretical Storage Effectiveness,'' which describes the percent of ice that would remain in a bin 24 hours after it is produced. In contrast, the December 2014 MREF Test Procedure NOPR considered energy use associated with ice storage based on testing the ice maker and storing the ice in a bin over a period of up to 48 hours with no ice retrieval to determine the energy use associated with replenishing the bin. 79 FR 74894, 74921–74922.

Many ice makers (including ice making heads (''IMHs'') and remote condensing unit (''RCU'') ice makers) can be paired with any number of storage bins, including those produced by other manufacturers. These ice makers are typically paired in the field with a bin chosen by the end user, rather than the manufacturer. However, DOE understands that many IMH and RCU equipment are advertised as compatible with a list of specific bins and, therefore, may be able to be rated based on recommended bin combinations.

Based on comments received in response to the March 2019 RFI, the energy use of ACIMs in standby mode is likely very low compared to active mode ice making energy use. Additionally, the contribution of any standby mode energy use to overall energy use can vary significantly depending on the specific installation and end use of the ACIM.

At this time, DOE does not have sufficient data and information to establish test procedures for standby energy use or energy use associated with ice storage. In addition, incorporating standby energy use and energy use associated with ice storage would require significant test procedure changes requiring an increase in test time. Therefore, because of the lack of data and undue burden on manufacturers, DOE is not proposing to amend its test procedures to account for standby or ice storage energy use.

Issue 33: DOE requests comment on its proposal to not amend its test procedures to account for standby or ice storage energy use. DOE also requests data on the typical durations and associated energy use for all ACIM operating modes and on the potential burden associated with testing energy use in those modes.

7. Calculations and Rounding Requirements

As compared to ASHRAE Standard 29–2009, section 9.1.1 ASHRAE Standard 29–2016 specifies averaging instructions for calculating the gross weight of product produced. ASHRAE Standard 29–2015 specifies to ''average the quantity for the three samples to determine the ice produced.'' However, this averaging instruction is not specified for the water or energy consumption calculations.

DOE proposes to provide explicitly that the energy use, condenser water use, and potable water use (as described in section III.D.8) be calculated by averaging the measured values for each of the three samples for each respective metric. This clarification would not affect the measured performance of ACIMs but would more explicitly present the calculation approach.

Issue 34: DOE requests comment on the proposal to clarify that the energy use, condenser water use, and potable water use (as described in section III.D.8) be calculated by averaging the calculated values for the three measured samples for each respective metric.

10 CFR 431.132 specifies rounding requirements for the ACIM metrics ''energy use'' and ''maximum condenser water use.'' Specifically, DOE requires energy use to be in multiples of 0.1 kWh/100 lb and condenser water use to be in multiples of 1 gallon per 100 pounds of ice (''gal/100 lb''). 10 CFR 431.132.

AHRI Standard 810–2007, which is currently incorporated by reference in the DOE test procedure, and AHRI Standard 810–2016, which is proposed for use in this NOPR, specify rounding requirements for the following quantities:

TABLE III.10—SUMMARY OF ROUNDING REQUIREMENTS

Quantity	AHRI standard 810 (both 2007 and 2016, except as noted)
Ice Harvest Rate	1 lb/24 h.
Condenser Water Use Rate	1 gal/100 lb.
Potable Water Use Rate	0.1 gal/100 lb.
Energy Consumption Rate	0.1 kWh/100 lb (2007); 0.01 kWh/100 lb (2016).
Ice Hardness Factor	Not Specified (percent).

[14] The evaporator temperature increases when the refrigeration system cycles off. Pulldown refers to the additional energy use needed to re-cool the evaporator for ice production.

[15] The Australian minimum energy performance standards (''MEPS'') apply to both stand-alone storage bins and ice storage bins contained in stand-alone equipment (AS/NZS 4865.2 & 3). The NRCan standard appears to apply only to storage bins contained in self-contained ice makers with integral storage bins.

[16] The newest version of the CSA test method, C742–15, refers directly to the 2012 version of AHRI 820 (and AHRI 821, which is the SI version of the standard).

DOE proposes to incorporate by reference AHRI Standard 810–2016, which would include the rounding requirements shown in Table III.10, with the exception of the provision for harvest rate. For harvest rate, the specified rounding to the nearest 1 lb/24 h could represent a significant percentage of harvest rates for low-capacity ACIMs. As discussed in section III.D.2, DOE observed low-capacity ACIMs available on the market with harvest rates as low as 7 lb/24 h. For this harvest rate, rounding to the nearest pound would allow a range of measured performance of approximately ±7 percent to have the same harvest rate result. Section 5.5.1 of ASHRAE Standard 29–2015 provides that ice-weighing instruments have accuracy and readability of ±1.0% of the quantity measured. Therefore, to avoid rounding harvest rate to a level that could impact test procedure accuracy, DOE proposes that harvest rate be rounded to the nearest 0.1 lb/24 h for ACIMs with harvest rates less than or equal to 50 lb/24 h.

Although rounding requirements are provided for the final calculated values used for rating ice makers, the DOE test procedure does not provide requirements for rounding intermediate values used in the calculations to determine those final values. Where rounding is not specified, the DOE test procedure intends the calculations of these values to be performed with raw measured data and only the final result to be rounded (where specified). However, this is not expressly specified in the current test procedure language. As such, DOE is proposing to specifically state that all calculations must be performed with raw measured values and that only the resultant energy use, condenser water use, and harvest rate metrics be rounded.

Issue 35: DOE requests comment on the proposal to expressly specify that all calculations must be performed with raw measured values and that only the resultant energy use, water use, and harvest rate metrics be rounded.

In addition, ASHRAE Standard 29–2015 specifies stabilization requirements in terms of either percent or absolute weight without specifically referencing a calculation for percent variation. There are multiple methods to calculate the percent difference between two measurements. One common method is to take the absolute difference between two measurements, for example ''A'' and ''B'', and to divide by the measurement of either ''A'' or ''B''. Under this method, the choice of denominator would affect the calculated value. Another method to calculate the percent difference is to take the absolute difference between two measurements and divide by the average of the two measurements. Under this method, the calculated percent difference is always the same. Therefore, DOE proposes to apply this second method, using the following equation, to calculate the percent difference between any two measurements. This includes any calculation to determine if the ice production rate has stabilized between cycles or samples, as described in section III.D.12.

$$Percent\ Difference = \frac{|A - B|}{\frac{A + B}{2}} x100\text{percent}$$

This proposal provides clarification but is otherwise consistent with the AHRI Standard 810–2016 and ASHRAE Standard 29–2015 requirements.

The proposed equation for calculating percent difference may affect when a unit meets the stability criteria. DOE analyzed over 50 ice maker tests conducted prior to this rulemaking where stability was calculated by dividing the absolute difference between the normalized harvest rate of two cycles by the harvest rate of one cycle, and found that calculating percent difference using the proposed equation did not affect the stabilization determination for any of the tests. The proposed equation to calculate the percent difference is appropriate to add clarity and consistency for testing.

Issue 36: DOE requests comment on its proposal to clarify that percent difference shall be calculated based on the average of the two measured values.

8. Potable Water Use

The water use of an ACIM includes water used in making the harvested ice; any dump or purge water used as part of the ice making process; and for water-cooled ACIMs, the water used to transfer heat from the condenser. In establishing initial standards for ACIMs, Congress addressed the latter type of water use. For ACIMs that produce cube type ice with capacities between 50 and 2500 pounds per 24-hour period, EPCA specified maximum condenser water use rates (in gallons per 100 pounds of ice). (42 U.S.C. 6313(d)(1)) In a note to the table establishing initial maximum condenser water use rates, the statute provides that ''Water use is for the condenser only and does not include potable water used to make ice.'' (*Id.*)

In the January 2012 final rule, DOE noted that 42 U.S.C. 6313(d) does not require DOE to develop a water conservation test procedure or standard for potable water use in cube type ice makers or other ACIMs; rather, it sets forth energy and condenser water use standards for cube type ice makers at 42 U.S.C. 6313(d)(1), and allows, but does not require, the Secretary to issue analogous standards for other types of ACIMs under 42 U.S.C. 6313(d)(2). 77 FR 1591, 1605.

DOE further stated that ambiguous statutory language may lead to multiple interpretations in the development of regulations. *Id.* DOE stated that the statutory language is unclear whether the footnote on potable water use that appears in 42 U.S.C. 6313(d)(1) has a controlling effect on 42 U.S.C. 6313(d)(2) and 42 U.S.C. 6313(d)(3)—the statutory direction to review and consider amended standards. *Id.* Potable water use is not referenced anywhere else in 42 U.S.C. 6313(d), and thus it is difficult to determine whether this footnote is a clarification or a mandate in regard to cube type ice makers, and furthermore, whether it would apply to the regulation of other types of ACIMS. *Id.*

DOE also stated that while there is generally a positive correlation between energy use and potable water use, DOE understands that at a certain point the relationship between potable water use and energy consumption reverses due to scaling. *Id.* Based on this fact, and given the added complexity inherent to the regulation of potable water use and the concomitant burden on ACIM manufacturers, DOE did not establish regulations or require testing and reporting of the potable water use of ACIMs. *Id.* Without a clear mandate from Congress on potable water use generally, and given that Congress chose not to regulate potable water use for cube type ice makers by statute, DOE exercised its discretion in choosing not to include potable water use rate in its test procedure for ACIMs. *Id.*

ASHRAE Standard 29–2015 and AHRI Standard 810–2016 include measurements and rating requirements for potable water use. The measurement of ''non-condenser'' potable water use (*i.e.,* water used in making the harvested ice and any dump or purge water) is currently not specified by the DOE test procedure, but is required by other programs, such as ENERGY STAR [17] and the AHRI certification program.[18]

As stated in the March 2019 RFI, DOE reviewed the relationship between potable water use with harvest rate and daily energy consumption by analyzing reported ACIM data from the AHRI directory and the ENERGY STAR product database.[19] [20] 84 FR 9979, 9986. DOE observed that all continuous ice makers had reported values for potable water use per 100 pounds of ice between 11.9 and 12.0 gallons, because all the water is converted to produced ice. *Id.* In contrast, potable water use varies for batch type ice makers because a portion of the potable water is drained from the sump at the end of each ice making cycle—this portion is different for different ice maker models. *Id.* The relationship between potable water use and daily energy consumption of the AHRI and ENERGY STAR data is not identifiable when considering the entire dataset. *Id.*

Because energy use can be affected by many factors other than potable water use, the lack of a clear trend between energy use and potable water use does not provide a definitive indication of the extent of the relationship between energy use and potable water use. Although the exact relationship between potable water use and energy use is not understood, potable water use does impact energy use. An ACIM must chill the entering potable water to some extent. The extent to which potable water is not directly converted to ice, it still is likely cooled to 32 °F. Cooled potable water that is not directly converted to ice and is drained from the unit represents lost refrigeration capacity. As such, reducing potable water use may provide the potential for reduced energy consumption.

In the March 2019 RFI, DOE requested comment and information on the relationship between potable water use and energy use, including data quantifying the relationship, and on any potential impact this relationship could have on customer utility. 84 FR 9979, 9986.

Hoshizaki commented that there is a large variation in the market on the relationship among energy use, water use, and ice production. (Hoshizaki, No. 4 at p. 2) Hoshizaki also asserted that regulating potable water usage would risk compromising the sanitary effects of ice makers. (Hoshizaki, No. 4 at p. 2–3)

Howe commented that there is a relationship between potable water use and energy use that is not currently accounted for. Howe agreed with DOE's determination that potable water use for all ice makers at steady state will be around 12 gallons per 100 lbs of ice due to the mass balance of water flow into and ice product out of the ice maker (most ice makers take in 12 gallons of water to produce 100 lbs of ice at some ice hardness). Howe commented that the differentiation in potable water use would become apparent when the ice hardness adjustment factor is added to this measurement as it is for energy consumption and condenser water use in 10 CFR 431.134(b)(2)(i). Howe suggested that potable water use must also be adjusted based on ice hardness to show differentiation in the water use by various continuous type ice makers. (Howe, No. 6 at p. 13–14) Howe also offered a test proposal to determine the impact of ice melt rate on potable water use. (Howe, No. 6 at p. 14)

AHRI commented that regulating water usage can be in direct conflict with the characteristics critical to the customers' needs and preferences, specifically clear and consistent ice. (AHRI, No. 5 at p. 8)

As discussed earlier in this section and as indicated in comments from interested parties, ACIMs currently available on the market have a wide range of potable water use, and the relationship between potable water use and energy use and harvest rate is not clear. Based on its inclusion in the AHRI certification program and ENERGY STAR qualification criteria, potable water use may be a useful measurement as part of characterizing the energy use associated with ACIM performance. To align with the AHRI certification program and ENERGY STAR, while allowing for a measurement of potable water use that is consistent with the test requirements proposed in this NOPR for energy use, harvest rate, and condenser water use, DOE is proposing to include measurement of potable water use in the DOE ACIM test procedure at 10 CFR 431.134. Because DOE does not regulate ACIM potable water use, testing for the potable water measurements would be voluntary. Specifically, DOE is not proposing to require manufacturers to conduct the potable water provisions of the test procedure, and manufacturers would not report the results of the potable water test to DOE, if conducted. In addition, consistent with 42 U.S.C. 6314(d), manufacturers would not be required to use the voluntary test procedure as the basis of any representations of potable water use.

DOE proposes that the measurement of potable water use would generally follow the test methods in AHRI Standard 810–2016 and ASHRAE Standard 29–2015, but with the additional test procedure amendments as proposed in this NOPR. This proposed approach is generally consistent with the methods currently used for the AHRI and ENERGY STAR programs; additionally, DOE does not expect that the additional test provisions as proposed in this NOPR would impact performance as measured under the existing approaches used by AHRI (AHRI Standard 810–2016) or ENERGY STAR (AHRI Standard 810–2007).

DOE also proposes to add a definition of ''potable water use'' in 10 CFR 431.132. DOE proposes to define ''potable water use'' as the amount of potable water used in making ice, which is equal to the sum of the ice harvested, dump or purge water, and the harvest water, expressed in gal/100 lb, in multiples of 0.1, and excludes any condenser water use. This definition is generally consistent with the term ''potable water use rate'' in AHRI Standard 810–2016, with the clarification that condenser water use is not considered potable water use.

DOE notes that AHRI Standard 810–2016 specifies under the ''Certified Ratings'' section that Potable Water Use Rate is applicable to Batch Type Ice-makers only, but that AHRI's Directory of Certified Product Performance includes the Potable Water Use Rate for both batch type and continuous type ACIMs.[21] Thus, the industry standard appears to currently be used for measuring potable water use for both batch and continuous ice makers.

Issue 37: DOE requests comment on the proposal to include a voluntary method for measuring potable water use, including the value or drawbacks of such an approach, in 10 CFR 431.134 according to the industry standards and additional test procedure proposals as discussed in this NOPR.

[17] The ENERGY STAR specification for automatic commercial ice makers is available at *www.energystar.gov/sites/default/files/Final%20V3.0%20ACIM%20Specification%205-17-17_1.pdf.*

[18] *www.ahrinet.org/Certification.aspx.*

[19] Available at *www.ahridirectory.org/NewSearch?programId=31&searchTypeId=3.*

[20] Available at *www.energystar.gov/productfinder/product/certified-commercial-ice-machines/results.*

[21] *www.ahridirectory.org/NewSearch?programId=31&searchTypeId=3.*

DOE is not proposing to adjust potable water use based on ice hardness factor, as is currently required for energy use and condenser water use. Both energy use and condenser water use correspond to the amount of heat removed from the potable water in producing ice. Ice that is more completely frozen will require more energy use and more heat rejection (via condenser water use, if applicable). However, potable water use does not similarly vary depending on the ice hardness. The same amount of potable water is used to make partially frozen ice as completely frozen ice. This is supported by nearly all continuous ice makers showing the same 11.9 to 12 gallons of potable water use per 100 lbs of ice production.

Issue 38: DOE requests comment on its proposal that potable water use is not adjusted based on ice hardness factor.

Potable water use for portable ACIMs is different than for ACIMs with a fixed water connection. As discussed, portable ACIMs require that the fill reservoir be filled manually with the maximum volume of water that is recommended by the manufacturer. In a portable ACIM, the unused ice collected in the ice storage bin slowly melts. This melt water is recycled back into the potable water reservoir to be reused. Unlike batch-type non-portable ACIMs, there is no dump or purge water to be measured. For portable ACIMs, water introduced to the reservoir is typically only removed from the unit as ice (and any corresponding melt water). Therefore, DOE proposes that the potable water use rate for portable ACIMs be defined as equal to the weight of ice and any corresponding melt water collected for the capacity test as specified in section 7.2 of ASHRAE Standard 29–2015.

Issue 39: DOE requests comment on the proposal that the potable water use rate of portable ACIMs be defined as equal to the weight of ice and water captured for the capacity test, as specified in section 7.2 of ASHRAE Standard 29–2015.

E. Representations of Energy Use and Energy Efficiency

In addition to updates to the ACIM test procedure, DOE is proposing revisions to the provisions related to the sampling plan and the determination of represented values currently specified at 10 CFR 429.45. DOE is also proposing to add equipment-specific enforcement provisions for ACIMs to 10 CFR 429.134.

1. Sampling Plan and Determination of Represented Values

In subpart B to 10 CFR part 429, DOE provides uniform methods for manufacturers to determine representative values of energy- and non-energy-related metrics for each basic model of covered equipment. The purpose of a statistical sampling plan is to provide a method to ensure that the test sample size (*i.e.,* number of units tested) is sufficiently large that represented values of energy- and non-energy-related metrics are representative of aggregate performance of the units in the basic model, while accounting for variability inherent to the manufacturing and testing processes.

DOE currently specifies the ACIM-specific sampling plans and requirements for the determination of represented values at 10 CFR 429.45. The sampling plan and method for determining represented values applies to represented values of maximum energy use, or other measures of energy consumption for which consumers would favor lower values.

The reference to ''maximum energy use'' and ''maximum condenser water use'' in 10 CFR 429.45 could be misinterpreted to refer to the energy and water conservation standard levels for that basic model (*i.e.,* the maximum allowable energy and maximum allowable condenser water use), as opposed to the tested performance. Therefore, for consistency and clarity, DOE is proposing to replace the term ''maximum energy use'' with the term ''energy use'' and the term ''maximum condenser water use'' with the term ''condenser water use.'' In addition, values of both energy and condenser water consumption are relevant for ACIMs. As such, DOE proposes to modify the language at 10 CFR 429.45 to specify expressly that the sampling plan at 10 CFR 429.45(a)(2)(i) applies both to measures of energy and condenser water use for which consumers would favor lower values.

Similarly, 10 CFR 431.132 includes a definition for the term ''maximum condenser water use.'' This language may also be misinterpreted to refer to the condenser water conservation standard level for a basic model as opposed to the tested condenser water use. Therefore, DOE proposes to modify the term and definition of ''maximum condenser water use'' to instead refer to the term ''condenser water use.'' This modification is consistent with the existing definition of ''energy use'' in 10 CFR 431.132.

In 10 CFR 429.45(a)(2)(ii), DOE also specifies calculation procedures for energy efficiency metrics, or measures of energy consumption where consumers would favor higher values. As DOE's test procedure does not require determining any values of energy efficiency or other measure of performance for which consumers would favor higher values, DOE proposes to remove this provision.

In addition to energy related metrics, DOE's current certification requirements mandate reporting of harvest rate, a key non-energy metric associated with determining energy and water standards for ACIM equipment, as applicable. However, the certification requirements do not specify how the represented value of harvest rate for each basic model should be determined based on the test results from the sample of individual models tested. Similar to the requirements for other covered products and commercial equipment, DOE is proposing that the represented value of harvest rate for the basic model be determined as the mean of the measured harvest rates for each unit in the test sample, based on the same tests used to determine the reported energy use and condenser water use, if applicable. Although not specified in 10 CFR 429.45, DOE expects manufacturers are currently certifying ACIM performance based on the tested harvest rates. Therefore, this proposed amendment would clarify the certification requirements but not impose any additional burden on manufacturers.

Issue 40: DOE requests comment on its proposal to amend the sampling plan and reporting requirements for ACIMs in 10 CFR 429.45. DOE seeks information on how manufacturers are currently interpreting ''maximum energy use'' and ''maximum condenser water use'' in the context of the sampling and certification report requirements, how manufacturers are currently determining harvest rates, and whether the proposed amendments would impose any burden on manufacturers. DOE also requests comment on its proposal to modify the term and definition of ''maximum condenser water use'' to instead refer to ''condenser water use''.

2. Test Sample Value Rounding Requirements

DOE currently requires test results for ACIMs to be rounded, as discussed in section III.D.7; however, the requirements in 10 CFR 429.45 do not specify how values calculated in accordance with 10 CFR 429.45(a) would be rounded. To ensure consistency, DOE proposes that any calculations according to 10 CFR 429.45 be rounded consistent with the

rounding requirements for individual test results. Specifically, DOE proposes to require that values calculated from a test sample be rounded as follows: Energy use to the nearest 0.01 kWh/100 lb, condenser water use to the nearest gal/100 lb, and harvest rate to the nearest 1 lb/24 h (for ACIMs with harvest rates greater than 50 lb/24 h) or to the nearest 0.1 lb/24 h (for ACIMs with harvest rates less than or equal to 50 lb/24 h).

Issue 41: DOE requests comment on its proposal to require that values calculated from a test sample be rounded as follows: energy use to the nearest 0.01 kWh/100 lb, condenser water use to the nearest gal/100 lb, and harvest rate to the nearest 1 lb/24 h (for ACIMs with harvest rates greater than 50 lb/24 h) or to the nearest 0.1 lb/24 h (for ACIMs with harvest rates less than or equal to 50 lb/24 h).

3. Enforcement Provisions

Subpart C of 10 CFR part 429 establishes enforcement provisions applicable to covered products and covered equipment, including ACIMs. Product-specific enforcement provisions are provided in 10 CFR 429.134, but that section currently does not specify product-specific enforcement provisions for ACIMs. The DOE requirements in 10 CFR 429.134 provide which ratings or measurements will be used to determine the applicable energy or water conservation standard. Normally, DOE provides that the certified metric would be used for enforcement purposes (*e.g.,* calculation of the applicable energy conservation standard) if the average value measured during enforcement testing is within a specified percent of the rated value (the specific allowable range varies based on product and equipment type). Otherwise, the average measured value would be used.

Section 7.1 of ASHRAE Standard 29–2009, incorporated by reference into the DOE ACIM test procedure, allows for a two percent weight variation between collected ice samples when establishing stability of an ACIM. Additionally, section 5.5.1 of ASHRAE Standard 29–2009 specifies that the ice-weighing instruments are required to be accurate to within 1.0 percent of the quantity measured. Due to the allowable variability in test measurements, a five percent tolerance around the rated capacity value likely is appropriate for ACIMs. This tolerance is consistent with the tolerance for ice harvest rate ratings as specified in section 5.4 of AHRI Standard 810–2016. DOE proposes that the certified capacity metric for ACIMs (*i.e,* the harvest rate), will be used for determination of the maximum allowable energy consumption and maximum allowable condenser water use levels only if the average measured harvest rate during DOE testing is within five percent of the certified harvest rate. If the average measured harvest rate is found to be outside of this range when compared to the certified harvest rate, the average measured harvest rate of the units in the tested sample will be used as the basis for determining the maximum allowable energy consumption and maximum allowable condenser water use levels, as applicable.

Issue 42: DOE requests comment on its proposal to include a new section in 10 CFR 429.134 to specify how to determine whether the certified or measured harvest rate is used to calculate the maximum energy consumption and maximum condenser water use levels. DOE also requests comment on whether a five percent tolerance for the average measured harvest rate compared to the certified harvest rate is an appropriate tolerance for such purposes, and if not, what tolerance is appropriate.

F. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In this NOPR, DOE proposes to include low-capacity ACIM in the scope of the test procedure; amend the existing test procedure for ACIMs by referencing the most recent versions of the test procedures incorporated by reference; clarify the stability criteria; revise clearances for test installations; include additional updates to clarify appropriate test measurements, conditions, settings, and setup requirements; establish provisions for the voluntary measurement of potable water use; and update calculation instructions. DOE has tentatively determined that these proposed amendments would impact testing costs as discussed in the following paragraphs.

a. Testing Cost Impacts

In the January 2012 final rule, DOE estimated per test costs of $5,000 to $7,500 for the current ACIM test procedure. 77 FR 1591, 1610. Based on feedback from third-party test laboratories since the January 2012 final rule published, DOE found that the low end of that range, or $5,000, is representative of current ACIM per test cost. One proposal in this NOPR will affect the cost per test.

As discussed in section III.C, ASHRAE Standard 29–2015 includes updated stabilization requirements. DOE is proposing to reference ASHRAE Standard 29–2015 and to provide additional detail to clarify application of its requirements. Under the proposed amendment, the ice production rate for each cycle used for the capacity test relative to any other cycle or sample used for the capacity test must meet the stability requirements. The current approach requires multiple cycles to determine stability, after which cycles are measured to test performance.

The proposed approach would decrease the total number of cycles required for testing by using the same cycles to determine stability and measured performance. For batch ice makers, this proposal would eliminate the need for testing two cycles prior to the test. For continuous ice makers, this proposal would eliminate the need for measuring three consecutive 14.4 min samples taken within a 1.5-hour period prior to the test.

DOE estimates that total ice maker test duration, including set up, pull-down, and test operation currently requires 8 hours. Under the proposed approach, DOE estimates that the total test time would decrease by approximately 1 hour. This represents a 12.5-percent reduction in test duration. Taking overhead costs into account, DOE estimates that the proposed stabilization requirement would decrease the test cost by approximately 6 percent, or $300 per test based on the initial $5,000 per test estimate. Because DOE requires manufacturers to test at least two units per model to certify performance, manufacturers would save approximately $600 per basic model for all future basic models tested in accordance with this proposed test procedure.

Issue 43: DOE requests comment on the impact and test cost of the proposed amendment to clarify the use of test cycles to also confirm stability of the ACIM under test.

b. Additional Amendments

The proposal discussed in the previous section regarding stability criteria would affect future individual test costs. DOE acknowledges that the proposals regarding stability criteria and the other proposals in this NOPR for testing ACIMs currently subject to DOE's energy conservation standards (*i.e.,* ACIMs other than low-capacity ACIMs) would introduce changes to test conduct as compared to the existing test procedure. However, DOE does not expect that these proposals would affect measured ACIM performance as compared to the existing test procedure, as discussed in detail for each proposal in section III in this NOPR. Rather, the

proposals would generally improve representativeness, repeatability, and reproducibility of DOE's test procedure. Additionally, certain proposals would also incorporate test requirements consistent with DOE guidance or test procedure waivers already in effect for testing ACIMs. Because the proposed amendments are not expected to impact ACIM performance as measured under the existing DOE test procedure, DOE does not expect that manufacturers would be required to re-test or re-certify their existing models.

Specifically, DOE is proposing the following amendments that are not expected to impact measured ACIM performance compared to the existing DOE test procedure: (1) Updating references to the latest versions of the relevant industry standards (see section III.C); (2) clarifying stabilization criteria; (3) incorporating test conditions for relative humidity and water hardness and a clarification regarding water pressure (see section III.D.3); (4) clarifying test setup and setting requirements (see section III.D.4); (5) specifying a voluntary measurement of potable water use (see section III.D.8); and (6) including revisions to test sample calculations and enforcement provisions (see section III.E).

While DOE does not expect the proposals in this NOPR to impact measured performance for ACIMs overall, in the event that a manufacturer was to opt to re-test models according to the proposed amended test procedure, DOE estimates this optional cost would be $9,400 per re-rated basic model.[22]

As described, DOE has tentatively determined that manufacturers would be able to rely on data generated under the existing test procedure should any of these proposed amendments be finalized.

While DOE does not expect test facilities would require upgrades as a result of the proposed test procedure, if made final, DOE has developed cost estimates in the event that a facility may require upgrades to maintain the proposed test conditions for relative humidity and water hardness. As discussed in sections III.D.3.a and III.D.3.b, DOE expects that ACIM test facilities are already capable of maintaining the proposed conditions and likely already conduct ACIM testing in accordance with the conditions proposed in this NOPR.

DOE estimates the cost for purchasing relative humidity controls to range from $1,000 to $5,000, depending on the method that is chosen. DOE estimates that the purchase and installation of a humidifier boiler with modulating valves that releases steam on the wall to control relative humidity costs $5,000. However, DOE notes there are less expensive options to control for relative humidity, such as a dedicated coil with reheat, steam generators, humidifiers, and dehumidifiers. In addition, manufacturers may have to purchase additional instrumentation to measure relative humidity. A typical relative humidity sensor is Campbell Scientific's EE181–L which meets the accuracy of ±2 percent and costs $500.[23]

Regarding water hardness, DOE's market research shows that a typical water hardness meter has an accuracy of ±10 mg/L and costs $235.[24] However, DOE provides the option to verify water hardness from the most recent version of the water quality report that is sent by water suppliers, which would not require any additional substantive costs or burden.

DOE's proposed water hardness condition is intended to prevent testing under favorable conditions that are not representative of actual use (*e.g.,* with water hardness that would be considered very hard by the USGS). DOE expects that ACIM test facilities either have water supplies within the proposed water hardness range or already incorporate water softeners for their laboratory water supply. Therefore, DOE does not expect that the water hardness proposal would add any costs or burden to ACIM manufacturers.

Issue 44: DOE requests comment on the impacts and associated costs of the proposed amendments included in this NOPR. In particular, DOE requests feedback and data regarding whether the proposals would impact measured performance of ACIMs as tested under the existing DOE test procedure, and whether manufacturers would incur costs for re-testing existing ACIM models under the proposed procedure. DOE requests comment on the impact and any associated costs of the proposed amendments regarding test conditions for ACIM testing. DOE requests feedback on whether any test facilities would require upgrades to meet the proposed test requirements, and if so, information on the corresponding costs.

As discussed in section III.A of this NOPR, DOE is proposing to include low-capacity ACIMs within the scope of its test procedure. DOE is proposing additional test procedure requirements to ensure appropriate testing of low-capacity ACIMs, as discussed in section III.D.1.

Low-capacity ACIMs are not currently subject to DOE testing or energy conservation standards. As proposed, manufacturers would not be required to test low-capacity ACIMs until such time as DOE establishes energy conservation standards for such equipment. Under the proposed test procedure, were a manufacturer to choose to make representations of the energy efficiency or energy use of a low-capacity ACIM energy, beginning 360 days after a final rule were DOE to finalize the proposal, manufacturers would be required to base such representations on the DOE test procedure. (42 U.S.C. 6314(d))

Based on a review of low-capacity ACIMs available on the market, DOE has determined that manufacturers either make no claims regarding the energy consumption of their low-capacity ACIM models, or currently specify energy consumption in accordance with the existing DOE test procedure (and referenced industry standards). After establishing any test procedure, DOE expects that the manufacturers currently electing to make no claims regarding low-capacity ACIM energy consumption would continue to do so. For the reasons described in section III.F.1.b and the other discussion sections of this NOPR, DOE does not expect that the proposed test procedure would impact measured ACIM performance compared to the existing DOE test procedure. Therefore, DOE does not expect that manufacturers currently providing energy consumption information for their low-capacity ACIMs would be required to re-test their low-capacity ACIM models.

Based on these determinations, DOE does not expect that the proposal to expand the scope of its test procedure to low-capacity ACIMs would result in additional testing costs for low-capacity ACIM manufacturers. For any manufacturers not currently testing low-capacity ACIM models, testing according to the proposed test procedure would not be required (other than making voluntary representations of energy consumption) until the compliance date of any energy conservation standards for that equipment.

Issue 45: DOE requests comment on any expected costs associated with the proposed amendment to expand test procedure scope to include low-capacity ACIMs. Specifically, DOE requests comment on whether any manufacturers are currently making representations of low-capacity ACIM energy consumption based on test methods that would

[22] Based on the initial $5,000 per unit testing cost estimate and the $300 savings due to the stability criteria proposed, as discussed in section III.D.2 and III.F.1.a. Each basic model is tested twice.

[23] *www.campbellsci.com/ee181-l.*

[24] *www.hannainst.com/total-hardness-epa-portable-photometer.*

produce measures of performance that would be inconsistent with the existing DOE test procedure or the test procedure for low-capacity ACIMs as proposed in this NOPR.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle. 10 CFR 431.4; Section 8(c) of appendix A 10 CFR part 430 subpart C. In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards and incorporate the modified standard as the DOE test procedure.

The test procedure for ACIMs at 10 CFR 431.134 incorporates by reference certain provisions of AHRI Standard 810–2007 and ASHRAE Standard 29–2009. DOE references 810–2007 for definitions and test procedure requirements. DOE references ASHRAE Standard 29–2009 for test procedure requirements and ice hardness factor calculations. In September 2016, AHRI released an updated version of the 810 Standard which DOE is evaluating as part of this rulemaking. In January 2015, ASHRAE released an updated version of the 29 Standard which DOE is evaluating as part of this rulemaking. The industry standards DOE proposes to incorporate by reference via amendments described in this notice are discussed in further detail in section IV.M. DOE requests comment on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for ACIM.

G. Compliance Date and Waivers

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 360 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) To the extent the modified test procedure proposed in this document is required only for the evaluation and issuance of updated efficiency standards, use of the modified test procedure, if finalized, would not be required until the implementation date of updated standards. 10 CFR 431.4; Section 8(d) of appendix A 10 CFR part 430 subpart C.

Upon the compliance date of test procedure provisions of an amended test procedure, should DOE issue a such an amendment, any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 431.401(h)(3). Recipients of any such waivers would be required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments proposed in this document pertain to issues addressed by a waiver granted to Hoshizaki America, Inc. under case number 2020–001, as discussed in section III.D.4.f of this NOPR. Were DOE to finalize the amendments pertaining to the waiver granted to Hoshizaki at such time as testing were required according to the amended test procedure, the waiver granted to Hoshizaki would terminate and Hoshizaki would be required to make representations based on the amended test procedure.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that this test procedure rulemaking does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

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

DOE reviewed this proposed rule to amend the test procedures for ACIMs under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The size standards and codes are established by the 2017 North American Industry Classification System (''NAICS'').

ACIM manufacturers are classified under NAICS code 333415, ''Air-conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' which includes ice-making machinery manufacturing.[25] The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business. This employee threshold includes all employees in a business's parent company and any other subsidiaries.

DOE conducted a focused inquiry into manufacturers of equipment covered by this rulemaking. DOE used available public information to identify potential small manufacturers. DOE accessed the CCD[26] and other public information, including manufacturer and vendor websites, to create a list of companies that import or otherwise manufacture ACIMs covered by this rulemaking and identified 30 ACIM manufacturers.

DOE then reviewed these companies to determine whether the entities met the SBA's definition of ''small business'' and screened out any companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated. Based on this review, DOE has identified 12 companies that are small business manufacturers of ACIMs in the United States. The average revenue of the twelve small businesses is $52 million.

As discussed in section III.F.1, DOE does not expect that ACIM manufacturers would incur any costs as a result of the proposals included in this NOPR. However, in the event that any test facilities may require upgrades to meet the proposed test conditions for relative humidity and water hardness, DOE has provided discussion and

[25] *www.sba.gov/document/support--table-size-standards*

[26] DOE's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data/#q=Product_Group_spercent3A*.*

estimated costs for potential upgrades and seeks comment on whether such upgrades may be necessary.

As discussed in section III.F.1.b, DOE estimates the cost for purchasing relative humidity controls to range from $1,000 to $5,000, depending on the method that is chosen. In addition, the small businesses may have to purchase additional instrumentation to measure relative humidity, at an estimated cost of $500 per sensor.

Regarding water hardness, DOE expects that the cost to monitor water hardness would be $235 for a typical meter. However, test facilities may also verify water hardness at no additional cost by reviewing the most recent version of the water quality report that is sent by water suppliers. DOE additionally does not expect that any facility upgrades would be necessary to comply with the water hardness requirement, as any ACIM test facilities likely already incorporate water softening controls if the water supply is considered very hard. Therefore, DOE estimates that the water hardness proposal requirement would result in minimal, if any, additional costs or burdens to small businesses.

DOE does not expect ACIM manufacturers, including small business manufacturers, to incur any costs as a result of the test procedure proposed in this NOPR, even if a manufacturer were to incur costs due to the proposed test condition requirements. If manufacturers made updates to their test facility as a result of this NOPR, DOE estimates to maximum cost would be $5,735. The annual revenues for the twelve small manufacturers range from $1 million to $218 million. DOE estimates that the maximum cost would represent less than 1 percent of annual revenues for all identified small businesses. Therefore, DOE certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE did not prepare an IRFA for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

Issue 46: DOE requests comment on its conclusion that the proposed test procedure amendments would not have a significant economic impact on a substantial number of small entities. Additionally, DOE request comment on its finding that there are twelve small businesses that manufacture ACIMs in the United States. DOE will consider comments received in the development of any final rule.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of ACIMs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including ACIMs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for ACIMs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to

review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of ACIMs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for ACIMs would incorporate testing methods contained in the following commercial standards: AHRI Standard 810–2016 titled ''Performance Rating of Automatic Commercial Ice-makers'', and ANSI/ASHRAE Standard 29–2015 titled ''Method of Testing Automatic Ice Makers''. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the test standard published by AHRI, titled ''Performance Rating of Automatic Commercial Ice-makers,'' AHRI Standard 810–2016, and the test standard published by ANSI/ASHRAE, titled ''Method of Testing Automatic Ice

Makers,'' ANSI/ASHRAE Standard 29–2015. These standards prescribe an industry recognized method of rating and testing automatic commercial ice makers to evaluate performance. AHRI Standard 810–2016 prescribes the rating requirements and refers to ASHRAE Standard 29–2015 for the method of test.

Copies of AHRI Standard 810–2016 may be purchased from the Air-Conditioning, Heating, and Refrigeration Institute at 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, (703) 524–8800, or by going to *www.ahrinet.org/Home.aspx.* Copies of ANSI/ASHRAE Standard 29–2015 may be purchased from ASHRAE at 1791 Tulie Circle, NE Atlanta, GA 30329, (404) 636–8400, or by going to *www.ashrae.org.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=53&action=viewlive.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule.[27] Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via *www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email, also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

C. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue 1: DOE requests comment on the proposal to include test procedure provisions for low-capacity ACIMs within the scope of the ACIM test procedure.

Issue 2: DOE seeks information on whether there is an industry test

[27] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

procedure for testing and rating low-capacity ACIMs. If so, DOE requests information on how such a test procedure addresses (or could address) the specific features of low-capacity ACIMs that are not present in higher-capacity ACIMs, such that the test procedure produces results that are representative of an average use cycle.

Issue 3: DOE requests comment on the proposed definition for refrigerated storage automatic commercial ice maker.

Issue 4: DOE requests comment on the proposed definition for portable automatic commercial ice maker.

Issue 5: DOE requests comment on its proposal to amend 10 CFR 431.132 to revise the definitions of ''Batch type ice maker'' and ''Energy Use'' and delete the definition of ''Cube type ice,'' consistent with updates to AHRI Standard 810–2016. DOE also requests feedback on the proposed clarification that the DOE definitions take precedence over any conflicting industry standard definitions.

Issue 6: DOE requests comment on its proposal to maintain the current specifications of 70 °F ±1 °F ambient air temperature and 90 °F ±1 °F initial water temperature for calorimetry testing. DOE also requests comment on its proposal to clarify that the harvested ice used to determine the ice hardness factor be collected from the ACIM under test at the Standard Rating Conditions specified in Section 5.2.1 of AHRI Standard 810–2016.

Issue 7: DOE requests comment on its proposal to clarify that the temperature of the block of pure ice, as specified in Section A2.e. of ASHRAE Standard 29–2015, is measured by a thermocouple embedded at approximately the geometric center of the interior of the block. DOE also requests comment on its proposal to clarify that any water that remains on the block of ice must be wiped off the surface of the block before placing the ice into the calorimeter.

Issue 8: DOE requests comment on its proposal to adopt by reference AHRI Standard 810–2016 and ASHRAE Standard 29–2015, except for the provisions for calorimetry testing as discussed previously, for all ACIMs.

Issue 9: DOE requests comment on its proposal that portable ACIMs be subject to the test procedure as proposed in this NOPR, except that sections 5.4, 5.6, 6.2, and 6.3 of ASHRAE Standard 29–2015 do not apply. DOE requests comment on its proposal that the potable water reservoir be filled to the maximum level of potable water as recommend by the manufacturer with an initial water temperature of 70 °F ±1.0 °F. DOE requests comment on its proposal that the initial water temperature be established in an external container and verified by inserting a temperature sensor into approximately the geometric center of the water in the external container.

Issue 10: DOE requests comment on its proposal that portable ACIMs have the ice storage bin empty prior to the initial reservoir fill and then produce ice into the ice storage bin until the bin is one-half full, at which point testing would proceed according to section 7 of ASHRAE Standard 29–2015. DOE requests comment on its proposal to define one-half full as half of the vertical dimension of the storage bin based on the maximum ice fill level within the storage bin.

Issue 11: DOE requests comment on its proposal to specify that door openings must only occur on self-contained refrigerated storage ACIMs to collect samples after each cycle, and that the door shall be in the fully open position for 10.0 ±1.0 seconds to collect the sample. DOE also requests comment on its proposal to specify that ''fully open'' means opening a door to an angle of not less than 75 degrees.

Issue 12: DOE requests comment on its proposal to test refrigerated storage ACIMs consistent with section 4.1.4 of AHRI Standard 810–2016 (*i.e.,* with adjustable temperature settings tested per the manufacturer's written instructions with no adjustment prior to or during the test). DOE requests comment on whether a specific refrigeration set point or internal air temperature should be specified for testing instead of the manufacturer's factory preset refrigeration set point.

Issue 13: DOE requests comment on its interpretation of Section 7.1.1 of ASHRAE Standard 29–2015 and proposal to require that all cycles or samples used for the capacity test meet the stability criteria.

Issue 14: DOE requests comment on the proposal to increase the tolerance for continuous ice makers to collect samples from 15.0 minutes ±2.5 seconds to 15.0 minutes ±9.0 seconds.

Issue 15: DOE requests comment on the proposal to require that all cycles or samples of low-capacity ACIMs used for the capacity test meet a ±4 percent stability criterion and not be subject to an absolute stability criterion.

Issue 16: DOE requests comment on the proposal to control relative humidity at 35 ±5.0 percent. Specifically, DOE requests comment on the representativeness of 35 percent relative humidity in field use conditions, whether manufacturers currently control and measure relative humidity for ACIM testing (and if so, the conditions used for testing), and the burden associated with controlling relative humidity within a tolerance of ±5.0 percent.

Issue 17: DOE requests comment on its proposal that water used for ACIM testing have a maximum water hardness of 180 mg/L of calcium carbonate and on whether any test facilities would not have water hardness supplied within the proposed allowable range. If there are such test facilities, DOE requests comment on whether the supply water is softened when testing ACIMs and, if the water is not softened, the burden associated with implementing controls for water hardness. Additionally, while DOE is proposing that this requirement apply to all water supplied for ACIM testing, DOE requests information on whether this requirement should only be applicable to potable water used to make ice (and not any condenser cooling water).

Issue 18: DOE requests comment on maintaining the existing ambient temperature gradient requirements, through an updated reference to ASHRAE Standard 29–2015, and on whether any modifications would improve test accuracy or decrease test burden.

Issue 19: DOE requests comment on its proposal to maintain the existing ambient temperature and water supply temperature requirements. If modifications should be considered to improve test representativeness or decrease test burden, DOE requests supporting data and information.

Issue 20: DOE requests comment on its proposal to require that water pressure when water is flowing into the ice maker be within the allowable range within 5 seconds of opening the water supply valve.

Issue 21: DOE requests comment on its proposal to expressly provide that a baffle must not be used when testing ACIMs unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions.

Issue 22: DOE requests comment on its proposal to specify that temperature measuring devices may be shielded to limit the impact of intermittent warm discharge air at the measurement locations and that if shields are used, they must not block recirculation of the warm discharge air into the condenser or ice maker air inlet.

Issue 23: DOE requests comment on whether any ACIM models discharge air such that the temperature and relative humidity measuring devices would be unable to maintain the required ambient air temperature or relative humidity tolerances even with the measuring

devices shielded. If so, DOE requests comment on whether alternate ambient air temperature and relative humidity measurement locations would be necessary (*e.g.,* the ambient temperature measurement locations for water-cooled ice makers, if those locations are not affected by condenser discharge air) and if the ambient air temperature and relative humidity measured at the alternate locations should be within the same tolerances as would otherwise be required.

Issue 24: DOE requests comment on its proposal to require ACIMs with automatic purge water control to be tested using a fixed purge water setting that is described in the manufacturer's written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness. DOE also requests comment on its initial determination to not account for energy or water used during intermittent flush or purge cycles. DOE continues to request data regarding the energy and water use impacts of purge cycles.

Issue 25: DOE requests comment on its proposal to require that ACIMs be tested according to the manufacturer's specified minimum rear clearance requirements, or 3 feet from the rear of the ACIM, whichever is less. All other sides of the ACIM and all sides of the remote condenser, if applicable, shall be tested with a minimum clearance of 3 feet or the minimum clearance specified by the manufacturer, whichever is greater. DOE also requests comment on whether this proposal would affect measured energy use and harvest rate compared to the existing DOE test procedure.

Issue 26: DOE requests comment on its proposal to specify that ambient temperature measurements shall be made using unweighted sensors.

Issue 27: DOE requests comment on its proposal to allow for an alternate ambient temperature (and relative humidity) measurement location to avoid complications associated with shielding the measurement in front of the air inlet, as currently required. DOE also requests comment on the proposal for measuring ambient temperature and relative humidity for ACIMs for which the proposed rear clearance would preclude temperature measurements at the rear of the unit under test.

Issue 28: DOE requests comment on maintaining the current requirement to test at the largest and smallest ice cube size settings, consistent with AHRI Standard 810–2016. DOE also requests information on the ice cube size setting typically used by customers with ACIMs with multiple size settings (largest, smallest, default, *etc.*).

Issue 29: DOE requests comment on its proposal to collect capacity samples for ACIMs with dispensers through the continuous production and dispensing of ice throughout testing, using an empty internal storage bin at the beginning of the test period and collecting the ice sample through the dispenser in an external bin one-half full of ice. DOE also requests comment on its proposal to allow for certain mechanisms within the ACIM that would prohibit the continuous production and dispensing of ice throughout testing to be overridden to the minimum extent that allows for the continuous production and dispensing of ice. DOE seeks information on how manufacturers of these ACIMs currently test and rate this equipment under the existing DOE test procedure, whether the proposal would impact the energy use as currently measured, and on the burden associated with the proposed approach or any alternative test approaches.

Issue 30: DOE requests comment on its initial determination that additional test setup and installation instructions are not required for ACIMs with dedicated remote condensing units. DOE seeks information and test data on the range of ACIM performance within the manufacturer-recommended installation parameters to determine whether additional requirements are needed to improve repeatability and reproducibility.

Issue 31: DOE requests comment on its proposal to not establish test procedures for ACIMs intended for installation with a compressor rack. DOE seeks information on the market availability of such equipment, including how manufacturers currently test and rate these units, and the extent to which they are installed with a compressor rack rather than a dedicated condensing unit.

Issue 32: DOE requests comment on its initial determination regarding the lack of availability of modulating capacity ice makers on the market.

Issue 33: DOE requests comment on its proposal to not amend its test procedures to account for standby or ice storage energy use. DOE also requests data on the typical durations and associated energy use for all ACIM operating modes and on the potential burden associated with testing energy use in those modes.

Issue 34: DOE requests comment on the proposal to clarify that the energy use, condenser water use, and potable water use (as described in section III.D.8) be calculated by averaging the calculated values for the three measured samples for each respective metric.

Issue 35: DOE requests comment on the proposal to expressly specify that all calculations must be performed with raw measured values and that only the resultant energy use, water use, and harvest rate metrics be rounded.

Issue 36: DOE requests comment on its proposal to clarify that percent difference shall be calculated based on the average of the two measured values.

Issue 37: DOE requests comment on the proposal to include a voluntary method for measuring potable water use, including the value or drawbacks of such an approach, in 10 CFR 431.134 according to the industry standards and additional test procedure proposals as discussed in this NOPR.

Issue 38: DOE requests comment on its proposal that potable water use is not adjusted based on ice hardness factor.

Issue 39: DOE requests comment on the proposal that the potable water use rate of portable ACIMs be defined as equal to the weight of ice and water captured for the capacity test, as specified in section 7.2 of ASHRAE Standard 29–2015.

Issue 40: DOE requests comment on its proposal to amend the sampling plan and reporting requirements for ACIMs in 10 CFR 429.45. DOE seeks information on how manufacturers are currently interpreting ''maximum energy use'' and ''maximum condenser water use'' in the context of the sampling and certification report requirements, how manufacturers are currently determining harvest rates, and whether the proposed amendments would impose any burden on manufacturers. DOE also requests comment on its proposal to modify the term and definition of ''maximum condenser water use'' to instead refer to ''condenser water use''.

Issue 41: DOE requests comment on its proposal to require that values calculated from a test sample be rounded as follows: Energy use to the nearest 0.01 kWh/100 lb, condenser water use to the nearest gal/100 lb, and harvest rate to the nearest 1 lb/24 h (for ACIMs with harvest rates greater than 50 lb/24 h) or to the nearest 0.1 lb/24 h (for ACIMs with harvest rates less than or equal to 50 lb/24 h).

Issue 42: DOE requests comment on its proposal to include a new section in 10 CFR 429.134 to specify how to determine whether the certified or measured harvest rate is used to calculate the maximum energy consumption and maximum condenser water use levels. DOE also requests comment on whether a five percent tolerance for the average measured harvest rate compared to the certified harvest rate is an appropriate tolerance

for such purposes, and if not, what tolerance is appropriate.

Issue 43: DOE requests comment on the impact and test cost of the proposed amendment to clarify the use of test cycles to also confirm stability of the ACIM under test.

Issue 44: DOE requests comment on the impacts and associated costs of the proposed amendments included in this NOPR. In particular, DOE requests feedback and data regarding whether the proposals would impact measured performance of ACIMs as tested under the existing DOE test procedure, and whether manufacturers would incur costs for re-testing existing ACIM models under the proposed procedure. DOE requests comment on the impact and any associated costs of the proposed amendments regarding test conditions for ACIM testing. DOE requests feedback on whether any test facilities would require upgrades to meet the proposed test requirements, and if so, information on the corresponding costs.

Issue 45: DOE requests comment on any expected costs associated with the proposed amendment to expand test procedure scope to include low-capacity ACIMs. Specifically, DOE requests comment on whether any manufacturers are currently making representations of low-capacity ACIM energy consumption based on test methods that would produce measures of performance that would be inconsistent with the existing DOE test procedure or the test procedure for low-capacity ACIMs as proposed in this NOPR.

Issue 46: DOE requests comment on its conclusion that the proposed test procedure amendments would not have a significant economic impact on a substantial number of small entities. Additionally, DOE request comment on its finding that there are twelve small businesses that manufacture ACIMs in the United States. DOE will consider comments received in the development of any final rule.

VI. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on December 3, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 7, 2021.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.45 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 429.45 Automatic commercial ice makers.

(a) * * *

(2) For each basic model of automatic commercial ice maker selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of energy use, condenser water use, or other measure of consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(ii) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from appendix A).

(3) The harvest rate of a basic model is the mean of the measured harvest rates for each tested unit of the basic model, based on the same tests to determine energy use and condenser water use, if applicable. Round the mean harvest rate to the nearest pound of ice per 24 hours (lb/24 h) for harvest rates above 50 lb/24 h; round the mean harvest rate to the nearest 0.1 lb/24 h for harvest rates less than or equal to 50 lb/24 h.

* * * * *

■ 3. Amend § 429.134 by adding paragraph (s) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(s) *Automatic commercial ice makers–verification of harvest rate.* The harvest rate will be measured pursuant to the test requirements of 10 CFR part 431 for each unit tested. The results of the measurement(s) will be averaged and compared to the value of harvest rate certified by the manufacturer of the basic model. The certified harvest rate will be considered valid only if the average measured harvest rate is within five percent of the certified harvest rate.

(1) If the certified harvest rate is found to be valid, the certified harvest rate will be used as the basis for determining the maximum energy use and maximum condenser water use, if applicable, allowed for the basic model.

(2) If the certified harvest rate is found to be invalid, the average measured harvest rate of the units in the sample will be used as the basis for determining the maximum energy use and maximum condenser water use, if applicable, allowed for the basic model.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 5. Amend § 431.132 by:
■ a. Adding a definition in alphabetical order for ''Baffle'',
■ b. Revising the definition of ''Batch type ice maker'';
■ c. Adding a definition in alphabetical order for ''Condenser water use'';
■ d. Removing the definition of ''Cube type ice'';
■ e. Revising the definition of ''Energy use'';
■ f. Removing the definition of ''Maximum condenser water use''; and
■ g. Adding definitions in alphabetical order for ''Portable automatic commercial ice maker'', ''Potable water use'', and ''Refrigerated storage automatic commercial ice maker''.

The additions and revisions read as follows:

§ 431.132 Definitions concerning automatic commercial ice makers.

* * * * *

Baffle means a partition (usually made of flat material like cardboard, plastic, or sheet metal) that reduces or prevents recirculation of warm air from an ice maker's air outlet to its air inlet—or, for remote condensers, from the condenser's air outlet to its inlet.

* * * * *

Batch type ice maker means an ice maker having alternate freezing and harvesting periods.

Condenser water use means the total amount of water used by the condensing unit (if water-cooled), stated in gallons per 100 pounds (gal/100 lb) of ice, in multiples of 1.

* * * * *

Energy use means the total energy consumed, stated in kilowatt hours per one-hundred pounds (kWh/100 lb) of ice, in multiples of 0.01. For remote condensing (but not remote compressor) automatic commercial ice makers and remote condensing and remote compressor automatic commercial ice makers, total energy consumed shall include the energy use of the ice-making mechanism, the compressor, and the remote condenser or condensing unit.

* * * * *

Portable automatic commercial ice maker means an automatic commercial ice maker that does not have a means to connect to a water supply line and has one or more reservoirs that are manually supplied with water.

Potable water use means the amount of potable water used in making ice, which is equal to the sum of the ice harvested, dump or purge water, and the harvest water, expressed in gal/100 lb, in multiples of 0.1, and excludes any condenser water use.

Refrigerated storage automatic commercial ice maker means an automatic commercial ice maker that has a refrigeration system that actively refrigerates the self-contained storage bin.

* * * * *

■ 6. Amend § 431.133 by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 431.133 Materials incorporated by reference.

* * * * *

(b) * * *

(1) AHRI Standard 810–2016, *Performance Rating of Automatic Commercial Ice-Makers,* approved January 2018; IBR approved for § 431.134.

* * * * *

(c) * * *

(1) ANSI/ASHRAE Standard 29–2015, *Method of Testing Automatic Ice Makers,* approved April 30, 2015; IBR approved for § 431.134.

* * * * *

■ 7. Revise § 431.134 to read as follows:

§ 431.134 Uniform test methods for the measurement of harvest rate, energy consumption, and water consumption of automatic commercial ice makers.

(a) *Scope.* This section provides the test procedures for measuring the harvest rate in pounds of ice per 24 hours (lb/24 h), energy use in kilowatt hours per 100 pounds of ice (kWh/100 lb), and the condenser water use in gallons per 100 pounds of ice (gal/100 lb) of automatic commercial ice makers with capacities up to 4,000 lb/24 h. This section also provides voluntary test procedures for measuring the potable water use in gallons per 100 pounds of ice (gal/100 lb).

(b) *Testing and calculations.* Measure the harvest rate, the energy use, the condenser water use, and, to the extent elected, the potable water use of each covered automatic commercial ice maker by conducting the test procedures set forth in AHRI Standard 810–2016, section 3, ''Definitions,'' section 4, ''Test Requirements,'' and section 5.2, ''Standard Ratings'' (incorporated by reference, see § 431.133), and according to the provisions of this section. Use ANSI/ASHRAE Standard 29–2015 (incorporated by reference, see § 431.133) referenced by AHRI Standard 810–2016 (incorporated by reference, see § 431.133) for all automatic commercial ice makers, except as noted in the following paragraphs. If any provision of the referenced test procedures conflicts with the requirements in this section or the definitions in § 431.132, the requirements in this section and the definitions in § 431.132 control.

(c) *Test setup and equipment configurations*—(1) *Baffles.* Conduct testing without baffles unless the baffle either is a part of the automatic commercial ice maker or shipped with the automatic commercial ice maker to be installed according to the manufacturer's installation instructions.

(2) *Clearances.* Install all automatic commercial ice makers for testing according to the manufacturer's specified minimum rear clearance requirements, or with 3 feet of clearance from the rear of the automatic commercial ice maker, whichever is less, from the chamber wall. All other sides of the automatic commercial ice maker and all sides of the remote condenser, if applicable, shall have clearances according to section 6.5 of ANSI/ASHRAE Standard 29–2015.

(3) *Purge settings.* Test automatic commercial ice makers equipped with automatic purge water control using a fixed purge water setting that is described in the manufacturer's written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness. Purge water settings described in the instructions as suitable for use only with water that has higher or lower than normal hardness (such as distilled water or reverse osmosis water) must not be used for testing.

(4) *Water hardness measurement.* Confirm water hardness either by using a water hardness meter with an accuracy within ±10 milligrams per liter (mg/L) of calcium carbonate or by referring to the most recent version of the applicable water quality report provided through the U.S. EPA Consumer Confidence Reports. See *ofmpub.epa.gov/apex/safewater/f?p=136:102.*

(5) *Ambient conditions measurement*—(i) *Ambient temperature sensors.* Measure all ambient temperatures according to section 6.4 of ANSI/ASHRAE Standard 29–2015, except as provided in paragraph (c)(5)(iv) of this section, with unweighted temperature sensors.

(ii) *Ambient relative humidity measurement.* Except as provided in paragraph (c)(5)(iv) of this section, Ambient relative humidity shall be measured at the same location(s) used to confirm ambient dry bulb temperature,

or as close as the test setup permits. Ambient relative humidity shall be measured with an instrument accuracy of ±2.0 percent.

(iii) *Ambient conditions sensors shielding.* Ambient temperature and relative humidity sensors may be shielded if the ambient test conditions cannot be maintained within the specified tolerances because of warm discharge air from the condenser exhaust affecting the ambient measurements. If shields are used, the shields must not inhibit recirculation of the warm discharge air into the condenser or automatic commercial ice maker inlet.

(iv) *Alternate ambient conditions measurement location.* For automatic commercial ice makers in which warm air discharge from the condenser exhaust affects the ambient conditions as measured 1 foot in front of the air inlet, or automatic commercial ice makers in which the air inlet is located in the rear of the automatic commercial ice maker and the manufacturer's specified minimum rear clearance is less than or equal to 1 foot, the ambient temperature and relative humidity may instead be measured 1 foot from the cabinet, centered with respect to the sides of the cabinet, for any side of the automatic commercial ice maker cabinet with no warm air discharge or air inlet.

(6) *Collection container for batch type automatic commercial ice makers with harvest rates less than or equal to 50 lb/24 h.* Use an ice collection container as specified in section 5.5.2(a) of ANSI/ASHRAE Standard 29–2015, except that the water retention weight of the container is no more than 4.0 percent of that of the smallest batch of ice for which the container is used.

(d) *Test conditions*—(1) *Relative humidity.* Maintain an average ambient relative humidity of 35.0 percent ±5.0 percent throughout testing.

(2) *Water hardness.* Water supplied for testing shall have a maximum water hardness of 180 mg/L of calcium carbonate.

(3) *Inlet water pressure.* Except for portable automatic commercial ice makers, the inlet water pressure when water is flowing into the automatic commercial ice maker shall be within the allowable range within 5 seconds of opening the water supply valve.

(e) *Stabilization*—(1) *Percent difference calculation.* Calculate the percent difference in the ice production rate between two cycles or samples using the following equation, where A and B are the harvest rates, in lb/24 h (for batch-type ice makers) or lb/15 mins (for continuous-type ice makers), of any cycles or samples used to determine stability:

$$Percent\ Difference = \frac{|A - B|}{\frac{A + B}{2}} x100\text{percent}$$

(2) *Automatic commercial ice makers with harvest rates greater than 50 lb/24 h.* The three or more consecutive cycles or samples used to calculate harvest rate, energy use, condenser water use, and potable water use, must meet the stability criteria in section 7.1.1 of ANSI/ASHRAE Standard 29–2015.

(3) *Automatic commercial ice makers with harvest rates less than or equal to 50 lb/24 h.* The three or more consecutive cycles or samples used to calculate harvest rate, energy use, condenser water use, and potable water use, must meet the stability criteria in section 7.1.1 of ANSI/ASHRAE Standard 29–2015, except that the weights of the samples (for continuous type ACIMs) or 24-hour calculated ice production (for batch type ACIMs) must not vary by more than ±4 percent, and the 25 g (for continuous type ACIMs) and 1 kg (for batch type ACIMs) criteria do not apply.

(f) *Calculations.* The harvest rate, energy use, condenser water use, and potable water use must be calculated by averaging the values for the three calculated samples for each respective reported metric as specified in section 9 of ANSI/ASHRAE Standard 29–2015. All intermediate calculations prior to the reported value, as applicable, must be performed with unrounded values.

(g) *Rounding.* Round the reported values as follows: Harvest rate to the nearest 1 lb/24 h for harvest rates above 50 lb/24 h; harvest rate to the nearest 0.1 lb/24 h for harvest rates less than or equal to 50 lb/24 h; condenser water use to the nearest 1 gal/100 lb; and energy use to the nearest 0.01 kWh/100 lb. Round final potable water use value to the nearest 0.1 gal/100 lb.

(h) *Continuous type automatic commercial ice makers*—(1) *Capacity test.* Conduct the capacity test according to section 7.2.2 of ANSI/ASHRAE Standard 29–2015, except that the ice shall be captured for three durations of 15.0 minutes ±9.0 seconds instead of ±2.5 seconds as provided in the Standard.

(2) *Ice hardness adjustment*—(i) *Calorimeter constant.* Determine the calorimeter constant according to the requirements in section A1 and A2 of Normative Annex A Method of Calorimetry in ANSI/ASHRAE Standard 29–2015, except that the trials shall be conducted at an ambient air temperature (room temperature) of 70 °F ±1 °F, with an initial water temperature of 90 °F ±1 °F. To verify the temperature of the block of pure ice as provided in section A2.e in ANSI/ASHRAE Standard 29–2015, a thermocouple shall be embedded at approximately the geometric center of the interior of the block. Any water that remains on the block of ice shall be wiped off the surface of the block before being placed into the calorimeter.

(ii) *Ice hardness factor.* Determine the ice hardness factor according to the requirements in section A1 and A3 of Normative Annex A Method of Calorimetry in ANSI/ASHRAE Standard 29–2015, except that the trials shall be conducted at an ambient air temperature (room temperature) of 70 °F ±1 °F, with an initial water temperature of 90 °F ±1 °F. The harvested ice used to determine the ice hardness factor shall be produced according to the test methods specified at § 431.134. The ice hardness factor shall be calculated using the equation for Ice Hardness Factor in section 5.2.2 of AHRI Standard 810–2016.

(iii) *Ice hardness adjustment calculation.* Determine the reported energy use and reported condenser water use by multiplying the measured energy use or measured condenser water use by the ice hardness adjustment factor, determined using the following equation:

$$Ice\ Hardness\ Adjustment\ Factor = \left[\frac{144\frac{Btu}{lb} + 38\frac{Btu}{lb}}{144\frac{Btu}{lb} \times \left(\frac{Ice\ Hardness\ Factor}{100}\right) + 38\frac{Btu}{lb}}\right]$$

(i) *Automatic commercial ice makers with automatic dispensers.* Allow for the continuous production and dispensing of ice throughout testing. If an automatic commercial ice maker with an automatic dispenser is not able to continuously produce and dispense ice because of certain mechanisms within the automatic commercial ice maker that prohibit the continuous production and dispensing of ice throughout testing, those mechanisms must be overridden to the minimum extent which allows for the continuous production and dispensing of ice. The automatic commercial ice maker shall have an empty internal storage bin at the beginning of the test period. Collect capacity samples according to the requirements of ANSI/ASHRAE Standard 29–2015, except that the samples shall be collected through continuous use of the dispenser rather than in the internal storage bin. The intercepted ice samples shall be obtained from a container in an external ice bin that is filled one-half full of ice and is connected to the outlet of the ice dispenser through the minimal length of conduit that can be used.

(j) *Portable automatic commercial ice makers.* Sections 5.4, 5.6, 6.2, and 6.3 of ASHRAE Standard 29–2015 do not apply. Ensure that the ice storage bin is empty prior to the initial potable water reservoir fill. Fill an external container with water to be supplied to the portable automatic commercial ice maker water reservoir. Establish an initial water temperature of 70 °F ±1.0 °F. Verify the initial water temperature by inserting a temperature sensor into approximately the geometric center of the water in the external container. Immediately after establishing the initial water temperature, fill the ice maker water reservoir to the maximum level of potable water as specified by the manufacturer. After the potable water reservoir is filled, operate the portable automatic commercial ice maker to produce ice into the ice storage bin until the bin is one-half full. One-half full for the purposes of testing portable automatic commercial ice makers means that half of the vertical dimension of the ice storage bin, based on the maximum ice fill level within the ice storage bin, is filled with ice. Once the ice storage bin is one-half full, conduct testing according to section 7 of ASHRAE Standard 29–2015. The potable water use is equal to the sum of the weight of ice and any corresponding melt water collected for the capacity test as specified in section 7.2 of ASHRAE Standard 29–2015.

(k) *Self-contained refrigerated storage automatic commercial ice makers.* For door openings, the door shall be in the fully open position, which means opening the ice storage compartment door to an angle of not less than 75 degrees from the closed position (or the maximum extent possible, if that is less than 75 degrees), for 10.0 ±1.0 seconds to collect the sample. Conduct door openings only for ice sample collection and returning the empty ice collection container to the ice storage compartment (*i.e.,* conduct two separate door openings, one for removing the collection container to collect the ice and one for replacing the collection container after collecting the ice).

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Part III

Surface Transportation Board

Seven County Infrastructure Coalition—Rail Construction & Operation Exemption—In Utah, Carbon, Duchesne, and Uintah Counties, Utah; Notice

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36284]

Seven County Infrastructure Coalition—Rail Construction & Operation Exemption—In Utah, Carbon, Duchesne, and Uintah Counties, Utah

In 2020, the Seven County Infrastructure Coalition (Coalition) filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authorization to construct and operate an approximately 85-mile rail line connecting two termini in the Uinta Basin (Basin) near South Myton Bench, Utah, and Leland Bench, Utah, to the national rail network at Kyune, Utah (the Line). According to the Coalition, the Line would provide shippers in the Basin with a viable alternative to trucking, which is currently the only available transportation option. (Pet. for Exemption 13–15.)

On January 5, 2021, the Board issued a decision assessing the transportation merits of the proposed transaction and preliminarily concluding, subject to completion of the ongoing environmental review, that the proposal meets the statutory standard for an exemption on the transportation merits. *Seven Cnty. Infrastructure Coal.—Rail Constr. & Operation Exemption—in Utah, Carbon, Duchesne, & Uintah Cntys., Utah* (*January 5 Decision*), FD 36284, slip op. at 8–10 (STB served Jan. 5, 2021) (86 FR 1564) (with Board Member Oberman dissenting). The Board noted that it was not granting the exemption or allowing construction to begin and that after the Board has considered the potential environmental impacts associated with this proposal and weighed those potential impacts with the transportation merits, it would issue a final decision either granting the exemption, with conditions, if appropriate, or denying it. *Id.* at 2. The Board received petitions for reconsideration of the *January 5 Decision* and denied those requests in a decision served on September 30, 2021. *Seven Cnty. Infrastructure Coal.—Rail Constr. & Operation Exemption—in Utah, Carbon, Duchesne, & Uintah Cntys., Utah* (*September 30 Decision*), FD 36284 (STB served Sept. 30, 2021) (with Board Member Oberman dissenting).

The Board's Office of Environmental Analysis (OEA), in cooperation with stakeholders, tribes, and federal, state, and local agencies, has completed a thorough environmental analysis that reviewed the potential environmental impacts that could result from the proposed project, culminating in a Final Environmental Impact Statement (Final EIS) served on August 6, 2021. OEA reviewed a number of build alternatives and a No-Action (or No-Build) Alternative to take a ''hard look'' at potential environmental impacts as required by the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4370m–12. The environmental review process has included extensive opportunity for public participation as well as input from agencies and other interested parties. Based on this analysis, OEA identifies the Whitmore Park Alternative as its Environmentally Preferable Alternative for the Line because it would avoid or minimize major environmental impacts compared to the two other build alternatives, as discussed in more detail below. OEA also recommends environmental conditions (including both voluntary mitigation proposed by the Coalition and additional mitigation developed by OEA) to avoid, minimize, or mitigate the transaction's potential environmental impacts.

In this decision, the Board will grant final approval for a construction and operation exemption for the Whitmore Park Alternative, subject to OEA's final recommended environmental mitigation measures, with minor changes. The environmental mitigation is set forth in Appendix B of this decision.

Background

On May 29, 2020, the Coalition filed a petition for exemption from the prior approval requirements of 49 U.S.C. 10901 under 49 U.S.C. 10502 to construct and operate the Line, which will connect with Union Pacific Railroad Company (UP) at Kyune, Utah. The Coalition notes that it is an independent political subdivision of the State of Utah, whose member counties include Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah Counties. (Pet. for Exemption 5.) It was formed to, among other things, identify and develop infrastructure projects that will promote resource utilization and development. (*Id.*)

The Coalition asserts that goods produced or consumed in the Basin now can be transported only by truck and that the proposed project would give shippers an additional freight transportation option, eliminating longstanding transportation constraints. (*Id.* at 13–15.) It explains that adding a rail transportation option would provide local industries the opportunity to access new markets and increase their competitiveness in the national marketplace, and that the removal of transportation constraints would benefit oil producers, mining companies, ranchers, farmers, and other local industries. (*Id.* at 15.)

The Coalition argues that regulation of the construction and operation of the proposed line under section 10901 is not needed to carry out the rail transportation policy (RTP) at 49 U.S.C. 10101, that the project would promote several provisions of the RTP, and that an application under section 10901 is not required to protect shippers from an abuse of market power. (Pet. for Exemption 21–22.) In considering the petition, the Coalition asked that the Board follow a two-step approach, addressing the transportation aspects of the project in advance of the environmental issues. (*Id.* at 26–28.)

The Board received filings both supporting and opposing the petition for exemption. Several government officials filed comments in support of the petition for exemption. *January 5 Decision,* FD 36284, slip op. at 3.[1] The opponents included the Center for Biological Diversity (CBD), the Argyle Wilderness Preservation Alliance (Argyle), and numerous individuals. *Id.* at 1.

In its *January 5 Decision,* the Board addressed the substantive comments, concluded that an application was not necessary, and found the requested approach of issuing a preliminary decision on the transportation merits appropriate. The Board preliminarily concluded, subject to completion of the ongoing environmental and historic review, that the proposed transaction meets the statutory standards for exemption under section 10502. *January 5 Decision,* FD 36284, slip op. at 1. As noted above, the Board stated that it was not granting the exemption or allowing construction to begin and that after the Board has considered the potential environmental impacts associated with this proposal and weighed those potential impacts with the transportation merits, it would issue a final decision either granting the exemption, with conditions, if appropriate, or denying it. *Id.* at 2.

The Board received petitions for reconsideration of the *January 5 Decision* from Eagle County, Colo., on

[1] To date, the Board has received letters supporting the project from the Ute Indian Tribe of the Uintah and Ouray Reservation (Ute Indian Tribe), U.S. Senators Mitt Romney and Mike Lee and U.S. Representatives Rob Bishop, Chris Stewart, John Curtis, Burges Owens, and Blake Moore. The Board also received letters supporting the project from state officials, including Utah's former Governor Gary R. Herbert, its current Governor Spencer J. Cox, Lieutenant Governor Deidre M. Henderson, State Senate President J. Stuart Adams, and State House Speaker Brad Wilson.

January 25, 2021, and CBD on January 26, 2021. The agency denied those requests in its *September 30 Decision,* where among other things, the Board rejected arguments that an application was required because of concerns related to potential reactivation of the Tennessee Pass Line in Colorado and that the Board's consideration of the statutory standards for exemption in the *January 5 Decision* was inadequate. *September 30 Decision,* FD 36284, slip op. at 3, 5–7.

During this time, OEA was conducting its environmental review of potential impacts from constructing and operating the Line. As part of this process, OEA issued a Notice of Intent to Prepare an EIS on June 19, 2019, a Final Scope of Study for the EIS on December 13, 2019, and a Draft EIS on October 30, 2020. The Draft EIS analyzed three Action Alternatives for the proposed Line, as well as the No-Action Alternative. The three alternatives examined were the Indian Canyon Alternative, Wells Draw Alternative, and Whitmore Park Alternative. (Draft EIS S–5.) Each of the Action Alternatives would extend from two terminus points in the Basin near Myton, Utah, and Leland Bench to a proposed connection with UP's existing Provo Subdivision near Kyune. (*Id.* at S–7.). A map of the Action Alternatives is found at Appendix A of this decision. The Indian Canyon Alternative, Wells Draw Alternative, and Whitmore Park Alternative would be approximately 81 miles, 103 miles, and 88 miles in length, respectively. (Draft EIS S–7.) In its request for authority, the Coalition identified the Whitmore Park Alternative as its preferred route for the Line.

Based on the analysis in the Draft EIS, OEA concluded that construction and operation of any of the Action Alternatives would result in environmental impacts, some of which would be significant. (*Id.* at S–7 to 13.) OEA preliminarily concluded, however, that, among the three Action Alternatives, the Whitmore Park Alternative would result in the fewest significant impacts on the environment. (*Id.* at S–12.)

OEA invited agency and public comment on the Draft EIS, including its preliminary conclusion on the Whitmore Park Alternative and the conditions OEA preliminarily recommended to mitigate the impacts of constructing and operating any of the Action Alternatives. OEA established a comment period, which it agreed to extend several times upon request, until February 12, 2021. OEA also conducted six online public meetings during the comment period. In total, OEA received 1,934 comment submissions on the Draft EIS, including both written and oral comments. (Final EIS S–5.)

In the Final EIS, OEA includes all of the comments received on the Draft EIS and OEA's responses to substantive comments, as well as all changes to the analysis that resulted from the comments. OEA concludes that the Whitmore Park Alternative is indeed the Environmentally Preferable Alternative, and that if the Board decides to permit construction and operation of a rail line, the Board should authorize that alternative to minimize impacts of construction and operation on the environment. (Final EIS 2–48.) OEA also provides its final recommendations for environmental mitigation to minimize potential environmental impacts. (*Id.* at Chapter 4.)

On August 25, 2021, the State of Utah (State) filed in support of the Coalition's project but asked that OEA modify several mitigation measures that OEA recommends in the Final EIS. In addition, the U.S. Environmental Protection Agency (USEPA) filed comments on the Final EIS on September 2, 2021, recommending certain changes to an air emissions dispersion model that OEA ran as part of the environmental review process. On October 1, 2021, the Ute Indian Tribe filed a comment in response to the Final EIS stating that it supports the rail construction project. CBD filed a comment on October 18, 2021, and supplemental exhibits on November 8, 2021, raising objections to the exemption sought by the Coalition, the Final EIS, and a related Biological Opinion (BO) issued by the U.S. Fish and Wildlife Service (USFWS) on September 20, 2021.[2]

Discussion and Conclusions

The construction and operation of new railroad lines requires prior Board authorization, through either a certificate under 49 U.S.C. 10901 or, as requested here, an exemption under 49 U.S.C. 10502 from the prior approval requirements of section 10901. Section 10901(c) is a permissive licensing standard that directs the Board to grant rail line construction proposals unless the agency finds the proposal ''inconsistent with the public convenience and necessity.'' Thus, Congress has established a presumption that rail construction projects are in the public interest and should be approved unless shown otherwise. *See Alaska R.R.—Constr. & Operation Exemption—Rail Line Extension to Port MacKenzie, Alaska,* FD 35095 (STB served Nov. 21, 2011), *aff'd sub nom. Alaska Survival* v. *STB,* 705 F.3d 1073 (9th Cir. 2013).

Under section 10502(a), the Board must exempt a proposed rail line construction from the prior approval requirements of section 10901 when the Board finds that: (1) Application of those procedures is not necessary to carry out the RTP of 49 U.S.C. 10101; and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not necessary to protect shippers from an abuse of market power.

In the *January 5 Decision,* the Board determined that the Line would enhance competition by providing shippers in the area with a freight rail option that does not currently exist and that the Line would foster sound economic conditions in transportation, consistent with section 10101(4) and (5). *January 5 Decision,* FD 36284, slip op. at 9. Additionally, the Board found that section 10101(2) and section 10101(7) would be furthered by an exemption because it would minimize the need for federal regulatory control over the rail transportation system and reduce regulatory barriers to entry by minimizing the time and administrative expense associated with the construction and commencement of operations. *January 5 Decision,* FD 36284, slip op. at 9.

The Board also discussed Argyle's claims that section 10101(8), concerning public safety, and section 10101(11), concerning safe working conditions, would be undermined by the project because rail traffic could cause forest fires and substantial truck traffic. *Id.* at 8. The Board noted that it takes these concerns seriously and that they would be examined as part of OEA's environmental review and further examined by the Board in its final decision. *Id.* at 9.

Nothing in the environmental record calls into question the Board's determination in the *January 5 Decision* that section 10101(2), (4), (5), and (7) would be furthered by the rail construction project. Moreover, as discussed below and in the Final EIS, nothing in the environmental record raises significant concerns regarding section 10101(8) and (11). The Board

[2] CBD simultaneously filed a petition asking that the Board accept its comment into the record. It claims that the Board has a compelling interest in accepting the filing, partly to allow the agency to fully consider the impacts of the project. (CBD Comment 1, Oct. 18, 2021.) The Coalition filed in opposition to CBD's request on October 22, 2021. In the interest of a complete record, CBD's filing as well as the other filings commenting on the Final EIS will be accepted into the record. *See Alaska R.R.—Constr. & Operation Exemption—Rail Line Between N. Pole & Delta Jct., Alaska,* FD 34658, slip op. at 6 (STB served Jan. 6, 2010).

therefore reaffirms its analysis here and now turns to consideration of the environmental aspects of the proposed project.

Environmental Analysis

1. The Requirements of NEPA

NEPA requires federal agencies to examine the environmental impacts of proposed major federal actions and to inform the public concerning those effects. *See Balt. Gas & Elec. Co.* v. *Nat. Res. Def. Council,* 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential environmental impacts in deciding whether to authorize a railroad construction as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed action before it is implemented to minimize or avoid potential adverse environmental impacts. *See Marsh* v. *Or. Nat. Res. Council,* 490 U.S. 360, 371 (1989). While NEPA prescribes the process that must be followed, it does not mandate a particular result. *See Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 350 (1989). Thus, once the adverse environmental effects have been adequately identified and evaluated, the Board may conclude that other values outweigh the environmental costs. *Id.* at 350–51.

The Board has assessed the Action Alternatives, OEA's final recommended environmental mitigation, and OEA's conclusions regarding the environmental impacts associated with this construction proposal. The Board has also fully considered the entire environmental record, including the Draft EIS, public comments, the Final EIS, and the comments received following issuance of the Final EIS from the State, CBD, USEPA, and the Ute Indian Tribe. CBD, generally, argues that the Final EIS fails to sufficiently analyze and disclose environmental impacts or recommend appropriate mitigation. (CBD Comment 2–6, Oct. 18, 2021.) Most of these objections, however, are objections CBD already had raised when commenting on the Draft EIS. Below, the Board briefly discusses OEA's analysis of several major issues previously raised in comments on the Draft EIS and then responds to the major issues raised following issuance of the Final EIS by CBD and the State as well as USEPA's request to modify some of the recommended environmental mitigation in the Final EIS. The Draft EIS and Final EIS discuss many issues beyond what the Board addresses in this decision; however, the Board adopts OEA's analysis and conclusions in those documents, even if specific issues are not addressed here.

In the Final EIS, OEA identifies the major environmental impacts that could result from construction and operation of the Line. These major impacts include impacts on water resources, impacts on special status species, impacts from wayside noise during rail operations, impacts related to land use and recreation, socioeconomic impacts, and issues of concern to the Ute Indian Tribe, including impacts on cultural resources. During the EIS process, OEA also analyzed other types of environmental impacts that OEA concluded would not be significant if the Coalition's voluntary mitigation measures and OEA's recommended mitigation measures were implemented. These minor impacts include impacts on vehicle safety and delay, impacts related to rail operations safety, impacts on big game, impacts on fish and wildlife, impacts on vegetation, impacts related to geology and soils, impacts on hazardous waste sites, impacts from construction-related noise, vibration impacts, impacts related to energy resources, impacts on paleontological resources, and visual impacts.

2. Range of Alternatives

NEPA requires that federal agencies consider reasonable alternatives to the proposed action. *Citizens Against Burlington, Inc.* v. *Busey,* 938 F.2d 190, 195–96 (D.C. Cir. 1991). To be considered, an alternative must be '' 'reasonable [and] feasible' in light of the ultimate purpose of the project.'' *Protect Our Cmtys. Found.* v. *Jewell,* 825 F.3d 571, 580–81 (9th Cir. 2016) (quoting *City of Carmel-by-the-Sea* v. *U.S. Dep't of Transp.,* 123 F.3d 1142, 1155 (9th Cir. 1997)); *see also Busey,* 938 F.2d at 195 (''rule of reason'' applies to the selection and discussion of alternatives). Here, the three Action Alternatives were developed as part of a years-long review of routes by the Utah Department of Transportation (UDOT) and the Coalition, and finally OEA. (Final EIS Sec. 2.2.) OEA determined the range of reasonable alternatives by first looking at potential conceptual routes. (*Id.*) In evaluating these conceptual routes, OEA looked at many factors, including logistical constraints, the potential for disproportionately significant environmental impacts, and construction and operations costs. (*Id.*) As explained in detail in Chapter 2 of the Final EIS, the primary reasons certain identified conceptual routes were not moved forward for analysis in the EIS were because they were infeasible due to the prevailing topography surrounding the Basin and because they would require substantial cut-and-fill and large or numerous bridges, as well as numerous large tunnels to pass through mountains. For these reasons and after extensive analysis, OEA determined that there were three reasonable Action Alternatives, one of which was the Environmentally Preferable Whitmore Park Alternative. (*Id.* at Chapter 2.)

CBD contends that the Final EIS does not consider a reasonable range of alternatives. (CBD Comment 70–71, Oct. 18, 2021.) CBD, however, does not identify any alternative routes that OEA did not analyze that CBD contends are reasonable. Nor does CBD provide any evidence that conceptual routes not moved forward for analysis as alternatives in the EIS are in fact reasonable. CBD asserts that OEA should have considered electrified rail or another ''solutionary alternative.'' (*Id.* at 71.) Electrified rail, however, would not satisfy the proposed project's purpose and need because of the capital costs associated with electrification. (Final EIS App. T–83–84.) Those costs, including installing power generating stations and overhead powerlines for the entire length of the approximately 85-mile rail line, would render the Line infeasible.[3] As a result, OEA's determination as to the range of reasonable alternatives is consistent with NEPA and the ''rule of reason'' applicable to every environmental analysis. *See Busey,* 938 F.2d at 195–96; *Jewell,* 825 F.3d at 581 (any potential alternative must be viewed in the context of its feasibility and consistency with agency goals); *Env't Def. Fund, Inc.* v. *Andrus,* 619 F.2d 1368, 1375 (10th Cir. 1980). The Board adopts OEA's analysis and concludes that the Final EIS's selection of alternatives, along with the extensive discussion in the Final EIS regarding why numerous theoretical alternatives were not feasible or did not otherwise meet the project's purpose and need, was reasonable and in compliance with NEPA.

[3] Additionally, there is a significant possibility that the infrastructure required for an electrified rail line itself could adversely affect biological resources, including the greater sage-grouse. (*See, e.g.,* Final EIS 3.4–33 (discussing potential adverse effects on wildlife caused by power distribution lines, communications towers, and fences), 3.15–27 (discussing potential adverse effects on greater sage-grouse caused by power lines).)

3. Special Status Species

Special status species include species that are listed or proposed to be listed as threatened or endangered under the Endangered Species Act (ESA); candidate species for ESA listing; bald and golden eagles; and sensitive species listed by the U.S. Bureau of Land Management (BLM), the U.S. Forest Service (Forest Service), the State, or the Ute Indian Tribe. (Final EIS Sec. 3.4.1.) Any of the Action Alternatives would impact special status species. For example, the Action Alternatives would all cross suitable habitat for several plant species that are listed as threatened or endangered under the ESA, including Pariette cactus, Uinta Basin hookless cactus, Barneby ridge-cress, and Ute ladies'-tresses.[4] (*Id.* at S–8.)

The Coalition has presented voluntary mitigation measures to lessen the impacts to special status species. Additionally, OEA has consulted with USFWS and other appropriate agencies to develop appropriate measures for further avoiding, minimizing, or mitigating impacts on those species. (*Id.* at S–8.) For example, pursuant to VM–39 and one of OEA's mitigation measures, BIO–MM–9, the Coalition must comply with the terms and conditions of USFWS's BO, which specifies that the Coalition shall, as appropriate and possible, fund the permanent protection of habitat for ESA-listed plant species as compensatory mitigation for the loss of occupied habitat for those plants. (BO 64–71.) The Board is satisfied that, if implemented, the Coalition's voluntary mitigation measures and OEA's additional recommended mitigation measures related to biological resources would lessen impacts of construction and operation on animal and plant species, including ESA-listed species and any potential permanent loss of existing habitat in the rail-line footprint. (Final EIS 3.4–63.)

Any of the Action Alternatives would also cross habitat for the greater sage-grouse, a bird species that is managed by BLM and the State. (*Id.* at S–8.) The Action Alternatives would each pass near one or more greater sage-grouse leks, which are areas where male grouse perform mating displays and where breeding and nesting occur. (*Id.*) Depending on the Action Alternative, several of those leks could experience significant increases in noise during construction and rail operations, which would disturb the birds and potentially cause them to abandon the leks. (*Id.*) OEA has determined that the Whitmore Park Alternative would avoid or minimize impacts on greater sage-grouse that would result under the other Action Alternatives because the Whitmore Park Alternative would be located the furthest distance away from the greatest number of leks and associated summer brood rearing habitat.[5] (Final EIS S–8.) To lessen impacts on the greater sage-grouse, the Coalition also volunteered a number of mitigation measures. OEA recommends additional mitigation measures in the Final EIS. With both OEA's final recommended mitigation, and the Coalition's voluntary mitigation, all of which the Board will impose, the EIS properly finds that, particularly under the Whitmore Park Alternative, the impacts on greater sage-grouse would not be significant.[6] (*Id.*)

In its comments on the Final EIS, the State asks that OEA remove BIO–MM–20, a Final EIS mitigation measure prohibiting construction during greater sage-grouse mating and nesting season. The State explains that eliminating the condition will help the Utah Division of Wildlife Resources and the Coalition negotiate a final mitigation agreement concerning the greater sage-grouse (State Comment 3, Aug. 25, 2021.) The State later filed this agreement on September 27, 2021, and the document provides significant additional mitigation to further lessen impacts on the greater sage-grouse. (State Filing 5–6, Sept. 27, 2021.)

Among the mitigation in the final mitigation agreement are steps to lessen noise during construction and operation, including, to the greatest degree practicable, limiting railroad operational noise to no more than 10 decibels above the ambient level at the edge of the lek during breeding season (March 1 to May 15) and limiting use of horns to emergency situations.[7] (State Filing 6, Sept. 27, 2021.) CBD asks that the Board prohibit train operations during greater sage-grouse mating season between 6:00 a.m. and 9:00 a.m. (CBD Comment 56, Oct. 18, 2021.) The Board generally does not restrict how railroads choose to conduct their operations. In any event, it is not necessary to consider CBD's request as the final mitigation agreement provides more protection for the greater sage-grouse than the mitigation

[4] CBD criticizes the Final EIS for not conducting field surveys of all of the Action Alternatives to establish a baseline population for each of the threatened or endangered plants species and, instead, planning to conduct those surveys after the EIS process is completed. (CBD Comment 62–64, Oct. 18, 2021.) While field surveys were conducted to establish the presence and extent of suitable habitat for each threatened or endangered plant species along each of the Action Alternatives, OEA appropriately did not conduct clearance surveys that would establish baseline populations for those species as part of the EIS process. Per USFWS guidelines, clearance surveys are only valid for one year and, if construction is authorized, it is anticipated that construction would last two to three years and start no earlier than 2022. *See* USFWS's Utah Field Office Guidelines for Conducting and Reporting Botanical Inventories and Monitoring of Federally Listed, Proposed and Candidate Plants (USFWS 2011) at *https://www.fws.gov/utahfieldoffice/Documents/Plants/USFWS%20UtahFO%20Plant%20Survey%20Guidelines%20Final.pdf*. Therefore, any clearance surveys conducted during the EIS phase would be outdated at the time of construction and would not provide useful information about the locations of individual plants at the time that impacts on those plants would occur. (Final EIS T–198–99.) Although OEA did not conduct clearance surveys to establish baseline populations, OEA, in consultation with USFWS, used a combination of suitable habitat field surveys and USFWS mapping data as the best available data to assess impacts on threatened and endangered plant species, while also providing for clearance surveys to be conducted after the EIS process so that those clearance surveys will be in compliance with USFWS guidelines and will provide accurate data about the locations of individual plants at the relevant time.

[5] Reduction in impacts, including those on greater sage-grouse, is, in fact, one of the primary reasons that the Whitmore Park Alternative was developed. (Draft EIS 2–25.)

[6] CBD criticizes the data and methodology OEA used in its analysis of impacts on the greater sage-grouse, including the locations of the baseline ambient noise level measurements, the noise levels deemed to cause disturbance of greater sage-grouse, and a claimed failure to account for declining population levels. (CBD Comment 48–56, Oct. 18, 2021.) The Final EIS thoroughly explains why these criticisms are misplaced and how the data and methodologies used by OEA in the EIS are supported by the record. (*See* Final EIS 3.4–45 to 46, 3.4–48 to 49, 3.4–58 to 62; App. T–184, T–203–05, T–208–09.) Moreover, determining the best data and methodology upon which to rely is a determination that falls well within the agency's discretion. *Jewell,* 825 F.3d at 583–85 (upholding agency's discretionary decision not to conduct nocturnal migratory bird survey because agency's determination was a discretionary one and ''founded on reasonable inferences from scientific data'').

[7] CBD asserts that the mitigation proposed for the greater sage-grouse, as well as for numerous other resources and impacts, such as threatened and endangered plants, big game, geological hazards, revegetation of temporarily disturbed construction areas, and recreational resources, is insufficient because it includes plans to continue developing specific mitigation actions as the project progresses or as based on continuing consultation with other agencies and the Ute Indian Tribe. (CBD Comment 72–79, Oct. 18, 2021.) However, explicit concrete detail and definitive actions not subject to further evaluation or refinement are not required in an agency's discussion and development of appropriate mitigation. Rather, what is required under both NEPA and the NEPA-implementing regulations of the Council on Environmental Quality is ''a reasonably complete discussion of possible mitigation measures.'' *Busey,* 938 F.2d at 206 (quoting *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 352 (1989)); *see* also *Theodore Roosevelt Conservation P'ship* v. *Salazar,* 616 F.3d 497, 516–17 (D.C. Cir. 2010) (upholding an adaptive management plan because NEPA does not require ''agencies to make detailed, unchangeable mitigation plans for long-term development projects''). The Final EIS's discussion of mitigation is reasonably complete and therefore complies with NEPA.

recommended in the Final EIS, including limits on train noise and hours of operation. (*Compare* Final EIS Sec. 4–7 *with* State Filing 5–6, Sept. 27, 2021.) Therefore, the Board will not adopt CBD's request to limit operations. However, as discussed below in the *Board Mitigation* section, the Board will grant the State's request to remove BIO–MM–20 recommended in the Final EIS and instead will impose the measures in the final mitigation agreement.

As part of the NEPA process for this project and pursuant to Section 7 of the ESA, on September 20, 2021, USFWS issued its BO evaluating the effects of the project on endangered and threatened species. The BO presents USFWS's conclusions regarding likely impacts on ESA-listed species and details the data and information on which it bases those conclusions. The BO concludes that the proposed project is not likely to jeopardize the continued existence of the ESA-listed plants or fish or result in the adverse modification of the endangered fishes' habitat. (BO 47–49.) CBD makes a generalized claim that the BO is flawed and asserts, among other things, that the BO does not rely on current data, arbitrarily limits the area of study, and fails to consider the effects of oil and gas development that would be spurred by the Line on listed plant species. (CBD Comment 6, Oct. 18, 2021.) However, the BO is a USFWS document that neither OEA nor the Board have the authority to revise. Moreover, CBD previously raised these claims of flaws in its comments on OEA's draft Biological Assessment (BA), which was appended to the Draft EIS.

OEA addressed comments on the draft BA in the Final EIS and revised the BA in response to comments, as appropriate, before submitting the BA to USFWS to begin formal consultation with USFWS. (Final EIS T–203.) Thus, CBD's concerns do not lead the Board to conclude that it should not rely on the BO.

4. Wildfires

OEA's analysis also thoroughly addresses the possibility of trains sparking wildfires along the routes of the Action Alternatives. OEA notes that the Forest Service has created a Wildfire Hazard Potential (WHP) map. (Final EIS 3.4–16.) According to the map, approximately 90% of the study areas for the Indian Canyon Alternative and Whitmore Park Alternative, and approximately 87.4% of the study area for the Wells Draw Alternative, are associated with very low, low, or moderate wildfire hazard potential. (*Id.*) The Final EIS further determined that the ''very high'' WHP is not present in the study areas for any Action Alternative. (*Id.*) Moreover, the Final EIS concludes that the probability of a train-induced forest fire is very low because trains only cause a small percentage of fires (*id.* at Table 3.4–7) and improvements in locomotive technology further lessen the risk. (*Id.* at 3.4–42.)

Nonetheless, to further reduce the risk of wildfires, OEA recommends mitigation requiring the Coalition to develop and implement a wildfire management plan in consultation with appropriate state and local agencies, including local fire departments (BIO–MM–7). Further, OEA recommends that the plan incorporate specific information about operations, equipment, and personnel on the Line that might be of use in case a fire occurs and should evaluate and include, as appropriate, site-specific techniques for fire prevention and suppression. OEA reasonably concludes that, if its recommended mitigation is implemented, the impacts of wildfire on vegetation would not be significant. (*Id.* at 3.4–42 to 43.)

In response to comments received on the Draft EIS, OEA also considered impacts from rail operations along existing rail line segments downline of the proposed rail line for some biological resources, including impacts related to wildfires. (*Id.* at 3.4–43.) Trains originating or terminating on the proposed rail line could be an ignition source for wildfires along existing rail lines outside of the study area. However, because those existing rail lines are active rail lines that have been in operation for many years, construction and operation of the Line would not introduce a new ignition source for wildfires along the downline segments. (*Id.*) Moreover, for the reasons discussed above, the probability that a train would trigger a wildfire is very low, and nearly 90% of the area along the downline segments has no WHP or has a very low or low WHP. (*Id.* at Table 3.4–9.) OEA therefore concludes that the downline wildfire impact of the proposed rail line would not be significant. (*Id.* at 3.4–43.) The Board adopts OEA's reasonable analysis concerning wildfires and will impose OEA's final recommended mitigation regarding a wildfire management plan.

5. Land Use and Recreation

Most of the area surrounding any of the Action Alternatives is rural and sparsely populated. The Indian Canyon Alternative and Whitmore Park Alternative both have five residences in their respective study areas, and nine residences are located in the study area of the Wells Draw Alternative. (*Id.* at 3.11–4.) However, all of the Action Alternatives could significantly affect land uses on public, private, or tribal lands. (*Id.* at S–9.) The Indian Canyon Alternative and Whitmore Park Alternative would each cross inventoried roadless areas within Ashley National Forest and Tribal trust land within the Ute Indian Tribe's reservation. (*Id.*) The Wells Draw Alternative would cross the Lears Canyon Area of Critical Environmental Concern and Lands with Wilderness Characteristics on BLM-administered lands. Noise and visual impacts would disturb recreational activities on those public lands, such as camping, hiking, and hunting, as well as recreational activities on private and tribal lands. (*Id.*)

As the Final EIS explains, construction and operation of the Line would result in unavoidable consequences on land use and recreation, including the permanent loss of irrigated cropland and grazing land, the severance of properties, and visual and noise disruption of recreational activities on public and private lands. OEA concludes that these unavoidable impacts on land use and recreation would be locally significant because each of the Action Alternatives would permanently alter existing land use and the availability and quality of recreational activities in the study area, including special designation areas on public lands. However, the Coalition has proposed voluntary mitigation measures and OEA is recommending additional mitigation measures to avoid or minimize impacts on land use and recreation. (*Id.* at 3.11–28.) The Board adopts OEA's reasonable analysis of impacts on land use and recreation and will impose all of OEA's final recommended mitigation.

6. Vehicle Safety and Delay

Construction and operation of any of the Action Alternatives would introduce new vehicles (such as construction vehicles) on public roadways and would require the construction of new at-grade road crossings. (*Id.* at S–10.) Among the three Action Alternatives, the Wells Draw Alternative would involve constructing the most at-grade road crossings and would result in the greatest potential for vehicle accidents and vehicle delays at those new crossings. Because it is the longest Action Alternative, construction of the Wells Draw Alternative would also result in the greatest vehicle disruption. (*Id.* at 3.1–20.) Because it is the shortest Action Alternative and would require the fewest new at-grade road crossings,

the Indian Canyon Alternative would result in the least impacts on vehicle safety and delay. (*Id.*)

Any of the Action Alternatives would generate limited additional road traffic, primarily associated with employees commuting. (*Id.* at 3.1–8.) On some local roads, operations would reduce truck traffic because some freight that is currently transported by truck would move by rail instead. (*Id.*)

To minimize effects on vehicles, OEA recommends that the Board adopt the mitigation measures the Coalition has volunteered as well as various conditions OEA has crafted itself. The voluntary mitigation measures include a requirement for the Coalition to consult with appropriate federal, tribal, state, and local transportation agencies to determine the final design of the at grade crossing warning devices and to follow standard safety designs for at-grade road crossings, among other measures (VM 2). Additionally, OEA is recommending a mitigation measure that would require the Coalition to consult with private landowners and communities affected by new at-grade crossings to identify measures to mitigate impacts on emergency access and evacuation routes and incorporate the results of this consultation into the emergency response plan identified in VM–11 (VSD–MM–6). OEA is also recommending additional mitigation measures, (VSD–MM–4, VSD–MM–5), requiring the Coalition to support Operation Lifesaver educational programs in communities along the Line to help prevent accidents at highway/rail grade crossings and to adhere to Federal Highway Administration regulations for grade-crossing signage. OEA concludes that, if the recommended mitigation measures in the Final EIS are implemented, impacts from the new vehicles and at-grade road crossings would not significantly affect vehicle safety on public roadways or cause significant delay for people traveling on local roads. (*Id.* at S–10.) The Board adopts OEA's reasonable analysis of impacts concerning vehicle safety and delay and will impose the mitigation recommended in the Final EIS.

7. Rail Operations Safety

Operation of any of the Action Alternatives would involve the risk of rail-related accidents, potentially including collisions, derailments, or spills. (*Id.*) Because the Wells Draw Alternative is the longest of the Action Alternatives, OEA predicts that it would have the highest chance of accidents (0.24 to 0.72 accident per year), followed by the Whitmore Park Alternative (0.22 to 0.60 accident per year) and the Indian Canyon Alternative (0.20 to 0.56 accident per year). (*Id.* at 3.2–7.) Given that approximately one in four accidents involving loaded trains would result in a release of some crude oil, OEA predicts that rail operations under the Wells Draw Alternative would result in a spill approximately once every 11 years (under the high rail traffic scenario) to approximately once every 33 years (under the low rail traffic scenario). (*Id.*) Under the Indian Canyon Alternative, a spill would be expected approximately once every 14 to 40 years, while OEA predicts that the Whitmore Park Alternative would experience a spill approximately once every 13 to 36 years, depending on the volume of rail traffic.[8] (*Id.* at 3.2–7 to 8.)

To minimize the likelihood and consequences of accidents during rail operations, the Coalition volunteered mitigation (VM–1, VM–15) to ensure that train operators using the Line would comply with the requirements of the Hazardous Materials Transportation Act, as implemented by the U.S. Department of Transportation, and with Federal Railroad Administration safety requirements, including any applicable speed limits and train-lighting requirements. In addition, OEA is recommending a mitigation measure (ROS–MM–2) that would require the Coalition to inspect, as part of its routine rail inspections or at least twice annually, both track geometry and local terrain conditions. Implementation of this measure would minimize the potential for problems with the track or track bed that could lead to accidents (ROS–MM–2). To ensure that the consequences of a potential accident would be minimized, the Coalition also has committed to developing an internal Emergency Response Plan for operations on the Line. The plan would include a roster of agencies and people to contact for specific types of emergencies during rail operations and maintenance activities, procedures to be followed by particular rail employees in the event of a collision or derailment, emergency routes for vehicles, and the location of emergency equipment (VM–8). In addition, the Coalition's voluntary mitigation measure (VM–14) and OEA's recommended mitigation measure (ROS–MM–1), require the Coalition to immediately notify state and local authorities in the event of a release of crude oil and to immediately commence cleanup actions in compliance with federal, state, and local requirements.

Because the operation of rail lines inherently involves the potential for accidents, some impacts related to rail operations safety in the project study area would be unavoidable. OEA concludes, however, that these impacts would be minimized and would not be significant if the Coalition's voluntary mitigation measures, OEA's recommended mitigation measures, and all applicable federal requirements are implemented. (*Id.* at 3.2–8.) The Board adopts OEA's reasonable analysis of impacts concerning the safety of rail operations and will impose the mitigation recommended in the Final EIS.

8. Air Quality and Greenhouse Gases (GHG)

OEA explains in the Final EIS that during the rail construction phase, construction equipment would emit air pollutants, including criteria air pollutants that could contribute to poor air quality and GHGs that would contribute to climate change. (*Id.* at S–12.) Among the three Action Alternatives, the Wells Draw Alternative would result in the most construction-related air pollution and GHG emissions, followed by the Whitmore Park Alternative and the Indian Canyon Alternative. Emissions from rail construction activities would be temporary and would move continually during the construction period. (*Id.* at 3.7–38.) Construction-related air emissions would not cause concentrations of criteria air pollutants to exceed the National Ambient Air Quality Standards (NAAQS)[9] and would not exceed the de minimis thresholds for air emissions within the Uinta Basin Ozone Nonattainment Area. (*Id.* at S–12.) With implementation of the Coalition's voluntary mitigation measure and OEA's recommended

[8] CBD criticizes the methodologies the Final EIS uses and claims that the Final EIS does not fully disclose its underlying data. However, OEA's analysis methods for assessing impacts related to rail operations safety are widely used and accepted and are consistent with OEA's past practice in railroad construction cases. Agencies are entitled to choose among reasonable methodologies, *Jewell,* 825 F.3d at 584–85, and the EIS fully explains its analysis. (Final EIS Sec. 3.2, App. T–40–41.)

[9] Under the Clean Air Act, USEPA sets air quality standards for six principal pollutants which can be harmful to public health and the environment. USEPA designates areas where criteria air pollutant levels are less than the NAAQS as ''attainment'' areas and where pollutant levels exceed the NAAQS as ''nonattainment'' areas. USEPA designates former nonattainment areas that have attained the NAAQS as ''maintenance'' areas. USEPA has designated the Basin as an attainment area for all pollutants except ozone because measured concentrations of ozone in the eastern part of the Basin have exceeded the NAAQS in winter when the ground is covered by snow and stagnant atmospheric conditions are present (ozone levels at other times have been less than the NAAQS). (*See* Final EIS 3.7–8.)

mitigation measures, OEA concludes that impacts related to air quality and GHG emissions would not be significant. (*Id.* at 3.7–38.)

The State responded to the Final EIS, asking that OEA remove AQ–MM–4, a condition requiring biodiesel fuel to be used during rail construction, and AQ–MM–8, a condition requiring the use of renewable diesel fuel during rail construction. (State Comment 2, Sept. 27, 2021.) The State notes that it already has a Utah Clean Diesel Program and that OEA's recommended measures would pose a regulatory burden. (*Id.*) The Board disagrees with the State's opinion that requiring the Coalition to use alternatives to traditional diesel fuel during construction in order to reduce GHG emissions would pose an undue regulatory burden. Therefore, the Board will not remove these conditions but will further clarify them in the *Board Mitigation* section below. Similarly, the State asks that AQ–MM–9 be removed to encourage voluntary ozone-reduction activities in coordination with the Utah Department of Environmental Quality. (*Id.*) That condition requires, to the extent practicable, that the Coalition avoid conducting project-related construction activities that could result in the emission of ozone precursors within the Uinta Basin Ozone Nonattainment Area in January and February to minimize emissions of ozone. The Board will not remove this condition but, in response to the Coalition's concerns, will modify it to explain that if the Coalition cannot avoid such construction during January and February, it must consult with OEA and the Utah Department of Environmental Quality's Air Quality Division to identify and implement other appropriate ozone-reduction activities for those months.[10]

OEA also examined projected air emissions from rail operations over the Line and finds in the Final EIS that the primary source of emissions would be locomotives. (Final EIS 3.7–38.) Because it is the longest Action Alternative, the Wells Draw Alternative would result in the most emissions of all pollutants, followed by the Whitmore Park Alternative and then the Indian Canyon Alternative. (*Id.*) Based on the air quality modeling, OEA concludes that operation of the Line would not cause air pollutant concentrations to exceed the NAAQS at any location. (*Id.*) Therefore, OEA finds that operation of the Line would not result in significant air quality impacts. (*Id.* at 3.7–39.)

OEA recommends mitigation measures related to GHG emissions, but, as the Final EIS explains, operation of the Line would still result in unavoidable GHG emissions even if these measures are implemented. (*Id.*)[11] However, GHG emissions from rail operations would represent a small percentage (less than one percent) of existing statewide GHG emissions in Utah, (Final EIS Table 3.7–1), and would not contribute significantly to global climate change, (*id.* at 3.7–39).

USEPA's comments on the Final EIS discuss several technical issues related to a computer model that OEA used to predict the dispersion of air pollutants from locomotive emissions along the Line. Those issues, however, also were raised in USEPA's comments on the Draft EIS, and OEA, in response, made changes to its analysis in the Final EIS. (Final EIS App. M (Air Quality Emissions and Modeling Data); App. T–251.) USEPA also expresses concern that OEA's use of a ''flagpole height'' (*i.e.,* the height above the ground for which the model predicts the concentration of a pollutant) for one of the modeling scenarios described in the Final EIS might under-predict air pollutant concentrations for that modeling scenario. After receiving USEPA's letter, OEA reran the model scenario without using a flagpole height, as USEPA had recommended, and found the new results to be identical to the results reported in the Final EIS. Therefore, no further air quality modeling is necessary to support OEA's conclusions, and the Board agrees with OEA's determination that the Line would not significantly affect air quality in the project area.[12]

9. Increased Oil and Gas Drilling and Other Cumulative Impacts

Under NEPA, agencies must analyze direct, indirect, and cumulative impacts. 40 CFR 1502.16, 1508.7, 1508.8, 1508.25 (as applicable in 2019). To do that, OEA reviewed information on relevant past, present, and reasonably foreseeable projects and actions that could have impacts that coincide in time and location with the potential impacts of the proposed rail line. (Final EIS S–13.) OEA identified 27 relevant projects, including facility and infrastructure improvements, watershed improvements, road improvements, two interstate electric power transmission projects, one crude oil processing facility, one Programmatic Agreement for cultural resource preservation, projects on Forest Service lands, and projects on BLM-administered lands. (*Id.*) Based on the cumulative impacts analysis, OEA concludes that the impacts of those projects in combination with the impacts of construction and operation of the Line could result in cumulative adverse impacts on water resources, biological resources, paleontological resources, land use and recreation, visual resources, and socioeconomics. (*Id.*)

Apart from these 27 projects, OEA's cumulative impacts assessment also includes an analysis of potential future oil and gas development in the Basin and the potential future construction and operation of new rail terminal facilities near Myton and Leland Bench, Utah. (*Id.*) Although OEA expected that the Line would divert to rail transportation some oil that in the past has been trucked to terminals outside the Basin, OEA assumed, for purposes of the cumulative-impacts analysis, that all oil transported on the Line would come from new production. (*Id.* at 3.15–4.) For the analysis of potential cumulative impacts, OEA developed two potential scenarios for future oil and gas development in the Basin that correspond to the Coalition's estimated range of rail traffic. (*Id.* at 3.15–3.) Under the high oil production scenario, total oil production in the Basin would increase by an average of 350,000 barrels per day and result in 3,330 wells over the first 15 years. (*Id.* at 3.15–4 to 6.)

As explained in the Final EIS, construction and operation of any of the Action Alternatives would, along with oil and gas development activities in the Basin, contribute to increased vehicle trips in the cumulative impacts study area that could increase the potential for vehicle safety and delay impacts. (*Id.* at 3.15–10.) Under the high oil production

[10] CBD states that OEA should use the most recent global warming potential (GWP) values in calculating GHG emissions from the Line and other projects in the area. (CBD Comment 37, Oct. 18, 2021.) OEA appropriately used the GWP values from the Intergovernmental Panel on Climate Change's (IPCC) Fourth Assessment Report from 2007, consistent with international GHG reporting standards under the United Nations Framework Convention on Climate Change.

[11] CBD states that the Board should require the railroad to achieve net-zero emissions, including emissions from oil and gas production in the Basin and downstream uses of oil transported on the rail line. (CBD Comment 44–45, Oct. 18, 2021.) This would be an unprecedented mitigation that is not mandated by any federal or applicable state regulatory requirement and would likely be impossible to implement as proposed.

[12] As part of its further claim that OEA's analysis of climate change is insufficient, CBD lists multiple methods that it asserts OEA should have used in its analysis of climate change, such as social cost of carbon, carbon budgeting, and carbon ''lock-in.'' (CBD Comment 37–42, Oct. 18, 2021.) Use of these methodologies, however, is not required under NEPA or its implementing regulations, and the existence of alternative tools for analysis does not support a conclusion that the methodologies used in the EIS were insufficient. (Final EIS, App. T–280, T–283, T–430–31); *see also Jewell,* 825 F.3d at 584–85 (agencies are entitled to choose among reasonable methodologies).

scenario, traffic would increase by a maximum of 6% on the major roadways, leaving substantial remaining capacity. (*Id.* at 3.15–13.) Local roads, however, have smaller roadway capacity, and OEA concludes that the increase in traffic on local roads used to serve the terminals could result in significant cumulative impacts on vehicle delay in the absence of road improvements or other mitigation. (*Id.*)

Additionally, OEA concludes that vehicle traffic stemming from increased oil and gas development would not result in significant cumulative impacts on vehicle safety. (*Id.* at 3.15–15.) OEA notes, among other things, that vehicle safety in the study area is generally good and that crash rates in Uintah and Duchesne Counties, where most oil and gas activity is occurring, are below the national average. (*Id.*)

As to air quality and climate change, OEA assumed that total air pollutant emissions each year would vary according to the number of wells constructed in that year. (*Id.* at 3.15–33.) Once a well is producing, emissions occur from operations and maintenance activities, which generate truck trips to the well site, and from trucks that transport the crude oil to the rail terminals. Emissions also occur from venting, flaring, equipment leaks, and engine exhaust from equipment located at operating wells. (*Id.* at 3.15–34.) OEA estimated aggregate emissions from potential future oil and gas development based on the best available information regarding emissions from oil and gas production in the Basin. (*Id.* at Table 3.15–11.) However, OEA determined the specific locations of localized air quality impacts in the cumulative impacts study area are not known because there are no available data on the characteristics or local site conditions of potential future oil and gas development projects. (*Id.* at 3.15–33.)

OEA adds that refiners would refine the crude oil transported by the Line into various fuels and other products. To the extent that the crude oil would be refined into fuels that would be combusted to produce energy, emissions from the combustion of the fuels would produce GHG emissions that would contribute to global warming and climate change. (*Id.* at 3.15–35.) Downstream end use emissions associated with the combustion of the crude oil that could be transported on the Line under the high oil production scenario could represent up to approximately 0.8% of nationwide GHG emissions and 0.1% of global GHG emissions. (*Id.* at 3.15–36.) However, the actual volumes of crude oil that would move over the Line would depend on various independent variables and influences, including general domestic and global economic conditions, commodity pricing, the strategic and capital investment decisions of oil producers, and future market demand for crude oil from the Basin, which would be determined by global crude oil prices and capacity at oil refineries, among other factors. (*Id.* at 3.15–3). Furthermore, to the extent that crude oil transported on the Line could be refined into products other than fuel and, to the extent that the fuels produced from crude oil transported on the Line could displace other fuels from the market, GHG emissions from downstream end uses would be lower, and potentially significantly lower, than these estimates.

OEA also reasonably explains that benefits would result from the increase in annual oil production. Notably, increased production would generate long-term employment, labor income, and spending on goods and services in the cumulative impacts study area.[13] Increased production would also generate state and local revenue through taxes. Additionally, new wells drilled on state land or accessing state minerals would generate additional revenue for Utah through royalties and lease payments. (*Id.* at 3.15–51.)

CBD asserts that the Final EIS is insufficient because it fails to treat a potential future increase in oil and gas production in the Basin and downstream emissions from the end uses of oil transported on the Line as indirect impacts of the project. And, as a result, CBD argues that the Final EIS does not sufficiently disclose the impacts of increased oil and gas production in the Basin that could occur as a result of the Line. (CBD Comment 8–14, Oct. 18, 2021.)

Indirect effects are reasonably foreseeable effects that are caused by the action but that are later in time or farther removed in distance. 40 CFR 1508.8. An indirect effect is more than something that could not occur ''but for'' the federal action at issue and, instead, to be an indirect effect of an action under NEPA requires a reasonably close causal connection. *Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. 752, 767–68, 770–72 (2004); *see also Metro. Edison Co.* v. *People Against Nuclear Energy,* 460 U.S. 766, 774 (1983). Thus, when an agency ''has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect'' for NEPA purposes. *Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. at 770. Here, the Board has no authority or jurisdiction over development of oil and gas in the Basin nor any authority to control or mitigate the impacts of any such development. Accordingly, contrary to CBD's argument, the fact that this oil and gas development likely would not occur ''but for'' the Board granting authority to construct and operate the Line does not make this an indirect effect. OEA properly declined to treat oil and gas development as an indirect effect.

This does not mean that OEA did not consider effects of potential oil and gas development in the Basin. Rather, OEA determined that impacts from potential oil and gas development should be considered as a cumulative impact and conducted a full and appropriate analysis of those impacts. (Final EIS Sec. 3.15.4.1.) Cumulative impacts are those which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. 40 CFR 1508.7. Oil and gas development that may occur following authorization of the Line would entail many separate and independent projects that have not yet been proposed or planned and that could occur on private, state, tribal, or federal land and could range in scale from a single vertical oil well to a large lease involving many horizontal wells.[14] As a result, the Board agrees with OEA that this development was properly considered as a cumulative impact.[15]

CBD asserts that OEA erred in relying, in part, on the results of an EIS prepared by the BLM for the Monument Butte Oil and Gas Development Project to predict potential air emissions that could result from future oil and gas production in the Basin as part of OEA's cumulative impacts analysis.[16] (CBD Comment 3–4,

[13] Constructing and operating any of the Action Alternatives would also generate direct, indirect, and induced employment, including for tribal members, and create state and local revenue. (*Id.* at 3.13–26 to 33.)

[14] Furthermore, regardless of whether the EIS labeled the impacts from oil and gas development in the Basin as indirect or cumulative impacts, OEA conducted a full analysis of those effects. The impacts and the analysis of those impacts would be the same no matter which label is used.

[15] CBD levels several additional criticisms of OEA's analysis of potential oil and gas development in the Basin, including claims of inconsistent statements and conclusions. But the Board will not directly address those here because a fair reading of the Final EIS shows that they are based on mischaracterizations of the statements in the Final EIS that CBD relies on and the thorough analysis OEA conducted. (*See* CBD Comment 10–13, Oct. 18, 2021; Final EIS Sec. 3.15.4.1.)

[16] CBD also asserts that the EIS fails to properly account for Clean Air Act requirements for Uinta

Continued

26–36, Oct. 18, 2021.) The Monument Butte EIS was a study of a proposed oil development project in the Basin and OEA relied, in part, on the results of that study to make conclusions about the cumulative air quality impacts of potential future oil and gas production in the Basin when considered in combination with the potential air quality impacts that could result from construction and operation of the Line. (Final EIS 3.15–32.) OEA's use of the results of the Monument Butte EIS in the cumulative impacts analysis was reasonable and appropriate because the Monument Butte EIS provides the best available information regarding potential air emissions from oil and gas production projects in the Basin. (Final EIS App. T–266, T–401–407.)

10. Downline Impacts

As part of its analysis of impacts, OEA examined downline impacts of the project, *i.e.,* reasonably foreseeable impacts that could occur outside the project area as a result of construction and/or operation of trains using the Line. (*See* Final EIS, Sec. 3.1 (Vehicle Safety and Delay), Sec. 3.2 (Rail Operations Safety), Sec. 3.6 (Noise and Vibration), Sec. 3.7 (Air Quality and Greenhouse Gases).) The Board's regulations at 49 CFR 1105.7(e)(11)(v) governing review of potential downline impacts refer to the general thresholds for environmental review concerning air quality and noise. 49 CFR 1105.7(e)(5); 1105.7(e)(6). Consistent with prior practice and based on its experience, OEA determined that these regulatory thresholds should also apply to the analysis of downline impacts on freight rail safety and grade-crossing safety and delay in the EIS here. *See Tongue River R.R.—Constr. & Operation—in Custer, Powder River, & Rosebud Cntys., Mont.,* FD 30186, Draft EIS at Sec.17.1 (STB served Apr. 17, 2015). That approach is reasonable, as the rationale for finding that minimal increases in train traffic on existing rail lines over which trains already operate are unlikely to cause significant impacts on air quality and, furthermore, that noise applies equally to potential effects on rail safety and grade-crossing safety and delay.

There are many different potential destinations for Uinta Basin oil transported by train and even more practical routes available to reach those destinations. Because it is not possible to identify specific refineries that would receive shipments of Uinta crude oil, in order to assess downline impacts, OEA first identified potential refinery destinations for Uinta crude oil using a regional approach. (*See* Final EIS App. C.) After those regions were identified, OEA then considered potential routing to those destinations and where the estimated project-related rail traffic would exceed the Board's regulatory thresholds. (*Id.*) Using the predicted number and length of trains, OEA's analysis of likely regional destinations, and the projected reasonably foreseeable routes for this traffic, OEA identified a downline impact study area eastward from Kyune to the northern, southern, and eastern edges of the Denver Metro/North Front Range that met the Board's regulatory thresholds for analysis and assessed impacts in that downline study area. (*Id.*) Using its analysis of predicted destinations, OEA further concluded that rail traffic outside of the downline study area would be dispersed and that no individual rail lines outside of the downline study area can reasonably be expected to experience an increase in rail traffic in excess of OEA's analysis thresholds. Therefore, the Final EIS concludes that an analysis of downline impacts on existing rail lines outside of the downline study area would not be appropriate.

CBD objects to both the application of the Board's regulatory thresholds to rail safety and delay, environmental justice, and GHG emissions from refining Uinta crude oil, as well as the validity of the thresholds themselves. According to CBD, the Board's thresholds prevent analysis of reasonably foreseeable impacts. (CBD Comment 14–18, Oct. 18, 2021.) As noted above, the regulatory thresholds place reasonable limits on OEA's assessment of certain impacts because minimal increases in train traffic on existing rail lines already in use are not likely to result in significant additional impacts required to be analyzed under NEPA. And indeed, CBD points to nothing that would indicate that the downline impacts here would be significant but instead relies on speculation. (*Id.*)

NEPA does not require agencies to examine every possibility that an impact could occur no matter how speculative, nor does it require agencies to analyze the impacts of effects over which it has no control because evaluation of those impacts would not inform the agency's decision-making. *See Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. at 768–70; *Jewell,* 825 F.3d at 583 (agencies are entitled to make reasonable inferences based upon the data); *Andrus,* 619 F.2d at 1375–76 (discussion of environmental effects must be governed by ''rule of reason'' and NEPA does not require every action to be discussed in exhaustive detail). Because the Board cannot regulate downline train operations by other carriers as part of this proceeding, it cannot regulate or mitigate impacts caused by those downline operations. The type of analysis that CBD claims is necessary is therefore neither required nor useful. As a result, OEA's application of the thresholds here was appropriate, reasonable, and consistent with NEPA and the regional analysis of downline rail operations complies with NEPA.

CBD also asserts that OEA should have included in its downline analysis impacts from operation of trains carrying Uinta crude oil on the Tennessee Pass Line. (CBD Comment 18–19, Oct. 18, 2021.) The Tennessee Pass Line is a line of railroad in Colorado that is owned by UP and has been out of service for many years. *See Colo., Midland & Pac. Ry.—Lease & Operation Exemption Containing Interchange Commitment—Union Pac. R.R.,* FD 36471, slip op. at 1, 4–5 (STB served Mar. 25, 2021). As discussed in the Board's *September 30 Decision,* even if it were in service, the Tennessee Pass Line would be unlikely to carry Uinta crude oil. *September 30 Decision,* FD 36284, slip op. at 6. Among other things, the Board noted that the modeling program used by OEA to examine the patterns for traffic coming off the Line did not forecast any traffic travelling over the Tennessee Pass Line. (Final EIS, App. C, C–4, C–6.) Instead, OEA projects that ''all rail traffic moving from Kyune to destinations in the east would travel over the existing rail line between Kyune and Denver, Colorado.'' (*Id.* at C–4.) [17] Thus, the Board agrees with OEA that analysis of impacts from use of the Tennessee Pass Line is not reasonably foreseeable and, therefore, not appropriate for consideration in the EIS.

11. Tribal Concerns

OEA coordinated and consulted with tribes in accordance with NEPA, Executive Order 13175, and Section 106 of the National Historic Preservation Act (NHPA). (Final EIS 5–7.) Through government-to-government consultation

Basin as a nonattainment area. (CBD Comment 33–35, Oct. 18, 2021.) The record contradicts CBD's claim that the EIS failed to consider those impacts or comprehensively explain how it came to conclusions regarding the same. (*See* Final EIS Sec. 3.7.1.1; 3.15.5.7; App. M; App. T–268–69, T–271–76, T–401–02.)

[17] The Coalition provided additional support for OEA's independent analysis by submitting a verified statement from Rio Grande Pacific Corporation, the proposed operator of the Line, stating that it has no intention of routing trains originating on the Line over the Tennessee Pass Line and that using the Tennessee Pass Line to transport crude oil would be impractical and the highest-cost option. (Coal. Reply, V.S. Hemphill 2, Jan. 26, 2021.)

with the Ute Indian Tribe,[18] OEA identified impacts related to vehicle safety and delay, rail operations safety, biological resources, air emissions, and cultural resources as areas of concern for the tribe. (*Id.* at S–9.) To mitigate the impacts, OEA has crafted mitigation measures that require the Coalition to work with the Ute Indian Tribe to address issues of tribal concern. In particular, OEA worked with the Ute Indian Tribe and other Section 106 consulting parties to develop a Programmatic Agreement, which has been executed, that sets forth how cultural resources would be protected if the Board were to authorize the Line. (*Id.* at S–9 to 10.) In addition, OEA has identified impacts on the Pariette cactus and the Uinta Basin hookless cactus as disproportionately high and adverse impacts on an environmental justice community. Because those species are culturally important to the Ute Indian Tribe, OEA is recommending mitigation requiring the Coalition to consult with the Ute Indian Tribe regarding impacts on those special status plant species and to abide by the tribe's requirements for addressing the impacts. (*Id.* at S–10.)

NHPA

In accordance with Section 106 of NHPA, OEA surveyed the project area, identified historic properties, and consulted with interested parties regarding the potential effects of the project on these properties. Construction of the proposed rail line would physically alter and potentially destroy cultural resources located within the below-ground portion of the area of potential effects (APE) (the project footprint plus a 50-foot buffer). (*Id.* at 3.9–13.) The APE for the Indian Canyon Alternative includes 16 known historic properties, the APE for the Wells Draw Alternative includes 19 known historic properties, and the APE for the Whitmore Park Alternative includes 16 known historic properties. (*Id.* at 3.9–13 to 16.) Some of these resources could be altered or destroyed during construction of the Line. (*Id.*)

Because the APEs have not been surveyed comprehensively, OEA concludes that additional cultural resources, such as previously unidentified archeological sites, are likely to be present in the APEs and could be impacted by construction and operation of the proposed rail line. (*Id.* at 3.9–17.) To ensure that any adverse effects on historic and cultural resources are appropriately avoided, minimized, or mitigated, OEA recommends that the Coalition be required to comply with the terms of the executed Programmatic Agreement discussed above. (VM–42, VM–43). The Board adopts OEA's thorough and reasonable analysis under NHPA and will impose the recommended mitigation requiring the Coalition to comply with the Programmatic Agreement.

Environmentally Preferable Alternative

Based on OEA's analysis and consultation with appropriate government agencies, the Ute Indian Tribe, other interested stakeholders, and the public, OEA concludes that, among the three Action Alternatives, the Whitmore Park Alternative would result in the fewest significant impacts on the environment. (Final EIS S–13.) In particular, the Whitmore Park Alternative would permanently affect the smallest area of water resources, including wetlands and perennial streams; would minimize impacts on greater sage-grouse leks and associated summer brood rearing habitat, as discussed above; and avoid impacts on subdivided residential areas. (*Id.*)

The Final EIS explains that, compared to the Wells Draw Alternative, the Whitmore Park Alternative would permanently and temporarily affect a smaller area of wetlands and intermittent streams, as well as a smaller number of springs. (*Id.*) It would avoid impacts on special use areas on BLM-administered lands, including Areas of Critical Environmental Concern, Lands with Wilderness Characteristics, and areas classified by BLM as sensitive to visual impacts. The Whitmore Park Alternative also would affect a smaller area of suitable habitat for the Pariette cactus and Uinta Basin hookless cactus than the Wells Draw Alternative and would avoid potential impacts on moderately suitable habitat for the threatened Mexican spotted owl and a smaller area of big game habitat. (*Id.*) In addition, it would result in fewer total emissions of criteria air pollutants and GHGs during construction and rail operations; would cross a smaller area of land that may be prone to landslides; would displace fewer residences; would involve a lower risk for accidents at at-grade road crossings; and would cross a smaller area with high potential for wildfires. (*Id.*)

Compared to the Indian Canyon Alternative, the Whitmore Park Alternative would permanently and temporarily affect a smaller area of wetlands, a smaller area of riparian habitat, and a smaller number of springs and would also require fewer stream realignments. (*Id.* at S–14.) It would avoid noise impacts on residences during rail operations, as well as visual and other impacts on residential areas in the Argyle Canyon and Duchesne Mini-Ranches areas of Duchesne County. (*Id.*) The Whitmore Park Alternative would generate more employment, labor income, and local and state tax revenue during construction than the Indian Canyon Alternative and would cross a smaller area of geological units that may be prone to landslides and a smaller area of land with high wildfire hazard potential. (*Id.*) For these reasons, OEA recommends that the Board authorize the Whitmore Park Alternative if it grants final approval to the Line. (*Id.*) For the reasons discussed above and in the Draft and Final EIS, the Whitmore Park Alternative is the alternative the Board approves.

Board Conclusions on Environmental Analysis

Upon consideration of the Draft EIS, the environmental comments submitted to the Board, and the Final EIS, the Board is satisfied that the Draft and Final EIS have taken the requisite ''hard look'' at the potential environmental impacts associated with this transaction. The Draft and Final EIS adequately identify and assess the environmental impacts discovered during the course of the environmental review, carefully consider a reasonable range of alternatives (including a No Action Alternative), and include extensive environmental mitigation to avoid or minimize potential environmental impacts. Accordingly, the Board adopts the Draft and Final EIS and all of OEA's analysis and conclusions, including those not specifically addressed here. The Board finds that OEA's recommended Environmentally Preferable Alternative (Whitmore Park Alternative) best satisfies the purpose and need for the Line, while minimizing potential impacts to residential areas, water resources, and greater sage-grouse leks and associated summer brood rearing habitat.

Board Mitigation

The Draft and Final EIS demonstrate that construction of the Whitmore Park Alternative would result in impacts on the environment, including impacts not discussed in this decision. However, the mitigation measures voluntarily proposed by the Coalition along with the mitigation developed by OEA during its environmental review should minimize the potential environmental effects of the transaction to the extent practicable. The Board will therefore impose the voluntary mitigation measures developed by the Coalition

[18] As noted earlier, the Ute Indian Tribe filed a letter on October 1, 2021, in support of the project.

and, except as discussed above, all of the additional mitigation measures recommended by OEA. In addition to the impacts discussed above, the mitigation measures appropriately address a number of other environmental issues assessed in the Draft and Final EIS, including impacts concerning water resources, wayside noise, and hazardous materials. The Board will also adopt the changes to mitigation measures concerning air quality and the greater sage-grouse following issuance of the Final EIS, which are discussed above, as well as modify a condition in the Final EIS concerning big game migration routes, BIO–MM–19.[19] The Coalition will also be required to comply with the executed Programmatic Agreement developed to address potential adverse impacts to cultural resources.

Weighing Environmental Impacts and Transportation Merits and Considering Appropriateness of an Exemption

The Board recognizes that, as with most other rail construction projects, the construction and operation of this Line is likely to produce unavoidable environmental impacts. But the Board also finds that the construction and operation of the Environmentally Preferred Whitmore Park Alternative, with the extensive mitigation conditions imposed, will minimize those impacts to the extent practicable. And the construction and operation of this Line will have substantial transportation and economic benefits. As noted above, the Line will bring rail service to an area of Utah that does not currently have service, provide shippers that must now rely on trucks another shipping option, and create jobs. (*See, e.g.,* Congressional Letter 1, June 28, 2021.) Rail service will eliminate longstanding transportation constraints. The availability of a more cost-effective rail transportation option could also support the diversification of local economies in the Basin, which could support additional employment and expand the regional economy. (*See* Governor Cox & Lieutenant Governor Henderson Letter 1, Aug. 30, 2021.) Moreover, the Board notes the Ute Indian Tribe's support of the project and the benefits that the Tribe has stated that it will provide. While the No-Action Alternative would avoid the potential environmental impacts of the rail project, it would not bring these benefits to the Basin or meet the goals of the counties making up the Coalition or the Ute Indian Tribe. The environmental impacts identified in the Draft and Final EIS have been sufficiently mitigated so that they do not outweigh the Line's transportation benefits. Moreover, as explained in the Board's *January 5 Decision* (slip op. at 5–6), the Board can grant the Coalition's request for authority even if all issues involving financing are not yet resolved because the grant of authority is permissive, not mandatory, and the ultimate decision on whether to proceed will be in the hands of the Coalition and the marketplace, not the Board.[20] A grant of authority permits a new line to be built if the necessary financing is obtained. Without moving forward with the process needed to obtain Board authority, however, no new rail lines could be built, regardless of how viable the projects might be.

Concerning the appropriateness of an exemption, one would further the RTP goals at section 10101 (2), (4), (5), and (7). As noted above, however, Argyle claims that the RTP goals at section 10101(8), concerning public safety, and section 10101(11), concerning safe working conditions, would be undermined by the project. (Argyle Reply 9, July 7, 2020.) Argyle asserts that there will be a substantial increase in local truck traffic if oil production were to increase to the extent claimed by the Coalition. (*Id.* at 10.) Argyle also claims, among other things, that rail activities could trigger forest fires and notes that Argyle Canyon was heavily damaged by a fire in 2012. (*Id.*) Similarly, CBD argues that the project's many significant environmental impacts, the undefined nature of certain mitigation measures proposed in the EIS and BO, and questions about the project's financial viability require more extensive proceedings to determine whether the project is financially able to avoid and/or mitigate the project's environmental effects and operate without detriment to the public health and safety. (CBD Comment 6, Oct. 18, 2021.)

These concerns do not warrant denying the petition for exemption. The Board properly considered the statutory standards that govern exemption requests in the *January 5 Decision* and the *September 30 Decision.* The record developed in this proceeding is substantial, and additional regulatory processes would not likely add to the substance of what has been presented. OEA has demonstrated in its Final EIS that there only would be a small risk of forest fire based on various factors such as the geography crossed by the Whitmore Park Alternative and that any harm would be lessened by the extensive mitigation measures the Board imposes here. Similarly, truck traffic would not significantly increase on major roads as a result of construction and operation of the Line and problems on local roads would be lessened by the mitigation measures the Board will impose. As for CBD's concerns regarding the mitigation, these were previously raised in CBD's comments on the Draft EIS and were appropriately addressed by OEA in the Final EIS. Further, the Board is modifying a number of the mitigation measures that CBD and the State identified as unclear or inadequately defined. The Board need not revisit the financial concerns CBD raises as the Board already discussed those issues in its *January 5 Decision.*

In sum, the transportation merits of the project outweigh the environmental impacts and the Coalition has demonstrated that an exemption from section 10901 is appropriate. There also is a presumption that rail construction projects are in the public interest. Section 10901(c) provides that the Board ''shall issue a certificate [authorizing construction activities] [. . .] unless the Board finds that such activities are inconsistent with the public convenience and necessity.'' Recognizing the presumption, the Board finds that this project should be approved.

Conclusions

The Board is satisfied that the Whitmore Park Alternative will meet the transportation goals of the project. Accordingly, the Board reaffirms here the analysis it discussed in the *January 5 Decision.*

After weighing the transportation merits and environmental impacts and considering the entire record, the Board finds that the Coalition's petition for exemption under section 10502 from the prior approval requirements of section 10901 should be granted. The Board is granting final approval of the construction and operation of the Environmentally Preferable Alternative—Whitmore Park Alternative—subject to compliance with the environmental mitigation measures listed in Appendix B of this decision.

It is ordered:

1. The filings commenting on the Final EIS are accepted into the record.

[19] Specifically, in light of concerns by CBD, (*see* CBD Comment 58–62, Oct. 18, 2021), the Board will amend the condition to require the big game corridor crossing plan to evaluate the use of big game overpasses or underpasses (including standards for design), wildlife friendly fencing, reduced train speeds in high-risk areas, use of sound signaling, and barriers in collision hotspots.

[20] The Board notes that the Coalition has stated its ''plans for financing the project through a private partner'' and that ''the project will be privately financed.'' (Coal. Reply 12–13, July 21, 2020.)

2. Under 49 U.S.C. 10502, the Board exempts the Coalition's construction and operation of the above-described rail line from the prior approval requirements of 49 U.S.C. 10901.

3. The Board adopts the environmental mitigation measures set forth in Appendix B to this decision and imposes them as conditions to the exemption granted here.

4. Notice will be published in the **Federal Register**.

5. Petitions for reconsideration must be filed by January 4, 2022.

6. This decision is effective on January 14, 2022.

Decided: December 15, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz. Board Member Oberman dissented with a separate expression

Board Member Oberman, Dissenting

I respectfully dissent from today's decision (*Today's Decision*) granting the Coalition's petition for exemption. The project's environmental impacts outweigh its transportation merits, and I would accordingly deny the Coalition authority to construct the Line.

As an initial matter, as I explained in my dissent to the *January 5 Decision,* the Board should not have utilized a so-called two-step process and granted preliminary approval of the transportation merits before completion of the environmental review. In addition, the Board should have required the Coalition to submit additional information before concluding that an application under 49 U.S.C. 10901 was not necessary. I raised grave concerns then regarding the Line's financial viability given the increasingly uncertain global market for crude oil, and the likelihood that it would be the public—and not private investors—who would bear the cost of constructing an ultimately unprofitable rail project. These concerns have grown over the last year, as the world economy has accelerated its transition away from use of the internal combustion engine and corresponding need for crude oil. Ever increasing doubt about the future market for oil undermines the project's transportation merits and counsels against an exemption.

But now that the environmental review has been completed, I have concluded not only that the financial viability of the Line is in serious doubt but also that the Line's environmental impacts significantly outweigh its transportation merits. In my view, it should be underscored that the Board has the power to deny construction approval based on weighing all of the environmental impacts that will arise from oil and gas development in the Basin, and the Board should consider those impacts as the reasonably foreseeable, indirect effects that they are, especially since the ''entire purpose'' of this Line is to stimulate and support oil production in the Basin. Assessing these impacts solely within a cumulative impact analysis, as *Today's Decision* does, badly understates their significance, and in particular the significance of downstream greenhouse gas emissions that will result from the combustion of oil moved over the Line. The critical question presented in this proceeding is whether the Line would serve the public interest given its centrality to oil development in the Basin and the broader and dire global warming crisis, *as well as* the very serious, significant, and unavoidable environmental impacts that *Today's Decision does* in fact attribute to the project.

Absent some particularized national need for increased oil from the Basin, of which there is none, I cannot support construction of the Line.

Transportation Merits

As noted in my dissent to the *January 5 Decision,* it is beyond controversy that the project's financial success depends entirely upon increased oil production in the Uinta Basin. *January 5 Decision,* FD 36284, slip op. at 14 (Board Member Oberman dissenting). But yet, questions abound regarding the ''future global demand for oil,'' as well as the ''quantity of oil reserves in the Basin, the demand for the specific type of oil found there, and whether there are sufficient proven reserves to provide long term business for the proposed railroad.'' *Id.* at 16, 17.

Although the price of oil has rebounded since the *January 5 Decision,* it remains volatile. Moreover, since that time, government and business leaders have advanced new commitments and policies to achieve carbon neutrality in the coming years, with diminished use of the internal combustion engine—and resulting oil consumption—playing a significant role. At the federal level, the United States has rejoined the Paris Agreement and the Biden Administration has set a goal of achieving net-zero emissions economy-wide by 2050. *See Tackling the Climate Crisis at Home and Abroad,* Exec. Order No. 14008, 86 FR 7619 (Jan. 27, 2021). The President has even more recently called for 50% of all new passenger cars and light trucks sold in the United States to be zero-emission by 2030 and, to help achieve this goal, has directed the Environmental Protection Agency and Department of Transportation to develop new emission and fuel efficiency standards.[1] *Strengthening Am. Leadership in Clean Cars & Trucks,* Exec. Order 14037, 86 FR 43583 (Aug. 5, 2021). Critically, Congress recently passed the Infrastructure Investment and Jobs Act, which, among other things, provides $7.5 billion for electric vehicle charging stations, $5.75 billion for the replacement of public transit vehicles with zero emission vehicles, and establishes a carbon reduction program at the Department of Transportation. *See* Public Law 117–58 (2021).[2]

States as well have passed new legislation meant to curb oil consumption and have continued to award grants for, or have otherwise initiated, green infrastructure projects, including to support vehicle electrification. *See, e.g.,* Act of Mar. 18, 2021, ch. 263, 2021 Va. Legis. Serv. (H.B. 1965) (West) (codified at Va. Code Ann. section 10.1–1307 & 10.1–1307.04) (establishing low-emissions and zero-emissions vehicle program for motor vehicles, consistent with California standards, with a model year of 2025 or later); Washington Climate Commitment Act, ch. 316, 2021 Wash. Sess. Laws 2606 (creating, among other things, greenhouse gas cap-and-invest program that includes declining limits on major emission sources); Press Release, Cal. Energy Comm'n, California Announces $17.5 million for Public Electric Vehicle Charging in 13 Rural Counties (May 17, 2021) (advancing September 2020 executive order requiring sales of all new passenger vehicles in California to be zero-emission by 2035).[3] Such action has not been limited to the United States. For example, the European Commission in July proposed expanding the EU's emissions trading scheme, strengthening vehicle emissions standards, including by

[1] *See also* Executive Order on Catalyzing Clean Energy Industries and Jobs through Federal Sustainability, Exec. Order 14057, 86 FR 70935 (Dec. 8, 2021) (directing executive agencies to achieve 100% zero-emission vehicle acquisitions by 2035).

[2] On November 19, 2021, the House of Representatives passed the Build Back Better Act, which among other things, raises the electric vehicle tax credit to $12,500 and provides tens of billions of dollars for electric vehicle infrastructure and the replacement of heavy-duty vehicles with zero emissions vehicles. *See* H.R. 5376, 117th Cong. (2021).

[3] Available at: *https://www.energy.ca.gov/newsroom/news-releases.* This builds on the California Public Utilities Commission's (CPUC) prior approval of a $437 million electric vehicle charging program to be implemented by Southern California Edison. See Press Release, CPUC, CPUC Expands SCE Charge Ready 2 Transportation Electrification Program (Aug. 27, 2020), *https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M345/K822/345822512.PDF.*

requiring that all new cars be zero emission by 2035, and introducing a carbon price on imports. Press Release, European Commission, European Green Deal: Commission Proposes Transformation of EU Economy and Society to Meet Climate Ambitions (July 16, 2021).[4] And, on May 26, 2021, a Dutch court stunningly ordered Royal Dutch Shell (Shell) to reduce its carbon dioxide emissions, arising both from its business operations and sold energy-carrying products, by net 45% by the end of 2030, relative to 2019 levels. Rb. Hague 26 mei 2021, ECLI:NL:RBDHA:2021:5337 (Vereniging Milieudefensie/Royal Dutch Shell PLC).[5]

In response to these trends, and ominously for the future of oil proposed to be extracted from the Basin and the Line's fiscal foundation, car manufacturers are increasingly committing to the sale of electric vehicles in the coming years. Immediately following President Biden's executive order on clean cars and trucks, Ford, General Motors and Stellantis jointly announced their intention to achieve sales of 40–50% of annual U.S. volumes of electric vehicles by 2030. Press Release, General Motors, Ford, GM and Stellantis Joint Statement of Electric Vehicle Annual Sales (Aug. 5, 2021).[6] Volkswagen has set a similar global sales target for 2030, while by that date Ford has separately committed to sell only electric passenger vehicles in Europe. Press Release, Volkswagen Group, NEW AUTO: Volkswagen Group Set to Unleash Value in Battery-Electric Autonomous Mobility World (July 13, 2021);[7] Press Release, Ford Motor Co., Ford Europe Goes All-In on EVs on Road to Sustainable Profitability (Feb. 17, 2021).[8]

Other automakers have announced time horizons for transitioning to fully electrified vehicle fleets, including as early as 2025. *See, e.g.,* Press Release, Volvo Car USA, Volvo Cars to be Fully Electric by 2030 (Mar. 2, 2021);[9] Press Release, Tata Motors, Jaguar Land Rover Reimagines the Future of Modern Luxury by Design (Feb. 15, 2021) (announcing that Jaguar vehicles will be ''all-electric'' by 2025);[10] *see also* Press Release, Nissan Motor Corp., Nissan Unveils Ambition 2030 Vision to Empower Mobility and Beyond (Nov. 28, 2021) (announcing investments of $17.6 billion over the next five years to accelerate the electrification of its vehicle lineup).[11] Prevailing company valuations highlight the internal combustion engine's bleak future, with electric vehicle manufacturers Tesla and Rivian currently having enterprise values of approximately $1 trillion and $100 billion, respectively, making them the first and third most valuable automobile manufactures by market capitalization. *See* Yahoo Finance, *https://finance.yahoo.com/screener/predefined/auto_manufacturers/* (last visited Dec. 14, 2021).

Not surprisingly, the American oil majors uniformly identify increased political and social attention to greenhouse gas emissions as risks that may result in reduced demand for their oil. *See, e.g.,* ConocoPhilips, Annual Report (Form 10–K) 27 (Feb. 16, 2021) (''[T]he new administration has recommitted the United States to the Paris Agreement, and a significant number of U.S. state and local governments and major corporations headquartered in the U.S. have also announced their intention to satisfy [the Paris Agreement] commitments.''); Pioneer Natural Resources Co., Annual Report (Form 10–K) 28 (Mar. 1, 2021) (noting that numerous proposals ''have been made and could continue to be made at the international, national, regional and state levels of government to monitor and limit existing emissions of GHGs as well as to restrict or eliminate such future emissions''); Chevron Corp., Annual Report (Form 10–K) 22 (Feb. 25, 2021) (''[I]f new legislation, regulation, or other governmental action contributes to a decline in the demand for the company's products, this could have a material adverse effect on the company and its financial condition.''); Occidental Petroleum Corp., Annual Report (10–K) 10 (Feb. 26, 2021) (explaining that government action relating to greenhouse gas emissions could impose increased operating and maintenance costs, such as ''higher rates charged by service providers'' or ''promote the use of alternative sources of energy and thereby decrease demand for oil'').

This risk is being increasingly reflected in the financial markets. As noted in my dissent to the *January 5 Decision,* investment managers—under pressure from their clients to pursue environmentally sustainable investing—have begun aligning their portfolios with net-zero emissions. *January 5 Decision,* FD 36284, slip op. at 16 (Board Member Oberman dissenting).[12] This includes putting pressure directly on oil producers to develop more sustainable business strategies. For example, on May 26, 2021, Exxon Mobil Corporation's shareholders elected to its Board—over the opposition of company management—three insurgent directors from a small hedge fund, Engine No. 1. Exxon Mobil Corp., Current Report (Form 8–K/A) 3 (June 21, 2021). These nominees were advanced for the express purpose of directing the company towards a ''long-term commitment to only funding projects that can break-even at much more conservative oil and gas prices,'' and to explore growth areas in ''net-zero emission energy sources and clean energy infrastructure.'' Exxon Mobil Corp., Definitive Proxy Statement (Schedule 14A) 5 (March 15, 2021). In its proxy statement, Engine No. 1 emphasized ''growing long-term oil and gas uncertainty'' arising from a ''decarbonizing world.''[13] *Id.* at 1.

It bears emphasizing that the political and business developments described above constitute only the latest and a small set of examples of the global

[4] Available at: *https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3541.*

[5] Available at: *https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339.* Since then, Shell has sold its assets in the Permian Basin and pulled out of a controversial plan to develop a new oil field near the Shetland Islands. *See* Press Release, Shell, Shell Completes Sale of Permian Business to ConocoPhillips (Dec. 1, 2021), *https://www.shell.com/media/news-and-media-releases.html;* Danica Kirka, *Shell Pulls Out of Controversial Cambo Project in Scotland,* Associated Press, December 3, 2021, *https://apnews.com/article/business-europe-environment-economy-scotland-ef91aa323b36cb3d8f3d7dcf9b616a36.*

[6] Available at: *https://media.gm.com.*

[7] Available at: *https://www.volkswagen-newsroom.com/en/press-releases.*

[8] Available at: *https://media.ford.com/content/fordmedia/feu/en/news.html.*

[9] Available at: *https://www.media.volvocars.com/us/en-us/media/pressreleases/list.*

[10] Available at: *https://www.tatamotors.com/investors/jlr-press-release-archive/.*

[11] Available at: *https://global.nissannews.com/en/pages/all-news-archive.*

[12] On May 20, 2021, President Biden signed an executive order, *Climate-Related Financial Risk,* which sets forth a policy of ''advancing consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk . . . .'' *Climate-Related Financial Risk,* Exec. Order No. 14030, 86 FR 27967 (May 26, 2021). The executive order acknowledges the risk to the competitiveness of companies and markets, as well as workers and communities, should financial institutions fail to adequately account for ''the global shift away from carbon-intensive energy sources and industrial processes.'' *Id.* at 27967.

[13] The hedge fund Third Point Investors also recently announced that it had taken a stake in Shell in part to advance a growth strategy focused on ''aggressive investment in renewables and other carbon reduction technologies.'' Available at *https://thirdpointlimited.com/wp-content/uploads/2021/10/Third-Point-Q3-2021-Investor-Letter-TPIL.pdf.*] Weeks later, Shell announced plans to simplify its share structure to accelerate ''delivery of its strategy to become a net-zero emissions business.'' Press Release, Royal Dutch Shell, Notice of General Meeting—Shell Seeks Shareholder Approval to Change Articles to Implement a Simplified Structure (Nov. 15, 2021), *https://www.shell.com/media/news-and-media-releases/2021/november-press-release.html.*

transition away from fossil fuels. This broad and rapidly accelerating trend calls into question both the viability of the Coalition's over $1 billion rail construction project as well as its ability to raise money from private funding sources. It confirms the significant concerns I raised previously about the extent to which the project will both require the backing of, and put at risk, public funds. *January 5 Decision,* FD 36284, slip op. at 19 (Board Member Oberman dissenting). These concerns have been exacerbated by the Coalition's decision not to supply (and indeed, to redact) oil and traffic projections from its consultant's pre-feasibility study, creating the ineluctable inference that the withheld data, if revealed, would undermine the commercial viability of the project. *January 5 Decision,* FD 36284, slip op. at 14–15 & n.5 (Board Member Oberman dissenting). The majority's continuing to turn a blind eye to this glaring omission is even more perplexing in light of the dramatic changes in the world oil market detailed above.

But make no mistake: The writing is on the wall. The Board has previously made clear that ''significant questions surrounding the financial feasibility of [a] proposed rail project'' may diminish its transportation merits and warrant against the granting of an exemption under section 10502. *Tex. Cent. R.R. & Infrastructure, Inc.—Petition for Exemption—Passenger Rail Line Between Dallas & Houston, Tex.* (*Texas Central*), FD 36025, slip op. at 14–15 (STB served July 16, 2020) (citing the RTP factors at 49 U.S.C. 10101(4) and 10101(5) as a basis for denying a petition for exemption given ''questions about increased costs and funding sources,'' the magnitude of the project, and the substantial public interest). Although the Board in *Texas Central* permitted the petitioner there to proceed via application, so as to provide additional information about the project's financial feasibility, an application in this case would not have changed the fact that the Line's transportation merits are greatly impaired by a future that has little use for the product it will be built to deliver. Moreover, and as explained in the following section, regardless of whether the Coalition had proceeded via application or petition for exemption, the Line's environmental impacts outweigh its transportation merits.

Environmental Impacts

Consideration of the Line's environmental effects must treat as indirect effects those impacts associated with oil development in the Basin that will be supported by the Line, including downstream greenhouse gas emissions that will result from the oil's eventual combustion. Contrary to the position taken in *Today's Decision,* the Board has the power to act on these impacts, including by denying construction authority, and accordingly has an obligation to consider them as reasonably foreseeable effects of the project. Only in doing so, may the Board reach the central question in this case: Whether it is in the public interest for the Board to authorize the building of a railroad for the near exclusive purpose of facilitating oil and gas development, given all that we know today about the worsening global warming crisis and the role played by fossil fuel combustion. That question lies at the heart of whether the transportation merits of the project outweigh its environmental impacts, including the troubling and unavoidable disturbance to wetlands and wildlife that are in fact acknowledged by the majority as effects of this project. In my view, the Line is not worth these costs.

With respect to downstream greenhouse gas emissions, the Final EIS recognized that construction of the Line ''would increase transportation capacity to ship an additional 130,000 to 350,000 barrels of oil on average each day from existing oil fields . . . .'' (Final EIS 3.15–51; *see also id.* 3.15–3 to 3.15–4.) Further, it assumed that the oil from this new production would ultimately be refined into fuel and combusted, and it estimated that the resulting emission of carbon dioxide equivalents would total 19,785,953 metric tons annually under a low oil production scenario and 53,269,873 metric tons annually under a high oil production scenario, the latter of which would represent approximately 0.8% of nationwide greenhouse gas emissions and 0.1% of global greenhouse gas emissions. (*Id.* at 3.15–36.) The Final EIS also identified other, more localized impacts of oil and gas development on water resources, biological resources, soils, noise, land use, cultural resources, and socioeconomics, including from the drilling of new wells. (*See generally id.* section 3.15.) These impacts are acknowledged in Today's Decision. *Today's Decision* 17.

However, they are considered only for the purpose of assessing the project's cumulative impacts. Accordingly, *and importantly,* the Final EIS does not consider as an indirect impact the harm caused to the environment by downstream combustion of increased oil production enabled by the Line's construction. The Final EIS focuses instead only on the *incremental* de minimis effect of emissions from construction and operation of the Line *when added* to emissions from downstream combustion. (Final EIS 3.15–32); *see also Twp. of Bordentown, NJ* v. *FERC,* 903 F.3d 234, 258 (3d Cir. 2018) (explaining that a cumulative impact analysis looks at the marginal impact of the jurisdictional project when added to the non-jurisdictional projects' impacts). The majority approved this approach and in so doing obscured the centrality of the Line's construction to oil and gas development in the Basin, which will foreseeably cause far larger emissions from combustion of oil that will be moved over the Line.[14] *See Twp. of Bordentown,* 903 F.3d at 258 (''Where the other projects' impacts are themselves already significant or greatly outweigh the jurisdictional projects' impacts, such that the jurisdictional project will not meaningfully influence the extent of the already significant environmental impacts, the cumulative impacts test is inapposite.'').

Considering the environmental impacts of oil development in the Basin only in the context of a cumulative impact analysis, and not as reasonably foreseeable impacts attributable to the Line itself, materially affects how those effects are factored by the Board when weighing the Line's transportation merits against its environmental impacts. *See Landmark West!* v. *U.S. Postal Serv.,* 840 F. Supp. 994, 1011 (S.D.N.Y. 1993) (explaining that a cumulative impact analysis ''entails the consideration of the foreseeable actions of others as background factors, but does not require that the impacts of others' actions be weighed in assessing the significance'' of the agency's actions, only the ''marginal impacts of its own actions''), *aff'd,* 41 F.3d 1500 (2d Cir. 1994).[15] *Today's Decision* justifies this approach by relying on *Department of Transportation* v. *Public Citizen,* 541 U.S. 752 (2004), contending that the

[14] In contrast to the estimated emissions from the production scenarios discussed above, the Final EIS estimated that ''[greenhouse gas] emissions from rail operations . . . would represent a small percentage (ranging from 0.9 percent to 3.5 percent) of regional and statewide GHG emissions . . . and would not contribute significantly to global climate change.'' (Final EIS 3.7–39.) Not surprisingly, the majority did not find cumulative adverse effects on greenhouse gas emissions or air quality, but rather identified only cumulative adverse effects on water resources, biological resources, paleontological resources, land use and recreation, visual resources, and socioeconomics. *Today's Decision* 16.

[15] Even though the labeling of the effects of oil and gas development in the Basin as indirect or cumulative impacts may not have affected their analysis within the Final EIS (*Today's Decision* 18 n.15), it does affect how they are weighed by the Board.

Board cannot be the ''legally relevant'' cause of impacts from oil and gas development, and therefore those impacts cannot be considered indirect impacts of the construction project. *Today's Decision* 18. *Today's Decision* emphasizes that the Board has no authority or jurisdiction over development of oil and gas in the Basin nor any authority to control or mitigate the impacts of any such development. *Id.* Importantly, and although not said in so many words, its reliance on *Public Citizen* necessarily implies that the Board cannot be the cause of such impacts *because it lacks the power* to act on them when deciding whether to approve or deny the Coalition's petition.

I disagree. In *Public Citizen,* the Supreme Court indeed held that where an ''agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect,'' and hence need not consider such effects under NEPA. 541 U.S. at 770. That case, however, is readily distinguishable. At issue in *Public Citizen* was the planned lifting of a moratorium by the President (with authority from Congress) on cross-border truck traffic from Mexico and related regulations under review by the Federal Motor Carrier Safety Administration (FMCS). Although the regulations had to be issued before Mexican traffic could enter the United States, by statute the rules were limited to safety and financial responsibility issues. *Id.* at 758–59. The Supreme Court concluded that the FMCSA had no obligation to evaluate emissions from the truck traffic when assessing the environmental impact of its regulations because FMCSA ''simply lack[ed] the power to act on'' any such emissions data. *Id.* at 768. Key to this holding was the Supreme Court's finding that FMCSA had ''*no ability to countermand the President's lifting of the moratorium*'' or otherwise ''*categorically*'' prevent such traffic from entering the United States. *Id.* at 766 (emphasis added). As the Supreme Court explained, the ''legally relevant cause of entry of the Mexican trucks is *not* FMCSA's action, but instead the actions of the President in lifting the moratorium and those of Congress in granting the President this authority while simultaneously limiting FMCSA's discretion.'' *Id.* at 769.

The scope of *Public Citizen* becomes even more apparent when considering how the case has been applied in other circumstances involving downstream greenhouse gas emissions. For example, in *Sierra Club* v. *FERC* (*Freeport*), the D.C. Circuit held that the Federal Energy Regulatory Commission (FERC) had no obligation to consider such emissions when approving facility upgrades at a liquified natural gas terminal that would be used to support export operations. 827 F.3d 36, 47–48 (D.C. Cir. 2016). This was because the Department of Energy (DOE) has exclusive jurisdiction over the export of natural gas as a commodity and had already authorized the terminal in *Freeport* to export gas. *Id.* at 40. DOE merely delegated to FERC licensing authority over the siting, construction, expansion, and operation of specific facilities. *Id.* at 40–41. Citing *Public Citizen,* the D.C. Circuit concluded that FERC could not be the ''legally relevant'' cause of emissions from gas exported from the terminal because DOE's ''intervening'' and ''independent decision to allow exports—a decision over which [FERC] has no regulatory authority—[broke] the NEPA causal chain and absolve[d]'' FERC of responsibility to consider impacts it ''could not act on.'' *Id.* at 47–48.

Public Citizen, which the majority relied upon, and *Freeport,* which shows its application, lay bare the flaw in the majority's reasoning. Had Congress itself authorized construction of a railroad out of the Basin, or vested that authority in another federal agency, but left to the Board the narrower responsibility of deciding where that line should be placed and the details of its construction, then perhaps *Public Citizen* would be instructive. But here, the Board has independent and plenary authority, and exclusive jurisdiction, over whether a line of railroad should be built in the first instance. 49 U.C.S. 10501, 10901. *See Alaska Survival* v. *STB,* 705 F.3d 1073, 1086 (9th Cir. 2013) (emphasizing that the decision as to ''which communities are entitled to important railroad development projects'' is ''committed in the first instance to the agency authorized by Congress to approve rail line construction projects, the STB''). That the Board has no authority or jurisdiction over development of oil and gas in the Basin, (Today's Decision 18),[16] and generally cannot restrict the types of products and commodities that are transported on already constructed rail lines, (Final EIS 3.15–36),[17] are not the types of overarching limitations like that at issue in *Public Citizen* which would diminish, let alone inform, the Board's authority over rail construction.

The D.C. Circuit's decision in *Sierra Club* v. *FERC* (*Sabal Trail*) is on point. That case involved FERC's decision to approve the construction and operation of certain interstate natural gas pipelines in the southeastern United States. *Sabal Trail,* 867 F.3d 1357, 1363 (D.C. Cir. 2017). As here, at issue was whether *Public Citizen* excused FERC's decision not to attribute to the pipeline, and consider, greenhouse gas emissions arising from the end-use combustion of gas to be moved over the pipeline. *Id.* at 1365, 1371–72. In its decision, the D.C. Circuit made clear that the relevant question is not '' 'What activities does [an agency] regulate?' but instead . . . 'What factors can [the agency] consider when regulating in its proper sphere?' '' *Id.* at 1373. In other words, is an agency ''forbidden to rely'' on the effects of the impact as ''justification'' for denying a license? *Id.* The Court found that FERC was ''not so limited.'' *Id.* Critical to its analysis was that Congress gave FERC broad power over the construction and operation of interstate pipelines, expansively directing it to consider the ''public convenience and necessity'' when reviewing an application. *Id.* (citing 15 U.S.C. 717f(e).) The Court emphasized that FERC balances the ''public benefits against the adverse effects of the project,'' including ''adverse environmental effects,'' and can deny construction authority ''on the ground that [it] would be too harmful to the environment.'' *Sabal Trail,* 867 F.3d at 1373. For all of these reasons, the Court concluded that FERC ''*is a 'legally relevant cause' of the direct and indirect environmental effects of the pipelines it approves.*'' *Id.* (emphasis added).[18]

As in *Sabal Trail,* here too the Board has a broad statutory obligation not to authorize rail construction when doing so would be ''inconsistent with the public convenience and necessity.'' 49 U.S.C. 10901(c). And although in this case the Coalition has proceeded via a petition for exemption from the prior

[16] *See Birkhead* v. *FERC,* 925 F.3d 510, 519 (D.C. Cir. 2019) (rejecting argument that agency cannot be legally relevant cause of emissions from gas transported via agency-approved pipeline ''due to its lack of jurisdiction over any entity other than the pipeline applicant'').

[17] The Final EIS cites to *Riffin* v. *STB,* 733 F.3d 340, 345–47 (D.C. Cir. 2013), for the established proposition ''that *railroads* have a common carrier obligation to carry all commodities, including hazardous materials, upon reasonable request . . . .'' (Final EIS 3.15–6 (emphasis added).) While that may be true, it has nothing to do with the *Board's* authority to license rail construction and its obligation to consider environmental impacts when doing so.

[18] *See also WildEarth Guardians* v. *Zinke,* 368 F. Supp. 3d 41, 73 (D.D.C. 2019) (holding that because Bureau of Land Management (BLM) could decline to sell an oil and gas lease if the ''environmental impact of those leases—including use of the oil and gas produced—would not be in the public's long-term interest,'' BLM was required to consider downstream greenhouse gas emissions ''as indirect effects of oil and gas leasing''), *appeal dismissed per stipulation,* 2021 WL 3176109 (D.C. Cir. Apr. 28, 2021).

approval requirements of section 10901, use of the exemption process does not affect the level of environmental review a project receives. *Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera, and Fresno Cntys., Cal.,* FD 35724, slip op. at 21–22 (STB served June 13, 2013). The Board has also made clear that environmental impacts can lead it to categorically decline to authorize rail construction, including when considering a petition for exemption. *Alaska R.R.—Constr. & Operation Exemption—Rail Line Between N. Pole & Delta Junction, Alaska,* FD 34658, slip op. at 10 (STB served Jan. 6, 2010). In either circumstance, and as in *Today's Decision,* the Board weighs the project's transportation merits against its environmental impacts when determining whether to grant construction authority. (*Today's Decision* 23–25.) This is in keeping with NEPA, which requires the Board to consider the environmental impacts of a decision permitting rail construction, regardless of whether it does so by granting an application under section 10901 or an exemption under section 10502.[19] 42 U.S.C. 4332(C).

I see no reason why the Line's construction would not otherwise be a sufficient cause of the oil and gas development impacts and downstream emissions identified in the Final EIS. It may well be the case that oil development ''may occur, and is already taking place, without the proposed rail line,'' (Final EIS T–44), and that the ''actual volumes of crude oil that would move over the Line would depend on various independent variables and influences,'' (*Today's Decision* 17). However, the Coalition's own position has been that trucking oil produced from the Basin to distant markets is cost prohibitive and that ''the lack of rail access has effectively capped oil production in the Basin.'' (Pet. 13–14.) As the Coalition puts it, a rail line would ''enable local producers to increase their output under appropriate market conditions.'' (*Id.* at 15.) It cannot be disputed that ''but for'' the proposed rail line, significantly less oil will be extracted from the Basin. *See Mid States Coal. for Progress* v. *STB,* 345 F.3d 520, 548–50 (8th Cir. 2003) (requiring that agency consider emissions from combustion of coal transported over rail line as it was ''almost certainly true'' that the line would increase the ''availability of inexpensive coal'' and ''any adverse effects that result from burning coal'').[20]

Of course, a '' 'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA . . . .'' *Public Citizen,* 541 U.S. at 767. Instead, ''NEPA requires analysis of an effect only where there is a reasonably close causal relationship between the environmental effect and the alleged cause, analogous to the doctrine of proximate cause from tort law.'' (Final EIS T–43 (citing *Public Citizen,* 541 U.S. at 767).) As the Supreme Court has made clear, proximate cause ''*turns on policy considerations*'' and where best to ''draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not.'' *Public Citizen,* 541 U.S. at 767 (citations omitted) (emphasis added). Notably, in *Public Citizen,* prevailing policy dictated that the FCMSA could not possibly be the proximate cause of the motor carrier emissions at issue since, again, FMCSA had ''no ability categorically to prevent the cross-border operation of Mexican motor carriers.'' *Id.* at 768. That is, in *Public Citizen* the Court's analysis of proximate cause turned on its conclusion that the FMCSA's lacked authority over the traffic.

As explained above, *Public Citizen* does not ''excuse'' the Board from considering impacts from oil and gas development. *Sabal Trail,* 867 F.3d at 1373. And it otherwise seems well within the range of reasonable policy considerations—and frankly, the only reasonable policy consideration—for the Board to weigh these impacts when making its final decision, *at least with respect to this particular line.* As noted in my prior dissent, there is no question that increased oil production is the ''singular rationale'' for the Line: Its potential use by other industries is ancillary to the movement of oil and not valuable enough standing alone to justify the line's construction and continued operation. *January 2020 Decision,* slip op. at 14 (Board Member Oberman dissenting) (citing Pet. 13–17). That is, increased oil output, its refinement into petroleum, and that petroleum's ultimate sale and combustion are not only ''reasonably foreseeable,'' they are ''the project's entire purpose.'' [21] *Sabal Trail,* 867 F.3d at 1372.

[19] In any event, the Board may not exempt construction from section 10901 where regulation is necessary to carry out the RTP, including those factors calling for the development of a sound rail transportation system to meet the public need, operation of transportation facilities without detriment to public health and safety, and energy conservation. 49 U.S.C. 10502; 49 U.S.C. 10101(4), (8), (14). In my view, these policy directives broadly warrant the Board's consideration of the environmental impacts to be caused by oil development in the Basin, including downstream greenhouse gas emissions.

[20] The Final EIS suggests that this aspect of *Mid States* would not stand today, given the Supreme Court's subsequent decision in *Public Citizen.* (Final EIS T–440.) But as explained above, the Court in *Public Citizen* grounded its holding on FCMSA's inability to prevent the relevant environmental effect ''due to its limited statutory authority over the relevant actions.'' 541 U.S. at 770. *Mid States* did not address whether the Board had the authority to deny or condition its construction approval on the emissions it originally failed to consider. *Mid States* appears still to be relevant for the proposition that the Board may be the legally relevant cause of downstream impacts that would not occur ''but for'' the agency's construction approval.

[21] When weighing the project's transportation merits against its environmental impacts, *Today's Decision* stresses that a ''rail transportation option could also support the diversification of local economies in the Basin, which could support additional employment and expand the regional economy.'' (*Today's Decision* 24.) But it gives no weight to the nature of the industry the Line is meant to support and that industry's impact on climate change. While local economic development may be a reason to support the Line's construction, if the majority is to weigh the economic benefits of that development, it should weigh *all* of its harms as well. When that is done, it is apparent that the project's environmental impacts outweigh its benefits.

Moreover, there can be no question about the significance of the threat that global warming poses to the environment as well as to our continued prosperity. Days after OEA issued the Final EIS, the United Nations' *Intergovernmental Panel on Climate Change's* (IPCC's) Working Group I released its contribution to the IPPC's Sixth Assessment Report, which presents the most up-to-date understanding of the current state of the climate.[22] *The report presents a dire picture.* Among other things, it concludes that: (i) It is ''unequivocal'' that human influence has warmed the atmosphere, ocean, and land; (ii) global surface temperature in the first two decades of the 21st century was .99 °C higher than 1850–1900; (iii) human-induced climate change is ''already affecting many weather and climate extremes in every region across the globe''; (iv) evidence attributing heatwaves, heavy precipitation, droughts, and tropical cyclones to human influences has strengthened in the last several years; (v) global warming of 1.5 °C and 2 °C will be exceeded during the 21st century unless deep reductions in greenhouse gas emissions occur in the coming decades;[23] and (vi) with further global warming, every region around the world will increasingly experience extreme climate events, including heavy precipitation, flooding, and droughts. *IPCC 2021* at SPM–5, SPM–10, SPM–17, and SPM–32.

These effects are already being felt. July 2021 was the hottest month ever recorded, according to global data from the National Oceanic and Atmospheric Administration (NOAA), with parts of the world witnessing record high temperatures, unprecedented heat waves, floods, and other extreme weather events.[24] The World Meteorological Organization (WMO), an agency of the United Nations, has predicted that the annual mean global temperature is likely to be at least 1 °C above pre-industrial levels in each of the next five years, with a 90% chance that at least one of those years will be the warmest on record. Press Release, WMO, New Climate Predictions Increase Likelihood of Temporarily Reaching 1.5 °C in Next 5 Years (May 27, 2021).[25] The past seven years are on track to be the warmest on record. Press Release, World Meteorological Organization, State of Climate in 2021: Extreme Events & Major Impacts (Oct. 21, 2021). As detailed above, our national and state governments and many leading components of the private sector have accelerated their response to the growing environmental disaster. *Decarbonization is national policy.*

The growing threat from global warming is too great, and its connection to the combustion of fossil fuel too obvious, for the environmental impacts of Line-induced oil and gas development in the Basin to be treated as anything other than what they are: Reasonably foreseeable effects of the rail construction project itself. For the reasons explained above, the Board has the power to act on impacts resulting from that development when deciding whether to approve the petition, and can and should engage with the central question presented in this matter: Whether a railroad built for the purpose of supporting oil and gas development, given the need for decarbonization and the harmful effects of global warming, is within the public interest. *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 349–50 (1989) (holding that under NEPA an agency must ''carefully consider'' information concerning significant environmental impacts when ''reaching its decision''). Such an approach properly situates the significant environmental impacts that nobody appears to disagree are attributable to the Line's construction and operation—among other things, impacts on surface waters and the loss of wetlands, disruption to habitat of threatened and endangered species, and disturbance of the use of otherwise pristine land—all of which are unavoidable and cannot be mitigated. (Final EIS S–8 to S–9.) Is the Line worth all of this given the activity it is intended to support? Without evidence that there is some particularized need for oil from the Basin, in the face of overwhelming evidence to the contrary, and given the irrefutable fact that this oil's use will contribute to the global warming crisis, I cannot say that it is.

I dissent.

Jeffrey Herzig,

Clearance Clerk.

Appendix A

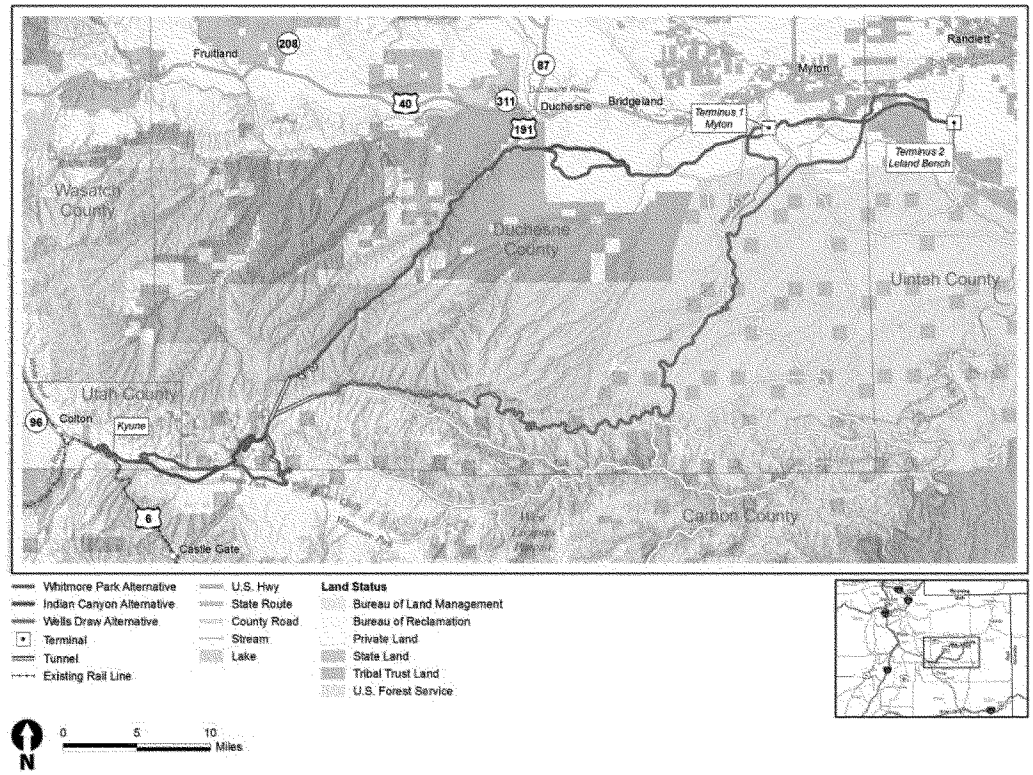
Map of Alternatives

[22] *See* Richard Allan, et al., *Summary for Policymakers* in *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (*IPCC 2021 Summary for Policymakers*) (Valérie Masson-Delmonte et al., eds., in press), *https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf.*

[23] According to the Climate Action Tracker—an independent scientific analysis that tracks government climate action and measures it against the globally agreed Paris Agreement—current policies in place around the world are projected to result in 2.7 °C warming above pre-industrial levels. Temperature, Climate Action Tracker, *https://climateactiontracker.org/global/temperatures/#* (last updated Nov. 9, 2021).

[24] *See* NOAA, It's Official: July was Earth's Hottest Month on Record (Aug. 13, 2021), available at: *https://www.noaa.gov/news-features.* On July 11, 2021, the National Weather Service recorded a temperature of 54 °C (129.2 °F) in Death Valley, which tied the record (set last year) for the hottest formally recognized daytime temperature ever. July and August also saw unprecedented heat waves in the Pacific Northwest, national high temperature records set in Spain, Tunisia, and Turkey, Germany ravaged by floods, and parts of China receiving a year's worth of rain in just three days. Press Release, World Meteorological Organization, State of Climate in 2021: Extreme Events & Major Impacts (Oct. 21, 2021), available at: *https://public.wmo.int/en/media/press-release.*

[25] Available at: *https://public.wmo.int/en/media/press-release.*



Appendix B

Environmental Mitigation Conditions

Voluntary Mitigation Measures

Construction and Rail Operations Safety

VM–1. The Seven County Infrastructure Coalition (Coalition) will follow all applicable federal Occupational Safety and Health Administration (OSHA), Federal Railroad Administration (FRA), tribal, and state construction and operational safety regulations to minimize the potential for accidents and incidents during construction and operation of the rail line.

Grade Crossing Safety

VM–2. The Coalition will consult with appropriate federal, tribal, state, and local transportation agencies to determine the final design of the at-grade crossing warning devices. Implementation of all grade-crossing warning devices on public roadways will be subject to review and approval, depending on location, by the Ute Indian Tribe of the Uintah and Ouray Reservation (Ute Indian Tribe), Utah Department of Transportation (UDOT), U.S. Forest Service (Forest Service), or Carbon, Duchesne, or Uintah Counties. The Coalition will follow standard safety designs for each at-grade crossing for proposed warning devices and signs. These designs will follow the Federal Highway Administration *Manual on Uniform Traffic Control Devices for Streets and Highways* as implemented by UDOT and the American Railway Engineering and Maintenance-of-Way Association standards for railroad warning devices. They will also comply with applicable UDOT, tribal, city, and county requirements.

VM–3. For construction of road crossings, when reasonably practical, the Coalition will consult with tribal and local transportation officials regarding detours and associated signs, as appropriate, or maintain at least one open lane of traffic at all times to allow the quick passage of emergency and other vehicles.

VM–4. The Coalition will develop a plan to consult with private landowners to determine the final details and reasonable signage for grade crossings on private roads.

VM–5. Where practical, at-grade crossings for minor roads and private roads will be combined and consolidated into right-angle, at-grade crossings for safety, and in order to reduce the total the number of highway-rail at-grade crossings.

VM–6. The Coalition will consult with affected communities regarding ways to improve visibility at highway-rail at-grade crossings, including by clearing vegetation or installing lights at the crossing during construction.

Hazardous Materials Handling and Spills During Construction

VM–7. Prior to initiating any project-related construction activities, the Coalition will develop a spill prevention, control, and countermeasures plan in consultation with federal, tribal, state and local governments. The plan will specify measures to prevent the release of petroleum products or other hazardous materials during construction activities and contain such discharges if they occur.

VM–8. In the event of a spill over the applicable reportable quantity, the Coalition will comply with its spill prevention, control, and countermeasures plan and applicable federal, state, local and tribal regulations pertaining to spill containment, appropriate clean-up, and notifications.

VM–9. The Coalition will require its construction contractor(s) to implement measures to protect workers' health and safety and the environment in the event that undocumented hazardous materials are encountered during construction. The Coalition will document all activities associated with hazardous material spill sites and hazardous waste sites and will notify the appropriate state, local, and tribal agencies according to applicable regulations. The goal of the measures is to ensure the proper handling and disposal of

contaminated materials including contaminated soil, groundwater, and stormwater, if such materials are encountered. The Coalition will use disposal methods that comply with applicable solid and hazardous waste regulations.

VM–10. The Coalition will ensure that gasoline, diesel fuel, oil, lubricants, and other petroleum products are handled and stored to reduce the risk of spills contaminating soils or surface waters. If a petroleum spill occurs in the project area as a result of rail construction, operation, or maintenance and exceeds specific quantities or enters a water body, the Coalition (or its agents) will be responsible for promptly cleaning up the spill and notifying responsible agencies in accordance with federal, state, and tribal regulations.

Hazardous Materials Transport and Emergency Response

VM–11. The Coalition will prepare a hazardous materials emergency response plan to address potential derailments or spills. This plan will address the requirements of the Pipeline and Hazardous Materials Safety Administration and FRA requirements for comprehensive oil spill response plans. The Coalition will distribute the plan to federal, state, local, and tribal emergency response agencies. This plan shall include a roster of agencies and people to be contacted for specific types of emergencies during rail construction, operation and maintenance activities, procedures to be followed by particular rail employees, emergency routes for vehicles, and the location of emergency equipment.

VM–12. The Coalition will work with the affected communities to facilitate the development of cooperative agreements with other emergency service providers to share service areas and emergency call response.

VM–13. After construction is completed, the Coalition will implement a desktop simulation of its emergency response drill procedures with the voluntary participation of local emergency response organizations. If necessary, the Coalition will update the hazardous materials emergency response plan based on the findings and observations of the simulated emergency response.

VM–14. In the event of a reportable hazardous materials release, the Coalition will notify appropriate federal, state, and tribal environmental agencies as required under federal, state, and tribal law.

VM–15. The Coalition will comply with FRA, Pipeline and Hazardous Materials Safety Administration, Transportation Security Administration regulations and tribal ordinances or plans applicable to the safe and secure transportation of hazardous materials.

Topography, Geology, and Soils

VM–16. The Coalition will limit ground disturbance to only the areas necessary for project-related construction activities.

VM–17. During project-related earth-moving activities, the Coalition will require the contractor to remove topsoil and segregate it from subsurface soils. Where practical, the contractor will also stockpile topsoil to be applied later during reclamation activities in disturbed areas along the right-of-way.

VM–18. The Coalition will place the topsoil and other excavated soil stockpiles in areas away from environmentally or culturally sensitive areas and will use appropriate erosion control measures on and around stockpiles to prevent or contain erosion.

VM–19. The Coalition will submit a notice of intent to request permit coverage under Utah Pollutant Discharge Elimination System Construction General Permit UTRC00000 for construction stormwater management.

VM–20. The Coalition will submit an application for coverage under the National Pollutant Discharge Elimination System stormwater construction permits pursuant to Section 402 of the Clean Water Act for construction stormwater management on tribal land.

VM–21. The Coalition will develop a stormwater pollution prevention plan, which will include construction Best Management Practices (BMPs) to control erosion and reduce the amount of sediment and pollutants entering surface waters, groundwater, and waters of the United States. The Coalition will require its construction contractor(s) to follow all water quality control conditions identified in all permits, including the Section 404 permit from the U.S. Army Corps of Engineers (Corps) and the Section 401 Water Quality Certification from the Utah Department of Environmental Quality (UDEQ) and the U.S. Environmental Protection Agency (USEPA).

VM–22. The Coalition will revegetate disturbed areas, where practical and in consultation with the Ute Indian Tribe as applicable, when construction is completed. The goal of reclamation will be the rapid and permanent re-establishment of native groundcover on disturbed areas to prevent soil erosion, where feasible. If weather or seasonal conditions prevent vegetation from being quickly re-established, the Coalition will use measures such as mulching, erosion-control blankets, or dust-control palliatives to prevent erosion until vegetative cover is established. The Coalition will monitor reclaimed areas for 3 years. For areas where efforts to establish vegetative cover have been unsuccessful after 1 year, the Coalition will reseed annually for up to 3 years as needed.

Air Quality

VM–23. Where practical and in consultation with the Ute Indian Tribe as applicable, the Coalition will implement appropriate fugitive-dust controls such as spraying water or other dust treatments in order to reduce fugitive-dust emissions created during project-related construction activities. The Coalition will require its construction contractor(s) to regularly operate water trucks on haul roads to reduce dust generation.

VM–24. The Coalition will work with its contractor(s) to make sure that construction equipment is properly maintained and that mufflers and other required pollution-control devices are in working condition in order to limit construction-related air pollutant emissions.

Water Resources

VM–25. The Coalition will obtain a permit from the Corps under Section 404 of the Clean Water Act before initiating project-related construction activities in wetlands and other jurisdictional waters of the United States. The Coalition will comply with all conditions of the Section 404 permit.

VM–26. The Coalition will obtain a Section 401 Water Quality Certification from the State of Utah and USEPA. The Coalition will incorporate the conditions of the Section 401 Water Quality Certification into its construction contract specifications and will monitor the project for compliance.

VM–27. The Coalition will minimize impacts on wetlands to the extent practicable in the final design of the selected alternative. After all practicable steps have been taken to minimize impacts on wetlands, the Coalition agrees to prepare a compensatory mitigation plan for any remaining wetland impacts in consultation with the Ute Indian Tribe where applicable. Compensatory mitigation may include any one or a combination of the following five methods: Restoring a previously existing wetland or other aquatic site, enhancing an existing aquatic site's functions, establishing (that is, creating) a new aquatic site, preserving an existing aquatic site, and/

or purchasing credits from an authorized wetland mitigation bank.

VM–28. Bridges at perennial streams will be designed to maintain a natural substrate.

VM–29. The Coalition will obtain stream alteration permits from the Utah Division of Water Rights for crossing waters of the state, and any applicable tribal permits, and will comply with all conditions of the permits.

VM–30. The Coalition will construct stream crossings during low-flow periods, when practical.

VM–31. When practical and in consultation with the Ute Indian Tribe where applicable, the Coalition will relocate natural streams using bioengineering methods, where relocation is needed and is unavoidable.

VM–32. For streams and rivers with a floodplain regulated by the Federal Emergency Management Agency or the Ute Indian Tribe, the Coalition will design the stream crossing with the goal of not impeding floodwaters and not raising water surface elevations to levels that would change the regulated floodplain boundary. If flood elevations change, the Coalition will coordinate with Federal Emergency Management Agency and/or tribal or local floodplain managers to obtain a Letter of Map Revision where construction of bridges, culverts, or embankments results in an unavoidable increase greater than 1 foot to the 100-year water surface elevations.

Biological Resources

VM–33. The Coalition will comply with any conditions and mitigation commitments contained in a biological opinion for sensitive species that could potentially be impacted by the project.

VM–34. The Coalition will require its contractor(s) to comply with the requirements of the Migratory Bird Treaty Act in consultation with the Ute Indian Tribe as applicable. The following measures will be conducted by the Coalition and/or its contractor(s).

a. Where practical, any ground-disturbing, ground-clearing activities or vegetation treatments will be performed before migratory birds begin nesting or after all young have fledged.

b. If activities must be scheduled to start during the migratory bird breeding season, the Coalition will take steps to prevent migratory birds from establishing nests in the potential impact area. Birds can be hazed to prevent them from nesting until egg(s) are present in the nest. The Coalition or its agents will not haze or exclude nest access for migratory birds and other sensitive avian species.

c. If activities must be scheduled during the migratory bird breeding season, a qualified biologist will perform a site-specific survey for nesting birds starting no more than 7 days prior to ground-disturbing activities or vegetation treatments. Birds with eggs or young will not be hazed, and nests with eggs or young will not be moved until the young are no longer dependent on the nest. A qualified biologist will confirm that all young have fledged.

d. If nesting birds are found during the survey, the Coalition will establish appropriate seasonal or spatial buffers around nests. Vegetation treatments or ground-disturbing activities within the buffer areas will be postponed, where feasible, until the birds have left the nest. A qualified biologist will confirm that all young have fledged.

VM–35. The Coalition will execute a Mitigation Agreement with the Utah Division of Wildlife Resources (UDWR) to address impacts within the Carbon Sage-grouse Management Area (CSGMA). The Coalition has discussed several potential mitigation strategies with UDWR and other local, state, tribal and federal stakeholders during the EIS process. The final CSGMA Mitigation Agreement will define the appropriate mitigation ratio for the project type and its impacts and the final mitigation approach.

VM–36. The Coalition shall comply with the Ute Indian Tribe's Greater Sage-Grouse Conservation Ordinance as applicable.

VM–37. If the selected alternative impacts U.S. Bureau of Land Management (BLM) lands, the Coalition will request that BLM join as a signatory to the CSGMA Mitigation Agreement.

VM–38. The Coalition will prepare a noxious and invasive weed control plan in consultation with the Ute Indian Tribe as applicable. Where practical, the Coalition will include the policies and strategies in Utah's Strategic Plan for Managing Noxious and Invasive Weeds when designing response strategies for noxious and invasive weeds.

VM–39. The Coalition will comply with any conditions and mitigation commitments contained in a biological opinion for sensitive plant species that could potentially be impacted by the project.

VM–40. The Coalition will work with UDWR, the Ute Indian Tribe, and adjacent landowners to define areas of the right-of-way that can be left without fences to maintain big game migration corridors.

VM–41. Where practical and necessary, the Coalition will install wildlife-safe fences to confine livestock within grazing allotments.

Cultural Resources

VM–42. The Coalition will work with the Ute Indian Tribe and others to develop training materials to educate construction supervisors about the importance of protecting cultural resources and the procedures for handling undocumented discoveries. The Coalition will make reasonable efforts to include the Ute Indian Tribe in the presentation of these materials.

VM–43. The Coalition will comply with the requirements of the Programmatic Agreement being developed by the Office of Environmental Analysis (OEA), the Advisory Council on Historic Preservation, Utah State Historic Preservation Office, Ute Indian Tribe, and other federal and state agencies in consultation with federally recognized tribes and other consulting parties.

Land Use

VM–44. If temporary construction easements on private property are needed, the Coalition will document the preconstruction conditions and, to the extent practical, will restore the land to its preconstruction condition after construction is complete.

VM–45. The Coalition will consult with landowners regarding grazing allotments and will install temporary fences during construction to allow continued grazing, where practicable. Once construction is complete, the Coalition will replace all permanent fences removed during construction.

VM–46. Where practical, the Coalition will maintain livestock access to water sources or will relocate water sources, maintain vehicle and livestock access to grazing allotments, and install safety fences and signs for grazing allotment entrances and exits to enable continuance of livestock operations within grazing allotments.

VM–47. The Coalition will secure agreements with utilities to establish responsibility for protecting or relocating existing utilities, if impacted by construction.

VM–48. The Coalition will coordinate with water districts to develop irrigation infrastructure protection or relocation plans, if irrigation infrastructure will be impacted by construction.

Community Outreach

VM–49. The Coalition will appoint a community liaison to consult with affected communities, businesses, and agencies and seek to develop cooperative solutions to local concerns regarding construction activities.

VM–50. The Coalition will appoint a tribal community liaison to address the

needs and concerns of Ute Indian Tribe members and communities and seek to develop cooperative solutions to concerns regarding construction activities and rail operations.

VM–51. The Coalition will maintain a project website throughout the duration of construction to provide regular updates regarding construction progress and schedule.

VM–52. The Coalition will install construction warning and detour signs throughout the corridor and at recreation sites around the project area as needed.

Noise and Vibration

VM–53. The Coalition, in consultation with the Ute Indian Tribe, will comply with FRA regulations (49 Code of Federal Regulations [CFR] Part 210) establishing decibel limits for train operation.

VM–54. The Coalition will work with its contractor(s) to make sure that project-related construction and maintenance vehicles are maintained in good working order with properly functioning mufflers to control noise.

Recreation

VM–55. If needed for the selected alternative, the Coalition will obtain approval from the Forest Service and will follow the conditions of the permit regarding access to, or temporary closure of, recreational features during construction.

VM–56. The Coalition will work with its construction contractor to maintain access to Forest Service roads during construction, where feasible.

Additional Mitigation Measures

Vehicle Safety and Delay

VSD–MM–1. The Coalition shall design and construct any new temporary or permanent access roads and road realignments to comply with the reasonable requirements of the UDOT Roadway Design Manual (UDOT 2020), other applicable road construction guidance (*e.g.,* county road right-of-way encroachment standards), and land management agency or landowner requirements (*e.g.,* BLM H–9113–1 Road Design Handbook) regarding the establishment of safe roadway conditions.

VSD–MM–2. During project-related construction activities, the Coalition and its contractors shall comply with speed limits and applicable laws and regulations when operating vehicles and equipment on public roadways.

VSD–MM–3. The Coalition shall obtain and abide by the reasonable requirements of applicable permits and approvals for any project-related construction activities within UDOT rights-of way or state highways where UDOT has jurisdiction and off-system roads that are maintained by UDOT.

VSD–MM–4. For each of the public at-grade crossings on the rail line, the Coalition shall provide and maintain permanent signs prominently displaying both a toll-free telephone number and a unique grade-crossing identification number in compliance with Federal Highway Administration regulations (23 CFR part 655). The toll-free number would enable drivers to report promptly any accidents, malfunctioning warning devices, stalled vehicles, or other dangerous conditions.

VSD–MM–5. The Coalition shall make Operation Lifesaver educational programs available to communities, schools, and other organizations located along the rail line. Operation Lifesaver is a nationwide, nonprofit organization that provides public education programs to help prevent collisions, injuries, and fatalities at highway/rail grade crossings.

VSD–MM–6. The Coalition shall consult with private landowners and communities affected by new at-grade crossings or that are adjacent to the rail line to identify measures to mitigate impacts on emergency access and evacuation routes and incorporate the results of this consultation into the Coalition's emergency response plan. These measures may include identifying new ingress and egress routes that could be used to improve safety in the event of an emergency.

Rail Operations Safety

ROS–MM–1. In the event of a reportable hazardous materials release, the Coalition shall notify appropriate local (county and city) agencies in addition to appropriate federal, state, and tribal environmental agencies as required under federal, state, and tribal law.

ROS–MM–2. As part of routine rail inspections or at least twice annually, the Coalition shall use appropriate technology to inspect both track geometry (horizontal and vertical layout of tracks) and local terrain conditions to identify problems with either the track or the surrounding terrain. The track inspection shall be designed and conducted so as to identify changes in track geometry that could indicate broken rails or welds, misalignments, and other technical issues with the track itself. The visual inspection of terrain shall be designed and conducted so as to identify evidence of subsidence, rockslides, undermining of the track, erosion, changes in runoff patterns, or other issues that could lead to structural weakening of the track bed and potentially cause an accident.

Water Resources

WAT–MM–1. To the extent practicable, the Coalition shall design culverts and bridges to maintain existing surface water drainage patterns, including hydrology for wetland areas, and not cause or exacerbate flooding. Project-related supporting structures (*e.g.,* bridge piers) shall be designed to minimize scour (sediment removal) and increased flow velocity, to the extent practicable. The Coalition shall consider use of multi-stage culvert designs in flood-prone areas, as appropriate.

WAT–MM–2. The Coalition shall design culverts and bridges on land managed by federal, state, or tribal agencies to comply with reasonable applicable agency requirements. All surface water crossings on land under the jurisdiction of the Ute Indian Tribe shall be designed in consultation with the tribe's Business Committee, Tribal Water Quality Department, the Tribal Fish and Wildlife Department, and the Tribal Water Resources Department to ensure that those crossings would not adversely affect the quality of surface waters on the tribe's Uintah and Ouray Reservation.

WAT–MM–3. The Coalition shall design all stream realignments in consultation with the Corps and Utah Division of Water Rights as part of the Section 404 permit mitigation plan development and Utah Stream Alteration Program, respectively, to ensure that effects on stream functions are taken into account and minimized. The Coalition shall also consult with the Ute Indian Tribe through the tribe's Business Committee, Tribal Water Quality Department, the Tribal Fish and Wildlife Department, and the Tribal Water Resources Department regarding the design of stream realignments to ensure that those realignments would not adversely affect the quality of surface waters on the tribe's Uintah and Ouray Reservation. To the extent practicable, the Coalition shall design realigned streams to maintain existing planform, geomorphology, bed material and flows.

WAT–MM–4. The Coalition shall design, construct, and operate the rail line and associated facilities to maintain existing water patterns and flow conditions and provide long-term hydrologic stability by conforming to natural stream gradients and stream channel alignment and avoiding altered subsurface flow (*i.e.,* shallow aquifer subsurface flow) to the extent practicable.

WAT–MM–5. During project-related construction, the Coalition shall minimize, to the extent practicable, soil compaction and related effects (*e.g.,* increase runoff and erosion), provide surface treatments to minimize soil compaction (*e.g.,* break up compacted soils during reclamation to promote infiltration), and take actions to promote vegetation regrowth after the facilities (*e.g.,* temporary staging areas) are no longer needed to support construction.

WAT–MM–6. During project-related construction, the Coalition shall implement erosion prevention, sediment control, and runoff control and conveyance BMPs to limit the movement of soils and sediment-laden runoff. On lands managed by federal, state, or tribal agencies, the Coalition shall design and implement these BMPs in consultation with the applicable agency. BMPs may include, but are not limited to, seeding disturbed ground and stockpiled soil, seed mixes, silt fences, sediment traps, ditch checks, and erosion monitoring. The Coalition shall coordinate with the appropriate land management agency, private landowner, or the Ute Indian Tribe to select seed mixes for use in restoration and reclamation activities. This may require consultation with range and ecology specialists to determine seed mixes and timing of seeding appropriate to the ecological site. Within Ashley National Forest, disturbed ground area, including stockpiled soil for later reclamation, shall be seeded to prevent erosion and the influx of weeds and invasive species. The Forest Rangeland Management or Ecology specialists shall be consulted for the appropriate seed mix and timing of seeding on Forest Service lands.

WAT–MM–7. During project-related construction, the Coalition shall use temporary barricades, fencing, and/or flagging around sensitive habitats (*e.g.,* wetlands, flowing streams) to contain project-related impacts within the construction area. The Coalition shall locate staging areas in previously disturbed sites to the extent practicable, avoiding sensitive habitat areas whenever possible.

WAT–MM–8. The Coalition shall remove all project-related construction debris (including construction materials and soils) from surface waters and wetlands as soon as practicable following construction.

WAT–MM–9. The Coalition shall implement stormwater BMPs to convey, filter, and dissipate runoff from the rail line during rail operations. These could include, but would not be limited to, vegetated swales, vegetated filter strips, streambank stabilization, and channelized flow dissipation, as appropriate. On lands managed by federal, state, or tribal agencies, the Coalition shall design and implement stormwater BMPs in consultation with the applicable agency.

WAT–MM–10. During rail operations, the Coalition shall ensure that all project-related culverts and bridges are clear of debris to avoid flow blockages, flow alteration, and increased flooding. The Coalition shall inspect all project-related bridges and culverts semi-annually (or more frequently, as seasonal flows dictate) for debris accumulation and shall remove and properly dispose of debris promptly.

WAT–MM–11. To address the closing of active groundwater wells and permanent impacts on springs, the Coalition shall consult with the owner, the Utah Division of Water Rights, and the Ute Indian Tribe, as appropriate, to attempt to replace each active well closed with a new well and to mitigate the water rights associated with springs, as practicable.

WAT–MM–12. The Coalition shall consider potential future changes in precipitation patterns caused by climate change when designing surface water crossings (bridges and culverts) and other rail line features.

Biological Resources

BIO–MM–1. The Coalition shall implement appropriate measures to reduce collision risks for birds resulting from project-related power communications towers. The Coalition shall incorporate the design recommendations in the U.S. Fish and Wildlife Service (USFWS) *Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning* (USFWS 2018) to avoid or minimize the risk of bird mortality at communications towers.

BIO–MM–2. During project-related construction, the Coalition shall comply with any federal, state, tribal, or local in-water work windows and timing restrictions for the protection of fish species, and other reasonable requirements of in-water work permits issued by UDWR and the Corps.

BIO–MM–3. During project-related construction, the Coalition shall use a bubble curtain or other noise-attenuation method (*e.g.,* wood or nylon pile caps) when installing or proofing pilings below the ordinary high water line of a fish-bearing stream to minimize underwater sound impacts on fish.

BIO–MM–4. During project-related construction, the Coalition shall use a block-net to remove and exclude fish from in-water work areas. The Coalition shall deploy the block-net toward the water from land, with the two ends of the net maintained on shore and the middle portion of the net deployed in the water. Any fish handling, exclusion, and removal operation shall be consistent with any reasonable requirements of in-water permits from UDWR and the Corps.

BIO–MM–5. The Coalition shall minimize, to the extent practicable, the area and duration of project-related construction activities within riparian areas and along streambanks. Where construction activities within riparian areas or along streambanks are unavoidable, the Coalition shall implement appropriate erosion control materials to stabilize soil and reduce erosion. Following the completion of project-related construction on a segment of rail line, the Coalition shall promptly restore and revegetate riparian areas using native vegetation.

BIO–MM–6. The Coalition shall design culverts and bridges to allow aquatic organisms to pass relatively unhindered, to the extent practicable.

BIO–MM–7. The Coalition shall develop and implement a wildfire management plan in consultation with appropriate state, tribal, and local agencies, including local fire departments. The plan shall incorporate specific information about operations, equipment, and personnel on the rail line that might be of use in case a fire occurs and shall evaluate and include as appropriate site-specific techniques for fire prevention and suppression. The plan shall also include a commitment for the Coalition and consulting parties to revisit the plan on a regular basis (*e.g.,* every 5 years; but to be determined during plan development) to determine if environmental conditions have changed (*e.g.,* drier conditions) to the point where aspects of the plan would need to be revised to address those changing conditions.

BIO–MM–8. The Coalition shall protect bald and golden eagles by adhering to the Bald and Golden Eagle Protection Act. In addition, the Coalition shall follow the USFWS *National Bald Eagle Management Guidelines* (USFWS 2007), as applicable.

BIO–MM–9. The Coalition shall comply with the terms and conditions of the USFWS Biological Opinion for the protection of federally listed threatened and endangered plants and animals that could be affected by the rail line, and to ensure compliance with Endangered Species Act Section 7.

BIO–MM–10. The Coalition shall implement the requirements of the Ute Indian Tribe for minimizing impacts on

wildlife, fish, and vegetation on Tribal trust lands.

BIO–MM–11. Prior to project-related construction, the Coalition shall acquire and abide by the reasonable requirements of all appropriate federal and state permits to possess, relocate, or disassemble a bald or golden eagle nest, and/or work within 0.5 mile of a bald or golden eagle nest, regardless of whether the nest is active or inactive. The Coalition shall also follow the guidelines for avoiding and minimizing impacts set out in the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* for the protection of bald and golden eagles, as applicable.

BIO–MM–12. Rail employees engaged in routine rail line inspections that observe carcasses along the rail line shall remove carcasses away from the rail line to minimize potential eagle strikes. Carcass data shall be recorded, including species, location, and number, and submitted to UDWR. The Coalition will consult with UDWR to determine the best way to submit this data and the frequency at which it will be transmitted.

BIO–MM–13. The Coalition shall abide by the BLM *Utah Greater Sage-Grouse Approved Resource Management Plan Amendment* for approved Action Alternatives that affect BLM land, and will follow the reasonable requirements of the *Utah Conservation Plan for Greater Sage-Grouse.*

BIO–MM–14. During project-related construction, the Coalition shall employ ecologically sound methods to remove all cleared vegetation and green debris from construction areas, including trees from woodland and timber clearing. On lands managed by federal, state, or tribal agencies, the Coalition shall consult with the appropriate agencies regarding methods for removal or cleared vegetation and green debris and shall implement those agencies' requirements.

BIO–MM–15. Prior to any project-related construction, the Coalition shall consult with the appropriate County Weed Boards/Departments and the Ute Indian Tribe to develop and implement a plan to address the spread and control of nonnative invasive plants during project-related construction. For any construction activities on lands managed by federal, state, or tribal agencies, the Coalition shall seek input on the plan from the appropriate land management agency. The plan shall incorporate the reasonable requirements and recommendations of those agencies and shall identify and address (1) planned seed mixes, (2) weed prevention and eradication procedures, (3) equipment cleaning protocols, (4) revegetation methods, (5) protocols for monitoring revegetation, and (6) ongoing inspection of the rail right-of-way for noxious weeds and invasive species during rail operations.

BIO–MM–16. If the Surface Transportation Board (Board) authorizes the Indian Canyon Alternative or Whitmore Park Alternative, the Coalition shall comply with the reasonable mitigation conditions imposed by the Forest Service in any special use permit allowing the Coalition to cross National Forest System Lands, including complying with the USDA Forest Service Guide to Noxious Weed Prevention Practices and the Ashley National Forest Noxious Weeds Management Supplement.

BIO–MM–17. Prior to any project-related construction, the Coalition shall consult with the Ute Indian Tribe, USFWS, and UDWR to develop and implement a reclamation and revegetation plan for areas that would be temporarily disturbed by construction activities. For any construction activities on lands managed by federal, state, or tribal agencies, the Coalition shall seek input on the plan from the appropriate agency. The reclamation and revegetation plan shall incorporate the reasonable requirements and recommendations of those agencies and shall clearly identify and address (1) the areas to be reclaimed and revegetated; (2) the proposed reclamation and revegetation materials, methods, and timing; and (3) the proposed monitoring schedule and contingency plans.

BIO–MM–18. The Coalition shall not use bird hazing (or scaring) techniques around documented leks in the Carbon SGMA during construction.

BIO–MM–19. The Coalition shall consult with the Ute Indian Tribe, UDWR, OEA, and appropriate land management agencies to develop and implement a big game movement corridor crossing plan. The plan shall address the need for dedicated big game crossings of the rail line, the need to limit fencing (if applicable), and the need for additional data collection. The plan shall specifically evaluate the use of big game overpasses or underpasses (including standards for design), wildlife friendly fencing, reduced train speeds in high-risk areas, and sound signaling and sound barriers in collision hotspots. The plan shall use the latest available big game movement corridor data from UDWR and the Ute Indian Tribe.

BIO–MM–20. The Coalition shall comply with the provisions of the Final Mitigation Approach and Agreement for Potential Impacts to Greater Sage-grouse executed by the Coalition and UDWR.

Geology, Soils, Seismic Hazards, and Hazardous Waste Sites

GEO–MM–1. The Coalition shall design and construct the rail line to balance cut and fill earthwork quantities, to the extent practicable, in order to minimize the quantities of materials required to be excavated, transported, or placed off site.

GEO–MM–2. The Coalition shall conduct geotechnical investigations to identify soils and bedrock in cut areas with potential for mass movement or slumping. The geologic hazard investigations shall be conducted in accordance with Utah Geological Survey Circular 122. Where appropriate, the Coalition shall implement engineering controls to avoid mass movement or slumping. If mass movement or slumping of soils or bedrock occurs during project-related construction, the Coalition shall promptly institute appropriate remedial actions. The Coalition shall periodically monitor the railbed during operations to identify changes related to use, cumulative effects of weight and vibration, and changes in underlying soils to prevent deterioration from settling, deformation, collapse, and erosion.

GEO–MM–3. The Coalition shall conduct geotechnical investigations to identify areas within the rail right-of-way where soils with high corrosivity to concrete or steel could affect the rail line. The Coalition shall implement appropriate site-specific measures to address the soil corrosivity in areas identified during the geotechnical investigations, potentially including replacing soils with high corrosivity with non-corrosive engineered soils, as applicable. If soil materials are removed and replaced due to corrosivity to steel or concrete, the Coalition shall consult with the appropriate land management agencies to determine the sites for disposal and the appropriate replacement soil materials. All replacement soil materials shall be certified weed-free engineered material, or shall be checked for the presence of weeds and sprayed for weeds to prevent bringing in invasive species.

GEO–MM–4. The Coalition shall conduct geotechnical studies to identify unmapped abandoned mines that could affect the rail line and shall take actions to appropriately stabilize areas where unmapped mines are identified.

GEO–MM–5. The Coalition shall conduct geotechnical investigations to identify areas within the rail right-of-way that are at risk of seismically

induced liquefaction. The geologic hazard investigations shall be conducted in general accordance with *Utah Geological Survey Circular 122.* The Coalition shall implement appropriate site-specific measures to minimize the risk of liquefaction in areas identified during the geotechnical investigations, including replacing soils subject to liquefaction with engineered soils that are not prone to liquefaction, as applicable. If soil materials are removed and replaced due to liquefaction hazards, the Coalition shall consult with the appropriate land management agencies to determine the sites for disposal and the appropriate replacement soil materials. All replacement soil materials shall be certified weed-free engineered material, or shall be checked for the presence of weeds and sprayed for weeds to prevent bringing in invasive species.

GEO–MM–6. The Coalition shall design and construct any tunnels in accordance with applicable OSHA guidelines for underground construction (OSHA 2003). Conformance shall include ventilation, air monitoring, and emergency procedures.

GEO–MM–7. In consultation with applicable land management agencies and other agencies with expertise in avalanche mitigation, the Coalition shall identify areas with a high risk of snow slab avalanche that have the potential to affect the rail line and investigate the use of nonstructural and structural methods to control the effects of slab avalanches. Nonstructural methods can include triggering and closures. Structural methods can include avalanche dams and retarding structures, starting zone structures, and avalanche sheds.

GEO–MM–8. Prior to construction, the Coalition shall conduct geophysical investigations to identify risks associated with the Duchesne-Pleasant Valley fault that could affect the rail line.

Noise and Vibration

NV–MM–1. Before undertaking any project-related construction activities, the Coalition shall, with the approval of OEA and in consultation with appropriate tribal and local agencies, develop and implement a construction noise and vibration control plan to minimize project-related construction noise and vibration affecting residences along the rail line, including noise and vibration from general construction equipment, specialized equipment, and tunnel construction. For tunnel construction in particular, the plan shall include estimates of construction noise and vibration levels and identify measures that shall be taken if predicted construction noise or vibration levels exceed Federal Transit Administration (FTA) criteria. The Coalition shall also conduct noise and vibration monitoring for receptors that would exceed FTA criteria. The Coalition shall designate a noise control officer to develop the construction noise and vibration plan, whose qualifications shall include at least 5 years of experience with major construction noise projects, and board certification from the Institute of Noise Control Engineering or registration as a Professional Engineer in Mechanical Engineering or Civil Engineering.

NV–MM–2. The Coalition shall minimize, to the extent practicable, construction-related noise disturbances in residential areas. The Coalition shall avoid nighttime construction and pile-driving near residential areas and employ quieter vibratory pile-driving or noise curtains for project-related construction where FTA construction noise criteria are exceeded.

NV–MM–3. In consultation with OEA and appropriate tribal and local agencies, the Coalition shall employ reasonable and feasible noise mitigation for receptors that would experience noise impacts at or greater than the regulatory analytical threshold of 65 day-night average sound level (DNL) and an increase of 3 A-weighted decibels (dBA). The design goal for noise mitigation shall be a 10 dBA noise reduction. Using industry standard loudspeaker testing, the building sound insulation performance shall be determined in accordance with ASTM 966–90, Standard Guide for Field Measurements of Airborne Sound Insulation of Building Facades and Façade Elements. The calculated noise reduction shall be at least 5 dBA. Should the calculated noise reduction be less than 5 dBA then no mitigation is warranted as the receptor has sufficient sound insulation.

NV–MM–4. The Coalition shall install and properly maintain rail and rail beds on the rail line according to American Railway Engineering and Maintenance of Way Association standards and shall regularly maintain locomotives, keeping mufflers in good working order to control noise. The Coalition shall install rail lubrication systems at curves along the rail line where doing so would reduce noise associated with wheel squeal for residential or other noise-sensitive receptors. The Coalition shall regularly inspect and maintain rail car wheels on trains that operate on the rail line in good working order and minimize the development of wheel flats (where a round wheel is flattened, leading to a clanking sound when a rail car passes).

Air Quality

AQ–MM–1. In consultation with the TriCounty Health Department and the Ute Indian Tribe as applicable, the Coalition shall implement appropriate fugitive-dust controls such as spraying water or other dust treatments to reduce fugitive-dust emissions created during project-related construction activities. During project-related construction, the Coalition shall ensure that construction contractors offer workers daily transportation to the work site from a central location to minimize vehicular traffic on unpaved roads in the area and thereby reduce exhaust emissions and fugitive dust.

AQ–MM–2. The Coalition shall ensure that all engine-powered equipment and vehicles used in construction, operation, and maintenance of the rail line are subject to a regular inspection and maintenance schedule in order to minimize air pollutant emissions, greenhouse gas emissions, and fuel consumption. Preventive maintenance activities shall include, but shall not be limited to, the following actions:

- Replacing oil and oil filters as recommended by manufacturer instructions.
- Maintaining proper tire pressure in on-road vehicles.
- Replacing worn or end-of-life parts.
- Scheduling routine equipment service checks.

AQ–MM–3. The Coalition shall develop and implement an anti-idling policy for both rail construction and operations and ensure that equipment operators receive training on best practices for reducing fuel consumption to reduce project-related air emissions. The anti-idling policy shall include required warm-up periods for equipment and prohibit idling beyond these periods. The policy shall define any exceptions where idling is permitted for safety or operational reasons, such as when ambient temperatures are below levels required for reliable operation. In addition, the policy shall include provisions addressing the use of technologies such as idle management systems or automatic shutdown features, as appropriate.

AQ–MM–4. During project-related construction, the Coalition shall require that construction contractors use renewable diesel fuel to minimize and control greenhouse gas emissions from diesel-fueled construction equipment and on-road diesel trucks, to the extent practicable. Renewable diesel refers to biofuel that is chemically identical to

diesel derived from petroleum, meets the most recent ASTM D975 specification for Ultra Low Sulfur Diesel, and has a carbon intensity no greater than 50 percent of traditional diesel. If the Coalition believes that renewable diesel is not available at a reasonable price from suppliers within 200 miles of the construction site, the Coalition may request an exemption from OEA to instead require construction contractors use traditional diesel fuel with the highest biodiesel content reasonably available. The Coalition shall document the availability and price of renewable diesel to meet project demand in consultation with OEA.

AQ–MM–5. The Coalition shall consider procuring alternative engine and fuel technologies, *e.g.,* hybrid-electric diesel equipment, for construction and operation of the rail line to reduce greenhouse gas emissions.

AQ–MM–6. The Coalition shall evaluate the feasibility of installing solar and wind microgeneration technologies on site offices, lodgings, and other project-related facilities to reduce the use of grid or privately generated electricity to reduce greenhouse gas emissions. As part of its evaluation, the Coalition shall consider the suitability of site conditions and location of solar and wind generation and the technical and economic feasibility of supplementing site electricity demands with renewable power.

AQ–MM–7. The Coalition shall post signage and/or fencing during project-related construction, including tunnel construction, to ensure that members of the public would be unable to enter areas within the construction easement that could experience temporary adverse air quality impacts.

AQ–MM–8. To the extent practicable, the Coalition shall avoid conducting project-related construction activities that could result in the emission of ozone precursors within the Uinta Basin Ozone Nonattainment Area in January and February to minimize emissions of ozone precursor chemicals in the nonattainment area. Construction-related activities covered by this measure include the use of diesel-powered construction equipment and the transportation by truck of materials to construction sites. If the Coalition believes that project-related construction activities that could result in the emission of ozone precursors in the Uinta Basin Ozone Nonattainment Area during January and February cannot practically be avoided during one or more years of the construction period, the Coalition shall consult with OEA and UDEQ's Air Quality Division to identify and implement other appropriate ozone-reduction activities for those months.

Energy

ENGY–MM–1. The Coalition shall design any project-related road realignments to allow continued vehicle access to existing fixed energy facilities, such as oil pads, during and following construction of the rail line. The Coalition shall work with the owners of the energy facilities to coordinate continued access during construction and rail operations.

ENGY–MM–2. The Coalition shall ensure that any oil and gas-producing wells within the rail right-of-way are plugged and abandoned in accordance with Utah Administrative Code Rule R649–3–24, Plugging and Abandonment of Wells. The Coalition shall consult with the Utah Division of Oil, Gas, and Mining prior to undertaking any construction activities that could affect existing wells and shall follow that agency's reasonable recommendations regarding appropriate safety procedures for the abandonment of wells.

ENGY–MM–3. The Coalition shall design any crossings or relocations of pipelines or electrical transmission lines in accordance with applicable Utah Division of Public Utilities' regulations and guidelines. The Coalition shall consult with appropriate utility providers to develop a plan to ensure that construction activities that could affect existing electrical transmission lines or energy pipelines avoid any interruption of utility service to customers to the extent possible.

ENGY–MM–4. The Coalition shall consult with oil and gas operators of existing facilities (*e.g.,* wells, well pads, gathering pipelines, access roads) that would be affected by construction and operation of the rail line during the final engineering and design phase for the rail line and prior to undertaking project-related construction activities to develop appropriate measures to mitigate impacts on these facilities. These measures may include, but are not limited to, adjusting the location of construction activities to avoid oil and gas facilities or relocating the facilities if impacts cannot be avoided during construction and operations.

Paleontological Resources

PALEO–MM–1. The Coalition shall contract with a qualified paleontologist to develop and implement a paleontological resources monitoring and treatment plan to mitigate potential impacts on paleontological resources on lands classified as Potential Fossil Yield Classification 3, 4 or 5. The plan shall include the following requirements:

A preconstruction survey where appropriate to describe and recover paleontological resources found on the surface.

Monitoring of ground-disturbing activities during construction to recover paleontological resources, including inspection of spoils piles created by tunnel construction.

Identification, preparation, and documentation of fossils collected during surveys or monitoring.

Curation and deposition of significant paleontological resources into a federally approved repository.

Increasing public awareness about the scientific importance of paleontological resources by developing web-based education material, interpretive displays, or other means.

Land Use and Recreation

LUR–MM–1. The Coalition shall consult with the Ute Indian Tribe during the final engineering and design phase of the rail line and prior to undertaking any project-related construction to ensure that construction and operation of the rail line would not significantly impact land uses on land under the tribe's jurisdiction.

LUR–MM–2. The Coalition shall implement any mitigation measures imposed by the Ute Indian Tribe as a condition of a right-of-way across Tribal trust lands.

LUR–MM–3. If the Indian Canyon Alternative or the Wells Draw Alternative is authorized by the Board, the Coalition shall adhere to the reasonable mitigation conditions imposed by BLM in any right-of-way granted by BLM allowing the Coalition to cross BLM lands and shall ensure that construction and operation of the rail line is in compliance with applicable Resource Management Plans, including any potential amendments to those plans, for BLM lands that the rail line would cross.

LUR–MM–4. If the Indian Canyon Alternative or the Whitmore Park Alternative is authorized by the Board, the Coalition shall adhere to the reasonable mitigation conditions imposed by the Forest Service in any special use permit allowing the Coalition to cross National Forest System Lands. These reasonable mitigation conditions may include identifying areas where use and storage of petroleum products, herbicides, and other hazardous materials should be avoided during construction and operation. Conditions may also include avoiding or minimizing impacts on horse pastures to maintain adequate

pasture size and replacing pasture fences removed during construction, as determined appropriate through consultation with the Forest Service. The Coalition shall consult with the Forest Service to ensure that construction and operation of the rail line complies with *Ashley Forest Land and Resource Management Plan,* including any existing or potential amendments to that plan, and with the Forest Service 2001 Roadless Rule.

LUR–MM–5. The Coalition shall adhere to the reasonable mitigation conditions imposed by the State of Utah School and Institutional Trust Lands Administration (SITLA) in any right-of-way grant allowing the Coalition to cross SITLA lands.

LUR–MM–6. If the Indian Canyon Alternative or the Whitmore Park Alternative is authorized by the Board, the Coalition shall obtain a right-of-way from the U.S. Bureau of Indian Affairs (BIA) to cross Tribal trust lands and shall implement the reasonable terms and conditions imposed by BIA in any decision granting a right-of-way on Tribal trust lands.

LUR–MM–7. Prior to project-related construction, the Coalition shall consult with BLM, the Forest Service, the Ute Indian Tribe, SITLA, and local agencies as appropriate, to develop a plan to limit, to the extent practicable, impacts on recreational resources under those agencies' management or jurisdiction, including roads used for recreation and recreational site access. The Coalition shall also consult with private landowners to develop appropriate measures to mitigate impacts on land uses and recreational activities on private land. The Coalition shall develop the plan prior to completing the final engineering plans for the rail line and following the above-mentioned consultation to determine the location of all public roads used as access points to a recreation area that would be crossed by the rail line. The plan shall designate temporary access points if main access routes must be obstructed during project-related construction. The plan shall also include the number and location of access points as decided during consultation with the applicable agencies.

LUR–MM–8. The Coalition shall coordinate with owners of properties used for recreation during project-related right-of-way acquisition negotiations to provide adequate private road at-grade crossings to ensure that recreationists maintain access to and movement within recreational properties and areas. The Coalition shall coordinate with UDWR, the Ute Indian Tribe, SITLA, BLM, and the Forest Service, as appropriate, to develop reasonable measures to maintain access to hunting and recreation access points.

LUR–MM–9. The Coalition shall consult with appropriate land management agencies to develop appropriate measures to mitigate impacts of construction and operation of the rail line on grazing allotments on public lands. These measures could include improving forage production in other areas of affected allotments through implementation of vegetation treatment projects, including sagebrush reduction treatments and/or seedings, to increase forage production and maintain preconstruction carrying capacity.

LUR–MM–10. The Coalition shall install cattle guards, livestock exclusion fencing, or other design features, as appropriate, within grazing areas along the rail line to prevent livestock from entering rail tunnels or congregating at tunnel entrances or in other areas in the rail right-of-way that could be hazardous to livestock. The Coalition shall work with landowners and land management agencies, as applicable, to identify appropriate locations for cattle guards, fencing, and other design features and to plan for ongoing maintenance of any of these features.

LUR–MM–11. The Coalition shall consider installing cattle underpasses along the right-of-way, as appropriate and practical. These underpasses could also be used by wildlife. The Coalition shall work with landowners to identify appropriate locations for cattle passes.

LUR–MM–12. The Coalition shall coordinate with landowners and holders of conservation easements crossed by the rail line to develop appropriate measures to mitigate impacts of construction and operation of the rail line on affected conservation easements.

Visual Resources

VIS–MM–1. The Coalition shall install visual barriers, as appropriate, to obstruct views of project-related construction activities and to maintain the privacy of adjacent landowners.

VIS–MM–2. The Coalition shall direct nighttime lighting, if used during construction, onto the immediate construction area during project-related construction to minimize impacts from shining lights on sensitive viewers, sensitive natural resource areas, recreational areas, and roadway or trail corridors.

VIS–MM–3. During project-related construction, the Coalition shall grade contours to create slopes with undulations and topographical variations that mimic natural terrain, where possible. If this grading practice results in larger areas of cut or fill that would further degrade natural features of scenic value, the Coalition shall not implement this measure at those locations. For example, a steeper cut slope may be more desirable than removing many trees to create more rounded terrain. The Coalition shall grade and restore roadbeds that are abandoned because of roadway relocation due to project-related construction to mimic the adjacent natural landscape and revegetate the roadway surface.

VIS–MM–4. The Coalition shall design bridges, communications towers, and other project-related features to complement the natural landscape and minimize visual impacts on the landscape. To the extent practicable, the Coalition shall use paint colors that are similar to colors in the surrounding landscape and shall implement design features that mimic natural materials (*e.g.,* stone or rock surfacing) and colors to reduce visibility and to blend better with the landscape.

VIS–MM–5. If the Board authorizes construction and operation of the Indian Canyon Alternative or Whitmore Park Alternative, the Coalition shall implement the reasonable requirements of any Forest Service decision permitting the rail line within Ashley National Forest and shall ensure that construction and operation on National Forest System lands complies with the requirements for visual resources management in *Ashley National Forest Land and Resource Management Plan,* including any potential amendments to that plan.

VIS–MM–6. If the Board authorizes the Indian Canyon Alternative or the Wells Draw Alternative, the Coalition shall consult with BLM during all phases of project design to ensure that construction and operation of the rail line on BLM lands would be in compliance with all applicable BLM Visual Resource Management requirements and procedures. The Coalition shall incorporate visual design considerations into the design of the rail line on BLM lands; undertake additional visual impact analyses on BLM lands, as appropriate, in consultation with BLM and considering applicable BLM Visual Resources Inventories; and implement appropriate measures to mitigate visual impacts on BLM lands, as requested by BLM.

VIS–MM–7. If the Board authorizes the Indian Canyon Alternative or the Wells Draw Alternative, the Coalition shall, in consultation with BLM, implement appropriate additional measures to minimize light pollution on BLM lands, potentially including limiting the height of light poles,

limiting times of lighting operations, limiting wattage intensity for lighting, and constructing light shields, as applicable.

VIS–MM–8. The Coalition shall implement the requirements of the Ute Indian Tribe regarding the design of the rail line on Tribal trust lands for minimizing visual disturbances to Tribal trust lands.

Socioeconomics

SOCIO–MM–1. The Coalition shall negotiate compensation—for direct loss of agricultural land in the right-of-way and the indirect loss of agricultural land from severance—with each landowner whose property would be affected by construction and operation of the rail line, consistent with applicable state law. The Coalition shall assist landowners in developing alternative agricultural uses for severed land, where appropriate. The Coalition shall apply a combination of alternative land use assistance and compensation as agreed upon during right-of-way negotiations, pursuant to state law. Where capital improvements are displaced by construction or operation of the rail line, the Coalition, in consultation with the landowner and relevant agencies, such as water districts or the local Natural Resources Conservation Services office, shall relocate or replace these improvements or provide appropriate compensation based on the fair market value of the capital improvements being displaced, consistent with applicable state law.

SOCIO–MM–2. The Coalition shall consult with landowners to limit the loss of access to properties during rail construction. The Coalition also shall consult with landowners to determine the location of property access roads that would be crossed by the rail line. The Coalition shall install temporary property access points for landowner use if main access routes must be obstructed during project-related construction. The Coalition shall coordinate with landowners while negotiating the railroad right-of-way easement to identify key access points that would be affected by construction and operation of the rail line. The Coalition shall install at-grade crossings and relocate roads to maintain adequate access to and movement within properties after rail operations begin.

Environmental Justice

EJ–MM–1. The Coalition shall consult with the Ute Indian Tribe regarding potential impacts on the Pariette cactus and Uinta Basin hookless cactus and shall abide by the requirements of the tribe's Sclerocactus Management Plan and the tribe's other requirements and recommendations for project-related activities on Tribal trust lands, which may include soil assessments, complying with mitigation measures to be developed in consultation with the tribe, and contributing to a conservation mitigation fund, as appropriate.

EJ–MM–2. The Coalition shall consult with the Ute Indian Tribe regarding the final design of the rail line, including the locations and designs of rail-related features, such as sidings, communications towers, culverts, bridges, and warning devices, to ensure that impacts on tribal members and land and resources under the tribe's jurisdiction are minimized.

Monitoring and Compliance

MC–MM–1. The Coalition shall submit quarterly reports to OEA on the progress of, implementation of, and compliance with all Board-imposed mitigation measures. The reporting period for these quarterly reports shall begin on the date of the Board's final decision authorizing the project until 1 year after the Coalition has completed project-related construction activities. The Coalition shall submit copies of the quarterly reports within 30 days following the end of each quarterly reporting period and distribute the reports to appropriate federal, state, local, and tribal agencies, as specified by OEA.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Hermes Copper Butterfly and Designation of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2017–0053; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BC57

Endangered and Threatened Wildlife and Plants; Threatened Species Status with Section 4(d) Rule for Hermes Copper Butterfly and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the Hermes copper butterfly (*Lycaena [Hermelycaena] hermes*), a butterfly species from San Diego County, California, and Baja California, Mexico. We also designate critical habitat. In total, approximately 14,174 ha (35,027 ac) in San Diego County, California, fall within the boundaries of the critical habitat designation. This rule adds the species to the List of Endangered and Threatened Wildlife. We also finalize a rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of this species.

DATES: This rule is effective January 20, 2022.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov* at Docket No. FWS–R8–ES–2017–0053.

The coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R8–ES–2017–0053. Additional supporting information that we developed for this critical habitat designation will also be available at *https://www.regulations.gov* and at the field office responsible for this designation.

FOR FURTHER INFORMATION CONTACT: Scott Sobiech, Field Supervisor, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008; telephone 760–431–9440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, to list a species as an endangered or threatened species, we are required to publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. If there is substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing, we may extend the final determination for not more than 6 months. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. This rule adds the Hermes copper butterfly (*Lycaena [Hermelycaena] hermes*) to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations as a threatened species (50 CFR 17.11(h)) and extends the Act's protections to this species through specific regulations issued under section 4(d) of the Act (50 CFR 17.47(d)).

This document also designates critical habitat for the Hermes copper butterfly. We are designating a total of approximately 14,174 hectares (ha) (35,027 acres (ac)) for the species in San Diego County, California.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Hermes copper butterfly and its habitat are at risk primarily due to wildfire and, to a lesser extent, habitat fragmentation, isolation, land use change, and climate change and drought, and by those threats acting in concert.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Previous Federal Actions

Please refer to the proposed listing and critical habitat rule (85 FR 1018) for the Hermes copper butterfly published on January 8, 2020, for a detailed description of previous Federal actions concerning this species.

Summary of Changes From the Proposed Rule

Based upon our review of the public comments, Federal and State agency comments, peer review comments, and relevant information that became available since the proposed rule published (85 FR 1018; January 8, 2020), we reevaluated our proposed listing rule and made changes as appropriate in this final rule. In addition to minor clarifying edits and incorporation of additional information on the species' biology, populations, threats, and economic impacts, this determination differs from the proposal in the following ways:

(1) We added information on data reported subsequent to publication of the proposed rule that adds to our understanding of Hermes copper butterfly distribution and viability.

(2) We added information about a 2020 wildfire that affected occupied Hermes copper butterfly occurrences.

(3) We added more recent data on drought and climate change.

(4) We added more information on local protection ordinances and how they affect the threat of development.

(5) In *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020), the court vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided that the Services do not undertake an

analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we have revised the significant portion of the range analysis in this final rule to consider whether the species is endangered in a significant portion of its range. We evaluated the status of the species and found that no portions of the range meet the definition of endangered. This updated analysis did not result in any changes from the proposed rule but provides support for the determination.

(6) We removed a future scenario because we concluded it was not likely and therefore not useful to understanding the future status of the species.

(7) In response to a public comment, we edited the third take prohibition regarding defensible space requirements with regard to reducing wildfire risk. We removed language in the exception regarding the required 30-m (100-ft) distance from structures in order to clarify that any activities to reduce wildfire risks must be done in compliance with State and local fire codes. Currently, this distance is still 30 m (100 ft), but the rewording allows for flexibility to ensure that activities will still comply with local and State of California fire codes if they ever do change.

(8) We discovered an error in the mapping of critical habitat units in the proposed rule where we inadvertently included a low-accuracy observation record-based occurrence in critical habitat, contrary to our stated methodology of only including those based on high-accuracy information. We removed this occurrence from critical habitat, resulting in a decrease of 74 ha (184 ac) from Unit 3 and our total critical habitat designation. The remaining 14,174 ha (35,027 ac) represent all areas that meet the definition of critical habitat for the Hermes copper butterfly.

(9) During the open comment period, we received new relatively comprehensive survey data for the Hermes copper butterfly. The majority of these were negative surveys, that is, surveys where researchers looked for but did not find butterflies. To appropriately address new data since 2017 and address the concerns of public commenters (Strahm 2019 entire; Marschalek 2019 entire; Marschalek and Deutschman 2019, p. 7), we revised our occurrence status classifications methods and updated the Species Status Assessment (SSA) and this final rule to reflect these new data.

The changes to occurrence number and status categories are a combined result of: Known subsequent losses (for example, due to fires); subsequently documented new occurrences; and new negative survey data that may reflect losses prior to, or after, 2017. Additionally, occurrences that are categorized as ''extant'' are those for which surveys have recorded butterflies within the past 10 years (as in the proposed rule), a timeframe that shifted by 2 years. As such, occurrences where butterflies were last recorded in 2008 and 2009 that were categorized as ''extant'' in the 2020 proposed rule (analysis data through 2017) are now categorized as ''presumed extant'' in this 2021 final rule (analysis data through 2019).

In the 2020 proposed rule, we considered there to be 95 occurrences, 45 of which were categorized as known/presumed extant, 40 as presumed extirpated, and 10 as permanently extirpated (85 FR 1018; January 8, 2020). Based on new data and associated new methodology, we now consider there to be 98 occurrences, 26 of which are categorized as known/presumed extant, 56 as presumed extirpated, and 16 as permanently extirpated (Service 2021, entire). Changes to occurrence status category numbers in the proposed and final rule do not necessarily reflect occurrence status changes that occurred between 2017 (data used in the 2018 SSA report and 2020 proposed rule) and 2020 (data used in the 2021 SSA report and final rule), because some new data may more accurately reflect 2017 conditions. For example, occurrences categorized as presumed extant based on 2017 data, now presumed extirpated, may have already been extirpated in 2017. Also, new observation locations recorded since 2017 were likely in habitat occupied in 2017 but not yet discovered, so should not be assumed to reflect new colonizations.

Despite these occurrence status category changes, all critical habitat units are still within the area considered occupied at the time of listing.

Full details on changes to status classification methods and to the number and status categories of occurrences from the 2018 SSA report and 2020 proposed rule are summarized in appendix II of the updated 2021 SSA report.

(10) Based on the updated number of extant and extirpated occurrences, we updated our viability index. We also streamlined the description of our viability index to make it clearer and easier to understand. Because more occurrences are considered extirpated than in the proposed rule and previous 2018 SSA report, the species viability index is lower in this final rule than it was in the proposed rule. We also made changes throughout the *Current Condition* section to reflect updated occurrence numbers.

(11) We updated our discussion of ''Habitats That Are Protected from Disturbance and Representative of the Historical Geographical and Ecological Distributions of a Species'' in our discussion of physical or biological features for the species to provide better context for rangewide features needed for the Hermes copper butterfly.

(12) We updated the SSA report with all the above changes and with other suggested edits received during the open comment period. The new SSA report is version 2.0 (Service 2021).

Supporting Documents

A species status assessment team prepared an SSA report for the Hermes copper butterfly. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought peer review of the SSA report. We sent the SSA report to eight independent peer reviewers and received six responses. The purpose of peer review is to ensure that our listing determinations, critical habitat designations, and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species. We also sent the SSA report to 7 agencies and 11 Tribes for partner review, including scientists with expertise in this species and butterfly ecology. We received reviews from two partners (one Federal agency and one Tribe).

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Hermes copper butterfly is presented in the Species Status Assessment for the Hermes Copper Butterfly (*Lycaena [Hermelycaena] hermes*) Version 2.0 (Service 2021), which is available at *https://www.regulations.gov* at Docket No. FWS–R8–ES–2017–0053.

The Hermes copper butterfly is a small-sized butterfly historically found in San Diego County, California, and northwestern Baja California, Mexico (Service 2021, Figure 4). There are 98 known historical or extant Hermes copper butterfly occurrences in the United States and northwestern Baja California, Mexico; 26 are extant or presumed extant (all in the United States), 56 are presumed extirpated, and 16 are permanently extirpated (Table 1). Table 1 shows all occurrences, their status, the last time butterflies were detected in an occurrence, and the Ecological Unit where the occurrence is found. Additionally, if an occurrence is extirpated, Table 1 displays the reason for the extirpation (Goudey and Smith 1994 [2007]). The category for core occurrence size is based on a total area within ½ km of Hermes copper butterfly records greater than 176 ha (435 ac); smaller occurrences are considered non-core (NC).

TABLE 1—HERMES COPPER BUTTERFLY OCCURRENCES IN THE UNITED STATES AND MEXICO

[Current status category was determined by a decision tree developed in 2020 (Service 2021, Figure 5), which considered data through 2019. Map # refers to Figures 6 and 7 in the SSA report.]

Map No.	Occurrence name	Ecological unit [1]	Size	Last record	Accuracy [2]	2018 SSA status category [3]	2020 status category Dispersal corridor-connectivity	Wildfire year (% burned if extant) [4]	Reason extirpated
1	Bonsall	WGF	NC	1963	3	Presumed Extirpated.	Presumed Extirpated.		Development Isolation.
2	East San Elijo Hills.	CH	NC	1979	2	Presumed Extirpated.	Presumed Extirpated.		Development Isolation.
3	San Elijo Hills	CH	NC	1957	3	Extirpated	Extirpated		Development Isolation.
4	Elfin Forest	CH	NC	2011	1	Extant	Presumed Extirpated.		Drought.
5	Carlsbad	CH	NC	Pre-1963	3	Extirpated	Extirpated		Development.
6	Lake Hodges	CH	NC	1982	3	Presumed Extirpated.	Presumed Extirpated.	2007	Development Isolation, Fire.
7	Rancho Santa Fe.	CH	NC	2004	1	Presumed Extirpated.	Presumed Extirpated.	2007	Development Isolation, Fire.
8	Black Mountain	CH	NC	2004	1	Presumed Extant.	Presumed Extirpated.		Development Isolation, Drought.
9	South Black Mountain.	CH	NC	Pre-1963	3	Extirpated	Extirpated		Development.
10	Van Dam Peak	CH	NC	2011	1	Extant	Presumed Extirpated.		Development Isolation, Drought.
11	Sabre Springs	CH	NC	2001	1	Presumed Extirpated.	Presumed Extirpated.		Development Isolation.
12	Lopez Canyon	CT	Core	2011	1	Extant	Presumed Extant Isolated.		
13	Mira Mesa	CT	NC	Pre-1963	3	Extirpated	Extirpated		Development.
14	West Mira Mesa	CT	NC	Pre-1963	3	Extirpated	Extirpated		Development.
15	Northeast Miramar.	CH	Core	2000	1	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
16	Southeast Miramar.	CH	NC	1998	2	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
17	Miramar	CH	Core	2000	1	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
18	West Miramar	CT	NC	1998	2	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
19	Miramar Airfield	CT	NC	Pre-1963	3	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
20	South Miramar	CH	NC	2000	1	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
21	Sycamore Canyon.	WGF	Core	2003	1	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
22	South Sycamore Canyon.	WGF	NC	2000	1	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
23	North Santee	CH	Core	2005	1	Presumed Extant.	Presumed Extant Connected.	2003 (60%).	
24	Santee	CH	NC	1967	3	Extirpated	Extirpated		Development.
25	Santee Lakes	CH	NC	2001	1	Presumed Extirpated.	Presumed Extirpated.	2003	Development, Fire.
26	Mission Trails	CH	Core	2010	1	Extant	Presumed Extant Connected.	2003, −70%.	
27	North Mission Trails.	CH	NC	2003	1	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
28	Cowles Mountain.	CH	NC	1973	2	Presumed Extant.	Presumed Extant Connected.		
29	South Mission Trails.	CH	NC	1978	3	Presumed Extirpated.	Extirpated		Development Isolation.
30	Admiral Baker	CH	NC	2015	1	Extant	Extant Isolated.		
31	Kearny Mesa	CT	NC	1939	3	Extirpated	Extirpated		Development.
32	Mission Valley	CT	NC	Pre-1963	3	Extirpated	Extirpated		Development.
33	West Mission Valley.	CT	NC	1908	3	Extirpated	Extirpated		Development.
34	San Diego State University.	CT	NC	Pre-1963	3	Presumed Extirpated.	Extirpated		Development.

TABLE 1—HERMES COPPER BUTTERFLY OCCURRENCES IN THE UNITED STATES AND MEXICO—Continued

[Current status category was determined by a decision tree developed in 2020 (Service 2021, Figure 5), which considered data through 2019. Map # refers to Figures 6 and 7 in the SSA report.]

Map No.	Occurrence name	Ecological unit [1]	Size	Last record	Accuracy [2]	2018 SSA status category [3]	2020 status category Dispersal corridor-connectivity	Wildfire year (% burned if extant) [4]	Reason extirpated
35	La Mesa	CH	NC	Pre-1963	3	Presumed Extirpated.	Extirpated		Development.
36	Mt. Helix	CH	NC	Pre-1963	3	Presumed Extirpated.	Extirpated		Development.
37	East El Cajon	CH	NC	Pre-1963	3	Presumed Extirpated.	Extirpated		Development.
38	Dictionary Hill	CT	NC	1962	2	Presumed Extant.	Presumed Extirpated.		Drought.
39	El Monte	CH	NC	1960	2	Presumed Extirpated.	Presumed Extirpated.	2003	Development, Fire.
40	BLM Truck Trail	WGF	Core	2006	1	Presumed Extant.	Presumed Extirpated.	2003	Fire.
41	North Crestridge	WGF	NC	1981	2	Presumed Extirpated.	Presumed Extirpated.	1970 (40%), 2003.	Fire.
42	Northeast Crestridge.	WGF	NC	1963	2	Presumed Extant.	Presumed Extirpated.	2003, 2017 (60%).	Fire.
43	East Crestridge	WGF	NC	2003	1	Presumed Extant.	Presumed Extant Connected.	1970 (12%), 2003 (50%).	
44	Crestridge	WGF	Core	2014	1	Extant	Presumed Extant Connected.	1970 (98%), 2003 (80%).	
45	Boulder Creek Road.	PC	Core	2019	1	Extant	Extant Isolated	2003.	
46	North Guatay Mountain.	PC	NC	2004	1	Presumed Extant.	Presumed Extant Connected.	2003 (10%).	
47	South Guatay Mountain.	PC	NC	2010	1	Extant	Presumed Extant Connected.	1970 (99%).	
48	Pine Valley	PC	NC	Pre-1963	3	Presumed Extant.	Presumed Extant Connected.		
49	Descanso	PC	Core	2019	1	Extant	Extant Connected	1970 (56%), 2003 (50%).	
50	Japutal	WGF	Core	2012	1	Extant	Extant Connected	1970 (99%).	
51	East Japutal	WGF	NC	2010	1	Extant	Presumed Extirpated.	1970	Drought.
52	South Japutal	WGF	Core	2018	1	Extant	Extant Connected	1970.	
53	Corte Madera	PC	NC	Pre-1963	3	Presumed Extant.	Presumed Extant Connected.	1970.	
54	Alpine	WGF	Core	2011	1	Extant	Presumed Extirpated Isolated.	1970 (37%)	Drought.
55	East Alpine	WGF	NC	Pre-1963	3	Presumed Extant.	Presumed Extirpated.	1970 (30%), 2003, 2018 (75%).	Development, Fire.
56	Willows (Viejas Grade Road).	WGF	NC	2003	1	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
57	Dehesa	CH	NC	2012	3	Presumed Extant.	Extant Connected	1970.	
58	Loveland Reservoir.	WGF	Core	2012	1	Extant	Presumed Extirpated.	1970	Drought.
59	East Loveland Reservoir.	WGF	NC	2011	1	Extant	Presumed Extirpated.	1970	Drought.
60	West Loveland Reservoir.	CH	NC	2009	1	Extant	Presumed Extirpated.	1970	Drought.
61	Hidden Glen	WGF	NC	2010	1	Extant	Presumed Extirpated.	1970	Drought.
62	McGinty Mountain.	CH	Core	2014	1	Extant	Presumed Extirpated.	1970	Drought.
63	East McGinty Mountain.	WGF	NC	2001	2	Presumed Extant.	Presumed Extant Connected.	1970.	
64	North Rancho San Diego.	CH	NC	Pre-1963	3	Extirpated	Extirpated	1970	Development, Isolation.
65	Rancho San Diego.	CH	Core	2011	1	Extant	Presumed Extirpated.	1970, 2007	Drought.
66	South Rancho San Diego.	CH	NC	2007	1	Presumed Extant.	Presumed Extirpated.	1970, 2007	Drought.
67	San Miguel Mountain.	CH	Core	2007	1	Presumed Extirpated.	Presumed Extirpated.	1970, 2007	Fire.
68	South San Miguel Mountain.	CH	NC	2004	1	Presumed Extant.	Presumed Extirpated.	1970, 2007.	
69	North Jamul	CH	Core	2004	1	Presumed Extant.	Presumed Extant Isolated.	1970, 2003 (5%).	
70	North Rancho Jamul.	CH	NC	2007	1	Presumed Extirpated.	Presumed Extirpated.	2003, 2007	Fire.
71	Rancho Jamul	CH	Core	2003	1	Presumed Extirpated.	Presumed Extirpated.	2003, 2007	Fire.

TABLE 1—HERMES COPPER BUTTERFLY OCCURRENCES IN THE UNITED STATES AND MEXICO—Continued

[Current status category was determined by a decision tree developed in 2020 (Service 2021, Figure 5), which considered data through 2019. Map # refers to Figures 6 and 7 in the SSA report.]

Map No.	Occurrence name	Ecological unit [1]	Size	Last record	Accuracy [2]	2018 SSA status category [3]	2020 status category Dispersal corridor-connectivity	Wildfire year (% burned if extant) [4]	Reason extirpated
72	East Rancho Jamul.	CH	NC	2007	1	Presumed Extant.	Presumed Extant Isolated.	1970 (1%), 2003, 2007 (5%).	
73	Sycuan Peak	WGF	Core	2016	1	Extant	Presumed Extirpated.	1970	Drought.
74	Skyline Truck Trail.	WGF	Core	2018	1	Extant	Extant Connected	1970.	
75	Lyons Peak	WGF	NC	2003	1	Presumed Extant.	Presumed Extirpated.	1970, 2007	Drought.
76	Gaskill Peak	WGF	NC	2010	1	Extant	Presumed Extirpated.	2020	Fire.
77	Lawson Valley	WGF	Core	2019	1	Extant	Extant Connected	1970, 2007 (40%).	
78	Bratton Valley	WGF	NC	Pre-1963	3	Presumed Extirpated.	Presumed Extirpated.	1970, 2007	Fire.
79	Hollenbeck Canyon.	WGF	Core	20166	1	Presumed Extirpated [5].	Presumed Extirpated.	1970, 2007	Fire.
80	Southeast Hollenbeck Canyon.	WGF	NC	2007	1	Presumed Extirpated.	Presumed Extirpated.	1970, 2007	Fire.
81	South Hollenbeck Canyon.	CH	NC	Pre-1963	3	Presumed Extirpated.	Presumed Extirpated.	1970 (5%), 2003, 2007; 2017 (20%)..	Fire.
82	West Hollenbeck Canyon.	CH	NC	2007	1	Presumed Extirpated.	Presumed Extirpated.	1970 (40%), 2007.	Fire.
83	Otay Mountain	WGF	NC	1979	2	Presumed Extirpated.	Presumed Extirpated.	2003, 2007	Fire.
84	South Otay Mountain.	WGF	NC	Pre-1963	3	Presumed Extirpated.	Presumed Extirpated.	2003, 2007	Fire.
85	Dulzura	WGF	NC	2005	1	Presumed Extirpated.	Presumed Extirpated.	2007, 2007 [5]	Fire.
86	Deerhorn Valley	WGF	NC	1970	3	Presumed Extirpated.	Presumed Extirpated.	2007	Fire.
87	North Hartley Peak.	WGF	NC	2010	1	Extant	Presumed Extirpated.	2007	Fire, Drought.
88	South Hartley Peak.	WGF	NC	2010	1	Extant	Presumed Extant Connected.	2007 (50%).	
89	North Portrero	WGF	Core	2018	1	Extant	Extant Connected	2007 (35%).	
90	South Portrero	WGF	Core	2012	1	Extant	Extant Connected.		
91	Tecate Peak	WGF	NC	1980	3	Presumed Extirpated.	Presumed Extirpated.	2007	Fire.
92	Otay Mesa	CT	NC	Pre-1920	3	Presumed Extirpated.	Extirpated		Development, Isolation.
93	West Guatay Mountain.	PC	NC	2005	1	n/a	Presumed Extant Connected.		
94	Southeast Japutal.	PC	Core	2018	1	n/a	Extant Connected.		
95	Lyons Japutal	PC	NC	2018	1	n/a	Presumed Extirpated.	2020 (40%)	Fire.
Mexico [6]									
96	Salsipuedes	n/a	NC	1983	3	Presumed Extirpated.	Presumed Extirpated.	2014	Fire.
97	Santo Tomas	n/a	NC	Pre-1920	3	Presumed Extirpated.	Presumed Extirpated.	2003	Fire.
98	North Ensenada	n/a	NC	1936	3	Presumed Extirpated.	Presumed Extirpated.	2005, 2014	Fire.

[1] Description of ecological units: CH = Coastal Hills; CT = Coastal Terraces; WGF = Western Granitic Foothills; PC = Palomar-Cuyamaca Peak (Goudey and Smith 1994 [2007]).

[2] Geographic accuracy categories: 1 = GPS coordinates or accurate map; 2 = relatively accurate specimen collection site label or map; 3 = site name record or map only accurate enough for determining species' range (not used for mapping if within 1.5 km of a higher accuracy record and, if used, considered ''non-core'').

[3] At least one adult observed after 2015 translocation, does not represent breeding.

[4] Only fire included pre-2003 is 1970 Laguna megafire. If no percentage and status is extant or presumed extant, 100% within mapped fire footprint.

[5] Both the Harris (entire occurrence) and the Border (small portion) fire footprints overlapped this occurrence in 2007.

[6] Although records are low accuracy, extirpation of populations in Mexico is presumed due to numerous large fires in the area between 2003 and 2014 (NASA imagery).

While most recent scientific studies support recognition of Hermes copper butterfly as belonging to the monotypic genus *Hermelycaena,* Hermes copper butterfly was recognized as *Lycaena hermes* (subgenus *Hermelycaena*) in the most recent peer-reviewed taxonomic treatment (Pelham 2008, p. 191). Therefore, we recognize Hermes copper butterfly as *Lycaena hermes* throughout the SSA report (Service 2021), this final rule, and subsequent documents.

Hermes copper butterfly individuals diapause (undergo a low metabolic rate resting stage) as eggs during the late

summer, fall, and winter (Deutschman et al. 2010, p. 4). Adults are active May through July, when females deposit single eggs exclusively on spiny redberry (*Rhamnus crocea*) shrubs (Thorne 1963, p. 143; Emmel and Emmel 1973, p. 62) in coastal sage scrub and chaparral vegetation. Adult occupancy and feeding are also associated with presence of their primary nectar source, the shrub California buckwheat (*Eriogonum fasciculatum*), although other nectar sources may provide equivalent or supplemental adult nutrition. Hermes copper butterflies are considered poor dispersers, they appear to have limited directed movement ability, and they have been recaptured no more than 0.7 mi (1.1 km) from the point of release (Marschalek and Klein 2010, pp. 727–728). More information is needed to fully understand movement patterns of Hermes copper butterfly, especially across vegetation types; however, dispersal is likely aided by winds but inhibited by lack of dispersal corridor-connectivity areas in many areas (Deutschman et al. 2010, p. 17).

The Hermes copper butterfly has a much narrower distribution than spiny redberry, its host plant. The reasons for this lack of overlap in distribution are not well understood, but a recent chemical ecology study detected higher levels of some plant secondary compounds within the range of Hermes copper butterfly than outside it (Malter 2020, entire). Plant secondary compounds, such as tocopherols, found in significantly higher quantities within Hermes copper butterfly's historical range, were associated with warmer and drier conditions, while compounds found in significantly higher quantities outside (north of) of the range were associated with cooler and wetter conditions (Malter 2020, p. 28). Tocopherols play a basic role in insect physiology, especially for insects with specific diet requirements (*e.g.,* Vanderzant et al. 1957, p. 606; Zwolinska-Sniatalowa 1976, entire). Increased tocopherol levels associated with drought conditions have been found in plants from Mediterranean climates and other regions (*e.g.,* Munné-Bosch et al. 1999, entire; Munné-Bosch and Alegre 2000a, entire; 200b, p. 139) and other plants (Liu et al. 2008, p. 1275). The association of tocopherols with dry conditions, potentially contributing to historical limitation of the Hermes copper butterfly's range to a drier, more southern distribution than the host plant, combined with the butterfly's apparent drought sensitivity, suggest a narrow climatic envelope for the species within the range of its host plant (discussed further under Climate Change and Drought below). Because the climate differences noted in this study are correlated with a northern latitude difference, we expect the reverse relationship (hotter and drier outside the historical range) to the east (desert) and south of the species' historical range.

There are two types of ''habitat connectivity'' important to the Hermes copper butterfly—within-habitat patch connectivity and dispersal corridor-connectivity areas. Within-habitat patch connectivity requires an unfragmented habitat patch where reproduction occurs. Habitat patches are a collection of host plants and host plant patches among which adult butterflies readily and randomly move during a flight season (any given butterfly is just as likely to be found anywhere within that area). Butterflies must be free and likely to move among individual host plants and patches of host plants within a habitat patch. Hermes copper butterflies also require dispersal corridor-connectivity areas, which are undeveloped wildlands with suitable vegetation structure between habitat patches close enough that recolonization of a formerly occupied habitat patch is likely. We refer to both types of connectivity in this rule.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to

provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R8–ES–2017–0053 on *https://www.regulations.gov.*

To assess Hermes copper butterfly viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, population resiliency collectively supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), species redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and species representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient populations a species has and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Resource Needs

In the SSA report (Service 2021), we describe the ecological needs of the Hermes copper butterfly at the hierarchical levels of individual, population, and species. There are also spatial and temporal components to hierarchical resource needs, reflected in the average area occupied by and ''life expectancy'' of each ecological entity. Individual needs are met and resource availability should be assessed at the adult male territory scale on an annual basis, reflecting the life span of an individual (from egg to adult). Population-level resilience needs are met and resource availability should be assessed on the habitat patch or metapopulation (interconnected habitat patches) scale over a period of decades. Populations or subpopulations persist in intact habitat until they are extirpated by stochastic events such as wildfire, to eventually be replaced as habitat is recolonized (18 years is the estimated time it took for the Mission Trails occurrence recolonization). Species-level viability needs are assessed and must be met at a range-wide scale if the species is to avoid extinction. The following list describes the Hermes copper butterfly's ecological needs:

(1) Individual Resource Needs:

(a) Egg: Suitable spiny redberry stems for substrate.

(b) Larvae: Suitable spiny redberry leaf tissue for development.

(c) Pupae: Suitable leaves for pupation.

(d) Adults: Suitable spiny redberry stem tissue for oviposition; nectar sources (primarily California buckwheat); mates.

(2) Population Needs:

(a) Resource needs and/or circumstances: Habitat elements required by populations include spiny redberry bushes (quantity uncertain, but not isolated individuals) and associated stands of California buckwheat or similar nectar sources.

(b) Population-level redundancy: Populations must have enough individuals (for population growth) in ''good years'' that, after reproduction is limited by poor environmental conditions such as drought in intervening ''bad years,'' individuals can still find mates. Alternatively, there need to be enough diapausing eggs to wait out a bad year and restore the average population size or greater in the subsequent year. That is, populations need to be large enough to persist through expected periods of population decline.

(c) Population-level representation: It is unclear how susceptible the Hermes copper butterfly is to inbreeding depression. A mix of open, sunny areas should be present within habitat patches and stands of California buckwheat for nectar in the vicinity of spiny redberry host plants. Additionally, individuals must be distributed over a large enough area (population footprint/distribution) that not all are likely to be killed by stochastic events such as wildfire.

(3) Species Needs:

(a) Resource needs and/or circumstances: Dispersal corridor-connectivity areas among subpopulations to maintain metapopulation dynamics. For Hermes copper butterfly, this means suitable dispersal corridor habitat with suitable intervening vegetation structure and topography between habitat patches that are close enough so that recolonization of habitat patches where a subpopulation was extirpated is likely. Apparent impediments to dispersal include forested, riparian, and developed areas.

(b) Species-level redundancy: 98 known historical or extant Hermes copper butterfly occurrences have been documented in southern California, United States, and northwestern Baja California, Mexico: 26 are extant or presumed extant (all in the United States), 56 are presumed extirpated, and 16 are permanently extirpated (Table 1).

In order to retain the species-level redundancy required for species viability, populations and temporarily unoccupied habitats must be distributed throughout the species' range in sufficient numbers and in a geographic configuration that supports dispersal corridor-connectivity areas described in (a) above.

(c) Species-level representation: Populations must be distributed in a variety of habitats (including all four California Ecological Units; Service 2021, p. 58) so that there are always some populations experiencing conditions that support reproductive success. In especially warm, dry years, populations in wetter habitats should experience the highest population growth rates within the species' range, and in colder, wetter years populations in drier habitats should experience the highest growth rates. Populations should be represented across a continuum of elevation levels from the coast to the mountain foothills. There is currently 1 presumed extant occurrence remaining with marine climate influence, 7 extant or presumed extant with primarily montane climate influence, and the remainder (18) at intermediate elevations with a more arid climate (Service 2021, p. 55). Those populations in higher elevation, cooler habitats, and coastal habitats with more marine influence are less susceptible to a warming climate and are, therefore, most important to maintain.

Summary of Threats

The following sections include summary evaluations of five threats impacting the Hermes copper butterfly or its habitat, including wildfire (Factor A), land use change (Factor A), habitat fragmentation and isolation (Factor A), climate change (Factor E), and drought (Factor E); as well as evaluating the cumulative effect of these on the species, including synergistic interactions between the threats and the vulnerability of the species resulting from small population size. We also consider the impacts of existing regulatory mechanisms (Factor D) on all existing threats (Service 2021, pp. 33–54). We also note that potential impacts associated with overutilization (Factor B), disease (Factor C), and predation (Factor C) were evaluated but found to have minimal to no impact on the species (Service 2021, pp. 33–54).

For the purpose of this analysis, we generally define viability as the ability of the species to sustain populations in the natural ecosystem for the foreseeable future—in this case, 30 years. For the purposes of this assessment, we consider the foreseeable future to be the amount of time for which we can reasonably determine a threat's anticipated trajectory and the anticipated response of the species to those threats. We chose 30 years because it is within the range of the available hydrological and climate change model forecasts, fire hazard period calculations, and the fire-return interval estimates for habitat-vegetation associations that support the Hermes copper butterfly.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Current Condition

Wildfire

Wildfire impacts both Hermes copper butterfly and its habitat. The vegetation types that support Hermes copper butterfly—chaparral and coastal sage scrub—are prone to relatively frequent wildfire ignitions, and many plant species that characterize those habitat types are fire-adapted. The Hermes copper butterfly's host plant, spiny redberry, resprouts after fires and is relatively resilient to frequent burns (Keeley 1998, p. 258). The effect of wildfire on Hermes copper butterfly's primary nectar source, California buckwheat, is more complicated. California buckwheat is a facultative seeder that has minimal resprouting capability (approximately 10 percent) for young individuals (Keeley 2006, p. 375). Wildfires cause high mortality in California buckwheat, and densities are reduced the following year within burned areas (Zedler et al. 1983, p. 814); however, California buckwheat recolonizes relatively quickly (compared to other coastal sage scrub species) if post-fire conditions are suitable.

The historical fire regime in southern California likely was characterized by many small, lightning-ignited fires in the summer and a few infrequent large fires in the fall (Keeley and Fotheringham 2003, pp. 242–243). These infrequent, large, high-intensity wildfires, so-called ''megafires'' (defined in the SSA report as those fires greater than 16,187 ha (40,000 ac) in size) (Service 2021, p. 33), burned the landscape long before Europeans settled the Pacific coast (Keeley and Zedler 2009, p. 90). As such, the current pattern of small, low-intensity fires with large infrequent fires is consistent with that of historical regimes (Keeley and Zedler 2009, p. 69). Therefore, habitat that supports Hermes copper butterfly is naturally adapted to fire and has some natural resilience to impacts from wildfire.

However, in recent decades, wildfire has been increasing in both frequency and magnitude (Safford and Van de Water 2014, pp. i, 31–35). Annual mean area under extreme fire risk has increased steadily in California since 1979, and 2014 ranked highest in the history of the State (Yoon et al. 2015, p. S5). The historical fire-return intervals for Hermes copper butterfly habitat vegetation associations are 15–30-plus years for coastal sage scrub habitats and 30–60 years for chaparral habitats (Sawyer et al. 2009, pp. 325, 529, 1294).

In order to understand the changing frequency of fire in Hermes copper butterfly's range, we analyzed fire-rotation intervals, or the amount of time it takes for fire to burn a certain set acreage. For our analysis, we looked at how long it historically took fire footprints to add up to the total estimated range for Hermes copper butterfly (Service 2017, entire). For the historical range of the Hermes copper butterfly, the fire-rotation interval decreased from 68 years between 1910–2000 to 49 years between 1925–2015 (Service 2017, entire). A change in only 17 percent of the time period analyzed resulted in a 28 percent decrease in fire-rotation interval (Service 2017, entire).

Increasing fire frequency and size is of particular concern for the Hermes copper butterfly because of how long it can take for habitat to be recolonized after wildfire. For example, in Mission Trails Park, the 2,596-ha (7,303-ac) ''Assist #59'' Fire in 1981 and the smaller 51-ha (126-ac) ''Assist #14'' Fire in 1983 (no significant overlap between acreages burned by the fires), resulted in an approximate 18-year extirpation of the Mission Trails Park Hermes copper

butterfly occurrence (Klein and Faulkner 2003, pp. 96, 97).

To assess the impacts of fire on the Hermes copper butterfly, we examined maps of recent high-fire-hazard areas in San Diego County (Service 2021, Figure 8). Almost all remaining habitat within mapped Hermes copper butterfly occurrences falls within the ''very high'' fire hazard severity zone for San Diego County (Service 2021, Figure 8). Areas identified in our analysis as most vulnerable to extirpation by wildfire include most occupied and potentially occupied Hermes copper butterfly habitats in San Diego County within the southern portion of the range. Twenty-eight potential source occurrences for recolonization of recently burned habitat fall within a contiguous area that has not recently burned (Service 2021, Figure 7), and where the fire hazard is considered high (Service 2021, Figure 8).

Although habitat that supports Hermes copper butterfly is adapted to fire, increased fire frequency can still have detrimental effects. Frequent fires open up the landscape, making the habitat more vulnerable to invasive, nonnative plants and vegetation type-conversion (Keeley *et al.* 2005, p. 2117). The extent of invasion of nonnative plants and type conversion in areas specifically inhabited by Hermes copper butterfly is unknown. However, wildfire clearly results in at least temporary reductions in suitable habitat for Hermes copper butterfly and may result in lower densities of California buckwheat (Zedler et al. 1983, p. 814; Keeley 2006, p. 375; Marschalek and Klein 2010, p. 728). Although Keeley and Fotheringham (2003, p. 244) indicated that continued habitat disturbance, such as fire, will result in conversion of native shrublands to nonnative grasslands, Keeley (2004, p. 7) also noted that invasive, nonnative plants will not typically displace obligate resprouting plant species in mesic shrublands that burn once every 10 years. Therefore, while spiny redberry resprouts, the quantity of California buckwheat as a nectar source necessary to support a Hermes copper butterfly occurrence may be temporarily unavailable due to recent fire impacts, and nonnative grasses commonly compete with native flowering plants that would otherwise provide abundant nectar after fire.

Extensive and intense wildfire events are the primary recent cause of direct mortality and extirpation of Hermes copper butterfly occurrences. The magnitude of this threat appears to have increased due to an increased number of recent megafires created by extreme ''Santa Ana'' driven weather conditions of high temperatures, low humidity, strong erratic winds, and human-caused ignitions (Keeley and Zedler 2009, p. 90; Service 2021, pp. 33–41). The 2003 Otay and Cedar fires and the 2007 Harris and Witch Creek fires in particular have negatively impacted the species, resulting in or contributing to the extirpation of 33 occurrences (Table 1). Only 3 of the 34 U.S. occurrences thought to have been extirpated in whole or in part by fire since 2003 appear to have been naturally reestablished, or were not entirely extirpated (Table 1; Service 2021, Figure 7; Winter 2017, pers. comm.). Most recently, the Valley Fire burned 6,632 ha (16,390 ac), including over ⅓ of the Lawson Valley core occurrence (presumed extant), all of the Gaskill Creek non-core occurrence (formerly considered extant), all records within the Lyons Japutal non-core occurrence documented in 2018, and approximately ¼ of the Hidden Glen non-core occurrence (Service 2021, Appendix II). This fire came within 4 km (2.5 mi) of both the Descanso core occurrence to the north, the highest abundance monitored site on record (Service 2021, Appendix II), and the Portrero core occurrence to the south, one of only three where adults were recorded in 2020 (Service 2021, Table 1; Figure 8).

Wildfires that occur in occupied Hermes copper butterfly habitat result in direct mortality of Hermes copper butterflies (Klein and Faulkner 2003, pp. 96–97; Marschalek and Klein 2010, pp. 4–5). Butterfly populations in burned areas rarely survive wildfire because immature life stages of the butterfly inhabit host plant foliage, and spiny redberry typically burns to the ground and resprouts from stumps (Deutschman et al. 2010, p. 8; Marschalek and Klein 2010, p. 8). This scenario results in at least the temporary loss of both the habitat (until the spiny redberry and nectar source regrowth occurs) and the presence of butterflies (occupancy) in the area.

Wildfires can also leave patches of unburned occupied habitat that are functionally isolated (further than the typical dispersal distance of the butterfly) from other occupied habitat. Furthermore, large fires can eliminate source populations before previously burned habitat can be recolonized, and may result in long-term or permanent loss of butterfly populations. Historically, Hermes copper butterfly persisted through wildfire by recolonizing extirpated occurrences once the habitat recovered. However, as discussed below, ongoing loss and isolation of habitat has resulted in smaller, more isolated populations than existed historically. This isolation has likely reduced or removed the ability of the species to recolonize occurrences extirpated by wildfire.

Our analysis of current fire danger and fire history illustrates the potential for catastrophic loss of the majority of remaining butterfly occurrences should another large fire occur prior to recolonization of burned habitats. One or more wildfires could extirpate the majority of extant Hermes copper butterfly occurrences (Marschalek and Klein 2010, p. 9; Deutschman et al. 2010, p. 42). Furthermore, no practical measures are known that could significantly reduce the impact of megafires on the Hermes copper butterfly and its habitat. In a 2015 effort to mitigate the impact of wildfires on Hermes copper butterfly, a translocation study, funded by the San Diego Association of Governments (SANDAG), was initiated to assist recolonization of habitat formerly occupied by the large Hollenbeck Canyon occurrence (Marschalek and Deutschman 2016c, entire). While it is not clear that this attempt was successful, in 2016 there were signs of larval emergence from eggs and at least one adult was observed, indicating some level of success (Marschalek and Deutschman 2016c, p. 10). Regulatory protections, such as ignition-reduction measures, do exist to reduce fire danger; however, large megafires are considered resistant to control (Durland, pers. comm., in Scauzillo 2015).

The current fire regime in Mexico is not as well understood. Some researchers claim chaparral habitat in Mexico within the Hermes copper butterfly's range is not as affected by megafires because there has been less fire suppression activity than in the United States (Minnich and Chou 1997, pp. 244–245; Minnich 2001, pp. 1,549–1,552). In contrast, Keeley and Zedler (2009, p. 86) contend the fire regime in Baja California, Mexico, mirrors that of southern California, similarly consisting of ''small fires punctuated at periodic intervals by large fire events.'' Local experts agree the lack of fire suppression activities in Mexico has reduced the fuel load on the landscape, subsequently reducing the risk of megafire (Oberbauer 2017, pers. comm.; Faulkner 2017, pers. comm.). However, examination of satellite imagery from the 2000s indicates impacts from medium-sized wildfire in Mexico are similar to those in San Diego County, as evidenced by two large fires in 2014 that likely impacted habitats associated with occurrence records of the Hermes

copper butterfly near Ensenada (NASA 2017a; 2017b; Service 2021, p. 37).

Although the level of impact may vary over time, wildfires cause ongoing degradation, destruction, fragmentation, and isolation of Hermes copper butterfly habitat as well as direct losses of Hermes copper butterfly that have contributed to the extirpation of numerous populations. As discussed above, only 3 of the 31 U.S. occurrences thought to have been extirpated in whole or in part by fire since 2003 appear to have been naturally reestablished. This threat affects all Hermes copper butterfly populations and habitat across the species' range.

Land Use Change

Urban development within San Diego County has resulted in the loss, fragmentation, and isolation of Hermes copper butterfly habitat (CalFlora 2010; Consortium of California Herbaria 2010; San Diego County Plant Atlas 2010) (see the Habitat Isolation section below). Of the 69 known Hermes copper butterfly occurrences permanently or presumed extirpated, loss, fragmentation, and isolation of habitat as a result of development contributed to 26 of those (38 percent; Table 1). In particular, habitat isolation is occurring between the northern and southern portions of the species' range and in rural areas of the southeastern county; this loss of dispersal corridor-connectivity areas is of greatest concern where it would impact core occurrences in these areas (Service 2021, p. 41).

To quantify the remaining land at risk of development, we analyzed all existing habitat historically occupied by the Hermes copper butterfly based on specimens and observation records. We then removed lands that have been developed and examined the ownership of remaining, undeveloped land. Currently, approximately 67 percent of the remaining undeveloped habitat is protected from destruction by development because it is on protected lands including military installations and lands within the Multiple Species Conservation Program (MSCP) (Service 2021, p. 41). Approximately 53 percent of conserved lands within mapped Hermes copper butterfly occurrences were conserved under the MSCP. The MSCP also includes biological management and monitoring within the Preserve. Within the MSCP, all of the known extant occurrences are located within the two largest subarea plans: The City of San Diego (83,415 ha (206,124 ac)) and the County of San Diego (102,035 ha (252,132 ac)). Both plans are implemented in part by local adopted ordinances (Environmentally Sensitive Lands regulations in the City of San Diego Municipal Code and the Biological Mitigation Ordinance in the County). Both ordinances outline specific project design criteria and species and habitat protection and mitigation requirements for projects within subarea boundaries (see MSCP Subarea Plans, City of San Diego 1997, County of San Diego 1997, City's Environmentally Sensitive Lands Municipal Code (Ch. 14, Art. 3, Div. 1, § 143.0101) and County's Biological Mitigation Ordinance (Ord. Nos. 8845, 9246), County of San Diego 1998).

The County of San Diego has two ordinances in place that restrict new development or other proposed projects within sensitive habitats. The Biological Mitigation Ordinance of the County of San Diego Subarea Plan and the County of San Diego Resource Protection Ordinance regulate development within coastal sage scrub and mixed chaparral habitats that currently support extant Hermes copper butterfly populations on non-Federal land within the County's jurisdiction (for example, does not apply to lands under the jurisdiction of the City of Santee or the City of San Diego). Additionally, County regulations mandate surveys for Hermes copper butterfly occupancy and habitat, and to the extent it is a significant impact under the California Environmental Quality Act (Cal. Pub. Res. Code 21000 *et seq.*), mitigation may be required. These local resource protection ordinances may provide some regulatory measures of protection for the remaining 33 percent of extant Hermes copper butterfly habitat vulnerable to development, when occurring within the County's jurisdiction. Additionally, presence of Hermes copper butterflies has on occasion been a factor within San Diego County for prioritizing land acquisitions for conservation from Federal, State, and local funding sources due to the focus of a local conservation organization. SANDAG has provided funding for Hermes copper butterfly surveys and research since 2010, as well as grants for acquisition of two properties that have been (or are) occupied by Hermes copper butterfly.

There is uncertainty regarding the Hermes copper butterfly's condition within its southernmost known historical range in Mexico; however, one expert estimated that development pressure in known occupied areas near the city of Ensenada was similar to that in the United States (Faulkner 2017, pers. comm.).

We conclude that development is a current, ongoing threat contributing to reduction and especially fragmentation of remaining Hermes copper butterfly habitat in limited areas on non-Federal lands at this time. However, some regulatory protections are in place, and 67 percent of historically occupied habitat is on protected lands owned by Federal, State, and local jurisdictions and conservancies. Therefore, although the rate of habitat loss has been reduced relative to historical conditions, regulations have not served to protect some key populations or dispersal corridor-connectivity areas, and development continues to increase isolation of the northern portion from the southern portion of the species' range (Service 2021, pp. 40–44).

Habitat Isolation

Habitat isolation directly affects the likelihood of Hermes copper butterfly population persistence in portions of its range, and exacerbates other effects from fire and development. Hermes copper butterfly populations have become isolated both permanently (past and ongoing urban development) and more temporarily (wildfires). Habitat isolation separates extant occurrences and inhibits movement by creating a gap that Hermes copper butterflies are not likely to traverse. Any loss of resources on the ground that does not affect butterfly movement, such as burned vegetation, may degrade but not fragment habitat. Therefore, in order for habitat to be isolated, movement must either be inhibited by a barrier, or the distance between remaining suitable habitat must be greater than adult butterflies will typically move to mate or to deposit eggs. Thus, a small fire that temporarily degrades habitat containing host plants is not likely to support movement between suitable occupied habitat patches and could cause temporary isolation. Although movement may be possible, to ensure successful recolonization, habitat must be suitable at the time Hermes copper butterflies arrive.

Effects from habitat isolation in the northern portion of the species' range have resulted in extirpation of at least four Hermes copper butterfly occurrences (see Table 1 above). A historical Hermes copper butterfly occurrence (Rancho Santa Fe) in the northern portion of the range has been lost since 2004. This area is not expected to be recolonized because it is mostly surrounded by development and the nearest potential ''source'' occurrence is Elfin Forest, 2.7 mi (4.3 km) away, where at least one adult was last detected in 2011 (Marschalek and Deutschman 2016a, p. 8). Farther to the south, Black Mountain, Lopez Canyon, Van Dam Peak, and the complex of occurrences comprising Mission Trails

Park, North Santee, and Lakeside Downs are isolated from other occurrences by development. Because a number of populations have been lost, and only a few isolated and mostly fragmented ones remain, the remaining populations in the northern portion of the range are particularly vulnerable to the effects of further habitat isolation. These populations may already lack the dispersal corridor-connectivity areas needed to recolonize should individual occurrences be extirpated. Reintroduction or augmentation may be required to sustain the northern portion of the species' range. No information is available on the potential impacts of habitat isolation in the species' range in Mexico.

Overall, habitat isolation is a current, ongoing threat that continues to degrade and isolate Hermes copper butterfly habitat across the species' range.

Climate Change and Drought

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has increased since the 1950s. Global climate projections are informative, and, in some cases, the only or the best scientific information available. However, projected changes in climate and related impacts can vary across and within different regions of the world (IPCC 2013, pp. 15–16). To evaluate climate change for the region occupied by the Hermes copper butterfly, we used climate projections ''downscaled'' from global projection models, as these provided higher resolution information that is more relevant to spatial scales used for analyses of a given species (Glick et al. 2011, pp. 58–61).

Southern California has a Mediterranean climate. Summers are typically dry and hot while winters are cool, with minimal rainfall averaging about 25 centimeters (10 inches) per year. The interaction of the maritime influence of the Pacific Ocean combined with inland mountain ranges creates an inversion layer typical of Mediterranean-like climates. These conditions also create microclimates, where the weather can be highly variable within small geographic areas at the same time.

We evaluated the available historical weather data and the species' biology to determine the likelihood of effects assuming the climate has been and will continue to change. The general effect of a warmer climate, as observed with Hermes copper butterfly in lower, warmer elevation habitats compared to higher, cooler elevations, is an earlier flight season by several days (Thorne 1963, p. 146; Marschalek and Deutschman 2008, p. 98). Past records suggest a slightly earlier flight season in recent years compared to the 1960s (Marschalek and Klein 2010, p. 2). The historical temperature trend in Hermes copper butterfly habitats for the month of April (when larvae are typically developing and pupating) from 1951 to 2006 can be calculated with relatively high confidence (p values from 0.001 to 0.05). The mean temperature change in occupied areas ranged from 0.07 to 0.13 °F (0.04 to 0.07 °C) per year (Climate Wizard 2016), which could explain the earlier than average flight seasons. Nevertheless, given the temporal and geographical availability of their widespread perennial host plant, and exposure to extremes of climate throughout their known historical range (Thorne 1963, p. 144), Hermes copper butterfly and its host and nectar plants are not likely to be negatively affected throughout the majority of the species' range by phenological shifts in development of a few days.

Drought has been a major factor affecting southern California ecosystems. The 2011–2016 California drought was one of the most intense in the State's history, with the period of late 2011–2014 being the driest ever recorded (Public Policy Institute of California 2020; Syphard *et. al.* 2018, p. 16). Specifically, the 12-month period in 2013–14 was the driest on record in California (Swain et al. 2014, p. S3), followed by another unusually dry year in 2018. Furthermore, evidence is emerging that climate change has pushed what would have likely been a moderate drought in southwestern North America into the beginning of a megadrought similar to ecologically devastating historical events (Agha Kouchak et al. 2014, entire; Griffen et al. 2014, entire; Robeson 2015, entire; Williams et al. 2020, p. entire).

The exact mechanism by which drought impacts Hermes copper butterflies is not known. However, other butterfly species in southern California have shown declines caused by drought stress on their perennial host plants (Ehrlich et al. 1980, p. 105). Spiny redberry shows decreased health and vegetative growth during drought years (Marschalek 2017, pers. comm.).

Though limited, existing data suggest that drought is contributing to the decline of Hermes copper butterflies. Systematic monitoring of adult abundance at sites within occurrences since 2010 indicates the past 10 years of mostly drought conditions negatively affected habitat suitability and suppressed adult population sizes. The highest elevation, wettest occurrence (Boulder Creek Road) maintained the highest abundance among long-term monitored sites from 2014 to 2020. This higher elevation site got more rain than lower sites, indicating representation in higher elevation inland habitats is important to species' viability. The number of Hermes copper butterflies reported at Boulder Creek sharply decreased in 2019. In 2020, the maximum daily number observed at that location was limited to only three butterflies and none were reported at any of the other seven long-term monitored sites (Marschalek and Deutschman 2019, p. 8; Marschalek pers. comm. 2020, entire; Figure 11). In 2018, a new site was discovered (''Roberts Ranch South,'' part of the Descanso occurrence) and, although variable from year to year, has had consistently high survey numbers. Fifty-four individuals were recorded in 2018, 95 in 2019, and 45 in 2020 (Marschalek and Deutschman 2019, p. 8; Marschalek pers. comm. 2020, entire). For all 3 years since discovery, Roberts Ranch South has far exceeded numbers found at sentinel and other survey sites.

Temperatures have significantly increased from 1951 to 2016, and these changes may be influencing the timing of the Hermes copper butterfly's flight season as well as their phenology (Service 2021, pp. 47–48). Through increased evapotranspiration and soil drying, high temperatures increase the indirect negative effects of drought on average quality of the host plant and nectar resources. Still, we are unaware of any direct negative impacts on Hermes copper butterfly life history due to these temperature changes. Drought appears to be having a more pronounced indirect negative effect, as the mean maximum daily adult counts have decreased in recent years with a decrease in precipitation that may be more of a concern at low-elevation sites.

Combined Effects

Threats interacting may have a much greater effect than threats working individually; for example, habitat loss and isolation due to land use change combined with wildfire together have a greater impact on the species than wildfire alone. Multiple threats at a given hierarchical level have combined effects that emerge at the next higher level. For example, at the population level, habitat loss significantly reducing the resilience of one population combined with wildfire affecting resilience of another has a greater effect on Hermes copper butterfly species-level redundancy and, therefore, species viability than either threat would individually.

Threats that alone may not significantly reduce species viability have at least additive, if not synergistic, effects on species viability. For example, wildfire and habitat modification (type conversion) typically have a synergistic effect on habitat suitability in Mediterranean-type climate zones (Keeley and Brennon 2012, entire; California Chaparral Institute 2017, entire). Wildfire increases the rate of nonnative grass invasion, a component of the habitat modification threat, which in turn increases fire frequency. Overall, these factors increase the likelihood of megafires on a landscape/species range-wide scale.

The relationship between habitat fragmentation and type conversion is in part synergistic, particularly for Hermes copper butterflies, which are typically sedentary with limited direct movement ability. Fragmentation increases the rate of nonnative plant species invasion and type conversion through increased disturbance, nitrogen deposition, and seed dispersal, and type conversion itself reduces habitat suitability and, therefore, habitat contiguity and dispersal corridor-connectivity areas (increasing both habitat fragmentation and isolation). Another example of combined impacts is climate change. Although not a known significant threat on its own, the increased temperature resulting from climate change significantly exacerbates other threats, especially wildfire and drought.

Small population size, low population numbers, and population isolation are not necessarily independent factors that pose a threat to species. It is the combination of small size and number and isolation of populations in conjunction with other threats (such as the present or threatened destruction and modification of the species' habitat or range) that may significantly increase the probability of a species' extinction. Considering reduced numbers in recent surveys and historically low population numbers relative to typical butterfly population sizes, the magnitude of effects due to habitat fragmentation and isolation, drought, and wildfire are likely exacerbated by small population size.

Therefore, multiple threats are acting in concert to fragment, limit, and degrade Hermes copper butterfly habitat and decrease species resiliency, redundancy, and representation. The effects of these threats are evidenced by the loss and isolation of many populations throughout the range; those remaining extant populations fall within very high fire-hazard areas.

Species Viability Index

In the absence of population dynamics data required for a population viability analysis, we constructed a relatively simple viability index in our SSA report to better understand how species viability may change with changing conditions (Service 2021, pp. 66–68). In our index calculations, the contribution of a population to species-level redundancy depends on population-level resiliency, and contribution to species-level representation depends on how rare populations are in the habitat type (California Ecological Unit) it occupies (Service 2021, Figure 13). Species redundancy and representation are assumed to equally influence species viability. We assign a 100 percent species viability index value to the baseline state of all known historical population occurrences in the United States. For this index calculation, we do not consider occurrences in Mexico, because there are only 3 (possibly 2) out of a total of 98, and all are presumed extirpated. For a detailed description of our methodology and of viability index results, see the Species Viability Index section of the SSA report (Service 2021, pp. 58–62).

Our index of species viability is indicative of changes in species viability (the ability of a species to sustain populations in the natural ecosystem beyond 30 years); in other words, it is correlated with the likelihood of persistence, but is not itself a probability value). This viability index is useful for comparison of current and future conditions to historical baseline conditions, with an assumed baseline indefinite likelihood of persistence. We can assume the index value and species viability move in the same direction over time (both decrease or increase together); however, once the probability of persistence for 30 years drops significantly below 100 percent (as populations become fewer, less resilient, and more isolated), viability likely decreases faster than the index value.

To calculate the viability index, we first estimated species redundancy and species representation. To estimate a current species redundancy value, we ranked each occurrence's resiliency based on the status and their relative connectedness (Service 2021, p. 53; Appendix III). We estimate there are currently 15 presumed extant, 1 extant non-core isolated, 1 core isolated, and 8 extant core connected occurrences and based on our calculations, the species currently retains 14 percent of its historical population redundancy (Service 2021, p. 57).

In order to model species representation, we used California Ecological Units (Goudey and Smith 1994 [2007]; see Table 1 above) as a measure of habitat diversity (Service 2021, Figure 10). Using those units, occupancy in the Coastal Terraces (CT) ecological unit has been reduced to 9 percent, in the Coastal Hills (CH) unit to 18 percent, in the Western Granitic Foothills (WGF) unit to 29 percent, and 89 percent in the Palomar-Cuyamaca Peak Coastal Terraces (PC) unit. Based on these proportional values, the species retains approximately 36 percent of its historical species representation (Service 2021, p. 57).

Species viability was calculated by summing the results of the redundancy and representation calculations (Service 2021, p. 57); we estimate the species viability index value is approximately 25 percent of its historical value.

Summary of Current Condition

Of the 98 known historical occurrences in southern California, there are currently 26 occurrences that are believed to be extant or presumed extant; therefore, there is limited population resiliency to withstand stochastic events. Based on our viability index, Hermes copper butterfly has lost significant viability over the past 50 years. However, extant and presumed extant occurrences are represented across a continuum of elevations and varying habitat diversity. This helps ensure the species has sufficient representation to provide the adaptive capacity necessary to maintain species viability. The number of occurrences presumed and considered to be extant also provides redundancy to protect the species against catastrophic events. While we know fire, drought, and climate change are ongoing stressors that continue to adversely affect the species' viability, under current conditions, there appear to be a sufficient number of extant and presumed extant occurrences to currently sustain the species in the wild. Additionally, the majority of extant occurrences are on conserved lands, providing some protection from ongoing threats.

Future Condition

To analyze species viability, we consider the current and future availability or condition of resources. The consequences of missing resources are assessed to describe the species' current condition and to project possible future conditions.

As discussed above, we generally define viability as the ability of the species to sustain populations in the natural ecosystem for the foreseeable future, in this case, 30 years. We chose 30 years because it is within the range of the available hydrological and climate change model forecasts, fire hazard period calculations, habitat-vegetation association, and fire-return intervals.

Threats

To consider the possible future viability of Hermes copper butterfly, we first analyzed the potential future conditions of ongoing threats. Possible development still in the preliminary planning stage (Service and CDFW 2016) could destroy occupied or suitable habitat on private land within the North Santee occurrence. Similar concerns apply to habitat in the Lyons Valley, Skyline Truck Trail area. Habitat isolation is a continuing concern for Hermes copper butterfly as lack of dispersal corridor-connectivity areas among occupied areas limits the ability of the species to recolonize extirpated habitat. Development outside of occupied habitat can also negatively affect the species by creating dispersal corridor-connectivity barriers throughout the range.

Anticipated severity of effects from future habitat development and isolation varies across the range of the species. Within U.S. Forest Service (USFS) lands (2,763 ha (6,829 ac)), we anticipate future development, if any, will be limited. As it implements specific activities within its jurisdiction, the USFS has incorporated measures into the Cleveland National Forest Plan to address threats to Hermes copper butterfly and its habitat (USFS 2005, Appendix B, p. 36). The limited number of Hermes copper butterfly occurrences within Bureau of Land Management's (BLM) National Landscape Conservation System Otay Mountain Wilderness is also unlikely to face future development pressure. Based on our analysis, we conclude land use change, while significant when combined with the stressor of wildfire, will not be the most significant future source of Hermes copper butterfly population decline and loss. Some habitat areas vulnerable to development are more important than others to the species' viability because of their history of occupancy, size, or geographic location. Development poses a potential threat to certain known occurrences including North Santee, Loveland Reservoir, Skyline Truck Trail, North Jamul, and South Japutal core occurrences (26 percent of the core occurrences considered or presumed extant; Service 2021, pp. 23–28, 41). Absent additional conservation of occupied habitat and dispersal corridor-connectivity areas, effects of habitat loss, fragmentation, and isolation will continue to extirpate occurrences, degrade existing Hermes copper butterfly habitat, and reduce movement of butterflies among occurrences, which reduces the likelihood of natural recolonizations following extirpation events (Service 2021, p. 53 and Figure 9).

As discussed above, wildfire can permanently affect habitat suitability. If areas are reburned at a high enough frequency, California buckwheat may not have the time necessary to become reestablished, rendering the habitat unsuitable for Hermes copper butterfly (Marschalek and Klein 2010, p. 728). Loss of nectar plants is not the only habitat effect caused by wildfire; habitat type conversion increases flammable fuel load and fire frequency, further stressing Hermes copper butterfly populations. Therefore, habitat modification due to wildfire is cause for both short- and long-term habitat impact concerns.

We expect that wildfire will continue to cause direct mortality of Hermes copper butterflies. In light of the recent drought-influenced wildfires in southern California, a future megafire affecting most or all of the area burned by the Laguna Fire in 1970 (40-year-old chaparral) could encompass the majority of extant occurrences and result in significantly reduced species viability (Service 2021, Figures 8 and 9).

In the case of Hermes copper butterfly, the primary limiting species-level resource is dispersal corridor-connectivity areas of formerly occupied to currently occupied habitats, on which the likelihood of post-fire recolonization depends. We further analyzed fire frequency data to determine the effect on occurrence status and the likelihood of extirpation over the next 30 years. Our analysis concluded that the probability of a megafire occurring in Hermes copper butterfly's range has significantly increased. During the past 15 years (2004–2019), there were six megafires within Hermes copper butterfly's possible historical range (Poomacha, Paradise, Witch, Cedar, Otay Mine, and Harris; all prior to 2008), a significant increase compared to none during the two previous 15-year periods (1973–2003), and only one prior to 1973 (Laguna). This represents a more than six-fold increase in the rate of megafire occurrence over the past 30 years. While fires meeting our megafire definition of greater than 16,187 ha (40,000 ac) have not occurred in the past 10 years, several relatively large fires occurred in the Hermes copper butterfly's range in 2014, 2017, and 2020. The Cocos and Bernardo fires burned approximately 809 ha (2,000 ac) and 607 ha (1,500 ac) of potentially occupied Hermes copper butterfly habitat near the Elfin Forest and the Black Mountain occurrences in 2014 (Service 2021, Figure 5). A smaller unnamed fire burned approximately 38 ha (95 ac) of potential habitat near the extant core Mission Trails occurrence in 2014 (Burns et al., 2014; City News Source 2014). In 2017, the Lilac Fire burned 1,659 ha (4,100 ac) of potentially occupied habitat between the Bonsall and Elfin Forest occurrences. Most notably, as discussed in ''Wildfire,'' the Valley Fire burned 6,632 ha (16,390 ac) in 2020, impacting or posing a threat to several extant core occurrences. At the current large-fire return rate, multiple megafires could impact Hermes copper butterfly over the next 30 years, and that assumes no further increase in rate. If the trend does not at least stabilize, the frequency of megafires could continue to increase with even more devastating impacts to the species.

As discussed above, climate change and associated drought are stressors estimated to have had a significant impact on the species over the last 15 years. Furthermore, new information on availability of key nutrients from host plants (Malter 2020, p. 28; see Background), combined with apparent drought sensitivity, suggest a narrow climatic envelope for the species within the range of its host plant that is shifting with climate change. Because climate differences noted in the new study are correlated with latitude, we expect the reverse relationship (hotter and drier outside the historical range) to the east (desert) and south of the species' historical range. Evidence of limited movement and immigration capacity of the species, as well as significantly reduced dispersal corridor-connectivity areas within the species' historical range due to land use change, indicates a climate-change-driven shift in habitat suitability not likely to be mirrored by a corresponding shift in the species' range at the pace required to maintain species viability. Support for this hypothesis presented in the SSA report (Service 2021, pp. 64–65) indicates assisted recolonization, and even assisted colonization (range-shift) may be required in the future for species survival.

Combined effects increase the likelihood of significant and irreversible loss of populations, compared to individual effects. If fewer source populations are available over time to

recolonize burned habitat when host and nectar plants have sufficiently regenerated, the combined effects of these threats will continue to reduce resiliency, redundancy, and representation, resulting in an increase in species extinction risk.

Future Scenarios

Given climate change predictions of more extreme weather, less precipitation, and warmer temperatures, and the recent trend of relatively frequent and large fires, we can assume the primary threats of drought and wildfire will continue to increase in magnitude. If land managers work to conserve and manage all occupied and temporarily unoccupied habitat, and maintain habitat contiguity and dispersal corridor-connectivity, this should prevent further habitat loss. Although fire and drought are difficult to control and manage for, natural recolonization and assisted recolonization through translocation in higher abundance years (*e.g.,* Marschalek and Deutschman 2016b) should allow recolonization of extirpated occurrences.

All scenarios described below incorporate some change in environmental conditions. However, it is important to keep in mind that even if environmental conditions remain unchanged, the species may continue to lose populations so that viability declines by virtue of maintaining the current trend. Given that there is uncertainty as to exact future trends of many threats, these future scenarios are meant to explore the range of uncertainty and examine the species' response across the range of plausible future conditions. For more detailed discussions of the future scenarios, see the Possible Future Conditions section of the SSA report (Service 2021, pp. 60–62).

Scenario 1: Conditions worsen throughout the range, resulting in increased extinction risk.

Due to a combination of increased wildfire and drought frequency and severity, no habitat patches are recolonized, and all Hermes copper butterfly occurrences with a low resilience score are extirpated. These losses would reduce the species redundancy and the species would retain approximately 8 percent of its historical baseline population redundancy. The species would retain approximately 7 percent of its historical representation. Resulting changes to the population redundancy and representation values would cause an approximate drop in the viability index value from 25 to 7 percent relative to historical conditions.

Scenario 2: A megafire comparable to the 1970 Laguna Fire increases extinction risk.

If there was a megafire comparable to the 1970 Laguna Fire, many occurrences would likely be extirpated, and, due to the number of occurrences already lost, the likelihood of any being recolonized would be low. With regard to redundancy, these losses would result in the additional loss of four unknown status occurrences; no small isolated occurrences; three small, connected or large, isolated occurrences; and five large, connected occurrences.

In this scenario, the species would retain 5 percent of its historical baseline redundancy and 23 percent of its historical representation. These changes to population redundancy and representation values would result in an approximate drop in the viability index value relative to historical conditions from the current 25 percent to 14 percent.

While the Laguna Fire footprint is used in this scenario as an example of an event similar to that, it includes loss of the ''Roberts Ranch South'' Descanso occurrence site south of I–8, the highest occupancy monitored site (Service 2021, Appendix III) and one of only three areas where adults were observed in 2020 (Service 2021; Table 1, Figure 8). Because no adults have been detected post-drought in the northern portion of the Descanso occurrence, the entire occurrence could be lost, and it is in an area where the probability of wildfire is high. Loss of this occurrence would likely have a greater impact on species viability than indicated by these index calculations.

Scenario 3: Conditions stay the same, resulting in extinction risk staying the same.

While environmental conditions never stay the same, changes that negatively affect populations may be offset by positive ones—for example, continued habitat conservation and management actions such as translocations to recolonize burned habitats, or the current trend of more frequent drought is reversed. In this scenario, the risk of wildfire remains high. Occurrence extirpations and decreased resiliency of some populations in this scenario are balanced by habitat recolonizations and increased resiliency in others. The species viability index value would thus remain at approximately 25 percent relative to historical conditions. Even if environmental conditions remain unchanged, the species may continue to lose populations so that viability declines by virtue of maintaining the current trend.

Summary of Comments and Recommendations

In the proposed rule published on January 8, 2020 (85 FR 1018), we requested that all interested parties submit written comments on the proposal by February 24, 2020. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the San Diego Union-Tribune. We did not receive any requests for a public hearing.

We received 448 comments: 437 from members of the public (including 432 whose comments were collected by a conservation organization and submitted on their behalf), 2 individuals involved in Hermes copper butterfly research, 3 conservation organizations, 1 public utility company, 3 local governmental agencies, the U.S. Marine Corps Air Station (MCAS) Miramar, and the USFS. In all, 443 commenters explicitly supported listing the species as threatened or endangered, and 5 commenters indicated it should be listed as endangered, not threatened, or provided data to support endangered status. No commenters argued the species should not be listed. Several commenters provided specific information they believed was relevant to the final listing rule, and three recommended specific changes. Three comments addressed the proposed designation of critical habitat. We reviewed all comments and information received from the public for substantive issues and new information regarding the proposed listing of the species; we incorporated new scientific information as appropriate, and address comments below.

Peer Reviewer Comments

As discussed in Supporting Documents above, we received comments from six peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and

suggestions to improve the final SSA report. Peer reviewer comments are addressed in the following summary and were incorporated into the final SSA report as appropriate.

Comment 1: Two peer reviewers expressed concerns about the interpretation of the limited population genetic analyses performed on this species across its range, emphasizing that study results did not demonstrate contemporary gene flow and population structure.

Our response: We removed discussion of interpretations questioned by the reviewer, and stated that more information is needed to fully understand movement patterns of Hermes copper butterfly.

Comment 2: One peer reviewer expressed concern that there was little mention of either effective population size or minimum viable population size that can be accomplished using mark-recapture or genetic data. They also noted that the SSA report did not address local adaptation (ecological and genetic), quantified inbreeding (and depression), landscape connectivity (specifically via un-sampled populations/corridors), and temporal genetic variability (or loss thereof). Finally, they stated the species viability model does not account for the traditional ''error'' variables, including genetic, and other stochastic factors. They recommended using a more robust probabilistic model that incorporates persistence likelihood such as the population viability analysis used by Schultz and Hammond (2003, entire). They specifically recommended analyzing genetic samples of museum specimens from Mexico.

Our response: We agree the suggested future analyses would aid our understanding of the species. However, we do not currently have the data needed for the genetic-based analyses suggested by the peer reviewer, and we must make our decision based on the best scientific and commercial information available at the time of our rulemaking. Landscape connectivity (specifically via un-sampled populations/corridors) is generally addressed in the discussions of isolation due to development and in the population resiliency score that is incorporated in the viability index calculations. We will continue to update our information on the species as new data become available.

Comment 3: One commenter stated that our wildfire threat discussion led him to believe that it seems necessary to start translocating adults from the occurrences that fall within the large contiguous area not recently burned to unoccupied habitats. They thought the need for translocation should be emphasized more.

Our response: Translocation is a potential recovery tool for this species. However, based on the information we have at this time, we are concerned that there is not a high likelihood of success and there may be negative impacts to the source populations. We will assess the potential for translocations (direct movement of individuals from one location to another) and assisted recolonization (including rearing of offspring for increased survival prior to reintroduction) in our recovery planning efforts based on species distribution and occurrence status at that time.

Comment 6: One commenter with expertise in modelling thought the species viability index was ''interesting and useful,'' and unlike any model they had seen before. Although they said they understood it, they found the description of it misleading and confusing, in particular that it was falsely described as a probability model. They stated that we have permanently altered this ecosystem, which resulted in the resulting decrease in viability. They also agreed the viability index is a valid way to measure decline from historical viability, but argued it does not provide information for the future, and has no direct relationship with extinction risk, even proportionally. Finally, the commenter said they thought the viability index analysis results were interpreted to indicate a more positive outlook than the rest of the SSA report supports.

Our response: We edited the index description to be less confusing and corrected the characterization as a probability model. While we understand the viability index is not a model that provides future predictions, to the extent future scenarios are plausible future projections, and the index can be calculated based on changes to parameters in those future scenarios, we believe it provides useful information about the species' potential future status. Finally, we are not sure the statement that the index value has no ''direct'' relationship with extinction risk is accurate. We agree that we cannot know if the viability index is directly proportional to probability of persistence/extinction risk (a change in one value is correlated with same amount of change in the other), and we edited our text to reflect that. However, while the exact nature of the relationship cannot be known, it must be at least inversely proportional as stated, even if the extinction risk increases at a different rate than the viability index value decreases. For example, the relationship might be linearly, but not directly, proportional. That said, the relationship is more likely to be an exponentially inversely proportional one (uncertain inflection point), with the extinction risk increasing exponentially as the index value decreases; as the species approaches the extinction threshold, synergy among threat effects such as small population size and isolation will likely increase. If such a relationship is in fact the case, it is possible the viability index analysis indicates a more positive outlook than the rest of the Species Status Assessment supports, as the commenter asserted.

Comment 7: One commenter said they found the three scenarios interesting and useful, but did not understand the implicit assumption that conditions would have to change for extinction risk to change. They pointed out it is possible that populations will continue to decline, even if conditions stay the same.

Our response: SSAs forecast species' response to potential changing environmental conditions and conservation efforts using plausible future scenarios. These scenarios characterizes a species' ability to sustain populations in the wild over time (viability) based on the best scientific understanding of current and plausible future abundance and distribution within the species' ecological settings.

We edited scenario 3 to explain this possibility: Even if environmental conditions remain unchanged, the species may continue to lose populations so that viability declines by virtue of maintaining the current trend.

Federal Agency Comments

Comment 8: Marine Corps Air Station Miramar's comments concurred with our determination that their Integrated Natural Resources Management Plan (INRMP) contains elements that benefit the Hermes copper butterfly. They further stated that conservation measures were identified in the INRMP to conserve all habitat found occupied by the Hermes copper butterfly prior to the 2003 wildfire. They pointed out that because occurrences listed in Table 1 lacked associated geographic text descriptions or map numbers, they did not understand where occurrences are located with respect to MCAS Miramar, and expressed concern that the occurrence names in Table 1 are similar to ones they use for other areas and will lead to confusion.

Our Response: We appreciate MCAS Miramar taking the time to provide specific comments. We revised Table 1 and added map numbers in the first

column to help locate each mapped occurrence in Figures 6 and 7 of the SSA report (Service 2021).

Comments From States

We did not receive any comments from the State of California.

Comments From Tribes

We did not receive any comments from Tribes.

Public Comments

Comment 9: Four commenters stated specifically the species should be listed as endangered, not threatened. One additional commenter submitted a research report as part of his comment with species monitoring information as evidence to support endangered status. He did not specifically recommend listing the species as endangered, but concluded Hermes copper butterfly is at risk of being lost from the United States in the near future.

Our Response: We reviewed all new comments and all the updated data and information, and concluded that based on current and future threats, the Hermes copper butterfly continues to meet the definition of threatened because there appear to be a sufficient number of extant and presumed extant occurrences to currently sustain the species in the wild. Additionally, the majority of extant occurrences are on conserved lands, providing some protection from ongoing threats. We invite all interested parties to continue to send us information and data on the Hermes copper butterfly. Additionally, in accordance with section 4(c)(2) of the Endangered Species Act, the status of Hermes copper butterfly will be reviewed every 5 years .

Comment 10: One conservation organization indicated that there are opportunities for habitat enhancement in places like parks and private lands with the planting of spiny redberry host plants in natural habitat conditions that could aid in the species' recovery.

Our Response: We agree that such opportunities could be beneficial for the species; however, host plant availability does not appear to be a limiting factor within the species' range. Planting of spiny redberry in areas where landscape connectivity has been limited by development may be most beneficial. There are currently no plans for such plantings, but conservation and planting of host plants will likely be incorporated into future conservation planning.

Comment 11: We received two comments discussing the net benefit of the proposed Fanita Ranch project to Hermes copper butterfly conservation and recovery. One local government agency and the project proponent (who included as an attachment a proposed development footprint) stated the proposed Fanita Ranch development would provide long-term Hermes copper butterfly habitat restoration, permanent management, and protection from fire in preserved areas on the property and maintain and enhance habitat connectivity. They asserted that Hermes copper butterfly may be extirpated from the property and require reintroduction. Additionally, they stated that because the local government agency must rely on developers to implement reintroduction and because the present opportunity is with current owners, reintroduction is most likely once the current project is approved.

Our Response: Based on our threats analysis (Service 2021, p. 61), it is not clear the proposed Fanita Ranch project would be a net benefit to Hermes copper butterfly conservation and recovery. The potential positive and negative impacts of this project to Hermes copper butterfly are currently, and will continue to be, addressed through discussion and consultation with the project applicants.

Comment 12: Four commenters expressed concerns about the impacts of the proposed Fanita Ranch project on the North Santee Core occurrence complex. Specifically, one conservation organization said there are significant patches of habitat that would be impacted by the proposed Fanita Ranch project, and habitat on northern and southern portions of the Fanita Ranch should be protected through conservation to maintain connectivity to adjacent undeveloped areas. A second conservation organization provided a detailed rebuttal to comments supporting the Fanita Ranch project, arguing generally the proposed development is a threat to Hermes copper butterfly.

Our Response: Based on our threats analysis (Service 2021, p. 61), we acknowledge it is possible the proposed Fanita Ranch project would negatively impact Hermes copper butterfly conservation and recovery. Such concerns are, and will continue to be, addressed through discussion and consultation with the project applicants regarding the Hermes copper butterfly.

Comment 13: Three commenters requested additional exceptions from take prohibitions under section 9(A)(1) of the Endangered Species Act. A public utility company described activities they have undertaken under their Wildfire Mitigation Plan that they believe have benefited the species and minimized wildfire damage and expressed support for the proposed take prohibition exceptions. They stated the proposed take prohibition exceptions would benefit them and the species by enabling them to continue activities that minimize wildfire risk. They proposed additional exceptions for fire-hardening and vegetation management activities carried out by utilities.

A local government agency expressed support for the proposed exception to take prohibition for fire prevention and management activities, but recommended the specific ''30 meter (m) (100 feet (ft))'' brush-clearing distance be deleted from the third exception, as this distance may change with future fire code updates.

One commenter requested we include a proposed development project (Village 13) in the mapped area specifying portions of the range exempt from take prohibitions under section 9(a)(1) of the Act (see Figure 1) because past surveys for host plants indicate this area would most likely not support the Hermes copper butterfly.

Our Response: We conclude that the utility company commenter's Wildfire Mitigation Plan will benefit Hermes copper butterfly through the control and minimization of wildfires within San Diego County. We did not edit take exceptions per the commenter's request because we are currently working with this company on an amendment to their Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) to provide for additional conservation and incidental take authorization of covered species, and to address new species including Hermes copper butterfly. The amendment includes new protocols that avoid and minimize impacts to the species from covered activities, including fire-hardening and vegetation management. We believe this amendment process is the appropriate mechanism to cover activities impacting the Hermes copper butterfly and addresses the commenter's concerns regarding the need for additional exceptions to take prohibitions.

We edited the third take prohibition exception to remove the 30-m (100-ft) distance for defensible space from structures; we did this to clarify that any activities to reduce wildfire risks must be done in compliance with State and local fire codes. Currently, this distance is still 30 m (100 ft), but the rewording allows for flexibility to ensure that activities will be in compliance with State of California fire codes if they change.

We did not include the Village 13 project area in the mapped areas exempt from take prohibitions under section

9(a)(1) of the Act (Figure 1). Doing so would be inconsistent with our methodology, as we did not consider host plant distribution data when constructing this map. Although Hermes copper butterfly is not a covered species under the existing County MSCP subarea plan (includes the Village 13 project), the County of San Diego just received a Section 6 planning grant to prepare a Butterfly HCP that would cover the Hermes copper butterfly and other butterfly species, and the Village 13 project area is within the draft plan boundary. Therefore, this issue should be addressed during HCP development, or if the site is as described, the project proponent can provide a simple habitat assessment demonstrating there is no need for surveys or possibility of take. Such a habitat assessment would serve to streamline the process at least as much as an exception from take prohibitions under section 9(A)(1) of the Endangered Species Act, which does not eliminate the need for consultation under section 7 of the Act (see Provisions of the 4(d) Rule below).

Comment 14: One public utility company said their above- and below-ground electric and gas facilities, the vegetation management probable impact zones around these facilities, and rights-of-way should be excluded from critical habitat designation based on the existing HCP and other conservation-oriented activities. They pointed out that the Service excluded other utility facilities from critical habitat designation for the coastal California gnatcatcher based on the adequacy of their HCP/NCCP to ensure conservation and management of habitat (72 FR 72010; December 19, 2007). They further stated that even though the Hermes copper butterfly is not covered by their current HCP/NCCP, its operational protocols sufficiently mitigate impacts to the species' habitat (1995 SDG&E NCCP/HCP, pp. 103–109).

Our Response: Should the proposed HCP/NCCP amendment be approved, it would address impacts to critical habitat from both operation and maintenance activities as well as construction of new facilities. The referenced exclusion from coastal California gnatcatcher critical habitat designation occurred because the existing HCP/NCCP covered that species, and our Biological Opinion analysis had already determined operational protocols sufficiently mitigate impacts to the species' habitat. It is possible this company's existing HCP/NCCP does sufficiently mitigate habitat impacts; however, this analysis is appropriately addressed through the ongoing HCP/NCCP amendment process.

With respect to rights-of-way maintenance activities in areas of critical habitat, Federal agencies that authorize, carry out, or fund actions that may affect listed species or designated critical habitat are required to consult with us to ensure the action is not likely to jeopardize listed species or destroy or adversely modify designated critical habitat. This consultation requirement under section 7 of the Act is not a prohibition of Federal agency actions; rather, it is a means by which they may proceed in a manner that avoids jeopardy or adverse modification. Even in areas absent designated critical habitat, if the Federal agency action may affect a listed species, consultation is still required to ensure the action is not likely to jeopardize the species. Additionally, existing consultation processes also allow for emergency actions for wildfire and other risks to human life and property; critical habitat would not prevent the commenter from fulfilling those obligations. Lastly, we note that actions of private entities for which there is no Federal nexus (*i.e.,* undertaken with no Federal agency involvement) do not trigger any requirement for consultation.

In regard to the commenter's specific request to exclude their rights-of-way areas from the critical habitat designation, the commenter provided general statements of their desire to be excluded but no information or reasoned rationale as described in our preamble discussion in our policy on exclusions (see Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act: 81 FR 7226; February 11, 2016) (Policy on Exclusions). For the Service to properly evaluate an exclusion request, the commenter must provide information concerning how their rights-of-way maintenance activities would be limited or curtailed by the designation to support the need for exclusion.

Comment 15: One local government agency explained that they are currently seeking approval of their subarea plan under the San Diego MSCP. The commenter stated that as part of the subarea plan, they, in conjunction with the Fanita Ranch property owner, are developing a Hermes copper butterfly habitat restoration plan for the property. The commenter believes their MSCP subarea plan will effectively protect the region's biodiversity while reducing conflicts between protection of wild species and economic development. They stated that the best scientific and commercial data available indicate that economic and other benefits of excluding their draft MSCP subarea plan planning area from critical habitat outweigh those of designation and do not indicate failure to designate will result in species extinction. They also stated that their draft MSCP subarea plan planning areas should be excluded from critical habitat with a clause that these areas will be automatically designated in the event the HCP is not permitted within a fixed period of time.

Our Response: As discussed in response to comment 15 above, although the commenter provided general statements of their desire to be excluded and cited some documents, they provided no information or reasoned rationale as described in our preamble discussion in our Policy on Exclusions. We acknowledge the effort to prepare the subarea plan for the MSCP. The protective provisions provided by completed HCPs are an important part of balancing species conservation with the needs of entities to manage their lands for public and private good. However, in the absence of an approved HCP, there are no assurances of funding or implementation of the measures included in such a plan. We cannot rely on the presumed benefits of an HCP that is currently in development (see Policy on Exclusions, 81 FR 7226; February 11, 2016). Should an HCP be approved, we will be required to ensure that the project will not adversely modify Hermes copper butterfly designated critical habitat. Therefore, an approved HCP will address critical habitat concerns for projects within the HCP subarea plan boundary.

Because the commenter did not provide a reasoned rationale for exclusion and there is no approved subarea plan at this time, we are not considering the areas covered by the draft plan for exclusion from the final designation of critical habitat.

Comment 16: The local government agency also asserted the majority of the Fanita Ranch property proposed as critical habitat does not meet the definition of critical habitat because it does not contain the physical or biological features, based on mapping of spiny redberry within 5 m (15 ft) of California buckwheat. The Fanita Ranch project applicant provided similar comments, referencing the benefits of fostering a conservation partnership as the primary reason the Fanita Ranch property should be excluded from critical habitat.

Our Response: With regard to assertions of errors in the critical habitat designation, spiny redberry within 5 m (15 ft) of California buckwheat was not a listed physical or biological feature

essential to the conservation of the Hermes copper butterfly, nor have we determined it should be, nor have we determined it is a valid mapping method based on the listed features. As stated in Physical or Biological Features Essential to the Conservation of the Species: Plants specifically identified as significant nectar sources include California buckwheat (*Eriogonum fasciculatum*) and golden yarrow (*Eriophylum confirtiflorum*). Any other butterfly nectar source (short flower corolla) species found associated with spiny redberry that together provide nectar similar in abundance to that typically provided by California buckwheat would also meet adult nutritional requirements. Additionally, in regard to the commenter's specific request to exclude their project area from the critical habitat designation based on partnership benefits, the commenter provided general statements of their desire to be excluded but no information or reasoned rationale. As discussed in the response to Comment 15, for the Service to properly evaluate an exclusion request, the commenter must provide information concerning how our partnership would be limited or curtailed by the designation to support the need for exclusion. We agree that there are strong benefits to a conservation agreement that can lead to exclusion from critical habitat; however, in this case, there is no final, approved plan in place.

Comment 17: Another local government agency requested we reevaluate designation of critical habitat in isolated areas surrounded by development, and identified by experts as likely extirpated, because these areas seem unlikely to contribute to species recovery.

Our Response: It is not clear what isolated areas were referenced by the commenters. All critical habitat units are considered occupied (see Criteria Used to Identify Critical Habitat for more detail on how we determined occupancy). Given the limited distribution of Hermes copper butterfly, we consider all critical habitat areas important for conservation of the species. Our analysis indicated that isolated areas designated as critical habitat contribute to habitat diversity within the species' range and possibly to genetic diversity (representation), which in turn will contribute to species recovery.

Comment 18: One local government agency and one project proponent expressed concern about the effect of this listing on areas already approved for development by the City of San Diego MSCP Subarea Plan. In particular, they argued we did not follow the mutual assurances requirements in Section 9.7 Future Listings of the MSCP's Implementing Agreement, and the proposed listing would encumber land in the Del Mar Mesa area, the center of a planned commercial and residential ''village'' (intersection of State Route 56, Camino del Sur, and its future connection to Rancho Peñasquitos).

Our Response: Although Hermes copper butterfly was considered for coverage in the MSCP, it was ultimately not included on the permit due to unknown conservation level and insufficient distribution and life-history data. Since then, we have worked closely with researchers to learn more about the species and its distribution. The commenter references portions of Section 9.7 of the Implementing Agreement, which addresses future listings. Consistent with Section 9.7.A., the Service evaluated the conservation provided by the MSCP during the status review for Hermes copper butterfly; however, this was not clear in the proposed rule. We have updated the SSA report and final rule to better reflect our analysis of conservation provided by the MSCP. The other referenced section (9.7.C.) outlines how a ''non-covered'' species can be added to the permit. The commenter is correct that we had not initiated this process when they wrote their letter. Since that time, we have had discussions with both local government agencies who commented regarding the development of a county-wide HCP that would address several sensitive butterflies, including Hermes copper butterfly. One local government is submitting a request for planning dollars that would be used to prepare the HCP. Consistent with the intent of Section 9.7.C., one of the first tasks in the planning process would be to evaluate existing measures, including the MSCP. The commenter referenced a planned project on Del Mar Mesa; however, little information was provided regarding what the potential conflict is. There are no known occurrences of Hermes copper butterfly on Del Mar Mesa, nor is there any critical habitat designated in that area. Therefore, we do not anticipate the referenced project being affected by this listing.

Comment 19: One local government agency stated they do not agree with our proposed listing rule where we stated that ''there is no coordinated effort to prioritize Hermes copper butterfly conservation efforts within the species' range,'' arguing the County of San Diego supports such an effort through the San Diego Management and Monitoring Program (SDMMP).

Our Response: We edited the statement and updated the rule to better reflect the ongoing conservation efforts within the region. We appreciate and support the conservation efforts and partnership building provided by the SDMMP for Hermes copper butterfly and other species of concern. The SDMMP includes the Hermes copper butterfly in their Management Strategic Plan, and is working collaboratively with the Service and other stakeholders to develop management and monitoring goals and objectives for the species. We look forward to working with the County to bring the plan to completion, including ensuring the plan has funding for implementation.

Comment 20: One local government agency asked if we will accept San Diego County's current survey guidelines developed in concert with experts for use in current and future projects until such time as the FWS develops its own survey guidelines.

Our Response: At this time, the survey protocol required by San Diego County is the only widely used protocol for Hermes, and we will continue to support this protocol until an updated protocol is established.

Determination of Hermes Copper Butterfly Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Hermes copper butterfly, and we have determined the

following factors are impacting the resiliency, redundancy, and representation of the species: Wildfire (Factor A), land use change (Factor A), habitat fragmentation and isolation (Factor A), climate change (Factor E), and drought (Factor E); as well as the cumulative effect of these factors on the species, including synergistic interactions between the threats and the vulnerability of the species resulting from small population size. We also considered the effect of existing regulatory mechanisms (Factor D) on the magnitude of existing threats. Potential impacts associated with overutilization (Factor B), disease (Factor C), and predation (Factor C) were evaluated but found to have little to no impact on species viability (Service 2021, p. 50); thus, we did not discuss them in this document.

Individually, land use change (Factor A), habitat fragmentation and isolation (Factor A), climate change (Factor A), and drought (Factor E) are impacting the Hermes copper butterfly and its habitat. Although most impacts from land use change have occurred in the past, and some existing regulations are in place to protect remaining occurrences, 33 percent of historically occupied habitat is not protected and remains at risk from land use change. As a result of past development, which contributed to the loss of 26 occurrences (Table 1), species representation has been reduced through loss of most occurrences in ecological units closest to the coast, while redundancy has decreased through loss of overall numbers of occurrences. Remaining habitat has been fragmented, decreasing species resiliency by removing habitat corridors and thus decreasing the species' ability to recolonize previously extirpated occurrences. Climate change is currently having limited effects on the species; however, drought is likely resulting in degradation of habitat and decreased numbers of Hermes copper butterflies at all monitored occurrences.

Wildfire (Factor A) is a primary driver of the Hermes copper butterfly's status and is the most significant source of ongoing population decline and loss of occurrences. Large fires can eliminate source populations before previously burned habitat can be recolonized, and can result in long-term or permanent loss of butterfly populations. Since 2003, wildfire is estimated to have caused or contributed to the extirpation of 34 U.S. occurrences (and 3 in Mexico), and only 3 of those are known to have been apparently repopulated. Wildfire frequency has significantly increased in Hermes copper butterfly habitat since 1970. Nearly all mapped occurrences of Hermes copper butterfly currently fall within very high fire hazard severity zones, increasing the risk that a single megafire could possibly affect the majority of extant occurrences. Additionally, based on increasing drought and continued climate change, the likelihood of additional megafires occurring over the next 30 years is high. Frequent wildfire degrades available habitat through conversion of suitable habitat to nonnative grasslands, and we anticipate that fire will continue to modify and degrade Hermes copper butterfly habitat into the foreseeable future. Furthermore, though fuel-reduction activities are ongoing throughout much of the species' range, megafires cannot be controlled through regulatory mechanisms. We expect the ongoing effects of wildfire will continue to result in substantial reductions of species resiliency, redundancy, and representation for the Hermes copper butterfly, and that the risk of wildfire will continue to increase into the foreseeable future.

Combined effects of threats have a greater impact on the Hermes copper butterfly than each threat acting individually. Wildfire increases the rate of nonnative grass invasion, which in turn increases fire frequency. Overall, these factors increase the likelihood of megafires on a range-wide scale now and will continue to make them even more likely into the foreseeable future. The combination of habitat fragmentation and isolation (as a result of past and potential limited future urban development), existing dispersal barriers, and megafires (that encompass vast areas and are increasing in frequency) that limit and degrade Hermes copper butterfly habitat, results in substantial reductions in species resiliency, redundancy, and representation. Additionally, effects from habitat fragmentation and isolation, megafire, and drought are exacerbated by the small population size and isolated populations of the Hermes copper butterfly. Overall, the combined effects of threats are currently decreasing the resiliency, redundancy, and representation of the Hermes copper butterfly, and we expect that they will continue to decrease species viability into the foreseeable future.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that multiple threats are impacting Hermes copper butterfly across its range and will continue to impact the species into the foreseeable future. Based on our future scenarios, species viability will either stay the same at 25 percent of historical levels, or decrease to 14 or 7 percent within the foreseeable future. Thus, after assessing the best available information and based on the level of viability decrease in two of the three future scenarios, we conclude that the Hermes copper butterfly is likely to become in danger of extinction within the foreseeable future throughout all of its range. We find that the Hermes copper butterfly is not currently in danger of extinction because there appear to be a sufficient number of extant and presumed extant occurrences to currently sustain the species in the wild. Additionally, the majority of extant occurrences are on conserved lands, providing some protection from ongoing threats.

Because remaining areas are isolated from each other, if some were lost to fire or other threats, the resiliency of the remaining areas would not be affected. Although a megafire has the potential to extirpate a high number of occurrences, we do not consider it an imminent threat because the frequency of such fires is uncertain and the fire-return intervals within Hermes copper butterfly habitat are 15–30-plus years for coastal sage scrub and 30–60 years for chaparral. We also expect that impacts to the species from fire and other threats will likely increase over time. Thus, after evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the Hermes copper butterfly is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the

species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the Hermes copper butterfly, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

For the Hermes copper butterfly, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Wildfire, land use change, habitat isolation, and climate change and drought, including cumulative effects. After a careful review of those threats, we determined that they are all affecting the Hermes copper butterfly across its range. There are varying levels of risk of individual threats; for example, fire risk is highest in the southern portion of the range, risk of development is higher in the northern portion of the range, land use change is occurring in parts of the southeastern part of the range, and climate change is most severe at lower elevations. Drought is occurring at similar levels rangewide. In the northern portion of the range, where development is the primary threat, we have no evidence that any remaining occurrences are currently at risk from development, though they could be in danger of development in the future. In the southern portion of the range, where fire is the primary threat, though fire could impact multiple occurrences in this part of the range currently, we expect that the most substantial impacts from fire will occur in the future. Overall, none of these threats are imminent in magnitude or at such a level to cause any parts of the range to be in danger of extinction now.

We found no concentration of threats in any portion of the Hermes copper butterfly's range at a biologically meaningful scale. Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best scientific and commercial data available indicates that the Hermes copper butterfly meets the definition of a threatened species. Therefore, we are listing the Hermes copper butterfly as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Hermes copper butterfly.

Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Please let us know if you are interested in participating in recovery efforts for the Hermes copper butterfly. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require consultation as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the U.S. Marine Corps, U.S. Fish and Wildlife Service, U.S. Forest Service, and Bureau of Land Management; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the

species. The implementing regulations at 50 CFR 424.12(b)(2) further delineate unoccupied critical habitat by setting out three specific parameters: (1) When designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species; and (3) for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Geographical Area Occupied at the Time of Listing

The following meets the definition of the geographical area currently occupied by the Hermes copper butterfly in the United States: Between approximately 33°20′0″ North latitude and south to the international border with Mexico, and from approximately 30 m (100 ft) in elevation near the coast, east up to 1,340 m (4,400 ft) in elevation near the mountains (Service 2021, Figure 5). This includes those specific areas within the geographical area occupied by the species at the time of listing or the currently known range of the species.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Space for Individual and Population Growth and for Normal Behavior

Patches of spiny redberry host plants, including post-fire stumps that can resprout, are required to support Hermes copper butterfly populations and subpopulations; the number of plants in a patch required to support a subpopulation is unknown. Because we know that Hermes copper butterflies are periodically extirpated from patches of host plants by wildfire, and subsequently recolonize these patches (Table 1), we can assume functional

metapopulation dynamics are important for species viability. The time-scale for recolonization from source subpopulations may be 10–30 years. Spiny redberry is often associated with the transition between sage scrub and chaparral vegetation associations, but may occur in a variety of vegetation associations. Such host plant patches occur between 30–1,341 m (100–4,400 ft) above sea level.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Adults require relatively abundant nectar sources associated with patches of their host plants, spiny redberry. Plants specifically identified as significant nectar sources include California buckwheat and golden yarrow. Any other butterfly nectar source (short flower corolla) species found associated with spiny redberry that together provide nectar similar in abundance to that typically provided by California buckwheat would also meet adult nutritional requirements. Larvae feed on the leaves of the host plant.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

All immature life-cycle stages develop on the host plant, spiny redberry. Eggs are deposited on branches, caterpillars are sheltered on and fed by leaves, and chrysalides are attached to live host plant leaves.

Habitats That Are Protected From Disturbance and Representative of the Historical Geographical and Ecological Distributions of a Species

Maintenance of species representation across the species' range necessitates sufficiently resilient, well-connected metapopulations and sufficient numbers and configuration of host plant stands. Corridor (connective) habitat areas containing adult nectar sources are required among occupied (source subpopulations) and formerly occupied host plant patches, in order to maintain long-term the number and distribution of source subpopulations required to support metapopulation resiliency.

Protected spiny redberry host plants must be distributed in four California Ecological Units to maintain species representation.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Hermes copper butterfly from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2021, entire; available *on https://www.regulations.gov* under Docket No. FWS–R8–ES–2017–0053).

We have determined that the physical or biological features essential to the conservation of the Hermes copper butterfly consist of the following components when found between 30 m and 1,341 m above sea level, and located in habitat providing an appropriate quality, quantity, and spatial and temporal arrangement of these habitat characteristics in the context of the life-history needs, condition, and status of the species (see Criteria Used to Identify Critical Habitat below):

(1) Spiny redberry host plants.

(2) Nectar sources for adult butterflies.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of this species may require special management considerations or protection to reduce or mitigate the following threats: Wildfire, land use change, habitat fragmentation and isolation, and climate change and drought. In particular, habitat that has at any time supported a subpopulation will require protection from land use change that would permanently remove host plant patches and nectar sources, and habitat containing adult nectar sources that connects such host plant patches through which adults are likely to move. These management activities will protect from losses of habitat large enough to preclude conservation of the species.

Additionally, when considering the conservation value of areas designated as critical habitat within each unit, especially among subpopulations within the same California Ecological Unit, maintenance of dispersal corridor-connectivity among them should be a conservation planning focus for stakeholders and regulators (such connectivity was assumed by the criteria used to delineate critical habitat units).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not designating any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that have a reasonable certainty of contributing to the conservation of the species.

Sources of data for this species and its habitat requirements include multiple databases maintained by universities and by State agencies in San Diego County and elsewhere in California, white papers by researchers involved in conservation activities and planning, peer-reviewed articles on this species and relatives, agency reports, and numerous survey reports for projects throughout the species' range.

The current distribution of the Hermes copper butterfly is much reduced from its historical distribution. We anticipate that recovery will require continued protection of existing subpopulations and habitat, protection of dispersal corridor-connectivity areas among subpopulations, as well as reestablishing subpopulations where they have been extirpated within the species' current range in order to ensure adequate numbers of subpopulations to maintain metapopulations. These activities help to ensure future catastrophic events, such as wildfire, would never simultaneously affect all known populations.

The critical habitat designation does not include all areas within the geographical area occupied by the species at this time. Rather, it includes those lands with physical and biological features essential to the conservation of the species which may require special management considerations or protection. We also limited the designation to specific areas historically or currently known to support the species within its current range. This critical habitat designation focuses on maintaining areas that support those occurrences we consider required for survival and recovery of the species—that is, areas required to maintain species viability by virtue of occurrence contribution to species redundancy (core status, or subpopulation contribution to metapopulation dynamics/resilience) and contribution to continued species representation within all California Ecological Units. Hermes copper butterflies may be found

in areas without documented populations (and perhaps even some areas slightly beyond that range), and these areas would likely be important to the conservation of the species.

In summary, we delineated critical habitat unit boundaries using the following criteria:

(1) We started by considering all high-accuracy record-based occurrences mapped in the SSA report (accuracy codes 1 and 2 in Table 1; Service 2021, p. 20) within the geographical area currently occupied by the species. Occurrences were mapped as intersecting areas within 0.5 km (0.3 mi) of high geographic accuracy records, and areas within 0.5 km (0.3 mi) of any spiny redberry record within 1 km (0.6 mi) of these butterfly records. These distances are based on the maximum recapture distance of 1.1 km (0.7 mi) recorded by Marschalek and Klein's (2010, p. 1) intra-habitat movement study.

(2) We removed seven non-core occurrences that were more than 3 km (1.9 mi) from a core occurrence, or otherwise deemed not essential for metapopulation resilience or continued species representation within all California Ecological Units.

(3) We added habitat contiguity areas between occurrences that were 0.5 km (0.3 mi) or less apart that are likely to be within a single subpopulation distribution. To do this, we included the area within 0.5 km (0.3 mi) of the midpoint of the tangent between the two closest butterfly records in each occurrence (to capture likely unrecorded physical or biological features).

(4) Using the best available vegetation association GIS database, we removed areas within 95 subcategories (out of 177) not likely to contain host plants, such as those associated with streams.

(5) We removed by visual review of the best available satellite imagery all clearly developed areas, areas of disturbed vegetation such as nonnative grasslands, and granitic formations not likely to contain host plants, at the scale of approximately 1.2 ha (3 ac).

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Hermes copper butterfly. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat areas that we have determined are within the geographical area occupied at the time of listing (that is, currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. All units contain all of the identified physical or biological features and support multiple life-history processes.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R8–ES–2017–0053, on our internet site *https://www.fws.gov/carlsbad/gis/cfwogis.html,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**).

Final Critical Habitat Designation

We are designating three units as critical habitat for Hermes copper butterfly. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Hermes copper butterfly. The three units we designate as critical habitat are: (1) Lopez Canyon; (2) Miramar/Santee; and (3) Southeast San Diego. Table 1 shows the critical habitat units and the approximate area of each unit.

TABLE 2—CRITICAL HABITAT UNITS FOR HERMES COPPER BUTTERFLY

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type in hectares (acres)	Approximate size of unit in hectares (acres)
1. Lopez Canyon	Federal: 0 State: 0 Local Jurisdiction: 88 (218) Private: 77 (191)	166 (410)
2. Miramar/Santee	Federal: 0 State: 111 (275) Local Jurisdiction: 1,113 (2,750) Private: 1,646 (4,068)	2,870 (7,092)
3. Southeast San Diego	Federal: 4,213 (10,411) State: 1,999 (4,940) Local Jurisdiction: 1,162 (2,871) Private: 3,765 (9,303)	11,139 (27,525)
Total	Federal: 4,213 (10,411) State: 2,110 (5,215) Local Jurisdiction: 2,363 (5,839) Private: 5,488 (13,562)	14,174 (35,027)

Note: Area sizes may not sum due to rounding or unit conversion.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Hermes copper butterfly, below. Although conservation and management of dispersal corridor connectivity areas among occurrences designated as critical habitat will also be required for species survival and recovery (occurrence isolation was a factor that eliminated occurrences in Criterion (2) above), the best available data do not provide sufficient information to identify the specific location of these lands at this time. Therefore, we did not include dispersal corridor connectivity areas among occurrences in the critical habitat units.

Unit 1: Lopez Canyon

Unit 1 consists of 166 ha (410 ac) within the geographical area currently occupied by the species and contains all of the essential physical or biological features. The physical or biological features may require special management to protect them from wildfire and land use change, although the latter is less likely in this unit (see Special Management Considerations or Protection above). This area encompasses the core Lopez Canyon occurrence, the only known extant occurrence that falls within the Coastal Terraces Ecological Unit (Table 1), and is therefore required to maintain species representation. Unit 1 is within the jurisdiction of the City of San Diego, associated with the communities of Sorrento Valley and Mira Mesa. This unit is surrounded by development. Habitat consists primarily of canyon slopes. The majority of this unit falls within the Los Peñasquitos Canyon Preserve jointly owned and managed by the City and County of San Diego. The primary objective of Los Peñasquitos Canyon Preserve is the preservation and enhancement of natural and cultural resources. The preserve master plan states that recreational and educational use by the public is a secondary objective, development should be consistent with these objectives, and public use should not endanger the unique preserve qualities. Land use in this unit is almost entirely recreation and conservation.

Unit 2: Miramar/Santee

Unit 2 consists of 2,870 ha (7,092 ac) within the geographical area currently occupied by the species and contains all of the essential physical or biological features. The physical or biological features may require special management to protect them from land use change and wildfire, although wildfire will be challenging to manage for in this unit because of its size and risk of megafire (see Special Management Considerations or Protection above). This area encompasses the core Sycamore Canyon, North Santee, and Mission Trails occurrences, as well as non-core occurrences connected to core occurrences also required for metapopulation resilience and continued species representation in two California Ecological Units (Coastal Hills and Western Granitic Foothills). This unit includes half of the extant/presumed extant core occurrences in the Coastal Hills California Ecological Unit (the other half is in Unit 3). Unit 2 mostly surrounds the eastern portion of MCAS Miramar (lands encompassing areas that also meet the definition of critical habitat and would be included in this unit but are exempt from designation), falling primarily within the jurisdictions of the City of San Diego, but also within the City of Santee and unincorporated areas of San Diego County. In this unit, the City of San Diego owns and manages the over 2,830-ha (7,000-ac) Mission Trails Regional Park (887 ha (2,192 ac) in this unit) and the County owns and manages the 919-ha (2,272-ac) Gooden Ranch/Sycamore Canyon County preserve (198 ha (488 ac) included in this unit).

Unit 3: Southeast San Diego

Unit 3 consists of 11,139 ha (27,525 ac) within the geographical area currently occupied by the species and contains all of the essential physical or biological features. The physical or biological features may require special management to protect them from land use change and wildfire, although wildfire will be challenging to manage in this unit because of its size and risk of megafire (see Special Management Considerations or Protection above). This unit configuration would conserve essential contiguous habitat. This area includes half of the extant/presumed extant core occurrences in the Coastal Hills California Ecological Unit (the other half is in Unit 2), and all of the extant/presumed extant core occurrences in the Western Granitic Foothills and Palomar-Cuyamaca Peak California Ecological Units. The majority of the Crestridge core occurrence falls within the Crestridge Ecological Reserve jointly managed by the Endangered Habitats Conservancy and the California Department of Fish and Wildlife. The majority of the Alpine core occurrence falls within the Wright's Field preserve owned and managed by the Back Country Land Trust. Thirty-eight percent of this unit (4,213 ha (10,411 ac)) is owned and managed by the U.S. Fish and Wildlife Service, the USFS, and the BLM.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of

critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to:

Actions that would remove biologically significant amounts of spiny redberry host plants or nectar source plants. Such activities could include, but are not limited to, residential and commercial development and conversion to agricultural orchards or fields. These activities could permanently eliminate or reduce the habitat necessary for the growth and reproduction of Hermes copper butterflies.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We consult with the military on the development and implementation of INRMPs for installations with listed species. The following areas are DoD lands with completed, Service-approved INRMPs within the critical habitat designation.

Approved INRMPs

MCAS Miramar is the only military installation supporting Hermes copper butterfly habitat that meets the definition of critical habitat; it has a completed, Service-approved INRMP. As discussed below, we analyzed the INRMP to determine if it meets the criteria for exemption from critical habitat under section 4(a)(3) of the Act.

MCAS Miramar's approved INRMP was completed in June 2018. The U.S. Marine Corps works closely with the Service and California Department of Fish and Wildlife to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. The MCAS Miramar INRMP overall strategy for conservation and management is to: (1) Limit activities, minimize development, and perform mitigation actions in areas supporting high densities of vernal pool habitat, threatened or endangered species, and other wetlands; and (2) manage activities and development in areas of low densities, or no regulated resources, with site-specific measures and programmatic instructions.

The MCAS Miramar INRMP contains elements that benefit the Hermes copper butterfly, such as mitigation guidance for projects which may impact Hermes copper butterfly or its habitat (MCAS Miramar 2018, p. 6–13) and natural resources management goals and objectives which support both Hermes copper butterfly conservation and military operational requirements. Identified management actions within the INRMP include restoring degraded

sites, restricting access to sensitive areas, training military personnel to recognize and avoid sensitive areas, invasive species removal, surveys to identify areas suitable for habitat restoration or enhancement, and long-term ecosystem monitoring (MCAS Miramar 2018, p. 7–17). The INRMP also includes measures to avoid or minimize the effects of planned actions, such as limiting training and land management activities during flight season, as well as minimizing off-road activities to avoid damage to host plants and crushing eggs and larval butterflies (MCAS Miramar 2018, p. 5–7). It further provides guidance for project planners on required impact avoidance, minimization, and compensation of occupied and unoccupied habitat. Overall, these measures protect Hermes copper butterflies from impacts such as loss of spiny redberry and nectar plants from direct and indirect effects of planned actions and will minimize conflicts with military operational needs. In total, 967 ha (2,389 ac) on MCAS Miramar meet the definition of critical habitat for the Hermes copper butterfly.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the MCAS Miramar INRMP and that conservation efforts identified in the INRMP will provide a benefit to the Hermes copper butterfly. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 967 ha (2,389 ac) of habitat in this final critical habitat designation because of this exemption.

Exclusions

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

On December 18, 2020, we published a final rule in the **Federal Register** (85 FR 82376) revising portions of our regulations for designating critical habitat. These final regulations became effective on January 19, 2021. The revisions set forth a process for excluding areas of critical habitat under section 4(b)(2) of the Act, and outline when and how the Service will undertake an exclusion analysis. However, the revised regulations apply to classification and critical habitat rules for which a proposed rule was published after January 19, 2021. Consequently, these new regulations do not apply to this final rule.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEc 2018, entire). The DEA, dated August 15, 2018, was made available for public review from January 8, 2020, through March 7, 2020 (85 FR 1018). The DEA addressed probable economic impacts of critical habitat designation for the Hermes copper butterfly. We did not receive any public comments on the DEA. We conclude the DEA represents an accurate assessment of the economic impacts of the final rule. Additional information relevant to the probable incremental economic impacts of the critical habitat designation for the Hermes copper butterfly is summarized below and available in the screening analysis for the Hermes copper butterfly (IEc 2018, entire), available at *https://www.regulations.gov.*

Executive Orders (E.O.) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable and reasonable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Hermes copper butterfly, first we identified probable incremental economic impacts associated with the following categories of activities: (1) Agriculture, (2) development; (3) forest management; (4) grazing; (5) mining; (6) recreation; (7) renewable energy; (8) transportation; and (9) utilities (Service 2018, p. 2). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation requires consideration of potential project effects only when there is an action conducted, funded, permitted, or authorized by Federal agencies. When this final rule becomes effective, in areas where the Hermes copper butterfly is present, Federal agencies would already be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Hermes copper butterfly's critical habitat. Because the designation of critical habitat for Hermes copper butterfly was proposed concurrently with the listing, it was difficult to discern which costs would be attributable to the species being listed and which would result solely from the designation of critical habitat. The essential physical or biological features identified for Hermes copper butterfly critical habitat are the same features essential for the life requisites of the species. In particular, because the Hermes copper butterfly is closely associated with the plant species essential for its conservation, and

because it is a nonmigratory species that remains on spiny redberry plants during all immature stages, and on the plant as an adult, reasonable and prudent alternatives needed to avoid jeopardy from impacts to the species' life-requisite habitat features would also likely serve to avoid destruction or adverse modification of critical habitat resulting from those impacts.

The critical habitat designation for the Hermes copper butterfly totals approximately 14,174 ha (35,027 ac) in three units, all of which are occupied by the species. The screening analysis found that incremental costs associated with section 7 consultations would likely be low for the Hermes copper butterfly for several reasons (IEc 2018, p. 9). First, the majority of the critical habitat designation is on State, private, and local lands where a Federal nexus is unlikely (although there are a few areas where the Army Corps of Engineers has jurisdiction). Secondly, given that all the designated critical habitat units are occupied, should a Federal nexus exist, any proposed projects would need to undergo some form of consultation due to the presence of the butterfly regardless of critical habitat designation.

Additionally, as previously stated, we expect that any project modifications identified to avoid jeopardy that would result from project-related effects to habitat features required by the species would be similar to those identified to avoid destruction or adverse modification of the critical habitat's physical or biological features essential to the conservation of the species. Furthermore, all critical habitat units overlap to some degree with critical habitat for other listed species or with various conservation plans, State plans, or Federal regulations. These protections may also benefit the Hermes copper butterfly, even in the absence of critical habitat for the species.

When an action is proposed in an area of occupied designated critical habitat, and the proposed activity has a Federal nexus, the need for consultation is triggered. Any incremental costs associated with consideration of potential effects to the critical habitat are a result of this consultation process and limited to administrative costs. Overall, we expect that agency administrative costs for consultation, incurred by the Service and the consulting Federal agency, would be minor (less than $6,000 per consultation effort) and, therefore, would not be significant (IEc 2018, p. 10). Overall, 70 percent of critical habitat is on non-Federal lands; thus, there are few areas designated that are likely to have a Federal nexus. Additionally, due to coordination efforts with State and local agencies, we expect few additional costs due to public perception.

Therefore, we expect that incremental costs will be minor and limited to additional administrative efforts by the Service and consulting Federal agencies to include consideration of potential effects to the designated critical habitat in otherwise needed consultations. These future costs are unknown but expected to be relatively small given the projections for affected entities, and are unlikely to exceed $100,000 in any given year. Consequently, future probable incremental economic impacts are not likely to exceed $100 million in any single year and would therefore not be significant.

The Service considered the economic impacts of the critical habitat designation. The Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Hermes copper butterfly based on economic impacts.

Consideration of National Security Impacts or Homeland Security Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the impact to national security that may result from a designation of critical habitat. For this final rule, we considered whether there are lands owned or managed by the DoD within critical habitat where a national security impact might exist. In this case, we are exempting under section 4(a)(3) of the Act all lands that meet the definition of critical habitat owned by the DoD. Additionally, we have determined that the lands within the final designation of critical habitat for Hermes copper butterfly are not owned or managed by the Department of Homeland Security. Therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising her discretion to exclude any areas from the final designation based on impacts on national security.

Consideration of Other Relevant Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we also consider any other relevant impacts that may result from a designation of critical habitat. In conducting that analysis, we consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of any Tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this rule, we have determined that there are currently no HCPs or other management plans for the Hermes copper butterfly, and the final designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this critical habitat designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from the final designation based on other relevant impacts.

Summary of Exclusions

After consideration of the economic impact, the impact on national security, and other relevant impacts of the final designation of critical habitat, the Secretary did not consider any particular areas for exclusion and is not exercising her discretion to exclude any areas from the final designation of critical habitat under section 4(b)(2) of the Act.

III. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. 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 Act 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 Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act 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, or section 9(a)(2), in the case of plants. 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 to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him [her] with regard to the permitted activities for those species. [S]he may, for example, permit taking, but not importation of such species, or [s]he 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).

Exercising its authority under section 4(d), the Service has developed a rule that is designed to address the Hermes copper butterfly's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Hermes copper butterfly. As discussed above under Summary of Biological Status and Threats, we concluded that the Hermes copper butterfly is likely to become in danger of extinction within the foreseeable future primarily due to extirpation of populations by wildfire and loss and isolation of populations due to development. The provisions of this 4(d) rule will promote conservation of the Hermes copper butterfly by creating more favorable habitat conditions for the species and helping to stabilize populations of the species. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the Hermes copper butterfly.

This 4(d) rule describes how and where the prohibitions of section 9(a)(1) of the Act will be applied. This 4(d) rule prohibits all acts described under section 9(a)(1) of the Act except as otherwise excepted or permitted. As described in more detail later in this section, this 4(d) rule identifies a certain portion of the species' range that would not be subject to the take prohibitions under section 9(a)(1)(B) of the Act (Figure 1). Outside of the area delineated in Figure 1, this 4(d) rule prohibits take under section 9(a)(1)(B) of the Act, except take resulting from the activities listed below when conducted within habitats occupied by the Hermes copper butterfly. All of the activities listed below must be conducted in a manner that (1) maintains contiguity of suitable habitat for the species within and dispersal corridor connectivity among populations, allowing for maintenance of populations and recolonization of unoccupied, existing habitat; (2) does not increase the risk of wildfire in areas occupied by the Hermes copper butterfly while preventing further habitat fragmentation and isolation, or degradation of potentially suitable habitat; and (3) does not preclude efforts to augment or reintroduce populations of the Hermes copper butterfly within its historical range with management of the host plant. Some excepted activities must be coordinated with and reported to the Service in writing and approved to ensure accurate interpretation of exceptions (for example, that activities do not adversely affect the species' conservation and recovery). Questions regarding the application of these requirements should be directed to the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Provisions of the 4(d) Rule

This 4(d) rule will provide for the conservation of the Hermes copper butterfly by prohibiting the following activities, except as otherwise excepted or permitted: Importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. This 4(d) rule exempts from the prohibitions in section 9(a)(1)(B) of the Act take resulting from any of the following activities when conducted within habitats occupied by the Hermes copper butterfly:

(1) Survey and monitoring work in coordination with and reported to the Service as part of scientific inquiry involving quantitative data collection (such as population status determinations).

(2) Habitat management or restoration activities, including removal of nonnative, invasive plants, expected to provide a benefit to Hermes copper butterfly or other sensitive species of the chaparral and coastal sage scrub ecosystems, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(3) Activities necessary to maintain the minimum clearance (defensible space) requirement from any occupied dwelling, occupied structure, or to the property line, whichever is nearer, to provide reasonable fire safety and to reduce wildfire risks consistent with the State of California fire codes or local fire codes or ordinances.

(4) Fire management actions on protected/preserve lands to maintain, protect, or enhance coastal sage scrub and chaparral vegetation. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(5) Maintenance of existing fuel breaks identified by local fire authorities to protect existing structures.

(6) Firefighting activities associated with actively burning fires to reduce risk to life or property.

(7) Collection, transportation, and captive-rearing of Hermes copper butterfly for the purpose of population augmentation or reintroduction, maintaining refugia, or as part of scientific inquiry involving quantitative data collection (such as survival rate, larval weights, and post-release monitoring) approved by, in coordination with, and reported to the Service. This does not include activities such as personal ''hobby'' collecting and rearing intended for photographic purposes and re-release.

(8) Research projects involving collection of individual fruits, leaves, or stems of the Hermes copper butterfly host plant, spiny redberry, approved by, in coordination with, and reported to the Service.

As discussed above under Summary of Biological Status and Threats, multiple factors are affecting the status of the Hermes copper butterfly. A range of activities have the potential to impact these species, including, but not limited to: Recreational activities that promote the spread of nonnative weeds and wildfire ignition, clearing of brush for fire safety, land use changes including construction of power lines and

maintenance roads, and construction of homes and businesses. Across the species' range, suitable habitat has been degraded or fragmented by development and wildfire, including megafires. Regulating these activities will address some of these problems, creating more favorable habitat conditions for the species and helping to stabilize or increase populations of the species.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take will help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other threats.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve Hermes copper butterflies that may result in otherwise prohibited take without additional authorization.

Additionally, we are proposing under section 4(d) of the Act to delineate a certain portion of the species' range that would not be subject to the take prohibitions under section 9(a)(1)(B) of the Act (Figure 1). Areas inside this portion of the species' range capture all remnant habitat areas where there is any possibility of Hermes copper butterfly occupancy and where we are confident they would not contribute significantly to species recovery because of limited available habitat and connectivity. They are unlikely to contribute to recovery because any occupied areas within the boundary are too small and isolated to support a population in the long term. The intent is to provide regulatory relief to those who might otherwise be affected by the species being listed as threatened, and to encourage and strengthen conservation partnerships among Federal, State, and local agencies and other partners we serve.

The areas where the section 9(a)(1)(B) prohibitions would not apply are shown in Figure 1. These areas were delineated in the following way: The southern edge is the Mexican border and the western edge is the Pacific coast. The eastern and northern edges of the boundary follow the development that would isolate any extant populations found within the boundaries. We did not include areas where we believed there was any chance of future dispersal corridor connectivity among extant populations, including habitat that could potentially be managed or restored to act as suitable connecting habitat. For a more detailed map of the areas where the section 9(a)(1)(B) prohibitions would not apply, please contact the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

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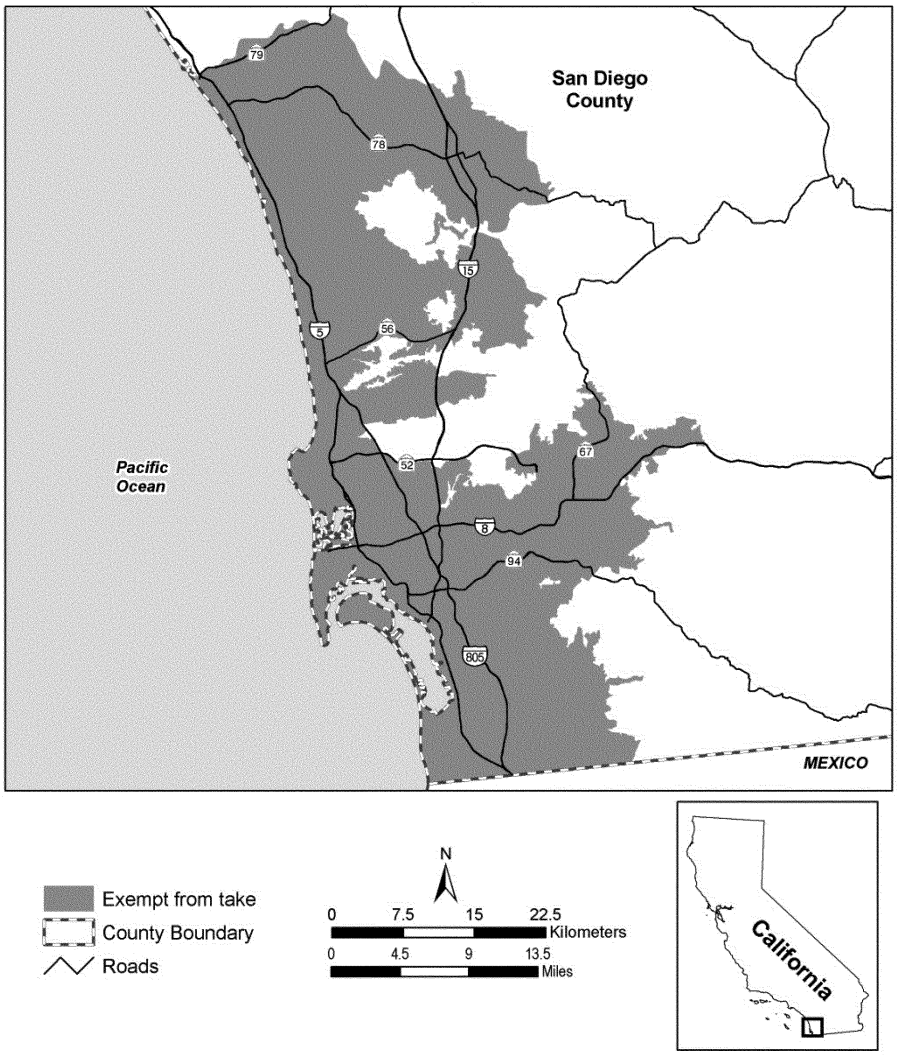

Figure 1. Portion of the Hermes copper butterfly's current range that is exempt from take prohibitions under section 9(a)(1)(B) of the Act.

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Nothing in this 4(d) rule will change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Hermes copper butterfly. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an 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 effects of the rule on small

entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate only the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation.

Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the final designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that this final critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this critical habitat designation will significantly affect energy supplies, distribution, or use. Furthermore, although it does include areas where power lines and power facility construction and maintenance may occur in the future, it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat

imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities.

Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Hermes copper butterfly in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the final designation of critical habitat for the Hermes copper butterfly, and it concludes that this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We coordinated with Federally-recognized Tribes within the range of the species regarding both listing and critical habitat. The species' historical range falls within Kumeyaay Nation (also known in part as Ipai and Tipai) traditional cultural territory identified by the Kumeyaay Heritage Preservation Committee, of which all 12 federally-recognized Tribes are members. Though the historical range includes these lands, we determined that no Tribal lands fall within the boundaries of the final critical habitat for the Hermes copper butterfly. Based on our coordination and geographic analysis, we concluded no Tribal trust lands will be affected by the designation. We are

committed to ongoing coordination with Tribes and partnership building to ensure no effects on Tribes and to support voluntary conservation efforts in the future.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, 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. In § 17.11, amend the table in paragraph (h) by adding an entry for ''Butterfly, Hermes copper'' to the List of Endangered and Threatened Wildlife in alphabetical order under ''Insects'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Insects				
*	*	*	*	*
Butterfly, Hermes copper	*Lycaena hermes*	Wherever found	T	86 FR [*INSERT **FEDERAL REGISTER** PAGE WHERE THE DOCUMENT BEGINS*]; 12/21/2021; 50 CFR 17.47(e); [4d] 50 CFR 17.95(i).[CH]
*	*	*	*	*

■ 3. Amend § 17.47 by adding paragraph (e) to read as follows:

§ 17.47 Special rules—insects.

* * * * *

(e) Hermes copper butterfly (*Lycaena hermes*).—(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to Hermes copper butterfly. Except as provided under paragraph (e)(2) of this section and §§17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Conduct the activities listed in paragraph (e)(2)(vi) of this section, including take, outside the area delineated in paragraph (e)(2)(vii) of this section if the activities are conducted in a manner that:

(A) Maintains contiguity of suitable habitat for the species within and dispersal corridor connectivity among populations, allowing for maintenance of populations and recolonization of unoccupied, existing habitat;

(B) Does not increase the risk of wildfire in areas occupied by the Hermes copper butterfly while preventing further habitat fragmentation and isolation, or degradation of potentially suitable habitat; and

(C) Does not preclude efforts to augment or reintroduce populations of the Hermes copper butterfly within its historical range with management of the host plant, spiny redberry *(Rhamnus crocea).*

(vi) Take the Hermes copper butterfly outside the area delineated in paragraph (e)(2)(vii) of this section if the take results from any of the following activities when conducted within habitats occupied by the Hermes copper butterfly:

(A) Survey and monitoring work in coordination with and reported to the Service as part of scientific inquiry involving quantitative data collection (such as population status determinations).

(B) Habitat management or restoration activities, including removal of nonnative, invasive plants, expected to provide a benefit to Hermes copper butterfly or other sensitive species of the chaparral and coastal sage scrub ecosystems, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(C) Activities necessary to maintain the minimum clearance (defensible space) requirement from any occupied dwelling, occupied structure, or to the

property line, whichever is nearer, to provide reasonable fire safety and to reduce wildfire risks consistent with the State of California fire codes or local fire codes or ordinances.

(D) Fire management actions on protected/preserve lands to maintain, protect, or enhance coastal sage scrub and chaparral vegetation. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(E) Maintenance of existing fuel breaks identified by local fire authorities to protect existing structures.

(F) Firefighting activities associated with actively burning fires to reduce risk to life or property.

(G) Collection, transportation, and captive-rearing of Hermes copper butterfly for the purpose of population augmentation or reintroduction, maintaining refugia, or as part of scientific inquiry involving quantitative data collection (such as survival rate, larval weights, and post-release monitoring) in coordination with and reported to the Service. This does not include activities such as personal ''hobby'' collecting and rearing intended for photographic purposes and re-release.

(H) Research projects involving collection of individual fruits, leaves, or stems of the Hermes copper butterfly host plant, spiny redberry, in coordination with and reported to the Service.

(vii) Take the Hermes copper butterfly within the portion of the range described in paragraphs (e)(2)(vi)(A) and (B) of this section:

(A) The southern edge is the Mexican border, and the western edge is the Pacific coast. The eastern and northern edges of the boundary follow the development that would isolate any extant populations found within the boundaries.

(B) Note: The map of areas exempted from take prohibitions follows:

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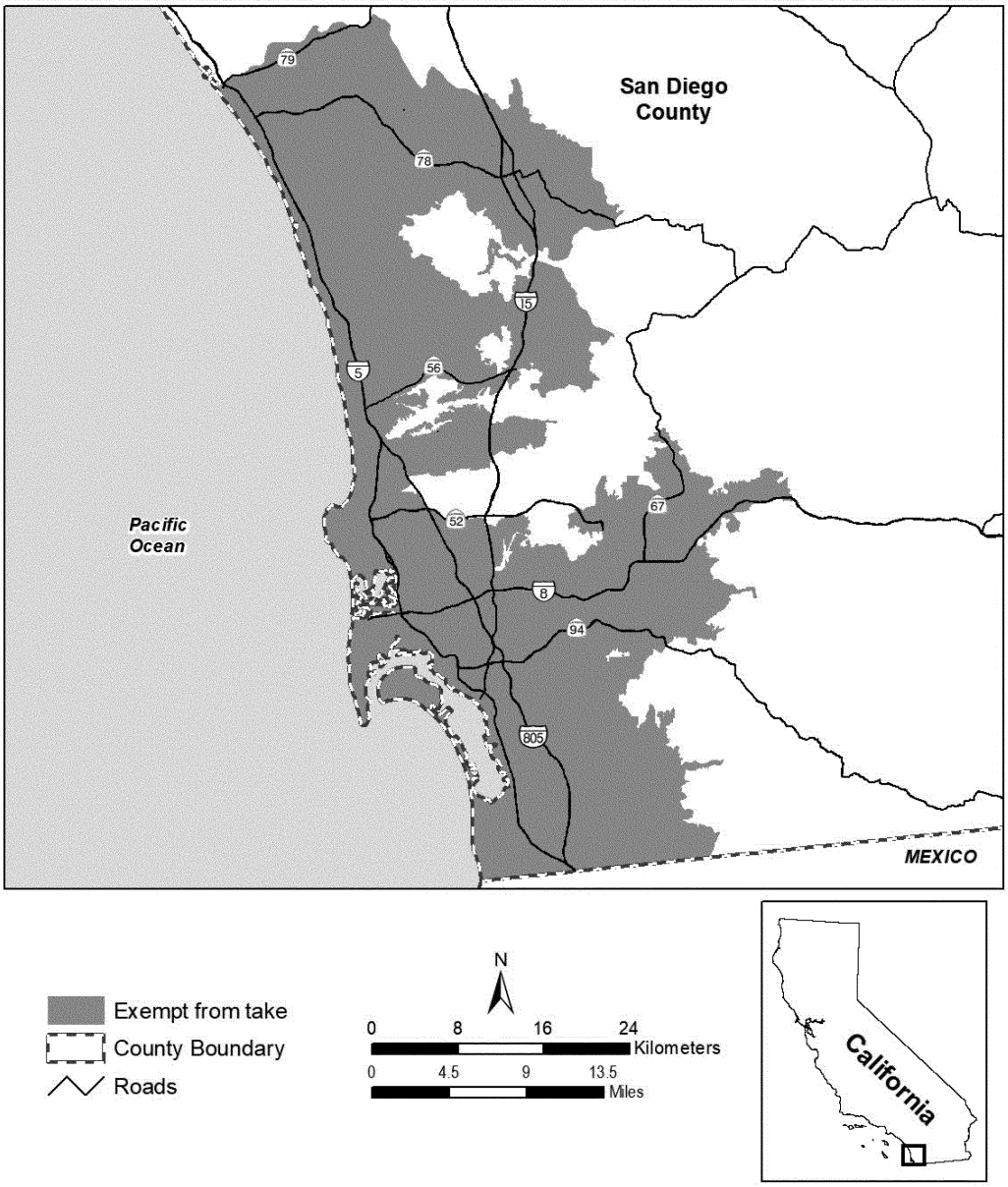
Figure 1 to paragraph (e)(2)(vii)(B)

Portion of Hermes copper butterfly's (*Lycaena hermes*) range exempt from take prohibitions under section 9(a)(1)(B) of the Endangered Species Act San Diego County, California



■ 4. Amend § 17.95(i) by adding an entry for ''Hermes Copper Butterfly (*Lycaena hermes*)'' after the entry for ''Florida Leafwing Butterfly (*Anaea troglodyta floridalis*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Hermes Copper Butterfly (Lycaena hermes)

(1) Critical habitat units are depicted for San Diego County, California, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Hermes copper butterfly consist of the following components when found between 30 m and 1,341 m above sea level, and located in habitat providing an appropriate quality, quantity, and spatial and temporal arrangement of these habitat characteristics in the context of the life-history needs, condition, and status of the species:

(i) Spiny redberry host plants (*Rhamnus crocea*).

(ii) Nectar sources for adult butterflies.

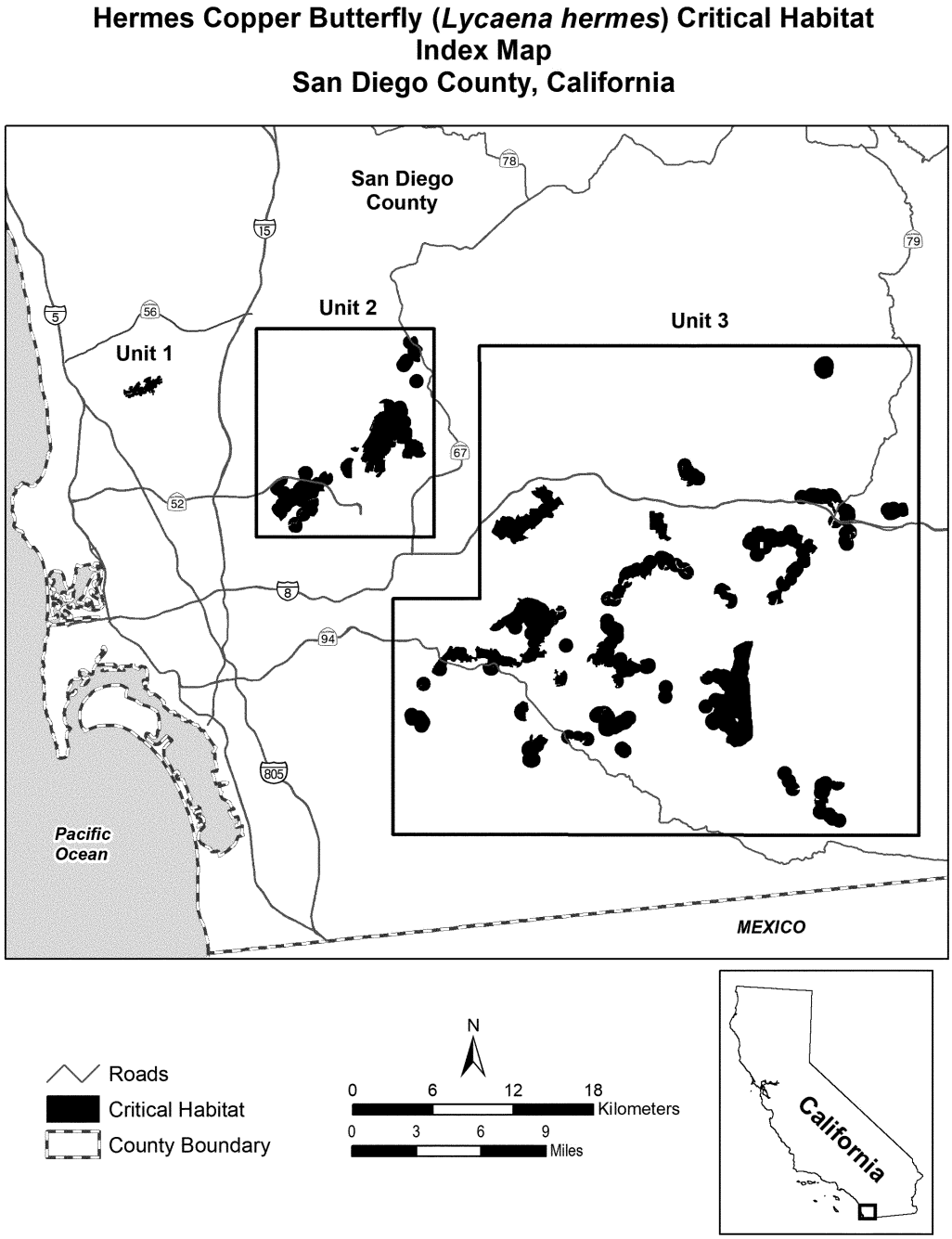
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they

are located existing within the legal boundaries on January 20, 2022.

(4) Critical habitat was mapped using GIS analysis tools and refined using 2016 NAIP imagery and/or the World Imagery layer from ArcGIS Online. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *https://www.regulations.gov* at Docket No. FWS–R8–ES–2017–0053, on our internet site *https://www.fws.gov/carlsbad/gis/cfwogis.html,* and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

Figure 1 to Hermes Copper Butterfly *(Lycaena hermes)* paragraph (5)

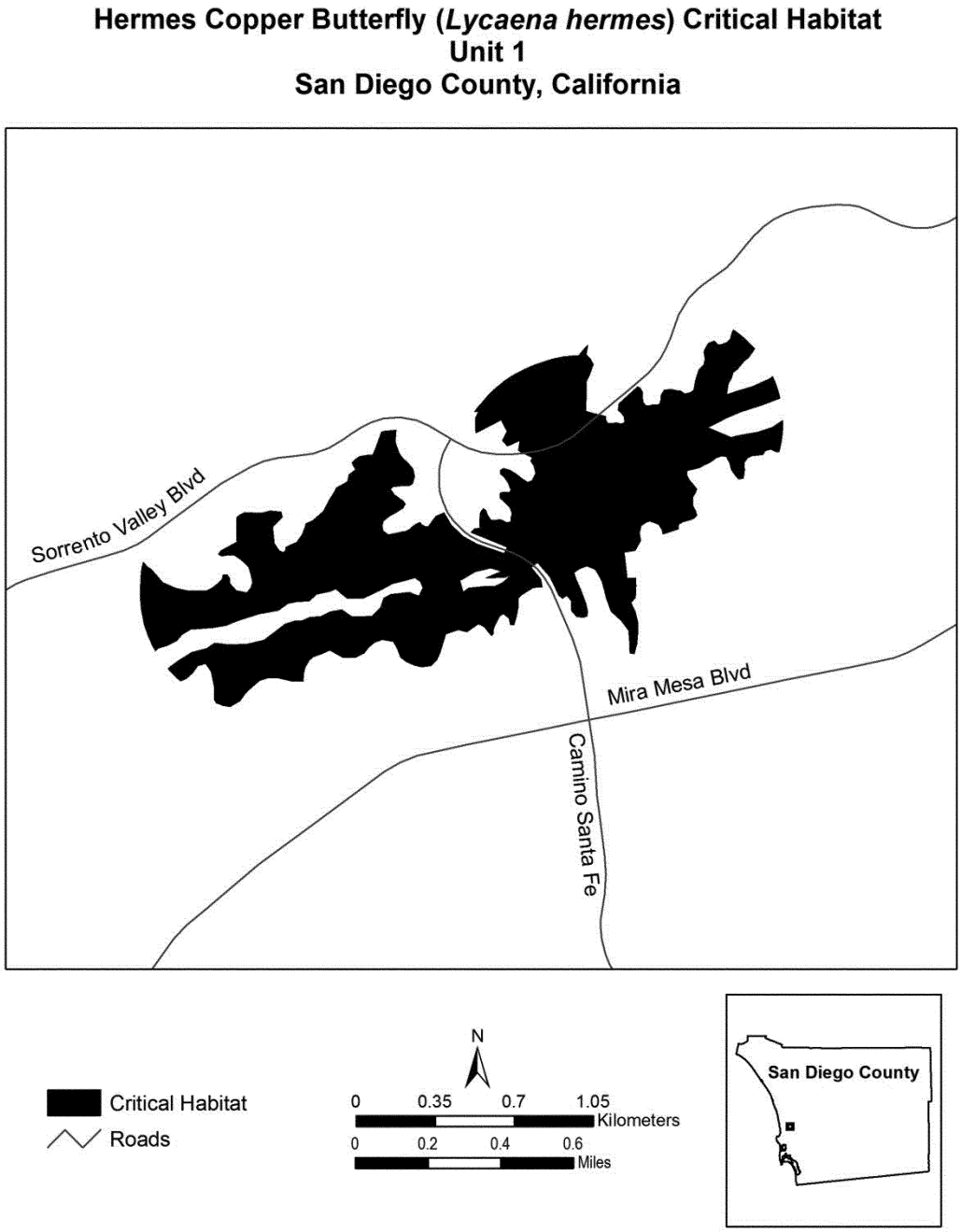


(6) Unit 1: Lopez Canyon, San Diego County, California.

(i) Unit 1 consists of 166 hectares (ha) (410 acres (ac)) in San Diego County and is composed of lands jointly owned and managed by the City and County of San Diego (88 ha (218 ac)) and private or other ownership (77 ha (191 ac)).

(ii) Map of Unit 1, Lopez Canyon, follows:

Figure 2 to Hermes Copper Butterfly *(Lycaena hermes)* paragraph (6)(ii)

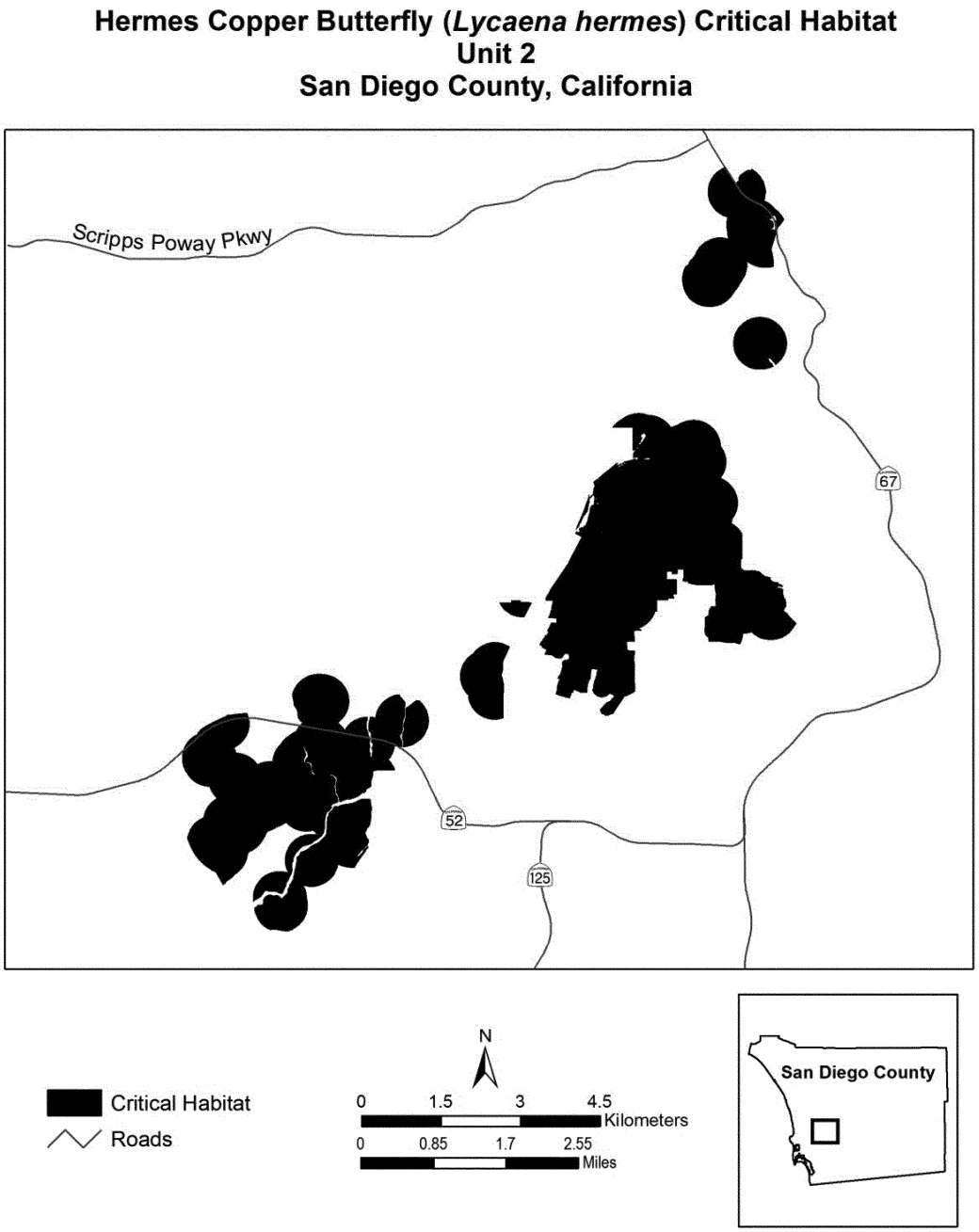


(7) Unit 2: Miramar/Santee, San Diego County, California.

(i) Unit 2 consists of 2,870 ha (7,092 ac) in San Diego County and is composed of lands owned and managed by the State of California (111 ha (275 ac)), local jurisdictions (primarily the County of San Diego; 1,113 ha (2,750 ac)), and private or other ownership (1,646 ha (4,068 ac)).

(ii) Map of Unit 2, Miramar/Santee, follows:

Figure 3 to Hermes Copper Butterfly *(Lycaena hermes)* paragraph (7)(ii)



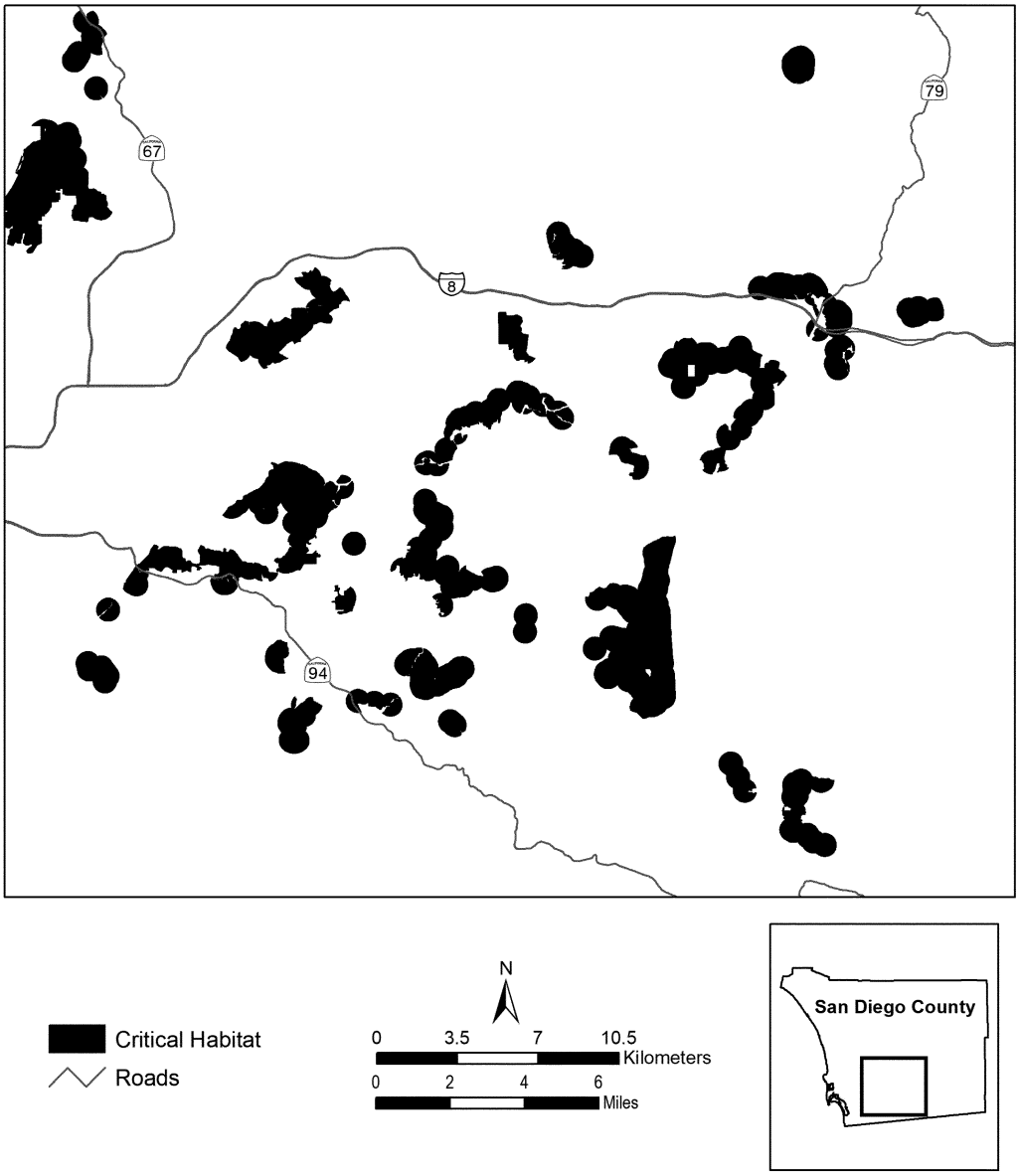
(8) Unit 3: Southeast San Diego, San Diego County, California.

(i) Unit 3 consists of 11,213 ha (27,709 ac) in San Diego County and is composed of lands owned by the Federal Government (4,213 ha (10,411 ac)), the State of California (2,000 ha (4,940 ac)), local jurisdictions (primarily the City and County of San Diego; 1,162 ha (2,871 ac)), and private or other ownership (3,765 ha (9,303 ac)).

(ii) Map of Unit 3, Southeast San Diego, follows:

Figure 4 to Hermes Copper Butterfly *(Lycaena hermes)* paragraph (8)(ii)

Hermes Copper Butterfly (*Lycaena hermes*) Critical Habitat
Unit 3
San Diego County, California



* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–27157 Filed 12–20–21; 8:45 am]

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FEDERAL REGISTER

Vol. 86 Tuesday,

No. 242 December 21, 2021

Part V

Environmental Protection Agency

40 CFR Parts 80 and 1090

Renewable Fuel Standard (RFS) Program: RFS Annual Rules; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 1090

[EPA–HQ–OAR–2021–0324; FRL–8521–02–OAR]

RIN 2060–AV11

Renewable Fuel Standard (RFS) Program: RFS Annual Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set standards every year to implement nationally applicable renewable fuel volume targets. This action proposes to modify the 2021 and 2022 statutory volume targets for cellulosic biofuel, advanced biofuel, and total renewable fuel, as well as to establish the 2022 volume target for biomass-based diesel. This action also proposes to modify the previously established cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements for 2020. In addition, this action proposes the 2020, 2021, and 2022 renewable fuel standards for all four of the above biofuel categories. Finally, this action also proposes to address the remand of the 2016 standard-setting rulemaking, as well as several regulatory changes to the Renewable Fuel Standard (RFS) program including regulations for the use of biointermediates to produce qualifying renewable fuel, flexibilities for regulated parties, and clarifications of existing regulations.

DATES: *Comments.* Comments must be received on or before February 4, 2022.

Public hearing. EPA announced information regarding the public hearing for this proposal in a **Federal Register** document published on December 10, 2021, at 86 FR 70426.

ADDRESSES: *Comments.* You may send your comments, identified by Docket ID No. EPA–HQ–OAR–2021–0324, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2021–0324 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For the full EPA public comment policy, information about confidential business information (CBI) or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Dallas Burkholder, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4766; email address: *RFS-Rulemakings@epa.gov.* Comments on this proposal should not be submitted to this email address, but rather through *https://www.regulations.gov* as discussed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel, as well as renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially affected categories include:

Category	NAICS [1] codes	Examples of potentially affected entities
Industry	324110	Petroleum refineries.
Industry	325193	Ethyl alcohol manufacturing.
Industry	325199	Other basic organic chemical manufacturing.
Industry	424690	Chemical and allied products merchant wholesalers.
Industry	424710	Petroleum bulk stations and terminals.
Industry	424720	Petroleum and petroleum products merchant wholesalers.
Industry	221210	Manufactured gas production and distribution.
Industry	454319	Other fuel dealers.

[1] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposed action. This table lists the types of entities that EPA is now aware could potentially be affected by this proposed action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this proposed action, you should carefully examine the applicability criteria in 40 CFR parts 80 and 1090. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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A red-line version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action.

I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements of the Energy Policy Act of 2005 (EPAct), which were codified in Clean Air Act (CAA) section 211(o). The statutory requirements were subsequently amended by the Energy Independence and Security Act of 2007 (EISA). The statute sets forth annual, nationally applicable volume targets for each of the four categories of renewable fuel. It also directs EPA to modify or establish volume targets in certain circumstances. EPA must then translate the volume targets into compliance obligations that obligated parties must meet every year.

In this action we are proposing the applicable volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2021 and 2022, and the biomass-based diesel (BBD) applicable volume for 2022,[1] as well as to modify the applicable volumes that EPA previously established for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2020.[2] [3] We are also proposing the annual percentage standards (also known as ''percent standards'') for cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel that would apply to gasoline and diesel produced or imported by obligated parties in 2020, 2021, and 2022. In addition, we are also proposing to address the remand of the 2014–2016 annual rule by the D.C. Circuit Court of Appeals, in *Americans for Clean Energy* v. *EPA,* 864 F.3d 691 (2017) (hereafter ''*ACE*'') by proposing a supplemental volume of 250 million gallons in 2022, and we intend to propose an additional supplemental volume of 250 million gallons for 2023 in a subsequent action.

TABLE I–1—PROPOSED VOLUME REQUIREMENTS

[Billion RINs] [a]

Category	2020	2021	2022
Cellulosic Biofuel	0.51	0.62	0.77
Biomass-Based Diesel [b]	[c] 2.43	[d] 2.43	2.76
Advanced Biofuel	4.63	5.20	5.77

[1] The 2021 BBD volume requirement was established in the 2020 final rule. 85 FR 7016 (February 6, 2020).

[2] 85 FR 7016 (February 6, 2020).

[3] As explained in Section II, we did not trigger the reset authority for BBD. Thus, we are not proposing to reset the previously finalized 2020 and 2021 BBD volumes. In addition, actual BBD use in both 2020 and 2021 is projected to exceed the previously finalized volumes, so we see no need to retroactively reconsider the BBD volumes in any event. As discussed in Section III.E, we are proposing to set the 2022 BBD volume pursuant our ''set'' authority under CAA section 211(o)(2)(B)(ii)).

TABLE I–1—PROPOSED VOLUME REQUIREMENTS—Continued

[Billion RINs] [a]

Category	2020	2021	2022
Total Renewable Fuel	17.13	18.52	20.77
Supplemental Standard	n/a	n/a	0.25

[a] One Renewable Identification Number (RIN) is equivalent to one ethanol-equivalent gallon of renewable fuel. Throughout this preamble, RINs are generally used to describe total volumes in each of the four categories shown above, while gallons are generally used to describe volumes for individual types of biofuel such as ethanol, biodiesel, renewable diesel, etc. Exceptions include BBD, which is always given in physical volumes, and biogas and electricity, which are always given in RINs.
[b] The BBD volumes are in physical gallons (rather than RINs).
[c] Established in the 2019 RFS annual rule (83 FR 63704, December 11, 2018).
[d] Established in the 2020 RFS annual rule (85 FR 7016, February 6, 2020).

Finally, we are proposing several regulatory changes to the RFS program, including regulations for the use of biointermediates to produce qualifying renewable fuel, flexibilities for regulated parties, and clarifications of existing regulations.

A. Legal Authorities To Modify and Establish Renewable Fuel Volumes

For the 2020, 2021, and 2022 cellulosic biofuel, advanced biofuel, and total renewable fuel volumes, EPA is fulfilling our statutory obligation to ''reset'' the statutory volumes in accordance with CAA section 211(o)(7)(F). This provision, entitled ''Modification of Applicable Volumes,'' provides that, if a waiver of any statutory volume target exceeds specified thresholds, EPA shall modify or ''reset'' the statutory volume targets for all years following the year that the threshold was exceeded. This obligation has been triggered by EPA actions waiving volumes in previous annual standard-setting rulemakings. Under this statutory provision, we are proposing new volume targets for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2020, 2021, and 2022.[4]

When resetting the statutory targets, EPA must comply with the processes, criteria, and standards set forth in CAA section 211(o)(2)(B)(ii). In addition to reviewing the implementation of the program during previous years and coordinating with the Secretary of Energy and the Secretary of Agriculture, EPA must also analyze several factors:

- The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
- The impact of renewable fuels on the energy security of the U.S.;
- The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);
- The impact of renewable fuels on the infrastructure of the U.S., including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
- The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
- The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

With respect to the 2022 BBD volume, we are setting this volume under CAA section 211(o)(2)(B)(ii). The requirement to reset the statutory volume targets does not apply to BBD. However, CAA section 211(o)(2)(B)(ii) separately requires that EPA set the BBD volume for years including 2022 based on an analysis of the same statutory factors as the reset authority.

In addition to these statutory provisions, the D.C. Circuit has also established principles that EPA must follow when promulgating RFS rulemakings after the statutory deadline as well as retroactive RFS rulemakings.[5] Namely, EPA has authority to promulgate such RFS rules, but EPA must reasonably consider and mitigate the burdens on obligated parties. Several aspects of this rulemaking are either retroactive or will be finalized after the statutory deadline, or both. Therefore we consider this caselaw as required by the court. We further discuss all our legal authorities to modify or establish volumes in Section II.

B. 2020 Volumes

EPA established the applicable 2020 volume requirements and percentage standards in late 2019.[6] Since we promulgated those standards, several significant and unanticipated events occurred that affected the fuels markets in 2020. The two most prominent of these events were:

- The COVID–19 pandemic and the ensuing fall in transportation fuel demand, especially the disproportionate fall in gasoline demand relative to diesel demand, which significantly reduced the production and use of biofuels in 2020 below the volumes we anticipated could be achieved, and
- The potential that the volume of gasoline and diesel exempted from 2020 RFS obligations through small refinery exemption (SREs) will be far lower than projected in the 2020 final rule.

These events are expected to adversely affect the ability of obligated parties to comply with the applicable standards and to achieve the intended volumes in the 2020 final rule.[7] As a result, we are proposing to retroactively adjust the 2020 volumes and standards to reflect the actual volumes of renewable fuels and transportation fuel consumed in the U.S. As we discuss further in Sections III and IV, these revised volumes are supported by our analysis of the statutory factors that we must consider when resetting RFS volumes.

C. 2021 Volumes

We are proposing volumes for 2021 that are equal to our projection of the volume of cellulosic biofuel, advanced biofuel, and total renewable fuel that will be used in the U.S. in 2021. Much like our proposed volumes for 2015,[8] which were similarly retroactive and promulgated after the statutory

[4] As we explain further in Section II, we are also independently justifying the 2020, 2021, and 2022 cellulosic biofuel volumes and the 2022 advanced biofuel and total renewable fuel volumes under the cellulosic waiver authority.

[5] See, *e.g., Americans for Clean Energy* v. *EPA,* 864 F.3d 691 (D.C. Cir. 2017); *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014); *Nat'l Petrochemical & Refiners Ass'n* v. *EPA,* 630 F.3d 145, 154–58 (D.C. Cir. 2010).

[6] 85 FR 7016 (February 6, 2020).

[7] EPA extended the 2020 compliance deadline for obligated parties to January 31, 2022 (86 FR 17073, April 1, 2021). We have proposed to further extend that deadline in a separate action (86 FR 67419, November 26, 2021).

[8] 80 FR 33100 (June 10, 2015).

deadline, these volume projections are based on actual renewable fuel use for months in 2021 where data are available and projections of renewable fuel use for the remainder of the year. These volumes include both renewable fuel that is produced domestically as well as imported renewable fuel that is used in the U.S. As discussed in further detail in Sections III and IV of this proposal, we believe this approach for 2021 is appropriate based on our analysis of the statutory factors EPA must analyze when resetting the RFS volumes, including our finding that this retroactive rulemaking has limited ability to incentivize increased production and use of renewable fuel in 2021.

D. 2022 Volumes

The proposed volumes for 2022 are significantly higher than the proposed volumes for 2020 and 2021. As we discuss further in Sections III and IV, these volumes are based on our analysis of the statutory factors, including our assessment of the ability for the RFS program to incentivize increased production and use of renewable fuel in 2022, the statutory intent to support increasing production and use of renewable fuels, and the potential positive impacts of renewable fuels on several of the statutory factors such as climate change and energy security. The proposed volumes for 2022 also reflect the adverse impacts of biofuels on some statutory factors, including market and infrastructure constraints to the ability of RFS annual volume requirements to incentivize increased production and use of renewable fuel in the near term. These constraints include the commercial availability of cellulosic biofuel, the price and availability of feedstocks, and the availability of infrastructure to distribute higher level blends of ethanol.

E. Response to the ACE Remand

In 2015, EPA established the total renewable fuel standard for 2016. As part of that rule, we relied upon the general waiver authority under a finding of inadequate domestic supply to reduce the total renewable fuel volume target by 500 million gallons.[9] Several parties challenged that action, and in *ACE* the U.S. Court of Appeals for the D.C. Circuit vacated EPA's use of the general waiver authority, finding that such use exceeded EPA's authority under the CAA. Specifically, EPA had impermissibly considered demand-side factors in its assessment of inadequate domestic supply, rather than limiting that assessment to supply-side factors. The court remanded the rule back to EPA for further consideration.

We now intend to restore the full 500 million gallons that we improperly waived in the 2016 rule but to do so over two years. Specifically, as we discuss further in Section V, we are proposing to add a supplemental volume obligation of 250 million gallons to the proposed 2022 standards. We also intend to propose an additional supplemental volume of 250 million gallons for 2023 in a subsequent action.

F. Annual Percentage Standards

The statute directs EPA to establish annual standards that translate the nationally applicable volume targets into compliance obligations on obligated parties. In this action, EPA is proposing annual standards for 2020, 2021, and 2022 for all four categories of renewable fuel. We are also proposing a supplemental standard to address the *ACE* remand, which will apply in the 2022 compliance year.

The renewable fuel standards are expressed as a volume percentage and are used by each refiner and importer of fossil-based gasoline or diesel to determine their renewable fuel volume obligations. The specific formulas we use in calculating the renewable fuel percentage standards are found in 40 CFR 80.1405. Four separate percentage standards are required under the RFS program, corresponding to the four separate renewable fuel categories shown in Table I–1. The proposed standards are shown in Table I.E–1. Details, including the projected gasoline and diesel volumes used, can be found in Section VI.

In the 2020 standards final rule, we modified the formulas used to calculate the percentage standards to account for a projection of exempt gasoline and diesel volumes produced by small refineries.[10] Subsequent to the promulgation of that rule, the Tenth Circuit Court of Appeals vacated three EPA SRE decisions as exceeding our statutory authority in *Renewable Fuels Association* v. *EPA* (hereinafter *RFA*).[11] Most recently, the Supreme Court, in *HollyFrontier* v. *Renewable Fuels Association* (hereinafter *HollyFrontier*), vacated one of the bases for the *RFA* decision, holding that small refineries need not have had continuous exemptions since the original statutory exemption, but did not opine on the other two holdings in *RFA* because those issues were not appealed to the Court. We continue to consider the impact of these decisions on our SRE policy, and it is still unclear at this time whether we will be granting SREs for 2020, 2021, or 2022, and if so, to what degree. Thus, we are proposing a range of exempted volumes of gasoline and diesel as a result of SREs in the calculation of the applicable percentage standards, ranging from zero to 8.19 billion gallons.

The resulting range in the proposed percentage standards is shown in Table I.F–1.

TABLE I.F–1—PROPOSED PERCENTAGE STANDARDS [a]

Category	2020		2021		2022	
	Low (%)	High (%)	Low (%)	High (%)	Low (%)	High (%)
Cellulosic Biofuel	0.32	0.34	0.36	0.38	0.44	0.46
Biomass-Based Diesel	2.37	2.50	2.19	2.30	2.42	2.54
Advanced Biofuel	2.91	3.07	3.03	3.18	3.27	3.42
Renewable Fuel	10.78	11.36	10.79	11.33	11.76	12.33
Supplemental Standard	n/a	n/a	n/a	n/a	0.14	0.15

[a] Low values do not include any projected exempted gasoline and diesel volumes from SREs. High values include 8.19 billion gallons of projected exempted gasoline and diesel from SREs.

[9] See 80 FR 77420 (December 14, 2015); CAA section 211(o)(7)(A)(ii).

[10] 85 FR 7016 (February 6, 2020).

[11] *Renewable Fuels Ass'n* v. *EPA,* 948 F.3d 1206 (10th Cir. 2020), *rev'd in part sub nom., HollyFrontier Cheyenne Refining, LLC,* v. *Renewable Fuels Ass'n,* 114 S. Ct. 2172 (2021).

G. Biointermediates

Since the RFS2 program was finalized in 2010, we have been made increasingly aware of renewable fuel producers that would like to process fuel at more than one facility. Specifically, renewable fuel producers would like to first have a facility process renewable biomass into a proto-renewable fuel (or ''biointermediate'') and then have a second, separate facility process that biointermediate into renewable fuel. In some cases, it may be preferable for economic or practical reasons for renewable biomass to be subjected to substantial pre-processing at one facility before being sent to a different facility where it is converted into renewable fuel. For example, renewable biomass may be converted into a biointermediate (such as a biocrude) at one facility that requires some additional processing at a different facility before it can be used as transportation fuel. These production methodologies have the potential to lower the cost of using cellulosic and other feedstocks for the production of renewable fuels by reducing capital costs for new facilities and/or the storage and transportation costs associated with feedstock handling—especially for cellulosic biomass. Thus, we believe that such technologies provide an opportunity for the future growth in production of the cellulosic biofuels required under the RFS program. Based on this potential for future growth, in 2016 we included in the proposed the Renewables Enhancement and Growth Support (REGS) rule provisions to allow for the production, transfer, and use of biointermediates to generate qualifying renewable fuel under the RFS program.[12]

Due to the elapsed time since the proposed REGS rule and our continued consideration of how to most effectively allow biointermediates into the program, we are proposing anew provisions to allow for the use of biointermediates to produce qualifying renewable fuels. Consistent with what we previously proposed in the REGS rule, these provisions specify requirements that apply when renewable fuel is produced through sequential operations at more than one facility. These provisions center around the production, transfer, and use of biointermediates and the creation of new regulatory requirements related to registration, recordkeeping, and reporting for facilities producing or using a biointermediate for renewable fuel production. We are reproposing many of the proposed biointermediate provisions from the REGS rule without significant changes, making significant changes to some of the previously proposed provisions, and proposing some provisions for the first time here. We further discuss biointermediates in Section VII.

H. Other Changes

We have identified several areas where regulatory changes would assist EPA in implementing our fuel quality and RFS programs. These proposed regulatory changes include:

- Changing the BBD weighting factor from 1.50 to 1.55
- Changes to registration for baseline volumes
- Changes to attest engagements for parties owning Renewable Identification Numbers (RINs)
- Treatment of confidential business information
- Clarifying the definition of ''agricultural digesters''
- Adding a definition of ''produced from renewable biomass''
- Other minor changes and technical corrections

Each of these regulatory changes is discussed in greater detail in Section VIII. In Section VIII, we also seek comment on potential changes to our treatment of landfill emissions in our lifecycle greenhouse gas (GHG) analysis for fuels produced from separated municipal solid waste.

I. Environmental Justice

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice (''EJ''). It directs Federal agencies, to the greatest extent practicable and permitted by law, to make achieving EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA defines 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.[13] Executive Order 14008 (86 FR 7619, February 1, 2021) also calls on Federal agencies to make achieving EJ part of their missions ''by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.'' It also declares a policy ''to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and under-investment in housing, transportation, water and wastewater infrastructure and health care.'' EPA also released its ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis'' providing recommendations on conducting the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and regulatory context.[14]

When assessing the potential for disproportionately high and adverse health or environmental impacts of regulatory actions on minority populations, low-income populations, tribes, and/or indigenous peoples, EPA strives to answer three broad questions: (1) Is there evidence of potential EJ concerns in the baseline (the state of the world absent the regulatory action)? Assessing the baseline will allow EPA to determine whether pre-existing disparities are associated with the pollutant(s) under consideration (*e.g.,* if the effects of the pollutant(s) are more concentrated in some population groups). (2) Is there evidence of potential EJ concerns for the regulatory option(s) under consideration? Specifically, how are the pollutant(s) and their effects distributed for the regulatory options under consideration? And, (3) do the regulatory option(s) under consideration exacerbate or mitigate EJ concerns relative to the baseline? It is not always possible to assess these questions in ways that produce quantitative results, though it may still be possible to describe them qualitatively.

EPA's 2016 Technical Guidance does not prescribe or recommend a specific approach or methodology for conducting an EJ analysis, though a key consideration is consistency with the assumptions underlying other parts of the regulatory analysis when evaluating

[12] See 81 FR 80828 (November 16, 2016).

[13] See, *e.g.,* ''Environmental Justice.'' *Epa.gov,* Environmental Protection Agency, 4 Mar. 2021, *https://www.epa.gov/environmentaljustice.*

[14] The definitions and criteria for ''disproportionate impacts,'' ''difference,'' and ''differential'' are contained in EPA's June 2016 guidance document ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.'' *Epa.gov,* Environmental Protection Agency, *https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

the baseline and regulatory options. Where applicable and practicable, the Agency endeavors to conduct such an analysis. Going forward, EPA is committed to conducting EJ analysis for rulemakings based on a framework similar to what is outlined in EPA's Technical Guidance, in addition to investigating ways to further weave EJ into the fabric of the rulemaking process.

In 2009, under the *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act* (''Endangerment Finding''), the Administrator considered how climate change threatens the health and welfare of the U.S. population. As part of that consideration, he also considered risks to minority and low-income individuals and communities, finding that certain parts of the U.S. population may be especially vulnerable based on their characteristics or circumstances. These groups include economically and socially disadvantaged communities; individuals at vulnerable lifestages, such as the elderly, the very young, and pregnant or nursing women; those already in poor health or with comorbidities; the disabled; those experiencing homelessness, mental illness, or substance abuse; and/or Indigenous or minority populations dependent on one or limited resources for subsistence due to factors including but not limited to geography, access, and mobility.

Scientific assessment reports produced over the past decade by the U.S. Global Change Research Program (USGCRP),[15] [16] the Intergovernmental Panel on Climate Change (IPCC),[17] [18] [19] [20] and the National Academies of Science, Engineering, and Medicine[21] [22] add more evidence that the impacts of climate change raise potential EJ concerns. These reports conclude that poorer or predominantly non-White communities can be especially vulnerable to climate change impacts because they tend to have limited adaptive capacities and are more dependent on climate-sensitive resources such as local water and food supplies, or have less access to social and information resources. Some communities of color, specifically populations defined jointly by ethnic/racial characteristics and geographic location, may be uniquely vulnerable to climate change health impacts in the United States. In particular, the 2016 scientific assessment on the *Impacts of Climate Change on Human Health* found with high confidence that vulnerabilities are place- and time-specific, lifestages and ages are linked to immediate and future health impacts, and social determinants of health are linked to greater extent and severity of climate change-related health impacts.

This proposed rule has the potential to reduce GHG emissions which would benefit all populations including minority populations, low-income populations, and indigenous populations. The manner in which the market responds to the provisions in this proposed rule could also have non-GHG impacts. For instance, replacing petroleum fuels with renewable fuels could have impacts on water, air, and hazardous waste exposure for communities living near either existing or new facilities that produce these fuels. Replacing petroleum fuels with renewable fuels could also impact feedstock supplies and land-use, which could impact a range of communities through their impacts on air, water, and soil quality, as well as water quantity. Impacts on water quality in particular could impact communities that rely on aquatic ecosystems for income or sustenance, including indigenous peoples. While replacing petroleum fuels with renewable fuels is projected to cause small increases in food and fuel prices, these price impacts also may disproportionately affect low-income populations who spend a larger portion of their income on food and fuel.

The extent to which such changes may be unevenly distributed spatially in ways that coincide with patterns of pre-existing exposure and vulnerabilities for minority populations, low income populations, and/or indigenous peoples is uncertain and would require predicting where these changes in production and land use change would occur at a fine spatial scale. EPA is taking comment on ways in which such effects could be better evaluated for future rulemakings. A more detailed discussion of potential EJ concerns as a result of this action can be found in Chapter 8 of the Draft Regulatory Impacts Analysis (DRIA), available in the docket for this action.

J. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(2), requires that Federal agencies such as EPA, along with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) (collectively ''the Services''), ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat for such species. Under relevant implementing regulations, consultation is required

[15] USGCRP, 2018: *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.

[16] USGCRP, 2016: The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment. Crimmins, A., J. Balbus, J.L. Gamble, C.B. Beard, J.E. Bell, D. Dodgen, R.J. Eisen, N. Fann, M.D. Hawkins, S.C. Herring, L. Jantarasami, D.M. Mills, S. Saha, M.C. Sarofim, J. Trtanj, and L. Ziska, Eds. U.S. Global Change Research Program, Washington, DC, 312 pp. *http://dx.doi.org/10.7930/J0R49NQX.*

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only for actions that ''may affect'' listed species or designated critical habitat. 50 CFR 402.14. Consultation is not required where the action has no effect on such species or habitat. For several prior RFS annual standard-setting rules, EPA did not consult with the Services under section 7(a)(2).

On September 6, 2019, the United States Court of Appeals for the D.C. Circuit decided *American Fuel & Petrochemical Manufacturers* v. *EPA,* 937 F.3d 559 (2019), finding that EPA had failed to make an effects determination for ESA purposes with regard to the 2018 RFS rule and remanding the rule without vacatur to the Agency to make an appropriate effects determination. *See id.* at 598.

On July 16, 2021, the same court decided *Growth Energy* v. *EPA,* 5 F.4th 1 (2021), finding that EPA's determination that the 2019 RFS rule would have no effect on listed species or the designated critical habitat of such species was arbitrary and capricious and remanding the rule to the Agency without vacatur to comply with the ruling. *See id.* at 32.

In light of this case law pertaining to EPA's action in prior years and consistent with section 7(a)(2) of the ESA and relevant ESA implementing regulations at 50 CFR part 402, EPA intends to initiate consultation, as appropriate, with the Services regarding this proposed rule.[23] At this time, EPA is evaluating whether any federally listed threatened or endangered species or their critical habitat are likely to be adversely affected by the finalization of this rulemaking.

II. Legal Authorities To Reduce and Establish Volumes

The CAA provides EPA with several authorities to reduce or establish the applicable renewable fuel volumes. This section discusses the statutory authorities, additional factors we are considering due to the retroactivity or lateness of parts of this rulemaking, additional factors related to our reconsideration of the previously finalized standards for 2020, how we are applying our authorities to propose these volumes, as well as the severability of the various portions of this proposed rule.

A. Authorities To Modify Statutory Volumes Targets

In CAA section 211(o)(2), Congress specified increasing annual volume targets for total renewable fuel, advanced biofuel, and cellulosic biofuel for each year through 2022. However, Congress also recognized that under certain circumstances it would be appropriate for EPA to set different volume requirements than the statutory volume targets and thus provided waiver provisions in CAA section 211(o)(7). In this proposal, we are utilizing the cellulosic waiver authority under CAA section 211(o)(7)(D), and the reset authority under CAA section 211(o)(7)(F) to reduce volumes for 2020, 2021, and 2022. As discussed below, while we have previously sought comment on the use of general waiver authority to reduce volumes for 2020, the reductions proposed in this action are based on the use of our other authorities.

1. Cellulosic Waiver Authority.

Section 211(o)(7)(D)(i) of the CAA provides that if EPA determines that the projected volume of cellulosic biofuel production for a given year is less than the applicable volume specified in the statute, then EPA must reduce the applicable volume of cellulosic biofuel required to the projected volume available for that calendar year. In making this projection, EPA must take a ''neutral aim at accuracy.'' *API* v. *EPA,* 706 F.3d 474, 479 (D.C. Cir. 2013). Pursuant to this provision, EPA has set the cellulosic biofuel requirement lower than the statutory volume for each year since 2010.

CAA section 211(o)(7)(D)(i) also provides EPA with the authority to reduce the applicable volume of total renewable fuel and advanced biofuel in years when it reduces the applicable volume of cellulosic biofuel under that provision. The reduction must be less than or equal to the reduction in cellulosic biofuel. EPA has used this aspect of the cellulosic waiver authority to lower the advanced biofuel and total renewable fuel volumes every year since 2014. Further discussion of the cellulosic waiver authority, and EPA's interpretation of it, can be found in the preamble to the 2017 final rule.[24]

2. Reset Authority.

The CAA provides that EPA shall modify the statutorily prescribed RFS volumes once certain triggers are met. This section discusses the statutory requirements that trigger the use of this reset authority, describes the process and criteria for such use, and explains the impact of this modification on our other waiver authorities.

a. Conditions for Resetting Volume Targets

CAA section 211(o)(7)(F) sets forth EPA's authority to modify (or reset) the applicable volumes once certain triggers have been met. Specifically, EPA must reset the applicable volumes for a particular category of biofuel when, under CAA section 211(o)(7)(F)(i), we waive at least 20 percent of the applicable volume requirement for such category for two consecutive years, or, under CAA section 211(o)(7)(F)(ii), we waive at least 50 percent of such applicable volume requirement for a single year. With the promulgation of the 2019 annual standards, these conditions have been met for three categories of biofuel: Cellulosic biofuel, advanced biofuel, and total renewable fuel.[25] We describe below, for each category of biofuel, the specific annual rules that satisfied these conditions.

The conditions for resetting cellulosic biofuel volumes were met by the 2010 annual standard, which reduced the applicable cellulosic biofuel volume by at least 50 percent triggering application of the reset authority under CAA section 211(o)(7)(F). In that rule, we waived the cellulosic applicable volume for the first time using the cellulosic waiver authority.[26] We set the cellulosic biofuel applicable volume at 6.5 million gallons for 2010.[27] This waiver resulted in an applicable volume that was 93.5 percent lower than the applicable volume requirement provided in the statute, 100 million, thus triggering the reset requirement under CAA section 211(o)(7)(F)(ii). However, the statute also provides that ''no such modification in applicable volumes shall be made for any year before 2016.'' CAA section 211(o)(7)(F). Therefore, although the trigger to modify the cellulosic biofuel volume target under the reset provision was met in 2010, the

[23] EPA also intends to respond to the court's remand of the 2018 and 2019 RFS rules in a separate proceeding. We are not revisiting our ESA obligations related to the 2018 or 2019 rules in this rulemaking; any comments received on those topics will be deemed beyond the scope of this rulemaking.

[24] See 81 FR 89752–89753 (December 12, 2016); see also *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013) (requiring that EPA's cellulosic biofuel projections reflect a neutral aim at accuracy); *Monroe Energy* v. *EPA,* 750 F.3d 909, 915–16 (D.C. Cir. 2014) (affirming EPA's broad discretion under the cellulosic waiver authority to reduce volumes of advanced biofuel and total renewable fuel); *Americans for Clean Energy* v. *EPA* (''*ACE*''), 864 F.3d 691, 730–735 (D.C. Cir. 2017) (same); *Alon Refining Krotz Spring, Inc.* v. *EPA,* 936 F.3d 628, 662–663 (D.C. Cir. 2019) (same); *American Fuel & Petrochemical Manufacturers* v. *EPA,* 937 F.3d 559, 577–78 (D.C. Cir. 2019) (same).

[25] Because the statutory volumes for biomass-based diesel lapsed after 2012, the reset provision, which only applies to 2016 and subsequent years, does not apply to BBD.

[26] 75 FR 14670 (March 26, 2010).

[27] 75 FR 14675.

statute did not require a change to the applicable volumes until 2016.

The conditions for resetting advanced biofuel volumes were met by the 2014 and 2015 annual standards, which reduced the applicable advanced biofuel volume by at least 20 percent for two consecutive years. For the 2014 annual standard, we waived the advanced biofuel volume for the first time.[28] We set the advanced biofuel volume at 2.67 billion gallons.[29] This represented a reduction of 28.8 percent from the applicable volume requirement provided in the statute (3.75 billion). This reduction therefore triggered the first year of reductions of at least 20 percent under CAA section 211(o)(7)(F)(i). For the 2015 annual standard, we reduced the advanced biofuel applicable volume to 2.88 billion gallons.[30] This represented a reduction of 47.6 percent from the applicable volume requirement provided in the statute (5.5 billion). This represented the second consecutive year for which the Administrator waived volumes by at least 20 percent, thus triggering the modification of the advanced biofuel volume under CAA section 211(o)(7)(F)(i).

The conditions for resetting total renewable fuel volumes were met by the 2018 and 2019 annual standards, which reduced the applicable total renewable fuel volume by at least 20 percent for two consecutive years. For the 2018 annual standard, we reduced the total renewable fuel volume to 19.29 billion gallons.[31] This represented a reduction of 25.8 percent from the applicable volume requirement provided in the statute (26 billion). This reduction therefore triggered the first year of reductions of at least 20 percent under CAA section 211(o)(7)(F)(i). For the 2019 annual standard, we reduced the total renewable fuel applicable volume to 19.92 billion gallons.[32] This represented a reduction of 29 percent from the applicable volume requirement provided in the statute (28 billion). This represented the second consecutive year for which the Administrator waived volumes by at least 20 percent, thus triggering the modification of the total renewable fuel volume under CAA section 211(o)(7)(F)(i).[33]

b. Factors That Must Be Analyzed

In resetting the statutory volumes, EPA must comply with the processes, criteria, and standards set forth in CAA section 211(o)(2)(B)(ii). That provision provides that the Administrator shall, in coordination with the Secretary of Energy and the Secretary of Agriculture, determine the applicable volumes of each biofuel category specified based on a review of implementation of the program during the calendar years specified in the table, and an analysis of the impact of:

- The production and use of renewable fuels on the environment;
- The impact of renewable fuels on the energy security of the U.S.;
- The expected annual rate of future commercial production of renewable fuels;
- The impact of renewable fuels on the infrastructure of the U.S.;
- The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
- The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

While the statute requires that EPA base its determination on an analysis of these factors, it does not establish any numeric criteria, require a specific type of analysis (such as quantitative analysis), or provide guidance on how EPA should weigh the various factors. Additionally, we are not aware of anything in the legislative history of EISA that addresses these issues. Thus, as the Act ''does not state what weight should be accorded to the relevant factors,'' it ''give[s] EPA considerable discretion to weigh and balance the various factors required by statute.'' [34]

Additionally, we also have authority to consider other factors, including implied authority to consider factors that inform our analysis of the statutory factors, as well as explicit authority to consider ''the impact of the use of renewable fuels on other factors. . . .'' [35] Accordingly, we have considered several other factors, including the intertwined nature of compliance with the 2020–2022 standards, the size of the carryover RIN bank,[36] how the retroactive nature of the 2020 and 2021 standards as compared to the prospective nature of the 2022 annual and supplemental standards affects the feasibility of compliance (Section IV),[37] the supply of qualifying renewable fuels to U.S. consumers (Section III),[38] soil quality (Chapter 3 of the DRIA),[39] and environmental justice (Section I of this preamble and Chapter 8 of the DRIA).[40]

c. Impact on other Statutory Authorities To Waive Volumes

Our proposed use of the reset authority in this action does not preclude our legal authority to waive volumes under the other waiver authorities. Nothing in the CAA suggests that once the volumes are reset they cannot be modified further, or that the reset authority cannot be used in conjunction with other waiver authorities such as the cellulosic waiver authority.[41]

3. General Waiver Authority

Section 211(o)(7)(A) of the CAA provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the applicable volumes specified in the Act in whole or in part based on a petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator by his own initiative. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment that: (1)

[28] 80 FR 77420 (December 14, 2015).

[29] *Id.*

[30] *Id.*

[31] 82 FR 58486 (December 12, 2017).

[32] 83 FR 63704 (December 11, 2018).

[33] Although we are exercising the reset authority in this action for 2020–2022 volumes, we could have exercised the reset authority for the 2016–2019 cellulosic and advanced biofuel volumes as well. We do not, however, have authority to reset total renewable fuel volumes for those years. In any event, we are not proposing to revisit the 2016–2019 volumes in this rulemaking.

[34] *Nat'l Wildlife Fed'n* v. *EPA,* 286 F.3d 554, 570 (D.C. Cir. 2002); accord *Riverkeeper, Inc.* v. *United States EPA,* 358 F.3d 174, 195 (2d Cir. 2004); *BP Exploration & Oil, Inc.* v. *EPA,* 66 F.3d 784, 802 (6th Cir. 1995); see also Cal. by *Brown* v. *Watt,* 668 F.2d 1290, 1317 (D.C. Cir. 1981) (''A balancing of factors is not the same as treating all factors equally. The obligation instead is to look at all factors and then balance the results. The Act does not mandate any particular balance, but vests the Secretary with discretion to weigh the elements. . . .'').

[35] CAA section 211(o)(2)(B)(ii)(VI).

[36] The first two factors inform our analysis of the statutory factor ''review of the implementation of the program.'' CAA section 211(o)(2)(B)(ii).

[37] The third factor (how the standards affect the feasibility of compliance) also informs our analysis of the statutory factor ''the expected annual rate of future commercial production of renewable fuels.'' CAA section 211(o)(2)(B)(ii)(III).

[38] The fourth factor (supply of renewable fuels) is based on our analysis of this same statutory factor as well as of downstream constraints on biofuel use, including the statutory factors relating to infrastructure and costs. CAA section 211(o)(2)(B)(ii)(IV)–(V).

[39] Soil quality is closely tied to water quality and is also relevant to the impact of renewable fuels on the environment more generally.

[40] Environmental justice involves consideration of the impact of renewable fuels on several factors, including environmental and cost factors. This and the other non-enumerated factors are also relevant under the statutory factor ''the impact of the use of renewable fuels on other factors. . . .'' CAA section 211(o)(2)(B)(ii)(VI).

[41] See *J.E.M. Ag Supply, Inc.* v. *Pioneer Hi-Bred Intern., Inc.,* 534 U.S. 124, 143–44 (2001) (holding that when two statutes are capable of coexistence and there is not clearly expressed legislative intent to the contrary, each should be regarded as effective).

Implementation of the requirement would severely harm the economy or the environment of a State, a region, or the United States; or (2) there is an inadequate domestic supply.

EPA received several requests for use of the general waiver authority for the 2020 standards from stakeholders concerned about the impacts on the fuels markets resulting from the COVID–19 pandemic. These included requests from the governors of multiple states based on their belief that the criteria for application of the general waiver authority were satisfied and that lowering the required volumes for 2020 was appropriate. We published a notice in the **Federal Register** seeking comment on these requests.[42] We are not proposing modifications to the 2020 volumes utilizing the general waiver authority in this action. In lieu of doing so, we are proposing to revise the 2020 volumes under our reset authority as discussed in Section III.B. Our proposal addresses many of the concerns raised in the general waiver petitions, including the shortfall in RIN generation in 2020, uncertainty regarding SREs following the Tenth Circuit's decision in *RFA,* and the hurdles those may present to obligated parties' compliance.

B. Authority To Establish BBD Volumes

EPA has established the biomass-based diesel requirement under CAA section 211(o)(2)(B)(ii) since 2013 because the statute only provided BBD volumes through 2012. Thus, EPA is proposing an applicable volume for BBD for 2022 under this authority, which we term the ''set'' authority.[43] As discussed in prior annual rulemakings, EPA is to determine the applicable volume of BBD, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on an analysis of the same statutory factors enumerated above for ''resetting'' volumes for the other fuel categories.[44] The statute also requires that the BBD volume be set at or greater than the 1.0 billion gallon volume requirement for 2012 in the statute, but does not provide any other numerical criteria that EPA is to consider.

C. Considerations for Retroactive and Late Rulemaking

In this rulemaking, we are proposing several late or retroactive standards. EPA has in the past also missed statutory deadlines for promulgating RFS annual standards. In those cases, the D.C. Circuit found that EPA retains authority to promulgate annual standards for the years in question, so long as EPA exercises this authority reasonably.[45] In doing so, EPA must balance the burden on obligated parties of a retroactive standard with the broader goal of the RFS program to increase renewable fuel use.[46] Even if the rule does not operate retroactively, but is promulgated after the statutory deadline, EPA must consider and mitigate the burdens on obligated parties associated with a delayed rulemaking.[47] In upholding EPA's retroactive standards for 2014 and 2015 in *ACE,* the court considered several specific factors, including the availability of RINs for compliance, the amount of lead time and adequate notice for obligated parties, and the availability of compliance flexibilities. Additionally, the court separately addressed rulemakings that were late (*i.e.,* those issued after the statutory deadline) but were nonetheless not retroactive, emphasizing in that context the amount of lead time and adequate notice for obligated parties.[48]

In this rulemaking, we are proposing to exercise our reset authority after the statutory deadline of December 11, 2019 (which is one year after the promulgation of the 2019 final rule, which triggered the reset obligation for total renewable fuel).[49] We are also proposing to exercise our set authority for the 2022 BBD volume after the statutory deadline of October 31, 2020. We are also promulgating the 2020 and 2021 standards after their statutory deadlines of November 30, 2019 and 2020 respectively.[50] These standards are retroactive and apply to gasoline and diesel produced or imported in 2020 and 2021. We discuss in detail the considerations for late or retroactive rulemaking for each of these requirements further in Section III.

In addition, in responding to the *ACE* remand of the 2016 annual rule, EPA is proposing a supplemental standard for 2022.[51] We are proposing this supplemental standard after the statutory deadline for the 2016 standards (November 30, 2015). However, the proposed supplemental standard would prospectively apply to gasoline and diesel produced or imported in 2022. We further discuss our response to the *ACE* remand in Section V.

We acknowledge that the final rule will issued after November 30, 2021, thus rendering the 2022 and supplemental standards late and retroactive.[52] Nonetheless, we are issuing this proposal in advance of 2022, and we anticipate that the final rule will apply mostly, if not entirely, prospectively to 2022. Thus, we believe the rule will be able to incent increased renewable fuel demand in that year consistent with the analysis in this proposal.

D. Considerations in Revisiting an Established RFS Standard

We are proposing to revise the previously finalized 2020 standards in this rulemaking. We generally have authority to reconsider and revise previously finalized RFS standards.[53] In addition, the D.C. Circuit has held that EPA has authority to promulgate RFS standards retroactively. CAA section 211(o)(7) generally authorizes EPA to adjust the volume requirements based on appropriate considerations as well. In this action we are proposing to revise the 2020 standards in response to several unanticipated and exceptional events that have occurred since the promulgation of the standards and that have had direct and significant impacts on the fuels market and the ability of obligated parties to comply. We discuss these events and our rationale for revising the 2020 standards further in Section III.B.[54]

[42] 86 FR 5182 (January 19, 2021). Comments on these requests are available in the docket for that notice, EPA–HQ–OAR–2020–0322. We have recently received an additional request to waive volumes using the general waiver authority from the Governor of Montana, available in the docket for this action.

[43] The applicable volume for BBD for 2021 was established in the 2020 annual rulemaking. 85 FR 7016 (February 6, 2020).

[44] 85 FR 7016, 7047–7048 (February 6, 2020).

[45] *Americans for Clean Energy* v. *EPA,* 864 F.3d 691, 720 (D.C. Cir. 2017) (*ACE*); *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014); *Nat'l Petrochemical & Refiners Ass'n* v. *EPA,* 630 F.3d 145, 154–58 (D.C. Cir. 2010) (*NPRA*).

[46] *NPRA,* at 154–58 (D.C. Cir. 2010).

[47] *ACE,* 864 F.3d 691, 718 (D.C. Cir. 2017).

[48] *Id.* at 721.

[49] This was the deadline for resetting total renewable fuel volumes. The deadline for resetting advanced and cellulosic volumes passed earlier.

[50] These are also the deadlines for exercising the cellulosic waiver authority for those years, which we will also miss.

[51] We also intend to propose a supplemental standard for 2023 in a subsequent action.

[52] As discussed in Section V, the supplemental standard in response to the *ACE* remand is already late.

[53] Nonetheless, we believe that we generally should not revisit past RFS standards. Doing so carries inherent costs for regulatory certainty and may unduly disrupt market expectations created by previously promulgated standards. Moreover, in the 2020 final rule itself, we expressly stated that we did not intend to revisit that rulemaking and subsequently adjust the standards. See Response to Comments at 173, EPA–HQ–OAR–2019–0136.

[54] EPA also received two petitions from AFPM and API in early 2020 seeking reconsideration of the 2020 annual rule under CAA section 307(d)(7)(B) in light of the *RFA* decision and its

E. Applicability of Legal Authorities To Establish the Volume Requirements

EPA is proposing to reduce the applicable statutory volumes for 2020, 2021 and 2022 utilizing both the cellulosic waiver and reset authorities. As described in Chapter 4 of the DRIA, the projected volumes of cellulosic biofuel production for 2020, 2021, and 2022 are all significantly less than the volume targets in the statute. Therefore, the cellulosic waiver authority requires EPA to lower the cellulosic biofuel volume for each year to the projected volumes available in each year. We are proposing to do so in this action. Additionally, we propose to find that these volumes are also appropriate under our reset authority.

For advanced biofuel and total renewable fuel, we are proposing, under the reset authority alone, volumes equal to the projected actual volumes of such fuels available in 2020 and 2021. We recognize that this exceeds our maximum discretion under the cellulosic waiver authority; however, as we explain further in Section III, we do not believe that the lowest volumes permissible under the cellulosic waiver authority are appropriate based upon our consideration of the reset factors.[55] For 2022, we are proposing, under both the cellulosic waiver authority and the reset authority, advanced biofuel and total renewable fuel volumes equal to the implied statutory volumes. This represents the maximum permitted reduction under the cellulosic waiver authority.[56] We also believe these volumes are appropriate under the reset authority.

In Sections III and IV and Chapter 2 of the DRIA, we set forth our policy and technical rationale for the proposed 2020, 2021, and 2022 volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel. Our analysis is framed in terms of the statutory factors that the reset authority requires us to consider, along with the considerations for retroactive and late rules identified by the D.C. Circuit.[57] Since this analysis subsumes our policy and technical rationale for exercising the cellulosic waiver authority as well, we are not providing a separate analysis for the application of the cellulosic waiver authority.

We believe that subsuming the analysis for the application of the cellulosic waiver authority into the analysis for the application of the reset authority is appropriate for three reasons. First, with respect to the cellulosic biofuel volume for each year, the cellulosic waiver authority requires EPA to lower that volume to the projected volume available. This quantity is also a relevant consideration under the reset authority, and, accordingly, we have considered it in that context. See, *e.g.,* CAA section 211(o)(2)(B)(ii)(III) (''the expected annual rate of future commercial production of renewable fuels''). Second, with respect to advanced biofuel and total renewable fuel, the cellulosic waiver authority does not specify any factors for EPA to consider (besides limiting the maximum quantity of reductions to the reduction in the cellulosic biofuel volume), and thus provides EPA broad discretion to consider relevant factors, including the factors we are considering in this proposal under the reset authority.[58] Third, given the significant overlap between the analyses used for the cellulosic waiver and reset authorities, we do not believe that two sets of analyses would provide significant additional value, but would be redundant for both EPA and the public.

We are also proposing a BBD volume for 2022 of 2.76 billion gallons under CAA section 211(o)(2)(B)(ii). Our policy and technical rationale for this volume is also set forth in Section III and Chapter 10 of the DRIA.

F. Severability

The following portions of this rulemaking are mutually severable from each other: (1) The volumes and percentage standards for 2020, 2021, and 2022; (2) The 2022 supplemental volume and standard; (3) The proposed provisions for biointermediates (discussed in Section VII); and (4) The regulatory amendments discussed in Section VIII. Each of the regulatory amendments in Section VIII is also severable from all the other regulatory amendments.

If any of the above portions is set aside by a reviewing court, we intend the remainder of this action to remain effective. For instance, if a reviewing court sets aside the 2022 supplemental volume and standard, we intend the remaining 2020–2022 volumes and percentage standards, biointermediates provisions, and other regulatory amendments, to remain effective.

III. Proposed Volumes

We are proposing 2020, 2021, and 2022 cellulosic biofuel, advanced biofuel, and total renewable fuel volumes under our reset authority.[59] We are proposing the 2022 biomass-based diesel (BBD) volume under our set authority. As required by both the reset and set authorities, we have analyzed the statutory factors under CAA section 211(o)(2)(B)(ii). We have also coordinated with the Secretary of Energy and the Secretary of Agriculture, including through the interagency review process, and their input is reflected in this proposal.

In Section III.A, we summarize our analyses as they apply to each of three component categories of biofuel: Cellulosic biofuel, non-cellulosic

impact on EPA's projections of SREs in calculating the percentage standards. These petitions are available in the docket. See AFPM, *Petition for Administrative Reconsideration of Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021 and Other Changes, 85 FR 7016 (Feb. 6, 2020)* (Mar. 24, 2020); API, *Petition for Reconsideration of the RFS 2020 Rule, EPA–HQ–OAR–2019–0136* (April 6, 2020). We are not at this time determining whether these petitions met the standards for reconsideration under CAA section 307(d)(7)(B). Nonetheless, for the reasons described in this document, we believe it is appropriate to reconsider the 2020 RFS standards, and we are providing the procedural process (*i.e.,* a CAA section 307(d) rulemaking to reconsider the 2020 RFS standards) requested in the petitions.

[55] Under the cellulosic waiver authority, when EPA reduces the volume of cellulosic biofuel, EPA may reduce the advanced biofuel and total renewable fuel volumes by the same or a lesser amount.

[56] This is also consistent with our authority to apply equal reductions to the volumes of advanced biofuel and total renewable fuel under the cellulosic waiver. CAA(o)(7)(D)(i), see also 85 FR 7016, 7047–7048 (February 6, 2020).

[57] Further detail on our analysis of the statutory factors is found in the DRIA.

[58] In past annual rules, we considered many of the same factors as we do in this proposal, albeit under the guise of different terminology, such as ''reasonably attainable'' and ''attainable'' volumes. See Section IV of the 2020 final rule at 85 FR 7016. For instance, in that rule, just as in this rule, we considered feedstock availability, advanced biofuel production and distribution capacity, environmental impacts, and costs. We acknowledge that the analytical framework has shifted somewhat given the focus on the statutory reset factors. For instance, in the 2020 final rule, unlike in this proposed rule, we did not explicitly consider the impacts of renewable fuels on job creation or rural economic development. Nonetheless, we believe those statutory factors (along with all the other factors we are considering under the reset authority) are ones that EPA may consider under the discretion we have under the cellulosic waiver authority. Congress's specification of those factors in the reset authority further suggests that they are permissible considerations for determining volumes generally, including in exercising the cellulosic waiver. This approach presents a shift in EPA's policy for the cellulosic waiver that we explicitly recognize and adopt as reasonable for the reasons described in this proposal. See *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). Ultimately, we note that the 2020, 2021, and 2022 total renewable fuel, advanced biofuel, and cellulosic biofuel volumes are all independently justified by the reset authority. Thus, any defect in our exercise of the cellulosic waiver authority is harmless so long as we have properly exercised the reset authority.

[59] As we explained in Section II.D, some of the volumes we are proposing in this action are also independently justified under the cellulosic waiver authority, but the policy and technical analysis for our exercise of the cellulosic waiver is subsumed under our analysis of the reset factors.

advanced biofuel, and conventional renewable fuel.[60] In Sections III.B through F, we describe our proposed volumes for 2020, 2021, and 2022, along with our supporting assessment of the statutory factors. In Section III.G, we summarize the fuel costs and energy security benefits of the proposed volumes. In Section IV, we further discuss the relationship between the volume requirements for all three years as part of our review of the implementation of the program. Our preamble discussion provides a high-level, narrative summary of the statutory factors, focusing on the factors that we deem most appropriate. A more detailed discussion of all the statutory factors is set forth in the DRIA.

A. EPA's Assessment of the Statutory Factors for Each Component Category of Biofuel

1. Cellulosic Biofuel

In EISA, Congress established escalating targets for cellulosic biofuel, reaching 16 billion gallons in 2022. After 2015, 84 percent of the growth in statutory volume of total renewable fuel was intended to come from cellulosic biofuel.[61] This indicates that Congress intended the RFS program to provide a significant incentive for cellulosic biofuels and that the focus for years after 2015 was to be on cellulosic. Consistent with this intent, our assessment of the statutory factors suggests that cellulosic biofuels have multiple benefits, including the potential for very low lifecycle GHG emissions that meet or exceed the 60 percent GHG reduction threshold for cellulosic biofuel. Many of these benefits stem from the fact that nearly all of the feedstocks projected to be used to produce cellulosic biofuel through 2022 are either waste materials (as in the case of compressed natural gas and liquified natural gas (CNG/LNG) derived from biogas) or residues (in the cases of cellulosic ethanol from corn kernel fiber and corn stover, as well as cellulosic diesel and heating oil from mill residue). The use of many of the feedstocks currently being used to produce cellulosic biofuel are not expected to cause significant land use changes that might lead to adverse environmental impacts.

Despite these similarities, there are also significant differences between liquid cellulosic biofuels and CNG/LNG derived from biogas. None of the cellulosic biofuel feedstocks expected to be used to produce liquid cellulosic biofuels through 2022 are specifically produced to be used as feedstocks for cellulosic biofuel production. Many of these feedstocks (including agricultural residues, mill residue, and separated municipal solid waste (MSW)) have limited uses in other markets.[62] Because of this, using these feedstocks to produce liquid cellulosic biofuel is not expected to have significant adverse impacts related to several of the statutory factors, including the conversion of wetlands, ecosystems and wildlife habitat, soil and water quality, the price and supply of agricultural commodities, and food prices. Notwithstanding these benefits, the cost of producing liquid cellulosic biofuel is high. These high costs are generally the result of low yields (*e.g.,* gallons of fuel per ton of feedstocks) and the high capital costs of liquid cellulosic biofuel production facilities. In the near term (through 2022), the production of these fuels is likely to be dependent on relatively high cellulosic RIN prices (in addition to state level programs such as California's low carbon fuel standard (LCFS)) to be economically competitive with petroleum-based fuels.

CNG/LNG derived from biogas, like liquid cellulosic biofuel, is generally produced from waste materials or residues (*e.g.,* through biogas collection from landfills, municipal wastewater treatment facility digesters, agricultural digesters, and separated MSW digesters) and thus is not expected to affect the conversion of wetlands, ecosystems and wildlife habitat, soil and water quality, the price and supply of agricultural commodities, and food prices. However, in contrast to the feedstocks generally used to produce liquid cellulosic biofuels, significant quantities of biogas from these sources are currently used to produce electricity, while smaller quantities are injected into natural gas pipelines. In some situations, such as at larger landfills, CNG/LNG derived from biogas may also be able to be produced at a price comparable to fossil natural gas. Despite this relatively low cost of production, the combination of the high cellulosic biofuel RIN price and the significant volume potential for CNG/LNG derived from biogas used as transportation fuel could have a relatively significant impact (about $0.01 per gallon) on the price of gasoline and diesel.[63]

2. Non-Cellulosic Advanced Biofuel

The volume targets established by Congress also anticipated significant growth in advanced biofuel beyond what is needed to satisfy the cellulosic standard. The statutory target for advanced biofuel in 2022 (21 billion gallons) allowed for up to 5 billion gallons of non-cellulosic advanced biofuel to be used towards the advanced biofuel volume target. In practice the vast majority of non-cellulosic advanced biofuel in the RFS program has been biomass-based diesel, with relatively small volumes of sugarcane ethanol and other advanced biofuels. Some of the statutory factors assessed by EPA suggest that the targets for non-cellulosic advanced biofuel established by Congress, or even higher volumes, are still appropriate. Notably, all advanced biofuels have the potential to provide significant GHG reductions as they are required to achieve at least 50 percent GHG reductions relative to the petroleum fuels they displace. Some types of advanced fuels, such as biodiesel and renewable diesel produced from fats, oils, and greases, provide even greater reductions than the 50 percent threshold. This summary focuses on the impacts of advanced biodiesel and renewable diesel.

Advanced biodiesel and renewable diesel together comprise 95 percent or more of the total supply of non-cellulosic advanced biofuel over the last several years, and is expected to supply all of increase in advanced biofuel through 2022. High domestic production capacity and availability of imports indicate that volumes of non-cellulosic advanced biofuel in 2021 and 2022 may meet or even exceed the implied statutory targets. Similarly, the feedstocks used to make advanced biodiesel and renewable diesel (such as soy oil, canola oil, and corn oil, as well as waste oils such as white grease, yellow grease, trap grease, poultry fat, and tallow) currently exist in sufficient quantities globally to supply these increasing volumes. These feedstocks

[60] Cellulosic biofuel corresponds directly to the statutory biofuel category. Cellulosic biofuel plus non-cellulosic advanced biofuel constitute the statutory advanced biofuel category. Finally, advanced biofuel plus conventional renewable fuel constitute the statutory total renewable fuel category. See CAA section 211(o)(2)(B)(i)(I)–(IV).

[61] From 2015 through 2022 the statutory target for cellulosic biofuel increases by 13.0 billion gallons, from 3.0 billion gallons to 16.0 billion gallons. During this same time period the statutory target for total renewable fuel increases by 15.5 billion gallons, from 20.5 billion gallons to 36.0 billion gallons. Thus, cellulosic biofuel was expected to account for 84% (13.0 billion gallons/15.5 billion gallons) of the total renewable fuel increase.

[62] One potential exception is corn kernel fiber. Corn kernel fiber is a component of distillers grains, which is currently sold as animal feed. Depending on the type of animal to which the distillers grain is fed, corn kernel fiber removed from the distillers grain through conversion to cellulosic biofuel may need to be replaced with additional feed.

[63] See Chapter 5.1.2.2 of the DRIA for a further discussion of the expected impact of RINs generated for CNG/LNG derived from biogas on the transportation fuel market.

have many existing uses that may require replacement with other suitable substitutes, but there is also potential for ongoing growth in the production of many of these feedstocks. Higher volume requirements for non-cellulosic advanced biofuel may also have energy security benefits, increase domestic employment in the biofuels industry, and increase income for biofuel feedstock producers.

However, some of the factors assessed would support lower volumes of advanced biofuel. For instance, as described in Chapter 9 of the DRIA, the cost of biodiesel and renewable diesel is significantly higher than petroleum-based diesel fuel and is expected to remain so over the next several years. Even if biodiesel and renewable diesel blends are priced similarly to petroleum diesel at the pump after accounting for the relevant Federal and state incentives (including the RIN value), society as a whole nevertheless bears their full costs. Moreover, the fact that sufficient feedstocks exist to produce increasing quantities of advanced biodiesel and renewable diesel does not mean that those feedstocks are readily available or could be diverted to biofuel production without adverse consequences. As described in Chapter 5 of the DRIA, we expect only limited quantities of fats, oils, and greases and distillers corn oil to be available for increased biodiesel and renewable diesel production in future years. We expect that the primary feedstock available to biodiesel and renewable diesel producers in significant quantities through 2022 will be soybean oil and other vegetable oils whose primary markets are for food. Increased demand for soybean oil could lead to diversion of feedstocks from food and other current uses in addition to further incentivizing increased soybean crushing and soybean production. Increased soybean production in the U.S. and abroad in turn could result in greater conversion of wetlands, adverse impacts on ecosystems and wildlife habitat, adverse impacts negative impacts on water quality and supply, and increased prices for agricultural commodities and food prices. We request comment on the impacts of advanced biofuel production on the statutory factors, including impacts on wetlands, ecosystems, and wildlife habitat.

3. Conventional Renewable Fuel

As with non-cellulosic advanced biofuel, some of the statutory factors assessed for conventional renewable fuel favor the implied statutory volume (15 billion gallons) or higher volumes, while other factors favor lower volumes. While conventional renewable fuels are generally required by EISA to achieve 20 percent GHG reductions relative to the petroleum fuels they displace, some conventional biofuel facilities exceed this threshold. Notably, EPA has developed an expedited petition process for ethanol production facilities using more efficient process technologies.[64] The statute, however, also contains grandfathering provisions exempting any facility that had begun construction on or before December 19, 2007, from this requirement, so not all producers of conventional renewable fuels meet or are required to meet the 20 percent GHG reduction threshold.[65]

The vast majority of conventional renewable fuel that has been supplied to the U.S. is corn ethanol. Domestic production capacity for corn ethanol exceeds 16 billion gallons. Production of corn-ethanol in the U.S. reached a peak of 16.1 billion gallons in 2018.[66] Higher volumes of conventional renewable fuel could result in more domestic jobs in the biofuels industry. At the same time, there are also significant volumes of palm biodiesel and renewable diesel that are produced internationally that could qualify as conventional renewable fuel under the grandfathering provisions of the RFS program. In the past, small volumes of grandfathered biodiesel and renewable diesel have been supplied to the U.S.[67]

However, some of the analyses we conducted support lower volumes of conventional renewable fuel. As with soy biodiesel, increased corn production in the U.S. could result in greater conversion of wetlands, adverse impacts on ecosystems and wildlife habitat, adverse impacts negative impacts on water quality and supply, and increased prices for agricultural commodities and food prices. Furthermore, constraints on ethanol use may also support lower implied volume requirements for conventional biofuel. The market has not achieved 15 billion gallons of actual use of conventional renewable fuel in any year in which the RFS standards were based on it. This was due to various factors, including limitations on ethanol use above the E10 blendwall, strong export markets for domestically produced ethanol, the effect of exempted small refinery volumes in depressing the effective RFS standards, and use of advanced biodiesel and renewable diesel, buoyed by its tax subsidy and other incentive programs, to meet the implied conventional portion of the total renewable fuel requirement.

While the use of ethanol as E10 has been, and continues to be, economical for refiners and blenders, the use of E10 alone has not been sufficient to achieve the 15 billion gallons of ethanol use due to declining gasoline demand. The RFS program has had limited success in helping to increase the use of higher ethanol blends, and growth in the nationwide average gasoline ethanol concentration has virtually stagnated as the market reached the E10 blendwall. While the use of higher ethanol blends has increased since 2011, that growth has been small compared to prior growth in the use of E10 and in the use of non-ethanol biofuels. We do not anticipate that growth in the use of higher ethanol blends through 2022 will increase rapidly enough to result in significantly greater volumes of ethanol consumption in the U.S., even with the incentives created by the RFS program standards and other governmental efforts such as Department of Agriculture's (USDA's) Blender Infrastructure Program and Higher Blends Infrastructure Incentive Program. Moreover, exporting ethanol to be blended with gasoline abroad has been more profitable in recent years than selling greater volumes of E15 or E85 domestically. We expect these trends in exports to continue given international demand for ethanol.

In addition, total demand for gasoline was lower in 2020 and is expected to remain lower in 2021 and 2022 relative to the volume of gasoline consumed in 2017–2019 according to EIA's May 2021 Short Term Energy Outlook (STEO), which will limit the volume of ethanol used as E10.[68] Most notably, the COVID–19 pandemic caused a significant fall in gasoline demand and sales of E10 starting in 2020. We would

[64] EPA has developed an ''Efficient Producer Petition Process,'' which encourages adoption of efficiency improvements in new ethanol facilities by expediting petition review and approval. Existing EPA estimates for corn starch ethanol produced in 2022 using a dry mill process and natural gas fired process heat range from a 42 percent to a 17 percent reduction over baseline gasoline, depending on the technologies used at the production facility.

[65] See CAA section 211(o)(2)(A)(i).

[66] Energy Information Administration (EIA) Monthly Energy Review.

[67] Use of grandfathered biodiesel and renewable diesel reached a maximum of 157 million gallons in 2016. Since 2018 use of grandfathered biodiesel and renewable diesel has been very small (less than 1 million gallons each year). See Chapter 1.6 of the DRIA.

[68] The May 2021 STEO estimates gasoline consumption of 8.03 million barrels per day (123.5 billion gallons) in 2020, projects 8.70 million barrels per day (133.3 billion gallons) in 2021, and projects 8.92 million barrels per day (136.8 billion gallons) in 2022. The STEO reported gasoline consumption in 2017–2019 at 9.31–9.33 million barrels per day (142.7–143.0 billion gallons) annually.

expect, therefore, that even maintaining the implied 15 billion gallon statutory volume target for conventional renewable fuel going forward would require that volumes of biodiesel and renewable diesel, the least costly alternative source, increase to compensate for the reduction in ethanol use.

If biodiesel and/or renewable diesel were able to be supplied in sufficient quantities to enable a conventional renewable fuel requirement at 15 billion gallons to be met despite lower ethanol consumption, there could still be other potentially adverse impacts. We project that much of this biodiesel and renewable diesel would be imported. Further, these fuels could be sourced from grandfathered facilities that may not achieve the desired GHG reductions. If imported biodiesel and renewable diesel were to increase, we would expect either an increase in the use of petroleum fuels from countries that previously used these fuels, or, alternatively, an expansion of palm oil production to produce biodiesel and renewable diesel, likely resulting in additional foreign land being converted to cropland for the production of palm oil. There would likely be both adverse wildlife impacts and higher GHG emissions of such international land use changes that would be associated with a higher implied conventional volume mandate satisfied by grandfathered biodiesel and renewable diesel.

At the same time, we do not believe that setting volumes such that the implied conventional renewable fuel volume is below the E10 blendwall would be appropriate either. Under such a scenario, imports of biodiesel and renewable diesel to meet the demand provided by the implied conventional renewable fuel volume would cease altogether which would have some benefits for domestic energy independence and may have some environmental benefits as well insofar as those imports are produced from palm oil. However, impacts on domestic ethanol production would be small as E10 would continue to be used regardless. There would most likely be some decrease in the small amounts of higher ethanol blends used, but the use of E10 would be essentially unchanged, and since ethanol blended as E10 dominates the total volume of ethanol consumed, the overall ethanol volume would be minimally affected. Thus, we expect that setting the implied volume for conventional renewable fuel below the E10 blendwall would have little impact on domestic biofuel production or use.

B. Proposed Volumes for 2020

We are proposing to revise previously finalized 2020 total renewable fuel, advanced biofuel, and cellulosic biofuel volumes to equal the volume of such fuels actually used in the U.S. in 2020.[69] As we discuss in Section VI, we are also proposing to make corresponding adjustments to the percent standards applicable to obligated parties.[70]

Since 2020 has already passed, this rulemaking has no ability to affect actual production, imports, and use of renewable fuel in 2020. The impact of the rule on each of the statutory factors is similarly limited. In contrast, were we to revise the 2020 volumes to be greater than the volume of renewable fuel that was supplied or were we to simply leave the original volumes from the 2020 final rule in place, we would expect some combination of potentially disruptive outcomes: (1) A reduction in the quantity of carryover RINs; (2) obligated parties carrying deficits into 2021; and/or (3) obligated parties being out of compliance with their RFS obligations.[71] While this approach could have the effect of prospectively increasing demand for renewable fuels in 2022, simply establishing higher volumes for 2022 is expected to have the same effect on renewable fuel producers with a much lower risk of market disruptions that could result from maintaining volume obligations for 2020. As we explain in Section IV.B, we are proposing to revise the 2020 volume obligations to forestall potential disruptions in the fuels market that would impair the ongoing implementation of the RFS program.

We acknowledge that this proposal to reconsider and revise the already finalized 2020 standards will be finalized after the November 30, 2019, statutory deadline for the 2020 standards and can operate only retroactively.[72] We generally do not think it is appropriate to reconsider and revise previously finalized RFS standards. Nonetheless, we are proposing to do so because critical and unanticipated events have occurred affecting fuels markets and RFS compliance. First, we anticipate a significant and unprecedented shortfall in renewable fuel use in 2020 relative to the volumes that we required in the 2020 final rule. This is largely due to the COVID–19 pandemic, which caused an unforeseen and drastic fall in transportation fuel demand generally and in biofuel demand more specifically.

In general, under the RFS program, a shortfall in gasoline and diesel fuel consumption relative to the projected volumes results in a corresponding decrease in the volume of renewable fuel required. This self-adjusting nature of the program is a function of the fact that the RFS standards are applied as a percentage to an obligated party's gasoline and diesel fuel production; the obligation to acquire RINs for compliance rises and falls along with gasoline and diesel fuel production volume. Further, historical deviations between the volumes of gasoline and diesel actually used relative to their projected volumes have been relatively small. As a result, we have historically not adjusted the RFS standards after they have been established to account for updated gasoline and diesel consumption levels. This is consistent with our general policy of not reconsidering and revising previously finalized RFS standards.

However, the situation in 2020 was different. As explained further in Section IV.B, the shortfalls in 2020 were both significantly larger than in any previous year and disproportionately affected gasoline more than diesel fuel. This is important because on average finished gasoline contains more renewable content than finished diesel. The vast majority of gasoline contains at least 10% ethanol, mostly in the form of E10, whereas the average concentration of renewables in diesel falls far short of that. Thus, while the decrease in transportation fuel demand in 2020 proportionally decreased the required renewable fuel volume, the decrease in the demand for renewable fuel was greater given the greater drop in gasoline versus diesel demand.

Further, even with the lesser impact on diesel fuel consumption, we still observed a shortfall in the use of biodiesel and renewable diesel relative to our projections in the 2020 final rule. That is to say, the projections in the 2020 final rule overestimated the use of biodiesel and renewable diesel, even if we adjust those projections by the shortfall in diesel demand.

Second, when we promulgated the 2020 volume requirements, we did so while projecting for the first time that we would be granting a large number of SREs for 2020. The 2020 final rule

[69] We also call such volumes the volumes that are actually consumed or actually supplied. In this context, we are using the term ''supply'' distinct from the statutory term ''inadequate domestic supply'' in CAA section 211(o)(7)(A)(ii).

[70] As discussed in Section VI, the adjustments to the percentage standards would also include changes to the non-renewable gasoline and diesel volumes to reflect actual 2020 consumption.

[71] See Section IV.A for a discussion of carryover RINs.

[72] 85 FR 7016 (February 6, 2020). In addition, the 2020 BBD volume was established in the 2019 final rule. 83 FR 63704.

reallocated the projected exempted volumes onto the remaining obligated parties, thereby significantly increasing the obligations on those parties. As we explain in Section VI.B, there continues to be substantial uncertainty regarding whether we will grant or deny the many SRE petitions for 2020 in the wake of the Tenth Circuit's decision in *RFA* and the Supreme Court's reversal of one of the bases for the Tenth Circuit's decision in *HollyFrontier*.[73] Among the uncertainties are the impacts of the additional holdings in *RFA* that were not addressed on appeal to the Supreme Court. The significant impact of our earlier projection on the standards and the consequent impact on our SRE policy by the litigation in *RFA* and *HollyFrontier* suggest that reconsideration is warranted.[74]

The decrease in biofuel use, together with the potential impacts of SRE decisions, means that compliance with the original 2020 standards would likely result in a significant drawdown of the number of carryover RINs available for use in 2021, which could negatively impact the functionality of the RIN market that enables the successful implementation of the RFS program. A well-functioning RIN market is foundational for allowing obligated parties to comply with their RFS mandates, particularly for obligated parties that do not themselves produce or blend renewable fuels. As discussed in Section IV.A, the carryover RIN bank is already projected to drop from 3.48 billion RINs in 2019 to 1.85 billion RINs in 2020, following 2019 compliance. We project that the 2020 standards, if unmodified and SREs are not granted, would result in a significant drawdown of the total number of carryover RINs, to a volume (630 million RINs) that would represent less than 4 percent of the proposed 2021 and 2022 total renewable fuel standards.[75] The number of carryover cellulosic biofuel RINs would also be projected to decrease significantly, as we project that the number of cellulosic carryover RINs would be reduced to just 2.2 million RINs, which is less than 0.5 percent of the proposed 2021 and 2022 cellulosic biofuel volumes. Such a drastic reduction in the carryover RIN bank has the potential to reduce the liquidity of RINs and could negatively impact parties that do not currently have sufficient RINs to meet their 2020 obligation. This could make it difficult for some parties to acquire enough RINs to comply with their 2020 RFS obligations, as well as the 2021 and 2022 standards being proposed, and could cause those parties to carry forward deficits or to become non-compliant. This could lead to significant negative impacts on the fuels market and the ongoing implementation of the RFS program, as discussed in Section IV.B.

These considerations also support our decision to retroactively reduce the 2020 volumes to those actually used. In doing so, we are relieving burdens on obligated parties, and in some cases, the potentially onerous burden of non-compliance with the RFS program and the possibility of penalty payments. This approach also ensures sufficient RINs for compliance. It also ensures the continued functioning of the carryover RIN bank, a necessary compliance flexibility for obligated parties. It also protects the ongoing implementation of the RFS program and facilitates the higher volumes proposed for 2022, as we discuss further in Section IV.B.

With regard to lead time, less lead time is needed for obligated parties given that we are reducing the stringency of their obligations, as opposed to increasing the stringency of their obligations. Nonetheless, we are providing significant lead time. We extended the 2020 compliance deadline for obligated parties to January 31, 2022, providing these parties with additional time to acquire RINs,[76] and have proposed to further extend that deadline in a separate action.[77] Had we not adjusted the compliance deadline, obligated parties would have needed to demonstrate compliance by March 31, 2021.

We recognize that retroactively adjusting the 2020 standards will disrupt market expectations created by the prior final rule, for instance on the part of biofuel producers who made investments or other parties who transacted biofuels or RINs, based on the higher standards originally finalized. As a general matter, these expectations may not rise to the level of reliance interests recognized by the courts.[78] Even if they do, however, we believe that revising the standards is nonetheless warranted based on the events and factors described above, which likely confounded market expectations in any event.

As explained in Section II.A.2, the statutory deadline for resetting the total renewable fuel volume was in December 2019, or one year after the promulgation of the 2019 final rule. The statutory deadlines for resetting the advanced biofuel and cellulosic biofuel volumes occurred even earlier. Despite being late to meet our statutory obligations, we are proposing to exercise the reset authority for several reasons. First, doing so satisfies our statutory obligation to reset the statutory volumes. Second, we have already notified the public that we intended to exercise the reset authority.[79] This proposal is a key step in making good on that intent and meeting our statutory obligation. Third, the reset authority also provides EPA broad discretion to modify the renewable fuel volumes and to establish biofuel volume requirements at the volumes actually consumed. Such volumes for advanced biofuel and total renewable fuel could not be established under the cellulosic waiver authority, which was the legal basis for the original 2020 final rule.[80] Nonetheless, we believe that these are the appropriate volumes for the reasons explained above.

The proposed revised 2020 volumes, along with the original volumes, are shown in Table III.B–1. The proposed revised 2020 percentage standards, along with the original percentage standards, are provided in Section VI.C.

[73] *Renewable Fuels Ass'n* v. *EPA,* 948 F.3d 1206 (10th Cir. 2020), *rev'd in part sub nom., HollyFrontier Cheyenne Refining, LLC,* v. *Renewable Fuels Ass'n,* 114 S. Ct. 2172 (2021).

[74] As noted in Section II.D, we have received petitions seeking reconsideration of the 2020 annual rule under CAA section 307(d)(7)(B).

[75] See Section VI of ''Carryover RIN Bank Calculations for 2020–2022 Proposed Rule,'' available in the docket for this action.

[76] 86 FR 17073 (April 1, 2021).

[77] 86 FR 67419 (November 26, 2021).

[78] *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909, 919–20 (D.C. Cir. 2014).

[79] See 84 FR 36766 (July 29, 2019).

[80] The cellulosic waiver authority limits reductions in the statutory total renewable fuel and advanced biofuel volumes to no more than the reduction in the cellulosic biofuel volume. In the 2020 final rule, we exercised the cellulosic waiver to the maximum extent, resulting in an implied conventional renewable fuel volume of 15 billion gallons and an implied non-cellulosic advanced biofuel volume of 4.5 billion gallons. However, the volumes of advanced biofuel and total renewable fuel actually supplied in 2020 fell short of these numbers.

TABLE III.B–1—PROPOSED REVISED VOLUME REQUIREMENTS FOR 2020

[Billion RINs]

Standard	Original	Revised
Cellulosic Biofuel	0.59	0.51
Biomass-Based Diesel	[a] 2.43	[a] 2.43
Advanced Biofuel	5.09	4.63
Total Renewable Fuel	20.09	17.13

Source: EMTS (EPA Moderated Transaction System). See "RIN supply as of 3–22–21".

[a] The BBD volume for 2020 is in physical gallons (rather than RINs) and was established in the 2019 final rule (83 FR 63704, December 11, 2018). We are not proposing to revise the 2020 BBD volume in this action.

We request comment on our proposed approach of reconsidering and revising the 2020 RFS volumes from those promulgated in the prior final rule. We also request comment on modifying 2020 volumes to the volumes of renewable fuel actually supplied in 2020. We further request comment on whether we should include the approximately 40 million cellulosic biofuel carryover RINs in the 2020 cellulosic biofuel volume requirement. We discuss this issue in detail in Section IV.A.3.

C. Proposed Volumes for 2021

We are proposing 2021 total renewable fuel, advanced biofuel, and cellulosic biofuel volumes at our projections of the volume of such fuels used in the U.S. this year. This is the same general approach as for 2020, with the difference that we do not yet have complete data for biofuel use in 2021, and therefore we are projecting biofuel use throughout the remainder of 2021.

Given that we are using the same basic approach as for 2020, the rationale for our 2021 volumes is similar to the rationale for our 2020 volumes. Below we present some of the key similarities and also note differences where they exist. As with 2020, due to the expected timing of the finalization of this rule, the ability for the rule to affect renewable fuel production, imports, and use in the U.S. in 2021 is limited. As such, the impact of the rule on each of the statutory factors is similarly limited. Also, as for 2020, we could also set volumes for 2021 that are greater or lesser than the volume of renewable fuel that is actually supplied in 2021, but we do not believe that doing so would be appropriate for similar reasons. EPA does, however, believe that the RFS program should drive increases in renewable fuel volumes over time. Given that we are setting volumes for 2020–2022 in this rule and the fact that retrospective volumes have limited ability to affect biofuel use, we believe that increases in volume requirements are more appropriate in 2022. That is when this rule applies prospectively and has the potential to affect actual biofuel use. We discuss this relationship between the three years further in Section IV.B.

As with 2020, the 2021 volumes both are late and would operate retroactively. Unlike for 2020, however, we are not modifying previously finalized standards for 2021. The lateness and retroactivity of the 2021 volumes are appropriate for similar reasons as for 2020. We believe that establishing the 2021 volumes at the volumes projected to be used properly balances the statutory goal of increasing renewable fuel use with mitigating burdens on obligated parties. It ensures that the obligated parties should have sufficient RINs to comply. In a separate action, we have proposed to extend the compliance and attest engagement dates for 2021, providing additional lead time, as well as compliance flexibilities for obligated parties including access to carryover RINs and carryforward deficits.[81] In addition, we note that this approach, of setting volumes at those actually used, is consistent with our approach in the 2014 and 2015 standards, which the D.C. Circuit upheld in *ACE*.

As with the 2020 volumes, the 2021 volumes also depend upon a belated exercise of the reset authority. We believe using the reset authority is appropriate for similar reasons as 2020: We are statutorily obligated to reset 2021 volumes, we have previously informed the public that we intended to reset the volumes, and the reset authority gives us discretion to reduce the total renewable fuel volume beyond what we could establish under the cellulosic waiver. There is also an additional reason, which is that the statute indicates that when we reset the volumes, we must do so for all remaining years in the statutory volume tables, which extend through 2022. Thus, in resetting the 2020 volumes, we are obligated to reset the 2021 and 2022 volumes.[82]

The volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel we are proposing for 2021 are shown in Table III.C–1. The biomass-based diesel volume for 2021 was previously established in the 2020 final rule and is included in Table III.C–1 for context. These volumes are based on the projected use of renewable fuels in the U.S., as discussed in greater detail in Chapter 5 of the DRIA.

TABLE III.C–1—PROPOSED RFS VOLUMES FOR 2021

[Billion RINs]

Category	Proposed volume
Cellulosic Biofuel	0.62
Biomass-Based Diesel	[a] 2.43
Advanced Biofuel	5.20
Total Renewable Fuel	18.52

[a] The BBD volume for 2021 is in physical gallons (rather than RINs) and was established in the 2020 final rule (85 FR 7016, February 6, 2020). We are not proposing to revise the 2021 BBD volume in this action.

In the final rule, we intend to consider additional data, including more recent data on renewable fuel production and use, and public comments, and update our projections accordingly. We request comment on both our proposed approach of establishing the RFS volumes for 2021 at the volume of renewable fuel projected to be supplied in 2021, as well as our projections of these volumes. We also request comment on whether or not to include volumes of cellulosic ethanol produced from corn kernel fiber in our projection of cellulosic biofuel production in 2021, as discussed in Chapter 5 of the DRIA.

D. Proposed Volumes for 2022

We are proposing 2022 total renewable fuel, advanced biofuel, and cellulosic biofuel volumes that represent growth compared to historical volumes and compared to the volumes proposed for 2020 and 2021. We are

[81] 86 FR 67419 (November 26, 2021).

[82] See CAA section 211(o)(7)(F) ("the Administrator shall promulgate a rule . . . that modifies the applicable volumes set forth in the table concerned for all years following the final year to which the waiver applies").

proposing a 150 million gallon increase in the 2022 cellulosic biofuel volume over the proposed 2021 volume based on the expected continued growth in biogas use. We are also proposing the full implied statutory volumes for non-cellulosic advanced biofuel (*i.e.,* 5 billion gallons, or 500 million gallons more than the proposed 2021 volume) and conventional renewable fuel (15 billion gallons).[83] We anticipate significant growth in the use of non-cellulosic advanced biofuels, especially in advanced renewable diesel.[84] While we expect that conventional ethanol use will fall short of the implied 15 billion gallon volume in 2022 by roughly 1.2 billion gallons, we project that greater volumes of biodiesel and renewable diesel could be produced and imported to offset this shortfall. We discuss the 2022 BBD volume separately in Section III.D.

The proposed cellulosic biofuel volume for 2022 is equal to the projected available volume of cellulosic biofuel (see Chapter 5.1 of the DRIA). This volume represents the highest volume of cellulosic biofuel we can establish for 2022 given the cellulosic waiver provision, which requires EPA to reduce the statutory cellulosic volume to the projected volume available. While EPA does have the authority to establish a lower cellulosic volume under the reset authority, we do not believe this would be appropriate for 2022, as discussed below.

EPA's approach to the proposed cellulosic biofuel volume for 2022 seeks to realize the potential for GHG benefits associated with increased cellulosic biofuel production despite the relatively high costs (or in the case of CNG/LNG derived from biogas, the relatively high impact on the price of transportation fuel). Thus, while some of the statutory factors (such as the cost to consumers of transportation fuel) may suggest that a volume of cellulosic biofuel lower than the volume projected to be produced in 2022 would be appropriate, we have determined that these factors are outweighed by other factors (such as climate change).

The proposed advanced biofuel and total renewable fuel volumes strike a balance between numerous competing statutory factors. They reflect the potential for growth in the volume of renewable fuel produced and consumed in the U.S., and the energy security and potential climate change benefits that producing and consuming increasing volumes of qualifying renewable fuels provide. They also take into consideration the potential negative impacts of renewable fuels produced from crops such as corn or soybeans on environmental factors such as the conversion of wetlands, ecosystems, and wildlife habitat, water quality, and water supply.

We acknowledge that the implied conventional renewable fuel volume is higher than the volume of these fuels projected to be consumed in the U.S. in 2022. We believe this may incentivize the continued expansion of the infrastructure necessary to use higher level blends of ethanol, which remains the dominant form of conventional renewable fuel. In recent years, ethanol consumption beyond the E10 blendwall in the U.S. has been limited by infrastructure constraints (as well as other factors) to a volume significantly lower than the volume of ethanol produced in the U.S. and the total production capacity of the U.S. ethanol industry. If these infrastructure constraints are addressed, domestic ethanol consumption and ultimately domestic ethanol production could increase, and this could result in job creation, rural economic development, higher corn prices for farmers, and a greater supply of agricultural commodities. Alternatively, additional volumes of conventional biodiesel and renewable diesel could be supplied in 2022, including renewable fuels that are grandfathered under 40 CFR 80.1403 and are thus not required to meet the minimum 20 percent GHG reduction required for all qualifying renewable fuel. These fuels would most likely be produced in foreign facilities, which may cause additional environmental impacts and would not provide the same benefits to domestic job creation and rural economic development, but they could still provide energy security benefits.[85]

At the same time, this higher volume requirement means that obligated parties will likely need to look to other sources of renewable fuel beyond corn ethanol to meet their compliance obligations for 2022. While we are proposing the non-cellulosic portion of the advanced biofuel standard at the full implied statutory volume of 5 billion gallons, our assessment of potential supply indicates that some additional volume will likely be used in 2022. This means that if, as expected, the market falls short of the implied volume of conventional renewable fuel in 2022, as has happened in several years in the past, excess volumes of advanced biofuel beyond what is needed to meet the advanced biofuel volume could be available to fulfill some portion of the shortfall. Finally, as discussed for in the context of the proposed volume requirements for 2020 and 2021, there may also be implications of the proposed 2022 volume requirements on the carryover RIN bank. While we are projecting that sufficient renewable diesel, both advanced and conventional, will be available to meet the proposed 2022 volume requirements, there is the potential that the market may fall short, in which case the existence of sufficient carryover RINs in the carryover RIN bank can still enable compliance. Specifically, obligated parties may use carryover RINs to help them comply with the proposed 2022 standards. See Section IV.A for a more detailed discussion of carryover RINs.

We acknowledge that in lieu of maintaining the implied statutory volumes of non-cellulosic advanced biofuel and conventional renewable fuel and relying on higher volumes of advanced biofuel to fulfill an expected shortfall in conventional biofuel, we could instead raise the advanced biofuel requirement and lower the conventional biofuel volume. However, we have chosen not to propose this. We expect that the impact on GHG emissions of the decision not to propose a higher advanced biofuel volume with a corresponding lower implied conventional biofuel volume will be minimal, given that additional volumes of advanced biofuels will likely be used to satisfy the conventional portion of the total renewable fuel requirement. Moreover, we believe that providing incentives for increased ethanol distribution and blending infrastructure through the higher implied volumes of conventional renewable fuel may result in the potential for greater renewable fuel consumption in future years.

We note that this approach of maintaining the statutory implied conventional and non-cellulosic advanced biofuel volumes is inherently consistent with the volumes Congress itself established in EISA. It is also consistent with EPA's policy in prior years, during which we have never established prospective volume requirements lower than the implied statutory volume targets, with a single

[83] The implied statutory volume for non-cellulosic advanced biofuel in 2022 (5 billion gallons) is the difference between the statutory volumes for advanced biofuel (21 billion gallons) and cellulosic biofuel (16 billion gallons) in 2022. Similarly, the implied statutory volume for conventional renewable fuel in 2022 (15 billion gallons) is the difference between the statutory volumes for total renewable fuel (36 billion gallons) and advanced biofuel (21 billion gallons) in 2022.

[84] See Chapter 2 of the DRIA.

[85] Registered capacity to produce conventional biodiesel and renewable diesel exists at grandfathered facilities. Because grandfathered renewable fuels are not required to meet the GHG reduction thresholds, the GHG impacts of these fuels are highly uncertain.

exception.[86] While we have discretion to deviate from this policy, we continue to believe that maintaining the implied statutory volumes strikes the proper balance based upon our consideration of the reset factors.

We also acknowledge that we are already late in resetting the 2022 volumes. We nonetheless believe that this late exercise of our reset authority is appropriate for similar reasons as for 2020 and for 2021. Moreover, the proposed 2022 volumes are also independently justified under our cellulosic waiver authority.

The volumes of cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel we are proposing for 2022 are shown in Table III.D–1. We request comment on these proposed volumes. (The proposed BBD volume for 2022 is also included in Table III.D–1 for context, although we discuss it in Section III.E)

TABLE III.D–1—PROPOSED RFS VOLUMES FOR 2022

[Billion RINs]

Category	Proposed volume
Cellulosic Biofuel	0.77
Biomass-Based Diesel	[a] 2.76
Advanced Biofuel	5.77
Total Renewable Fuel	20.77

[a] The BBD volume for 2022 is in physical gallons (rather than RINs).

In particular, we request comment on our projection of cellulosic biofuel for 2022. As discussed in greater detail in Chapter 4 of the DRIA, our cellulosic biofuel projections for 2022 do not include any volume of cellulosic ethanol produced from corn kernel fiber from facilities that are not currently registered to generate cellulosic RINs due to outstanding issues. If these technical and regulatory issues are resolved, we project that as much as 210 million additional gallons of cellulosic biofuel could be produced from corn kernel fiber in 2022. Our projections also do not include any volumes that might result from our proposed biointermediate regulations, as we believe the impacts of that proposal will not occur until after 2022. We request comment on whether we should project additional cellulosic biofuel production from corn kernel fiber or biointermediates in 2022, and, if so, the volume we should project.

E. Proposed Biomass-Based Diesel Volume for 2022

As described above, we are proposing an increase of 500 million gallons in the non-cellulosic advanced biofuel volume for 2022. Consistent with this, we are also proposing to increase the BBD volume requirement by the same energy-equivalent amount (330 million physical gallons) to 2.76 billion gallons.

As in recent years, we believe that excess volumes of BBD (above 2.76 billion gallons) will be used in 2022 to satisfy the advanced standard. Historically, the BBD standard has not independently driven the use of BBD in the market. This is due to the nested nature of the standards and the competitiveness of BBD relative to other advanced biofuels. Instead, the advanced biofuel standard, and occasionally the total renewable fuel standard, have driven the use of BBD in the market. We believe this trend will continue in 2022, and that the 2022 advanced standard, and potentially the total renewable fuel standard, will drive the use of BBD in the market in 2022.

At the same time, we think it is important to maintain space for other advanced biofuels to participate in the RFS program. Although the BBD industry has matured over the past decade, the production of other advanced biofuels continues to be relatively low and uncertain. Maintaining this space for other advanced biofuels can facilitate in the long-term increased commercialization and use of other advanced biofuels, which may have superior environmental benefits and lower costs relative to BBD. Conversely, we do not think increasing the size of this space is necessary for 2022 given that only small quantities of these other advanced biofuels have been used in recent years relative to the space we have already provided.

The proposed BBD volume for 2022 is consistent with our policy in previous annual rules, where we also set the BBD volume consistent with the change, if any, in the advanced volume. In the 2019 final rule, we set the 2020 BBD volume at 2.43 billion gallons. This was an increase from the prior year's BBD volume by the same energy-equivalent amount (330 million physical gallons) as the increase in the 2019 non-cellulosic advanced biofuel volume (500 million ethanol-equivalent gallons). By contrast, in the 2020 final rule, when the 2020 non-cellulosic advanced biofuel volume did not change, we also maintained the 2021 BBD volume at 2.43 billion gallons. In both rules, we preserved a significant space for other advanced biofuels to compete, approximately equal to 850 million RINs (approximately equal to 566 million physical gallons). In reality, only 334 million ethanol-equivalent gallons of other advanced biofuel was consumed in 2020.

We acknowledge that in proposing the 2022 BBD volume in this action, we are proposing a late BBD volume. CAA section 211(o)(2)(B)(ii) provides that EPA shall determine the applicable volume 14 months prior to the year for which the standard will apply. That deadline has already passed. However, we do anticipate establishing the 2022 BBD standard ahead of the 2022 compliance year. The D.C. Circuit in *ACE* has affirmed EPA's ability to promulgate late BBD standards as long as those standards are reasonable.[87] In evaluating the reasonableness of EPA's standards, the Court suggested that EPA must ''consider[ ] various ways to minimize the hardship caused to obligated parties.'' [88] In this action, we are providing obligated parties with notice of the potential 2022 BBD volume requirement well in advance of the 2022 compliance deadline. Additionally, we are proposing a volume requirement that is consistent with our treatment of the BBD volume requirement in the past, *i.e.,* increasing the BBD volume requirement in accordance with increases in the implied statutory non-cellulosic advanced volume. Further, as in this case of previous annual rules, we continue to believe that it will be the advanced biofuel standard for 2022 that will drive the use of BBD in the market, and thus, the BBD standard we propose to establish is unlikely to result in additional burdens on obligated parties. Finally, we solicit comment on whether we should instead maintain the BBD standard for 2022 at 2.43 billion gallons. This would increase the space allowed for other advanced biofuels, as we are proposing to increase the advanced biofuel volume for 2022 by 500 million gallons over the proposed 2021 volume.

F. Summary of the Proposed Volumes

The proposed volumes for 2020, 2021, and 2022 are summarized in Table III.F–1. We request comment on these volumes (excepting the 2020 and 2021 BBD volumes, which were set in the 2019 and 2020 final rules, respectively), as well as any data or analysis that

[86] We prospectively established a volume for conventional renewable fuel for 2016 (14.5 billion gallons) that was lower than the statutory implied volume (15 billion gallons). In doing so, we exercised our ''inadequate domestic supply'' waiver authority based largely on the limited demand for ethanol in the United States. That decision that was subsequently set aside by the U.S. Court of Appeals for the District of Columbia Circuit in *ACE,* as exceeding our waiver authority.

[87] *ACE* at 721.

[88] *Id.* (quoting *Monroe Energy, LLC* v. *EPA,* 750 F.3d 909, 920 (D.C. Cir. 2014)).

would support alternative volumes for these years.

TABLE III.F–1—PROPOSED RFS VOLUMES FOR 2020, 2021, AND 2022

[Billion RINs]

Category	2020	2021	2022
Cellulosic Biofuel	0.51	0.62	0.77
Biomass-Based Diesel [a]	[b] 2.43	[c] 2.43	2.76
Advanced Biofuel	4.63	5.20	5.77
Total Renewable Fuel	17.13	18.52	20.77

[a] The BBD volumes are in physical gallons (rather than RINs).
[b] The BBD volume for 2020 was established in the 2019 final rule (83 FR 63704, December 11, 2018).
[c] The BBD volume for 2021 was established in the 2020 final rule (85 FR 7016, February 6, 2020).

G. Impacts of the Proposed Volumes

As explained in Chapter 2.2 of the DRIA, we have used a baseline of the volumes actually supplied in 2020 to assess the impacts of this proposed rule, and thus the proposed 2020 volumes have no costs or benefits. We therefore focus on the projected impacts of the 2021 and 2022 volumes.[89] We recognize that there are other possible baselines that could be used as a point of comparison, and that the choice of baseline significantly influences our impact analyses. A potential alternative baseline that might be informative would be the volumes of renewable fuels that would be used each year from 2020–2022 in the absence of RFS obligations. While we have not used this alternative baseline in this rule, Chapter 2.2 of the DRIA contains a brief description of what such a baseline might look like. We request comment on the volumes of renewable fuel and feedstock use that would occur in these years in the absence of the RFS obligations.

For two of the statutory factors (fuel costs and energy security benefits) we were able to quantify and monetize the expected impacts of this proposed rule.[90] Information and specifics on how fuel costs are calculated are presented in Chapter 9 of the DRIA, while energy security benefits are discussed in Chapter 4 of the DRIA. A summary of the fuel costs and energy security benefits are shown in Table III.G–1 and Table III.G–2. Other factors, such as job creation and the price and supply of agricultural commodities, are quantified but have not been monetized. Further information and the quantified impacts of this proposed rule on these factors can be found in the DRIA. We were not able to quantify many of the impacts of this rulemaking, including impacts on many of the statutory factors such as the environmental impacts and rural economic development.

TABLE III.G–1—FUEL COSTS OF THE PROPOSED VOLUMES

[2020 and nominal year dollars, millions] [a]

Year	Undiscounted	Discounted	
		Rate: 7%	Rate: 3%
2021	278	278	278
2022			
Excluding Supplemental Volumes	2,158	2,017	2,095
Including Supplemental Volumes	2,302	2,151	2,235

[a] These costs represent the costs of producing and using biofuels relative to the petroleum fuels they displace. They do not include other factors, such as the potential impacts on soil and water quality or potential GHG reduction benefits.

TABLE III.G–2—ENERGY SECURITY BENEFITS OF THE PROPOSED VOLUMES

[2020 dollars, millions]

Year	Undiscounted	Discounted	
		Rate: 7%	Rate: 3%
2021	64	64	64
2022			
Excluding Supplemental Volumes	151	141	147
Including Supplemental Volumes	162	151	157

Regardless of whether or not we were able to quantify or monetize the impact of this proposed rule on each of the statutory factors, consideration of these factors is still required by the statute. We believe that the proposed standards

[89] The values for both 2021 and 2022 are calculated relative to the actual volumes of renewable fuel used in 2020. The 2022 values therefore reflect the incremental volumes for both 2021 and 2022.

[90] Due to the uncertainty related to the GHG emission impacts of this proposed rule (discussed in further detail in Chapter 3.2 of the RIA) we have not included a quantified projection of the GHG emission impacts of this proposal. However, to provide perspective regarding the scope of the potential benefits, Chapter 3.2.2 of the RIA illustrates the potential GHG benefits associated with the proposed volumes in this rule using the lifecycle GHG values calculated in the 2010 RFS final rule and other prior actions.

in this rulemaking are appropriate under our reset authority when we balance all of the relevant factors described throughout this preamble and the DRIA. We request comment generally on how costs and benefits quantified in this proposed rule are calculated and accounted for, as well as methods to quantify and monetize additional statutory factors.

IV. Interactions Between the RFS Annual Volumes

In resetting the volumes, EPA must review the implementation of the program. In conducting this review, we have assessed the carryover RIN bank [91] and carryforward deficits, which are two important compliance mechanisms. Specifically, the RFS regulations contain provisions that allow an obligated party to satisfy their RFS obligations for a given year by using up to 20 percent of RINs generated in the previous year.[92] Similarly, the RFS regulations also allow an obligated party to carry forward a compliance deficit from one year to the next, provided the party meets their full RFS obligations in the following year.[93] These provisions operate such that any excess RINs generated in one year, or any RIN deficits, can impact the market for RINs and renewable fuels in the next year. As such, compliance with the RFS standards for one year is inherently intertwined with compliance for the prior year. This section discusses the projected volume of carryover RINs (net of carryforward deficits) that will be available for use towards compliance with the 2020, 2021, and 2022 RFS obligations. We also evaluate whether we should intentionally set the 2020, 2021, and 2022 volumes at levels that would intentionally reduce the size of the carryover RIN bank, and we propose that this would not be appropriate.

In addition, in reviewing the implementation of the program, we recognize the difference between the ability of retroactive versus prospective volume requirements to affect renewable fuel use. As we explained in Section II, we anticipate that the 2020 and 2021 standards will be largely retrospective, while the 2022 standards will be prospective. In this section, we explain that we do not expect the retroactive 2020 and 2021 standards to significantly affect renewable fuel use in 2020 and 2021, respectively, but we do expect the prospective 2022 standards to significantly affect renewable fuel use in 2022. Given this dynamic, we generally believe that higher renewable fuel volumes should occur in 2022 as opposed to 2020 or 2021.[94]

A. Treatment of Carryover RINs

Consistent with our approach in recent annual rules, we have also considered the availability and role of carryover RINs in setting the volume requirements for 2020, 2021, and 2022. In general, we have authority to consider the size of the carryover RIN bank in deciding whether and to what extent to exercise any of our discretionary waiver authorities.[95] EPA's approach to the consideration of carryover RINs in exercising our cellulosic waiver authority was affirmed in *Monroe Energy* and *ACE*.[96]

As noted in past RFS annual rules, carryover RINs are a foundational element of the design and implementation of the RFS program.[97] A bank of carryover RINs is extremely important in providing a liquid and well-functioning RIN market upon which success of the entire program depends, and in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace.[98] Carryover RINs enable parties ''long'' on RINs to trade them to those ''short'' on RINs instead of forcing all obligated parties to comply through physical blending. Carryover RINs also provide flexibility in the face of a variety of unforeseeable circumstances that could limit the availability of RINs and reduce spikes in compliance costs, including weather-related damage to renewable fuel feedstocks and other circumstances potentially affecting the production and distribution of renewable fuel.

Just as the economy as a whole is able to function efficiently when individuals and businesses prudently plan for unforeseen events by maintaining inventories and reserve money accounts, we believe that the RFS program is able to function when sufficient carryover RINs are held in reserve for potential use by the RIN holders themselves, or for possible sale to others that may not have established their own carryover RIN reserves. Were there to be too few RINs in reserve, then even minor disruptions causing shortfalls in renewable fuel production or distribution, or higher than expected transportation fuel demand (requiring greater volumes of renewable fuel to comply with the percentage standards that apply to all volumes of transportation fuel, including the unexpected volumes) could result in deficits and/or noncompliance by parties without RIN reserves. Because carryover RINs are individually and unequally held by market participants, a small RIN bank may negatively impact the RIN market, even where the market overall could satisfy the standards. Consequently, were market disruptions to occur with an insufficient carryover RIN bank, it could force the need for a new waiver of the standards, undermining the market certainty so critical to the RFS program. For all of these reasons, the collective carryover RIN bank provides a necessary programmatic buffer that both facilitates individual compliance, provides for smooth overall functioning of the program to the benefit of all market

[91] CAA section 211(o)(5) requires that EPA establish a credit program as part of its RFS regulations, and that the credits be valid for obligated parties to show compliance for 12 months as of the date of generation. EPA implemented this requirement through the use of RINs, which are generated for the production of qualifying renewable fuels. Obligated parties can comply by blending renewable fuels themselves, or by purchasing the RINs that represent the renewable fuels from other parties that perform the blending. There are different ''D'' codes representing the different RFS standards that the various renewable fuels can be used to comply with. (*e.g.,* D3 represents cellulosic biofuel that can be used to comply with the cellulosic biofuel standard.) RINs can be used to demonstrate compliance for the year in which they are generated or the subsequent compliance year. Obligated parties can obtain more RINs than they need in a given compliance year, allowing them to ''carry over'' these excess RINs for use in the subsequent compliance year, although our regulations limit the use of these carryover RINs to 20 percent of the obligated party's RVO. For the bank of carryover RINs to be preserved from one year to the next, individual carryover RINs are used for compliance before they expire and are essentially replaced with newer vintage RINs that are then held for use in the next year. For example, vintage 2020 carryover RINs must be used for compliance in 2021, or they will expire. However, vintage 2021 RINs can then be ''banked'' for use in 2022.

[92] 40 CFR 80.1427(a)(5).

[93] 40 CFR 80.1427(b).

[94] We further discuss our review of the implementation of the program throughout the preamble and DRIA, especially in Chapter 1 of the DRIA.

[95] These discretionary waiver authorities include the reset and set authorities, CAA section 211(o)(7)(F) and 211(o)(2)(B)(ii) (both of which allow EPA to establish RFS volumes based upon a ''review of the implementation of the program''), discretionary portion of the cellulosic waiver authority, CAA section 211(o)(7)(D)(i) (''the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement''), the general waiver authority, CAA section 211(o)(7)(A) (''The Administrator . . . may waive the requirements''), and the BBD waiver authority with regard to the extent of the reduction in the BBD volume, CAA section 211(o)(7)(E)(ii) (''the Administrator . . . shall issue an order to reduce . . . the quantity of biomass-based diesel . . . by an appropriate quantity'').

[96] *Monroe Energy* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014); *ACE,* 864 F.3d at 713.

[97] See, *e.g.,* 72 FR 23904 (May 1, 2007).

[98] See 80 FR 77482–87 (December 14, 2015), 81 FR 89754–55 (December 12, 2016), 82 FR 58493–95 (December 12, 2017), 83 FR 63708–10 (December 11, 2018), 85 FR 7016 (February 6, 2020).

participants, and is consistent with the statutory provision allowing for the generation and use of credits. We anticipate that the carryover RIN bank will serve this very purpose for compliance with the 2019 standards, when actual biofuel use in that year is expected to have fallen short of the RFS standards.[99]

EPA can also rely on the availability of carryover RINs to support ambitious volumes that may not be able to be met with renewable fuel production and use in that year, and in the context of the 2013 RFS rulemaking we noted that an abundance of carryover RINs available in that year, together with possible increases in renewable fuel production and import, justified maintaining the advanced and total renewable fuel volume requirements for that year at the levels specified in the statute.[100]

1. Carryover RIN Bank Size

We project a significant drawdown in the number of carryover RINs as a result of compliance with the 2019 standards. After compliance with the 2019 RFS standards, we project that there will be approximately 1.85 billion total carryover RINs available, a decrease of 1.62 billion RINs from the previous estimate of 3.48 billion total carryover RINs in the 2020 final rule.[101] Since we are proposing to set both the 2020 and 2021 volume requirements at the actual volume of renewable fuel produced in those years, we project that 1.85 billion total carryover RINs would be available for compliance with the 2022 standards as well.

However, there remains considerable uncertainty surrounding the ultimate number of carryover RINs that will be available for compliance with the 2020, 2021, and 2022 standards for several reasons, including the possibility of SREs and the fact that compliance with the 2019 standards has not yet occurred for all parties. Furthermore, as discussed in Section V, our proposed response to the remand of the 2016 rulemaking may reduce the total number of carryover RINs by up to 250 million RINs in 2022 (and up to another 250 million RINs in 2023). Finally, we note that there have been enforcement actions in past years that have resulted in the retirement of carryover RINs to make up for the generation and use of invalid RINs and/or the failure to retire RINs for exported renewable fuel. Future enforcement actions could have similar results and require that obligated parties or renewable fuel exporters settle past enforcement-related obligations in addition to complying with the annual standards. In light of these uncertainties, the net result could be a total carryover RIN bank larger or smaller than 1.85 billion RINs.

2. EPA's Decision Regarding the Treatment of Carryover RINs

We evaluated the volume of carryover RINs projected to be available and considered whether we should intentionally draw down the carryover RIN bank in setting the 2020, 2021, and 2022 volume requirements. We do not believe that would be appropriate. As described above, the current bank of carryover RINs provides an important and necessary programmatic and cost spike buffer that will both facilitate individual compliance and provide for smooth overall functioning of the program. We believe that a balanced consideration of the possible role of carryover RINs in achieving the statutory volumes for cellulosic biofuel, advanced biofuel, and total renewable fuel, versus maintaining an adequate bank of carryover RINs for important programmatic functions, is appropriate when EPA exercises its discretion under its statutory authorities. Furthermore, as noted earlier, after compliance with the 2019 standards, we project that there will be a significant drawdown in the number of carryover RINs. The advanced biofuel and total renewable fuel standards we are proposing for 2022, moreover, are significantly higher than the volume of renewable fuel used in previous years, as well as the volume of renewable fuel expected to be used in 2020 and 2021. As we explain further in Sections III and V, it may be challenging for the market to satisfy the 2022 annual standards and the 2022 supplemental standard entirely with renewable fuel use in 2022. Given this, the projected shortfall in RIN generation in 2019, and the uneven holding of carryover RINs among obligated parties, we expect that further increasing the standards with the intent to draw down the carryover RIN bank would lead to significant deficit carryovers and potential non-compliance by some obligated parties that own relatively few or no carryover RINs. We do not believe this is an appropriate outcome. Therefore, consistent with the approach we have taken in previous annual rules, we are not proposing to set the 2020, 2021, and 2022 volume requirements at levels that would intentionally draw down in the bank of carryover RINs.

As noted above, it is possible the size of the RIN bank may be different than our projection. Regardless, however, we do not believe an intentional drawdown of the carryover RIN bank would be appropriate for many of the reasons stated above. The carryover RIN bank would continue to be an important compliance flexibility for obligated parties. Moreover, the standards we are proposing for 2022, along with the 2022 supplemental standard, are forward leaning and if the projected growth in renewable fuel volumes do not materialize would lead to a drawdown of the carryover RIN bank.

3. Consideration of Cellulosic Carryover RINs

In comments on the 2020 proposed rule and supplemental proposal, several parties suggested that EPA prospectively establish the cellulosic biofuel volume at the volume projected to be supplied plus the volume of available carryover RINs from the prior year.[102] That is, these parties argued that EPA should set the cellulosic biofuel volume at a level that would intentionally eliminate the entire cellulosic carryover RIN bank. Because EPA established volumes solely under the cellulosic waiver authority that year, those parties focused their arguments on a legal interpretation of that provision, asserting that it required or allowed EPA to include, in its projection of the available volume, cellulosic carryover RINs that are projected to be available for compliance.

Section 211(o)(7)(D)(i) of the CAA requires EPA to set the applicable volume of cellulosic biofuel at the ''projected volume available during [the] calendar year.'' EPA has consistently interpreted the statutory phrase ''projected volume available'' to refer to the volume of qualifying cellulosic biofuel projected to be produced or imported and available for use as transportation fuel in the U.S. in that year. This is equivalent to the projected number of cellulosic RINs generated in the year that are available for obligated parties to use for compliance. Since we first exercised the cellulosic waiver authority in the 2010 annual rule, we have never included carryover cellulosic RINs in this projection.

Parties that requested that EPA include carryover RINs in our projection of the available volume of cellulosic biofuel generally argued that despite the

[99] EPA extended the 2019 compliance deadline for small refineries to November 30, 2021. See 86 FR 17073 (April 1, 2021). We have proposed to further extend that deadline in a separate action (86 FR 67419, November 26, 2021).

[100] 79 FR 49793–95 (August 15, 2013).

[101] The calculations performed to estimate the size of the carryover RIN bank can be found in the memorandum, ''Carryover RIN Bank Calculations for 2020–2022 Proposed Rule,'' available in the docket for this action.

[102] For example, see comments from the Coalition for Renewable Natural Gas (EPA–HQ–OAR–2019–0136–0723) and AJW and Iogen (EPA–HQ–OAR–2019–0136–0467).

continued rapid growth in cellulosic biofuel volumes, excess carryover cellulosic RINs in 2018 and 2019 resulted in low cellulosic RIN prices, which in turn may have negatively affected investment in cellulosic biofuel production. They further claimed that by including carryover RINs in the projected volume available, EPA would ensure that there was a strong market for cellulosic biofuel and cellulosic biofuel RINs in years when cellulosic biofuel production exceeded the number of cellulosic biofuel RINs needed by obligated parties for compliance. Commenters stated that this increased market certainty would result in increased investment in cellulosic biofuel production and ultimately increased cellulosic biofuel production. One commenter suggested that in conjunction with adding projected carryover RINs to the projected production volume of cellulosic biofuel when establishing the cellulosic biofuel volume, EPA could also subtract any projected deficits to account for years when cellulosic biofuel production falls short of EPA's projected production volume.[103]

In our response to these comments in the 2020 final rule,[104] we disagreed with parties who claimed that the statutory language of the cellulosic waiver authority requires EPA to include carryover RINs in establishing the required volume of cellulosic biofuel. The statutory term ''projected volume available'' does not directly address the topic of carryover RINs. Indeed, the cellulosic waiver provision, CAA section 211(o)(7)(D)(i), does not mention carryover RINs at all, or otherwise refer to the statutory basis for such RINs, CAA section 211(o)(5). Thus, we believe there are multiple reasonable interpretations of this ambiguous statutory provision, including both the interpretation put forward by the stakeholders as well as the interpretation adopted by EPA in previous years.

We further stated that the interpretation EPA adopted in previous years struck an appropriate balance between the interests of the cellulosic producers, those obligated to purchase and use cellulosic biofuels and cellulosic biofuel RINs, and consumers; and best ensured the ongoing smooth implementation of the RFS program.[105] Finally, since the 2020 proposed rule did not raise the possibility of including cellulosic carryover RINs in the projected volume available, we did not think it would be appropriate to make such a change without first giving all stakeholders an opportunity to comment.

We are now providing stakeholders notice and opportunity for comment in this proposal on whether to include cellulosic carryover RINs as part of the projected volume available. With respect to the volumes in this rule, were we to include cellulosic carryover RINs, it would increase the 2020 cellulosic biofuel volume by 40 million gallons over the currently proposed volume.[106] It would not affect the 2021 and 2022 cellulosic biofuel volumes, since we are establishing the cellulosic biofuel volumes based on actual supply for 2020 and 2021, and therefore at this time we do not project that excess RINs will be generated for carryover into 2021 or 2022.[107]

While we acknowledge that some aspects of the cellulosic category (such as the cellulosic waiver authority and the cellulosic waiver credits) [108] are unique, at this time we believe the benefits of carryover RINs, discussed in Section IV.A, also apply to cellulosic carryover RINs. Adding carryover RINs to the volume projected to be produced would effectively guarantee that the demand for these RINs was always equal to the overall market supply and would likely result in cellulosic RIN prices at or near the price of an advanced biofuel RIN plus the price of a cellulosic waiver credit in future years. While raising prices would increase revenue for cellulosic biofuel producers, it may also increase the price of cellulosic biofuel. These higher prices would be passed on to consumers, who ultimately bear these costs.

We also note that the legal arguments made by the previous commenters, while still relevant, are less so in the context of this rulemaking. The prior comments focused on an interpretation of the cellulosic waiver authority. In this rulemaking, however, we are concurrently exercising both our cellulosic waiver and reset authorities. Under the reset authority, we have broad discretion to establish volumes, including cellulosic biofuel volumes lower than the volume required under the cellulosic waiver. Thus, regardless of whether the prior commenters are correct about EPA's legal authority under the cellulosic waiver, we have legal authority under reset to establish volumes at actual supply, excluding any carryover RINs. At the same time, however, the cellulosic waiver authority establishes the ceiling for cellulosic biofuel volumes. If we agree with the commenters that the cellulosic waiver mandates or allows volumes at supply plus carryover RINs, then we may establish cellulosic biofuel volumes up to that level. Thus, although the legal framework has changed somewhat since the comments were submitted, their arguments remain relevant, and EPA is soliciting comment on this issue.

B. Ability for the RFS Volumes To Impact Renewable Fuel Supply

In developing the proposed volume requirements, we considered the timing of this action and its ability to impact renewable fuel production, imports, and use. Since only prospective requirements have a significant chance of affecting actual renewable fuel use, we are proposing to require higher volumes for 2022. Imposing higher volumes for 2020 or 2021, in contrast, would have no effect on demand for fuels in those years. By contrast, retroactively requiring volumes higher than what the market has actually supplied could create market disruption and thus interfere with program implementation without advancing program goals. Setting 2020 and 2021 volumes at those actually supplied reflects the fact that we are acting retroactively, while in requiring higher volumes for 2022 we are setting prospective obligations.

With respect to 2020, that year has already passed, so our retroactive revision of the RFS volumes cannot affect the production or use of renewable fuels in 2020 or consequently the statutory reset factors (*e.g.,* the impacts of the use of renewable fuels on cost, the environment, and so forth). Any actual market effects will be felt after the rule is promulgated and mediated through the carryover RIN bank.

With respect to 2021, there will not be sufficient time for the market to respond to the volumes that we finalize for 2021. The market may also respond in a more limited fashion to this proposed rule.

[103] See comment from AJW and Iogen (Docket Item No. EPA–HQ–OAR–2019–0136–0467).

[104] See Section 3.3 of the Response to Comments document for the 2020 final rule (EPA–420–R–19–018, December 2019).

[105] See *Chevron USA, Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984).

[106] The calculations performed to estimate the number of cellulosic carryover RINs can be found in the memorandum, ''Carryover RIN Bank Calculations for 2020–2022 Proposed Rule,'' available in the docket for this action.

[107] We acknowledge of course that our projections of the available volume of cellulosic biofuel are inherently uncertain, and that there may be more or fewer cellulosic RINs generated in 2020 and 2021 than what we project. However, at the time of this rule, we have done our best to take neutral aim at accuracy of the projected volume available.

[108] Cellulosic waiver credits may be purchased from EPA by obligated parties in years when EPA uses the cellulosic waiver authority to reduce the statutory volumes of cellulosic biofuel. Regulations related to cellulosic waiver credits can be found in 40 CFR 80.1456.

Regardless, any impact on the production, import, and use of renewable fuel in 2021 is likely to be limited, and therefore the ability for this rule to affect the statutory factors is likewise limited.

The situation for 2022, however, is different. The RFS standards for 2022 will be in place throughout 2022 and should be able to affect market decisions for renewable fuel production, import, and use in 2022, albeit still within the bounds of the lead time available. Similarly, the ability for this action to affect the statutory factors in 2022 will be significantly greater than in 2021 or 2020. Thus, we believe that increased renewable fuel requirements should be imposed in 2022, when this rule has a much greater chance of actually increasing renewable fuel use and production, as opposed to 2020 or 2021.

Conversely, there are also disadvantages to requiring higher volumes for 2020 and 2021 retroactively, or similarly, to maintaining the 2020 standards in the original final rule. Notably, such higher volumes would cause some combination of a drawdown of the carryover RIN bank, carryforward deficits, or non-compliance by obligated parties. While we have previously found an intentional drawdown of the carryover RIN bank to be appropriate in one case, we do not think that this is appropriate in this situation for reasons we describe below. We also do not think that intentionally relying on or effectively compelling carryforward deficits or intentionally causing non-compliance is generally appropriate.

Given the drastic shortfall in renewable fuel use relative to what we projected in the 2020 final rule as discussed in Section III.B, compliance with the original 2020 standards would likely result in a significant drawdown in the number of carryover RINs available for use in 2021 and 2022. As discussed in Section IV.A.1, we currently project that as a result of compliance with the 2019 RFS standards, the number of carryover RINs available for compliance with the 2020 standards will be approximately 1.85 billion RINs, a considerable drop from the 3.48 billion total carryover RINs we projected in the 2020 final rule. We expect that as a result of revising the 2020 standards to equal the actual volume of renewable fuels consumed, the number of carryover RINs available for compliance with the 2021 and 2022 standards will remain at 1.85 billion RINs. Were we not to modify the 2020 standards, we anticipate that the total number of carryover RINs available for compliance with the 2021 and 2022 standards would decrease dramatically to 630 million RINs, or less than 4 percent of the proposed 2021 and 2022 total renewable fuel standards.[109] This would be the lowest quantity of carryover RINs available since EPA began projecting the size of the carryover RIN bank in 2013, and the relatively small carryover RIN bank could increase the risk of disruptions in the RIN trading market. A number of obligated parties would also likely have to carry deficits into 2022, fail to comply with the 2021 total renewable fuel standard if they had already carried a deficit forward from 2020, or similarly fail to comply with the 2022 total renewable fuel standard.[110]

If these compliance difficulties occur, we believe that the harms would not just be felt by directly affected obligated parties but also extend to the entire fuels market and the RFS program. Notably, if insufficient RINs are available to obligated parties to meet their compliance obligations, that could negatively impact the regulatory and market certainty critical to the investments needed to increase renewable fuel volumes in 2022 and into the future. This could in turn diminish the expected future rate of production of renewable fuels, impair the development of infrastructure to distribute and use increased volumes of such fuels, and reduce the expected energy security, job creation, and rural economic benefits associated with higher renewable fuel use and production. Reduced business certainty could also deter the commercialization of novel advanced biofuels, which have the potential for lower costs and superior environmental benefits.

Retroactively reducing the 2020 volumes mitigates these concerns. Specifically, our proposal to reduce the 2020 volumes to those actually supplied preserves an estimated carryover RIN bank of 1.85 billion RINs for use in 2021 and establishing the 2021 volumes at those actually supplied preserves the same estimated carryover RIN bank for compliance with the relatively aggressive 2022 standards.

We note lesser reductions to 2020 or 2021 would give rise to the same concerns. The magnitude of those concerns would depend on how high the resulting volumes are. We think that some of these concerns, moreover, would remain even were we to make offsetting reductions to the 2022 volumes (*e.g.,* were we to increase the proposed 2021 volumes by 500 million gallons and decrease the proposed 2022 volumes by the same amount). In that case, even though the aggregate incentive for renewable fuels across all three years might remain the same, retroactively requiring compliance for past years would be more likely to lead more RIN bank drawdowns, carryforward deficits, and non-compliance, and less likely to lead to actual increases in renewable fuel use and production.

In sum, in proposing the 2020, 2021, and 2022 volumes, we recognize the interconnected nature of the RFS annual volume requirements. We believe that the volume should reflect both a desire to provide the necessary incentives for significant growth in renewable fuel production and use and our obligation to consider and mitigate the burdens on obligated parties associated with a retroactive rulemaking. In general, this indicates that required growth in renewable fuel use should occur prospectively in 2022, as opposed to retroactively in 2020 and 2021. We request comment on how EPA should consider the carryover RIN bank in establishing RFS volume obligations.

V. Response to ACE Remand

In addition to proposing the applicable volume requirements and percentage standards for 2020, 2021, and 2022, in this rulemaking we are also proposing to address the remand of the 2014–2016 annual rule[111] by the U.S. Court of Appeals for the D.C. Circuit in *ACE.*[112] In the 2020 proposal, we proposed to address the D.C. Circuit's remand by retaining the original 2016 total renewable fuel standard.[113] We received many comments both in support of and against this approach.[114] In the 2020 final rule, we deferred taking action in response to the remand.[115] We now believe that we should address the remand through supplemental renewable fuel volume requirements totaling 500 million gallons spread over two years. We are proposing a supplemental renewable fuel obligation of 250 million gallons to be applied in 2022 coupled with the intention of proposing an additional 250

[109] The calculations performed to project the number of carryover RINs that would be available if we did not revise the 2020 standards can be found in the memorandum, ''Carryover RIN Bank Calculations for 2020–2022 Proposed Rule,'' available in the docket for this action.

[110] The regulations at 40 CFR 80.1427(b) allows obligated parties to only carry forward a deficit if they did not carry forward a deficit from the previous calendar year; thus, an obligated party that carries forward a deficit from 2020 into 2021 may not carry forward a deficit from 2021 into 2022.

[111] 80 FR 77420 (December 14, 2015).

[112] 864 F.3d 691 (2017).

[113] 84 FR 36762 (July 29, 2019).

[114] See Docket No. EPA–HQ–OAR–2019–0136.

[115] 85 FR 7016 (February 6, 2020).

million gallon supplemental standard in a subsequent action for 2023. We propose to establish the supplemental total renewable fuel volume requirement and the corresponding percentage standard for 2022 in this rulemaking. This section describes the relevant aspects of the 2014–2016 annual rule, the court's decision, EPA's responsibilities following the court's remand, and our proposed approach.

A. Reevaluating the 2014–2016 Annual Rule

1. The 2016 Renewable Fuel Standard

On December 14, 2015, we promulgated a rulemaking establishing the volume requirements and percentage standards for 2014, 2015, and 2016.[116] In establishing those standards for 2016, we utilized the cellulosic waiver authority under CAA section 211(o)(7)(D) to lower the cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements, and the general waiver authority under CAA section 211(o)(7)(A) to lower total renewable fuel by an additional increment.[117]

As an initial step, under CAA section 211(o)(7)(D), we lowered the cellulosic biofuel volume requirement by 4.02 billion gallons, to the projected production of cellulosic biofuel for 2016, as required by the statute.[118] Using that same authority, we then elected to reduce the advanced biofuel and total renewable fuel volumes. We did not reduce the advanced biofuel volume requirement by the full 4.02 billion gallons that was permitted under this authority, but rather by a lesser 3.64 billion gallons that resulted in an advanced biofuel volume requirement that was ''reasonably attainable.'' [119] This allowed some advanced biofuel to ''backfill'' for the shortfall in cellulosic biofuel. We then reduced the total renewable fuel volume by an amount equivalent to the reduction in advanced biofuel in accordance with our longstanding interpretation that when making reductions to advanced biofuel and total renewable fuel under CAA section 211(o)(7)(D), the best reading of the statute is to reduce them both by the same amount.[120]

As a second step, under CAA section 211(o)(7)(A), under a finding of inadequate domestic supply, we further lowered the total renewable fuel standard by 500 million gallons for 2016.[121] In assessing ''inadequate domestic supply,'' we considered the availability of renewable fuel to consumers. Based on such demand-side considerations, we made the additional 500 million gallon reduction in the total renewable fuel requirement.

The 2016 total renewable fuel standard was challenged in court. In an opinion issued on July 28, 2017, the D.C. Circuit vacated our use of the general waiver authority under a finding of inadequate domestic supply to reduce the 2016 total renewable fuel standard, the second step of setting the 2016 total renewable fuel standard.[122] The court in *ACE* held that we had improperly focused on supply of renewable fuel to consumers, and that the statute instead requires a ''supply-side'' assessment of the volumes of renewable fuel that can be supplied to refiners, blenders, and importers.[123] Other components of our interpretation of ''inadequate domestic supply'' were either upheld by the court in *ACE* (*e.g.,* EPA need not consider carryover RINs as a ''supply source of renewable fuel for purposes of determining the supply of renewable fuel in a given year'') or were not challenged (*e.g.,* our consideration of biofuel imports as part of the domestic supply). Our use of the cellulosic waiver authority to provide the initial reduction in total renewable fuel was also upheld by the court. In establishing volume requirements for subsequent years, EPA has applied the court's holding and not proposed to reduce volumes under a finding of inadequate domestic supply.[124]

2. Agency Responsibility

The court in *ACE* upheld our volume requirements for advanced biofuel, BBD, and cellulosic biofuel; there is, therefore, no need for the agency to adjust those 2016 final volume requirements, or to take further action with regard to these standards in light of the court's decision. The court also upheld EPA's use of the cellulosic waiver authority to reduce the 2016 total renewable fuel volume requirement. The court only vacated our decision to further reduce that requirement under the ''inadequate domestic supply'' waiver authority, remanding this issue to the Agency for further consideration consistent with the court's opinion.[125] Our obligation is thus to reevaluate the 2016 total renewable fuel volume requirement in accordance with the court's decision.

B. Consideration of Approaches for Responding to the ACE Remand

As discussed in the previous section, we waived 500 million gallons of total renewable fuel volume associated with the 2016 volume requirements. In 2017, after the compliance year had passed, and after obligated parties had complied with those requirements, we received the *ACE* court's decision rejecting our use of the general waiver authority under a finding of inadequate domestic supply to reduce volumes as being beyond our statutory authority, and remanded the rulemaking action back to EPA. In this action, we propose to address the court's remand through a supplemental standard of 250 million gallons of total renewable fuel in 2022, with the intent of proposing an additional supplemental volume of 250 million gallons of renewable fuel to be required in 2023 in a subsequent action. As the court invalidated only the 500 million gallon total renewable fuel reduction, we therefore would limit our response to the remand to only the 2016 total renewable fuel standard and the corresponding 500 million gallon reduction stemming from our use of the general waiver authority. As the total renewable fuel volume is the outermost standard in the nested renewable fuel standards, this approach would not affect the other standards.

1. Proposed Response to the *ACE* Remand

We are proposing to address the *ACE* decision by applying a supplemental standard of 250 million gallons in 2022 with the intention of proposing an additional 250-million-gallon supplemental standard in a subsequent action for 2023. Under this approach, the original 2016 standard for total renewable fuel would remain unchanged and the compliance demonstrations that obligated parties made for it would likewise remain in place. A supplemental standard would thus avoid the difficulties associated with reopening 2016 compliance, as discussed below. This proposed supplemental standard would have the

[116] 80 FR 77420. The rule also established BBD volumes for 2017.

[117] 80 FR 77439.

[118] See 80 FR 77499.

[119] 80 FR 77427.

[120] *Id.*

[121] 80 FR 77444.

[122] *ACE,* 864 F.3d 691.

[123] *Id.* at 696.

[124] We note that the precedential effect of the *ACE* decision has governed subsequent RFS annual rules. Compare, *e.g.,* 82 FR 34229 & n.82 (July 21, 2017) (2018 annual rule proposal, issued prior to *ACE*) (soliciting comment on whether it would be appropriate to exercise the inadequate domestic supply waiver authority based on the maximum reasonably achievable volume'' of renewable fuel, which incorporates demand-side considerations), with 82 FR 46177 (Oct. 4, 2017) (2018 annual rule availability of supplemental information and request for comment, issued after *ACE*) (recognizing, under *ACE,* that EPA may not consider demand-side constraints in determining inadequate domestic supply).

[125] *Id.* at 703.

same practical effect as increasing the 2022 total renewable fuel volume requirement by 250 million gallons, as compliance would be demonstrated using the same RINs as used for the 2022 standard. The percentage standard for the supplemental standard would be calculated the same way as the 2022 percentage standards (*i.e.,* using the same gasoline and diesel projections), such that the supplemental standard would be additive to the 2022 total renewable fuel percentage standard. The proposed approach would provide a meaningful remedy in response to the court's vacatur and remand in *ACE* and would effectuate the Congressionally determined renewable fuel volume for 2016, modified only by the proper exercise of EPA's waiver authorities, as upheld by the court in *ACE.* It is with emphasis on these considerations that we are proposing a different approach from the one proposed in the 2020 proposal.[126]

We propose to treat such a supplemental standard as a supplement to the 2022 standards, rather than as a supplement to standards for 2016, which has passed. In order to comply with any supplemental standard, obligated parties would need to retire available RINs; it is thus logical to require the retirement of available RINs in the marketplace at the time of compliance with this supplemental standard. As discussed below, there are insufficient 2015 and 2016 RINs currently available to meet a supplemental 2016 standard, and additional 2015 or 2016 RINs cannot be generated. By applying the supplemental standard to 2022 instead of 2016, RINs generated in 2021 and 2022 could be used to comply with the 2022 supplemental standard.

In applying the supplemental standard to 2022, we would treat the supplemental standards like a 2022 standard in all respects. That is, producers and importers of gasoline and diesel that are subject to the 2022 standards would also be subject to the supplemental standard. The applicable deadlines for attest engagements and compliance demonstrations that apply to the 2022 standards would also apply to the supplemental standard. The gasoline and diesel volumes used by obligated parties to calculate their obligation would be their 2022 gasoline and diesel production or importation. Additionally, obligated parties could use 2021 RINs for up to 20 percent of their 2022 supplemental standard.

As described more fully in Section III, the proposed volume requirements for 2022 are forward leaning, requiring a growth in renewable fuel volumes that we believe is achievable. We also believe that compliance with the 2022 supplemental standard in addition to the proposed standards for 2022 is feasible. If it cannot be fully met through the supply of additional renewable fuel volumes in 2022, it could be met through a drawdown of the carryover RIN bank.[127] After compliance with the 2019 standards, the carryover RIN bank is expected to consist of approximately 1.85 billion total carryover RINs for compliance in 2022 as discussed in Section IV.A.[128] We acknowledge that the size of the carryover RIN bank may change by the time this action is finalized. However, given the projected size of the carryover RIN bank, we think it is very likely that more than 250 million total carryover RINs will be available in 2022 for compliance with the supplemental standard, enabling the market to meet the supplemental standard entirely with carryover RINs, if necessary.

We believe that the potential drawdown of the carryover RIN bank by 250 million RINs is appropriate. As we stated in the 2020 final rule, ''[t]he current bank of carryover RINs provides an important and necessary programmatic and cost spike buffer that will both facilitate individual compliance and provide for smooth overall functioning of the program.'' [129] As discussed in Section IV.A, we continue to believe that a significant carryover RIN bank is fundamental to the functionality and success of the RFS program. Therefore, we are reluctant to take potentially counterproductive actions which would force any significant drawdown of its volume. However, we believe that the important programmatic benefits of the carryover RIN bank would be preserved even if the market were to satisfy the supplemental standard purely by drawing down the carryover RIN bank. It is important to note that we would only be reducing the carryover RIN bank by up to 250 million RINs per year due to the phased-in nature of our response.

By phasing in the 500 million gallons of total renewable fuel associated with the *ACE* remand through the implementation of two supplemental standards over two compliance years we believe we can maintain the functionality of the carryover RIN bank and lessen both the disruption to the market and the burden on obligated parties. Imposing two 250 million gallon standards in two compliance years, as opposed to one 500 million gallon supplemental standard in a single compliance year, provides additional notice for both obligated parties and the renewable fuel industry about the additional volume requirements and lessens the additional requirements for each compliance year. This could increase the likelihood that the volumes are met with additional renewable fuel use and, in turn, lessen the likelihood that the carryover RIN bank be drawn down.

In summary, we are proposing to implement a 250 million gallon supplemental volume requirement in 2022 and intend to propose an additional 250 million gallon supplemental volume requirement in 2023, totaling 500 million gallons, that represent the reduction in the 2016 total renewable fuel volume improperly waived under the general waiver authority. This approach would address our obligation to respond to the *ACE* remand while accounting for the unique timing of imposing a 2016 requirement in 2022. Importantly, because there are insufficient 2015 and 2016 RINs to satisfy a supplemental standard, this approach would allow obligated parties to comply with the 2022 supplemental standard using 2021 and 2022 RINs. We seek comment on this approach of applying a supplemental standard for 2022 associated with the *ACE* remand on top of the proposed standards for 2022.

2. Reopening 2016 Compliance

In the alternative, we considered an approach where EPA could have obligated parties comply with a modified 2016 total renewable fuel standard that requires an additional 500 million gallons of renewable fuel relative to the 2016 standard promulgated in 2015. However, we have determined that such an approach would be impractical if not infeasible to implement. Under our current regulations, only 2015 and 2016 RINs can be used to demonstrate compliance with the 2016 standard.[130] There are far fewer 2015 and 2016 RINs available today (*i.e.,* RINs that are valid but have not already been retired to comply with the 2015, 2016, or 2017 standards) than would be needed to comply with a supplemental standard commensurate

[126] See *FCC* v. *Fox,* 556 U.S. 502 (2009), acknowledging an agency's ability to change policy direction.

[127] See Section IV.A for a discussion of carryover RINs.

[128] The calculations performed to estimate the number of carryover RINs currently available can be found in the memorandum, ''Carryover RIN Bank Calculations for 2020–2022 Proposed Rule,'' available in the docket for this action.

[129] 85 FR 7020–22 (February 6, 2020).

[130] 40 CFR 80.1427(a).

with our exercise of the general waiver authority for 2016 (*i.e.,* 500 million gallons).[131] Additionally, the few 2015 and 2016 RINs available are unevenly held among obligated parties; because of the small number of RINs, any parties that held excess 2015 and 2016 RINs could attempt to sell them at a high price, creating dysfunction within the RIN market. These high prices would create a burden on obligated parties without providing any incentive for additional renewable fuel use in 2016 since that year has already passed. Because this approach would result in some parties being in noncompliance, we do not consider this a viable option to respond to the court's remand.

As we have stated in the past, we believe the burdens associated with altering the 2016 standard are high.[132] To illustrate the burdens associated with such an approach, we considered the steps that would be required to implement a revised 2016 standard. First, we would need to rescind the 2016 standard and promulgate a new 2016 standard. Next, we would need to return all of the RINs used for compliance to the original owners. Once those RINs were unretired (a process that could take several months), trading of those RINs could resume for a designated amount of time before retirements would again be required to demonstrate compliance. Obligated parties could then attempt to comply with a new, higher standard that includes an adjustment to the required total renewable fuel volume to address the *ACE* decision. However, simply unretiring 2016 RINs would not result in sufficient RINs for compliance with the higher standard. Furthermore, because the suite of obligated parties is no longer the same as it was in 2016, with some companies no longer in business, the distribution of unretired RINs could be perceived as unfair as well as uneven, highlighting the complexity of attempting to go back in time.

To remedy the insufficient 2016 RINs used for compliance with the 2016 standard, we also considered an approach where 2016 RINs used for compliance with the 2017 standards could be unretired and used for compliance with the increased 2016 standard, but this would essentially also reopen 2017 compliance, with cascading impacts on each subsequent year's compliance. Reopening compliance would impose a significant burden on both obligated parties and EPA as described above. Moreover, stakeholders have expressed strong desires for consistent compliance requirements on an annual basis. Having compliance demonstrations for the prior year complete before requiring compliance with the subsequent year is considered essential to allow obligated parties to properly account for the vintage of the various RINs in their holdings as they develop their compliance strategies and avoid having RINs expire. Therefore, we do not find that it would be appropriate or reasonable to reopen compliance with the 2016 total renewable fuel standard.

Aside from the paucity of available 2015 and 2016 RINs, applying a supplemental standard to the 2016 compliance year would require us to consider whether the obligated gasoline and diesel volumes used in the calculation of the percentage standards would be derived from the projected volumes used in the rulemaking that established the 2016 standards, or instead the actual obligated gasoline and diesel volumes in 2016. Of these two choices, using the actual obligated gasoline and diesel volumes would more accurately result in the full volume of the adjustment being realized through the retirement of RINs.[133] However, using the actual obligated gasoline and diesel volumes for the supplemental standard would make it inconsistent with the other 2016 standards, and call into question whether the other percentage standards should also be revised to account for actual obligated 2016 gasoline and diesel volumes and compliance revised for all obligated parties. We do not believe that it would be appropriate to revise the other 2016 percentage standards when only the total renewable fuel standard is at issue under the *ACE* remand. Applying the supplemental standard to 2022 and 2023 would avoid this issue.

C. Demonstrating Compliance With the 2022 Supplemental Standard

We intend to prescribe formats and procedures as specified in 40 CFR 80.1451(j) for how obligated parties would demonstrate compliance with the 2022 supplemental standard that simplifies the process in this unique circumstance.[134] Although the proposed 2022 supplemental standard would be a regulatory requirement separate from and in addition to the 2022 total renewable fuel standard, we intend that obligated parties would submit a single annual compliance report for both the 2022 annual standards and the supplemental standard. Under this intended approach, obligated parties would only report a single number for their total renewable fuel obligation in the 2022 annual compliance report.[135] Obligated parties would also only need to submit a single annual attest engagement report for the 2022 compliance period that covers both the 2022 annual standards and 2022 supplemental standard.[136] If we set a 2023 supplemental standard as intended, we would intend to use the same approach for annual compliance demonstrations for both the 2022 and 2023 compliance periods.

To assist obligated parties with this unique compliance situation, we intend to issue guidance with instructions on how to calculate and report the values to be submitted in the 2022 compliance reports.

D. Authority and Consideration of the Benefits and Burdens

In establishing the 2016 total renewable fuel standard, EPA waived the required volume of total renewable fuel by 500 million gallons using the inadequate domestic supply general waiver authority. The use of that waiver authority was vacated by the court in *ACE* and the rule was remanded to the EPA. In order to remedy our improper use of the inadequate domestic supply general waiver authority, we find that it is appropriate to treat our authority to

[131] RINs have a 2-year lifespan. Based on EMTS data, 29 million 2016 RINs are still being held in obligated party accounts. Although these RINs still show up in the database as ''available,'' it is likely that many of these RINs are not actually valid. This simply means that these RINs have not been retired by obligated parties as the compliance year has passed and they are expired.

[132] 84 FR 36762, 36788 (July 29, 2019).

[133] The projected 2016 non-renewable gasoline volume and diesel volume used in the rulemaking that set the 2016 standards was 179.33 billion gallons. According to EIA's May 2021 STEO, the actual non-renewable gasoline and diesel consumption volume in 2016 was 179.16 billion gallons.

[134] We note that we are not proposing to change the reporting regulations at 40 CFR 80.1451(a) as we do not believe that regulatory changes are needed to accommodate annual compliance demonstration for the proposed 2022 supplemental standard. Any comments suggesting changes to such reporting regulations will be considered outside the scope of this rulemaking.

[135] Obligated parties demonstrate annual compliance by following the reporting instructions entitled, ''Instructions for RFS0304: RFS Annual Compliance Report'' (RFS0304 report). A copy of these reporting instructions is available in the docket of this action. Under our intended approach, obligated parties would combine the 2022 total renewable fuel standard with the 2022 supplemental standard in ''Field 18'' of the RFS0304 report. This combined value would then be multiplied by the obligated gasoline and diesel fuel volume reported as specified in reporting instructions for ''Field 20'' of the RFS0304 report.

[136] The deadline for the attest engagement reports for the 2022 compliance period is June 1, 2023, and we are not proposing to modify that deadline in this action.

propose a supplemental volume requirement at this time as the same authority used to establish the 2016 total renewable fuel volume requirement—CAA section 211(o)(3)(B)(i), which requires EPA to establish percentage standard requirements by November 30 of the year prior to which the standards will apply and to ''ensure'' that the volume requirements ''are met.'' EPA exercised this authority for the 2016 standards once already. However, the effect of the *ACE* vacatur is that there remain 500 million gallons of total renewable fuel from the 2016 statutory volumes that were not included under the original exercise of EPA's authority under CAA section 211(o)(3)(B)(i). Therefore, EPA has retained authority for the remaining 500 million gallons. EPA also has authority under CAA section 211(o)(2)(A)(i). The D.C. Circuit in *NPRA* noted Congress granted EPA authority to '' 'ensure' that 'at least' the set volumes were used each year.'' [137]

We have sought to mitigate the burdens of a late or retroactive standard in part by proposing a supplemental standard that applies for the 2022 compliance year. Although we established a total renewable fuel standard in 2016, we did so while erroneously waiving 500 million gallons of total renewable fuel through the use of our general waiver authority. In this action, we are proposing to begin to remedy that error by requiring an additional 250 million gallon total renewable fuel volume requirement in the 2022 compliance year.[138]

As noted in Section II.C, in *ACE* and two prior cases, the court upheld EPA's authority to issue late renewable fuel standards, even those applied retroactively, so long as EPA's approach is reasonable.[139] EPA must consider and mitigate the burdens on obligated parties associated with a delayed rulemaking.[140] When imposing a late or retroactive standard, we must balance the burden on obligated parties of a retroactive standard with the broader goal of the RFS program to increase renewable fuel use.[141] The approach we are proposing in this action would implement a late standard as described in these cases. Obligated parties made their RIN acquisition decisions in 2016 based on the standards as established in 2016 and they may have made different decisions had we not reduced the 2016 total renewable fuel standard by 500 million gallons using the general waiver authority. Were EPA to create a supplemental standard for 2016 designed to address the use of the general waiver authority in 2016, we would be imposing a wholly retroactive standard on obligated parties, but because the proposed supplemental standard will be complied with in the 2022 compliance year, it will instead be a late standard. Pursuant to the court's direction, we have carefully considered the benefits and burdens of our approach and considered and mitigated the burdens to obligated parties caused by the lateness.

We acknowledge that in the 2020 proposal, we stated that a supplemental standard would ''impose a significant burden on obligated parties'' that would ''be unduly burdensome and inappropriate'' and lack ''any corresponding benefit as any additional standard cannot result in additional renewable fuel use in 2016.'' [142] We seek comment on whether the approach described in this document mitigates the associated burdens or even entirely avoids most of the burdens we described in the 2020 proposal (such as those associated with allowing only 2015 and 2016 RINs to be used for compliance). We seek comment on whether the current size of the carryover RIN bank is sufficient to mitigate the burden on obligated parties from a supplemental standard as well as whether the proposal to spread the 500 million gallon volume over two compliance years also mitigates the burdens on the carryover RIN bank. In short, we seek comment on whether this approach would reasonably balance the benefits and burdens and whether it would provide appropriate and meaningful relief in response to the *ACE* remand.

We believe that the approach proposed in this action, if finalized, could provide benefits that outweigh potential burdens. Consistent with the 2016 renewable fuel volume established by Congress, our proposed and intended supplemental standards for 2022 and 2023, respectively, are in total equivalent to the volume of total renewable fuel that we inappropriately waived for the 2016 total renewable fuel standard. The use of these supplemental standards phased across two compliance years would provide a meaningful remedy to the D.C. Circuit's vacatur of EPA's use of the general waiver authority and remand of the 2016 rule in *ACE.*

We have carefully considered and designed this approach to mitigate any burdens on obligated parties. We have considered the availability of RINs to satisfy this additional requirement. We are soliciting comment on the feasibility of the proposed 250-million-gallon supplemental standard in 2022. As explained earlier, there are insufficient 2015 and 2016 RINs available to satisfy the proposed 250-million-gallon standard.[143] Instead, we are proposing a supplemental volume requirement to the 2022 standards that will apply in the 2022 compliance year. Doing so would allow 2021 and 2022 RINs to be used for compliance with the 2022 supplemental standard, in keeping with existing RFS regulations. We believe there would be a sufficient number of 2021 and 2022 RINs to satisfy the 2022 supplemental standard. Although it is possible that the supplemental standard could be met through additional renewable fuel production, we generally believe that requiring volumes for the 2022 annual standards beyond those we are proposing in this action results in increasing difficulty in the standards being met through additional renewable fuel production. We believe that potential drawdown of the carryover RIN bank as a result of compliance with the proposed supplemental standard would be appropriate in light of the projected size of the carryover RIN bank in 2022 and the desire to provide a meaningful remedy to the court's remand and the Congressional intent evidenced by the statutory 2016 total renewable fuel standard.

Second, we provide significant lead-time for obligated parties by proposing this standard as supplemental to the 2022 standard: More than one year prior to the 2022 compliance deadline.

Third, we are proposing multiple mechanisms to mitigate the potential compliance burden. One step is to designate that the response to the *ACE* remand will be a supplement to the 2022 standards. This approach would not only allow the use of 2021 and 2022 RINs for compliance with the 2022 standard, as described earlier, but it would also avoid the need for obligated parties to revise their 2016 (and potentially 2017, 2018, 2019, etc.) compliance demonstrations, which would be a burdensome and time-consuming process. In addition, our proposal allows obligated parties to

[137] *NPRA,* 630 F.3d at 157.

[138] As noted earlier, we intend to propose an additional supplemental volume of 250 million gallon for 2023 in a subsequent action.

[139] See *ACE,* 864 F.3d at 718; *Monroe Energy, LLC* v. *EPA,* 750 F.3d at 920; *NPRA,* 630 F.3d at 154–58.

[140] *ACE,* 864 F.3d at 718.

[141] *NPRA,* 630 F.3d at 154–58.

[142] 84 FR 36788 (July 29, 2019).

[143] As also described above, it is likely that some amount of the existing carryover RIN bank represents RINs generated but not used for compliance in 2016, as the market over complied with the total renewable fuel standard that year.

satisfy both the 2022 standards and the supplement in a single set of compliance and attest engagement demonstrations. We are also proposing to extend the same compliance flexibility options already available for the 2022 standards to the 2022 supplemental standard, including allowing the use of carryover RINs and deficit carry forward subject to the conditions of 40 CFR 80.1427(b)(1). We also intend to spread out the 500-million-gallon obligation over two compliance years as described above. This will allow obligated parties and renewable fuel producers additional lead time to meet the standard because the RFS program will phase in the requirement, thus providing about a year of lead time for the second 250 million gallon requirement.

Lastly, we have carefully considered alternatives, including retaining the 2016 total renewable fuel volume as described in the 2020 proposal. We seek comment on this alternative, as well as on any other alternative approaches for addressing the *ACE* remand.

On balance, we find that requiring an additional 500 million gallons of total renewable fuel to be complied with through two supplemental standards spread over two years would be an appropriate response to the court's vacatur and remand of our use of the general waiver authority to waive the 2016 total renewable fuel standard by 500 million gallons. We seek comment on this approach.

E. Calculating a Supplemental Percentage Standard for 2022

The formulas in 40 CFR 80.1405(c) for calculating the applicable percentage standards were designed explicitly to associate a percentage standard for a particular year with the volume requirement for that same year. The formulas are not designed to address the approach that we are proposing in this action, namely the use of a 2016 volume requirement to calculate a 2022 percentage standard. Nonetheless, we can apply the same general approach to calculating a supplemental percentage standard for 2022.

If this proposed approach to the *ACE* remand in finalized, the numerator in the formula in 40 CFR 80.1405(c) would be the supplemental volume of 250 million gallons of total renewable fuel. The values in the denominator would remain the same as those used to calculate the proposed 2022 percentage standards in Section VI.C, which can be found in Table VI.C–1.[144] As described in Section VI.C, the resulting supplemental renewable fuel standard percentage standard for a 250 million gallon volume requirement in 2022 would be 0.14–0.15 percent, depending on the projection of exempt volume of gasoline and diesel.

The proposed supplemental standard for 2022 would be a requirement for obligated parties separate from and in addition to the 2022 standard for total renewable fuel. The two percentage standards would be listed separately in the regulations at 40 CFR 80.1405(a), but in practice obligated parties would demonstrate compliance with both at the same time. Thus, the two percentage standards would effectively be additive (*e.g.,* 11.76% + 0.14% = 11.90%, using the low end of the proposed percentage standards in Section VI.C).

VI. Percentage Standards

EPA implements the nationally applicable volume requirements by establishing percent standards that apply to obligated parties. The obligated parties are producers and importers of gasoline and diesel, as defined by 40 CFR 80.1406(a). The standards are expressed as volume percentages. Each obligated party multiplies the percentage standards by sum of all non-renewable gasoline and diesel they produce or import to determine their Renewable Volume Obligations (RVOs).[145] The RVOs are the number of RINs that the obligated party is responsible for procuring to demonstrate compliance with the RFS rule for that year. Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party for each year.

The volumes used to determine the proposed 2020, 2021, and 2022 percentage standards are described in Section III and are shown in Table VI–1.

TABLE VI–1—VOLUMES FOR USE IN DETERMINING THE PROPOSED APPLICABLE PERCENTAGE STANDARDS

(billion RINs)

Standard	2020	2021	2022
Cellulosic Biofuel	0.51	0.62	0.77
Biomass-Based Diesel [a]	[b] 2.43	[c] 2.43	2.76
Advanced Biofuel	4.63	5.20	5.77
Total Renewable Fuel	17.13	18.52	20.77
Supplemental Standard	n/a	n/a	0.25

[a] The BBD volumes are in physical gallons (rather than RINs).
[b] The BBD volume requirement for 2020 was established in the 2019 standards rulemaking (83 FR 63704, December 11, 2018).
[c] The BBD volume requirement for 2021 was established in the 2020 standards rulemaking (85 FR 7016, February 6, 2020).

A. Calculation of Percentage Standards

The formulas used to calculate the percentage standards applicable to obligated parties are provided in 40 CFR 80.1405(c). The formulas apply to the estimates of the volumes of non-renewable gasoline and diesel fuel, for both highway and nonroad uses, which are projected to be used in the year in which the standards will apply. EIA provides projected gasoline and diesel volumes, but these include projections of ethanol and biomass-based diesel used in transportation fuel. Since the percentage standards apply only to the non-renewable gasoline and diesel, the volumes of renewable fuel are subtracted out of the EIA projections of gasoline and diesel. In addition, transportation fuels other than gasoline or diesel, such as natural gas, propane, and electricity from fossil fuels, are not currently subject to the standards, and volumes of such fuels are not used in calculating the annual percentage standards or obligated parties' RVOs.

As specified in the 2010 RFS2 final rule,[146] the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the BBD

[144] We intend to update the values in the denominator, such as the projected gasoline and diesel volumes, based on updated information available at the time of the final rule.

[145] 40 CFR 80.1407.

[146] See 75 FR 14670 (March 26, 2010).

standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. To effectuate this difference between BBD and the other three standards, the formula used to calculate the percent standard for BBD in 40 CFR 80.1405 includes a factor of 1.5 to convert physical volumes of BBD into ethanol-equivalent volumes. However, as discussed more fully in Section VII.A, based on updated data regarding BBD use, we are proposing to change this factor from 1.5 to 1.55.

B. Small Refineries and Small Refiners

In CAA section 211(o)(9), Congress exempted small refineries from RFS compliance temporarily through December 31, 2010. Congress also provided that small refineries could receive an extension of the exemption beyond 2010 based either on the results of a required Department of Energy (DOE) study or in response to individual small refinery petitions demonstrating ''disproportionate economic hardship.'' CAA section 211(o)(9)(B)(i).

In the 2020 final rule, EPA revised certain definitions in the percentage standards formulae at 40 CFR 80.1405(c) to account for a projection of the total exempted volume of gasoline and diesel produced at small refineries, including for those exemptions granted after the final rule. In this proposed action, we are applying these revised definitions to calculate the projected exemptions for 2020, 2021, and 2022 and proposing a range of values. On the low end, we are proposing that the exempted volume is zero; on the high end, we are proposing to project the volume using the same methodology used in the 2020 final rule and updating values with more recent data.

The low end of the range of applicable percentage standards would be based on the fact that on January 24, 2020, the United States Court of Appeals for the Tenth Circuit ruled in *RFA* that EPA's grant of three individual SREs exceeded our statutory authority.[147] The court vacated EPA's actions under multiple bases. First, under the Tenth Circuit's reading of the CAA, a small refinery is eligible for relief only if it has received a continuous exemption from the RFS program since the initial blanket exemption through 2010.[148] The Supreme Court subsequently reversed the Tenth Circuit's decision in part on this basis.

However, the Tenth Circuit also vacated EPA's actions for two other reasons: EPA may grant relief only when it finds that the small refinery would suffer disproportionate economic hardship due to compliance with the RFS program, not due to other factors, and EPA had failed to discuss how granting the exemptions was consistent with our findings on RIN cost pass-through.[149] Were EPA to follow these aspects of the *RFA* decision nationwide, we would not anticipate granting any SREs for 2020, 2021, or 2022.

As described in previous actions, our assessment indicates that small refineries fully recover the costs of RFS compliance through higher prices on sales of gasoline and diesel, and that as a result they do not suffer economic hardship due to the RFS.[150] EPA has stated that refineries, including small refineries, are generally able to recover the costs of the RIN in the revenues received for their petroleum products, and that the cost of the RIN is passed through to consumers in the marketplace and does not represent a net cost to obligated parties.[151] While some small refineries have contested RIN cost pass-through in their exemption petitions, we have not credited such arguments in the past. Even when we granted relief in past years, we did so for other reasons.

In addition, because the applicable standards are expressed as a percentage of production basis, the cost of RFS compliance (prior to being recovered in the marketplace through higher sales prices on gasoline and diesel) is proportional to the amount of gasoline and diesel the obligated party produces. In other words, the cost of RFS compliance, per gallon of gasoline and diesel production, is the same for all obligated parties. This same cost applies to all obligated parties and is not disproportionate.

The high end of the proposed range of applicable percentage standards is based on the fact that small refineries subsequently sought review of *RFA* from the U.S. Supreme Court in *HollyFrontier* and received a favorable ruling.[152] At this time we do not yet know how the court's ruling will affect SRE decisions currently before EPA or in the future. The high end of the proposed range therefore reflects a continuation of the intent described in the 2020 final rule to project the volumes of gasoline and diesel associated with future SREs.[153] Specifically, we are proposing to project the SRE volume for 2020, 2021, and 2022 using the same methodology used in the 2020 final rule, but updating the values using more recent data for 2016–2018 SRE petitions.[154]

EPA is also soliciting comment on the revisions we made in the 2020 final rule to the definitions in the percentage standards formulae at 40 CFR 80.1405(c) to account for a projection of the exempted small refinery volume, including for exemptions granted after the final rule. In the 2020 final rule, we justified the revised formulae based in part on our then-prospective SRE policy of following DOE's recommendations. As noted above, EPA does not know at this time how *RFA* and *Holly Frontier* will affect our SRE policy going forward, so we are co-proposing a range of exempted small refinery volumes. Since the revisions to the formulae were based in part on our SRE policy, we are also soliciting comment on the revisions, specifically with regard to our decision to account for a projection of exemptions granted after the final rule.

C. Modification of the 2020 Biomass-Based Diesel Percentage Standard

As noted above, the percentage standards implement the nationally applicable volume requirements. Since EPA is proposing to revise the nationally applicable volume requirements for 2020 in this action under our reset authorities, we are proposing to also establish revised percentage standards corresponding to those volumes. With regard to the 2020 and 2021 BBD volumes, EPA is not proposing to revise such volumes, which were established in the 2019 and 2020 final rules, respectively.[155] Nonetheless, EPA is proposing to revise the percent standards for the 2020 volume. We are also proposing to establish the volume requirement and associated percentage standard for 2022 for the nationally applicable volume requirement for BBD using our set authority as described in Section III.E.

With regard to 2021 BBD, EPA did not previously promulgate percentage

[147] *Renewable Fuels Ass'n* v. *EPA,* 948 F.3d 1206 (10th Cir. 2020), *rev'd in part sub nom., HollyFrontier Cheyenne Refining, LLC,* v. *Renewable Fuels Ass'n,* 114 S. Ct. 2172 (2021).

[148] *RFA* at 1244–49.

[149] *RFA* at 1253–54.

[150] ''A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects,'' Dallas Burkholder, Office of Transportation and Air Quality, US EPA. May 14, 2015.

[151] ''Denial of Petitions for Rulemaking to Change the RFS Point of Obligation,'' EPA–420–R–17–008, EPA–HQ–OAR–2016–0544–0525, (November 22, 2017).

[152] 114 S. Ct. 2172 (2021).

[153] 85 FR 7049 (February 6, 2020).

[154] We are not adjudicating any SREs in this action, and this action does not prejudge any SRE petition. Rather, this proposal simply reflects our best estimate at this time of the potential range of exempt volumes in 2020, 2021, and 2022.

[155] 83 FR 63704 (December 11, 2018); 85 FR 7016 (February 6, 2020). In this action, we are not reopening nor seeking comment on the 2020 or 2021 BBD volume requirements.

standards, and thus we do so now for the first time.[156] With regard to 2020 BBD, EPA previously promulgated percentage standards in the 2020 final rule.[157] In this action, EPA is proposing to modify the 2020 BBD percentage standard, even though we are not modifying the 2020 BBD volume requirement that we previously established. Specifically, we are proposing to use the same volume requirement previously promulgated (2.43 billion gallons) but to update the other inputs for calculating the standard (such as the projections of gasoline and diesel consumption and exempted small refinery volumes in 2020), which we term ''inputs'' in the remainder of this section. We are also proposing to apply the new BBD multiplier of 1.55, which we discuss further in Section VIII.A.

We are proposing to update the inputs because it is logical for all of the 2020 percentage standards to be calculated using the same inputs. This is consistent with EPA's policy since the beginning of the RFS program, where we have generally calculated all the percentage standards for a given year based on the same inputs. Here, because we are updating the inputs for the other 2020 percentage standards, we also propose to modify the inputs for the 2020 BBD percentage standard. This approach is supported by the nested nature of the standards, where BBD is a subset of the advanced biofuel and total renewable fuel standards, and compliance with all three is accomplished in part by using the same RIN credits. We think it would not be appropriate to use updated inputs for the other standards, while simultaneously using what is now outdated data for the BBD standard alone.

Additionally, the inputs we are proposing to use in this action are quite different from the inputs used in the 2020 final rule. As discussed in Section II.D. and III.B., the projections for gasoline and diesel consumption in 2020 final rule, which were used to establish the BBD standard, are significantly different than the actual gasoline and diesel consumed in 2020. Relative to the 2020 final rule, we are also co-proposing different projections of SREs, as discussed in the prior section.

Finally, we note that our proposed modification to the 2020 BBD percentage standard is not anticipated to have any significant real-world impacts. As set forth in the next section, the proposed modification results in an increase in the BBD percentage standard, which will increase the number of RINs required for compliance with this standard. However, even were we to retain the original, lower standard, we would nonetheless expect the same number of BBD RINs to be used for 2020 compliance given that BBD is nested within the advanced biofuel category and we are proposing to set the advanced biofuel percentage standard based on actual use of renewable fuels.

D. Proposed Standards

The formulas in 40 CFR 80.1405 for the calculation of the percentage standards require the specification of a total of 14 variables comprising the renewable fuel volume requirements, projected gasoline and diesel demand for all states and territories where the RFS program applies, renewable fuels projected by EIA to be included in the gasoline and diesel demand, and projected gasoline and diesel volumes from exempt small refineries. The values of all the variables used for this proposed rule are shown in Table VI.C–1 for the applicable 2020, 2021, and 2022 standards.[158]

TABLE VI.C–1—VOLUMES FOR TERMS IN CALCULATION OF THE PROPOSED PERCENTAGE STANDARDS

[Billion RINs]

Term	Description	2020	2021	2022	2022 supplemental
RFV_{CB}	Required volume of cellulosic biofuel	0.51	0.62	0.77	0
RFV_{BBD}	Required volume of biomass-based diesel [a]	2.43	2.43	2.76	0
RFV_{AB}	Required volume of advanced biofuel	4.63	5.20	5.77	0
RFV_{RF}	Required volume of renewable fuel	17.13	18.52	20.77	0.25
G	Projected volume of gasoline	123.25	133.06	136.49	136.49
D	Projected volume of diesel	50.49	54.52	56.81	56.81
RG	Projected volume of renewables in gasoline	12.63	13.64	13.98	13.98
RD	Projected volume of renewables in diesel	2.15	2.23	2.66	2.66
GS	Projected volume of gasoline for opt-in areas	0	0	0	0
RGS	Projected volume of renewables in gasoline for opt-in areas.	0	0	0	0
DS	Projected volume of diesel for opt-in areas	0	0	0	0
RDS	Projected volume of renewables in diesel for opt-in areas	0	0	0	0
GE	Projected volume of gasoline for exempt small refineries (low).	0.00	0.00	0.00	0.00
	Projected volume of gasoline for exempt small refineries (high).	4.80	4.80	4.80	4.80
DE	Projected volume of diesel for exempt small refineries (low).	0.00	0.00	0.00	0.00
	Projected volume of diesel for exempt small refineries (high).	3.39	3.39	3.39	3.39

[a] The BBD volume used in the formula represents physical gallons. The formula contains a proposed 1.55 multiplier to convert this physical volume to ethanol-equivalent volume.

[156] This action is consistent with past annual rules, which have generally promulgated the BBD percentage standard for the BBD volume set in the prior year's annual rule. This is due to the unique statutory timing applicable to BBD, where EPA must set the volume 14 months in advance but promulgate percentage standards by November 30 of the immediately preceding year. See CAA section 211(o)(2)(B)(ii), (o)(3)(B)(i).

[157] 85 FR 7049 (February 6, 2020).

[158] See the technical memoranda, ''Calculation of proposed % standards for 2020,'' ''Calculation of proposed % standards for 2021,'' and ''Calculation of proposed % standards for 2022,'' available in the docket for this action.

Projected volumes of gasoline and diesel, and the renewable fuels contained within them, were derived from EIA's May 2021 STEO. For the final rule, the 2022 gasoline and diesel projections will be provided by EIA in a letter to EPA that is required under the statute, while the projections for 2020 and 2021 will be derived from the latest version of the STEO, which we anticipate being the October 2021 STEO.[159]

Using the volumes shown in Table VI.C–1, we have calculated the proposed percentage standards for 2020, 2021, and 2022 as shown in Table VI.C–2.

TABLE VI.C–2—PROPOSED PERCENTAGE STANDARDS

Standard	2020			2021		2022	
	Original	Revised low	Revised high	Low	High	Low	High
Cellulosic Biofuel	0.34%	0.32%	0.34%	0.36%	0.38%	0.44%	0.46%
Biomass-Based Diesel	2.10	2.37	2.50	2.19	2.30	2.42	2.54
Advanced Biofuel	2.93	2.91	3.07	3.03	3.18	3.27	3.42
Renewable Fuel	11.56	10.78	11.36	10.79	11.33	11.76	12.33
Supplemental Standard	n/a	n/a	n/a	n/a	n/a	0.14	0.15

The proposed regulations at 40 CFR 80.1405 can only contain one set of percentage standards. Given this constraint, the proposed regulations contain only the percentage standards representing the low end of the range shown in the table above. However, we do not intend this approach to indicate a preference for the low end of the range of proposed percentage standards.

VII. Biointermediates

A. Background

The RFS regulations were designed with the general expectation that renewable biomass would be converted into renewable fuel at a single facility (*e.g.,* a renewable fuel producer purchases corn directly from several farmers in a region, crushes the corn in a mill, and then ferments the corn into ethanol, all at the same facility). The regulations therefore impose requirements on renewable fuel producers to provide EPA with information necessary to verify that their fuel was made with qualifying renewable biomass, through production processes corresponding with approved pathways, and in volumes corresponding to feedstocks used. Such information submissions are necessary for oversight and enforcement, leading to increased integrity and confidence in the program.

Since the RFS2 regulatory program was promulgated in 2010, however, EPA has received a number of inquiries from companies regarding the possible use of renewable biomass that has been substantially pre-processed at one facility to produce a proto-renewable fuel (referred to as a biointermediate) that is subsequently used at a different facility to produce renewable fuel for which RINs would be generated. For example, a number of companies have approached us with the proposed use of woody biomass or separated MSW to produce a biocrude (a pre-processed feedstock that could then be processed into renewable fuel at a crude oil refinery). In response to these requests, EPA has stated that the existing RFS regulations are insufficient to generally allow RINs to be generated in situations wherein multiple facilities are involved in the conversion of renewable biomass feedstocks into renewable fuel.

On November 16, 2016, EPA issued the proposed Renewables Enhancement and Growth Support (REGS) rule that outlined proposed provisions to allow the use of biointermediates to produce qualifying renewable fuels under the RFS program.[160] The proposed REGS rule outlined a comprehensive set of compliance provisions, enforcement provisions, and oversight mechanisms for biointermediates that would have allowed biointermediates into the RFS program while maintaining effective oversight of the production, transfer, and use of biointermediates to make renewable fuels. A public hearing was held in Chicago, IL, on December 16, 2016, and the public comment period ended on January 17, 2017.

Since the proposed REGS rule was issued, EPA has continued to review public comments and other information and to carefully consider how best to develop and implement a program that would allow for the production, transfer, and use of biointermediates to produce renewable fuel under RFS. We continue to believe that the use of biointermediates to produce renewable fuels would be a reasonable and positive development for the future growth in production particularly of cellulosic and advanced biofuels. However, we also continue to believe that the existing regulations are insufficient to allow the use of biointermediates because we are unable to verify the validity of RINs generated in situations where feedstocks are allowed to be processed at multiple facilities, and where partially processed feedstocks, which may appear very similar to renewable fuels themselves, are transferred between parties. The value of these RINs provides considerable incentive for fraudulent activity, and therefore it is important for the integrity of the program that mechanisms be in place to verify their validity.[161]

After careful consideration of public comments received in response to the proposed biointermediates provisions in the proposed REGS rule and further thought on how best to design and implement a potential biointermediates program, we are proposing biointermediates provisions anew. This proposal re-proposes many aspects of the biointermediate provisions in the proposed REGS rule but also updates several key aspects of that proposal reflecting what we have learned since the original proposal. We discuss what biointermediate provisions we are re-proposing without significant changes from the proposed REGS rule in Section VII.B and the updated revisions in Section VII.C. We also specifically seek comment on a number of issues related

[159] To determine the 49-state values for gasoline and diesel, the amount of these fuels used in Alaska is subtracted from the totals provided by EIA because petroleum-based fuels used in Alaska do not incur RFS obligations. The Alaska fractions are determined from the June 26, 2020 EIA State Energy Data System (SEDS), Energy Consumption Estimates. In addition, fuel used in ocean-going vessels is also subtracted from the total because it is excluded from the definition of transportation fuel by the statute. This volume is provided directly by EIA.

[160] See 81 FR 80828 (November 16, 2016).

[161] We note that there has been a long history of RIN fraud in the RFS program. We detail several of the major RIN fraud civil enforcement cases on our website, available at *https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program.*

to including biointermediates in the RFS program in Section VII.D.

We are reproposing (*i.e.,* proposing anew) the biointermediates provisions here for two main reasons. First, since the publication of the proposed REGS rule, we have reviewed comments received on that proposed rulemaking and have engaged in numerous discussions with parties interested in bringing biointermediates into the RFS program. After almost five years of further consideration, we have identified several areas that we would like to modify or enhance. These changes impact what biointermediates would be allowed under the program and what parties that produce, transfer, and use biointermediates would need to do to demonstrate compliance.

Second, we believe it would be useful to provide an additional opportunity for stakeholders interested in biointermediates to comment on the proposed biointermediates provisions more generally. Due to the amount of time that has passed since we proposed the REGS rule, the nature and number of the parties interested in bringing biointermediates into the program has changed. We believe that by providing an additional opportunity for public comment on all aspects of the proposed biointermediates provisions, we would receive additional comments with reasonable suggestions to modify and enhance the proposed biointermediates provision in addition to those we received during the proposed REGS rule comment period. Furthermore, we believe there are specific provisions that we proposed in the REGS rule that would benefit from additional public comment (these are discussed in Section VII.D).

For these reasons, we are proposing all the biointermediates provisions anew and broadly seek comment on these reproposed biointermediate provisions. Commenters that submitted comments on the proposed biointermediates provisions in the REGS rule must resubmit any relevant comments in order for those comments to be considered. As this is a new proposal, we do not intend to respond to comments that were submitted only on the previously proposed biointermediates provisions in the REGS rule. Such comments are outside the scope of this action.

We also seek comment from potential producers of biointermediates on the current status of operations, potential production volumes, timelines for production, and any other information that may help inform EPA as to the expected use of biointermediates to produce renewable fuel both during 2022 and out into the future.

B. Re-Proposal of Biointermediates Provisions Previously Proposed in REGS

In this action, we are reproposing certain biointermediate provisions that we previously proposed in the REGS rule. Many of the program design elements for proposed biointermediate provisions remain unchanged from the REGS proposal and are being reproposed here with no modifications other than ministerial changes. The provisions we are reproposing without substantive changes are the following:

- The calculation of lifecycle GHG emissions where biointermediates are used to make renewable fuels and the treatment of pathways for RIN generation where biointermediates are converted into renewable fuels;
- Limiting the production of biointermediates to a single facility;
- The potential liability of biointermediate and renewable fuel producers for violations of the proposed biointermediate provisions;
- Registration, reporting, and recordkeeping requirements for biointermediate producers as well as additional registration, reporting, and recordkeeping requirements for renewable fuel producers that use biointermediates;
- Annual attest engagements for biointermediate producers;
- RFS quality assurance program (QAP) provisions for biointermediate producers and renewable fuel producers that use biointermediates; and
- The treatment of biointermediates produced at foreign facilities.

This preamble incorporates the discussions of each of these elements that are contained in the referenced memo to the docket.[162] We note that because the RFS regulations have undergone several revisions since these elements were previously proposed, we have updated the proposed regulatory language to accommodate these revisions to help ensure consistency between the proposed biointermediate provisions and the rest of the RFS regulations. Additionally, while each of these individual provisions is substantively unchanged from the REGS proposal, how they fit into and function within the larger biointermediates program may be different under our proposed revised program. We discuss broader, substantive changes to the proposed biointermediate provisions in Section VII.C.

As explained above, we are requesting comment on these re-proposed provisions. Comments on these provisions previously submitted to the REGS rulemaking docket will not be considered unless they are resubmitted to the docket for this action (*i.e.,* EPA–HQ–OAR–2021–0324).

C. Changes to the Biointermediates Provisions Previously Proposed in the REGS Rule

In this action, we are also proposing some additions and updates to the biointermediate provisions previously proposed in the REGS rule. Specifically, we are proposing changes to the definition of biointermediate, limits on biointermediate transfers, and mandatory participation in the RFS QAP. We are also proposing changes to the compliance and enforcement provisions, including: New product transfer document requirements for RINs generated from renewable fuels produced from biointermediates; changes to the registration, reporting, recordkeeping, and attest engagement requirements; and provisions for the treatment of invalid RINs generated from biointermediates. These changes are discussed in more detail below.

1. Implementation Dates

We are proposing that the biointermediates provisions will be implemented starting 60 days after the publication of the final rule in the **Federal Register**. In recognition of the time that has passed since EPA first identified the need to revise the regulations to allow the use of biointermediates, we now intend to put a biointermediates program in place as soon as possible. We believe this proposed implementation date is achievable based on the scope of biointermediates provisions as proposed here. However, we note that depending on the complexity of the final biointermediate provisions, we may need to finalize a later implementation date to provide us enough time to put in place the compliance and oversight mechanisms necessary to effectively oversee the program.

We are seeking specific comments on when biointermediate producers expect to be able to begin production so we can consider the potential impacts of a later implementation date.

2. Definition of Biointermediate

We are proposing a definition of biointermediate that differs from what we proposed in the REGS rule. Previously, we proposed to define a

[162] Each of these elements are described in greater detail in the memorandum to the docket, ''Proposed Biointermediate Provisions in the proposed Renewables Enhancement Growth Support Rule,'' available in the docket for this action.

biointermediate as any renewable fuel feedstock material that meets all of the following criteria:

- It was derived from renewable biomass.
- It did not meet the definition of renewable fuel and RINs were not generated for it.
- It was produced at a facility that is registered with EPA, but which is different than the facility at which it is used to produce renewable fuel.
- It was made from the feedstock and would be used to produce the renewable fuel in accordance with the process(es) listed in the approved pathway.
- It was processed in such a way that it is substantially altered from the feedstock listed in the approved pathway.

We pointed out in the proposed REGS rule that our intent was that feedstocks currently listed in an approved pathway or that underwent form changes would not be considered biointermediates [163] and excluded form changes from the definition included in the proposed REGS rule. Such form changes included, but were not limited to the following:

- Chopping biomass into small pieces, pressing it, or grinding it into powder.
- Filtering out suspended solids from recycled cooking and trap grease.
- Degumming vegetable oils.
- Drying wet biomass.
- Adding water to biomass to produce a slurry.

We received several public comments suggesting that the proposed definition was too broad and would include existing feedstocks that are currently used in approved pathways. These commenters argued that the additional registration, reporting, and recordkeeping requirements would be unnecessarily burdensome on the production of renewable fuels that already can generate RINs under the current RFS program. Commenters pointed to EPA's stated intent in the proposed REGS rule to avoid inclusion of almost all feedstocks covered by existing pathways either in Table 1 to 40 CFR 80.1426 or an EPA-approved pathway under 40 CFR 80.1416.

Additionally, since the proposed REGS rule, we have developed a better understanding of the potential implementation oversight challenges surrounding the inclusion of certain types of biointermediates. We now believe that the general, one-size-fits-all regulatory framework proposed in the REGS rule would not work in many of the biointermediates situations anticipated now and in the future and that it would be difficult for us to implement appropriately. In some cases it would treat situations as biointermediates when it was not necessary to do so, in other cases it would not treat situations as biointermediates that should be in order to provide proper oversight, and in still other cases it might treat situations as biointermediates but not in the way that our regulations were intended to address. Our additional consideration of biointermediates since REGS has emphasized that some potential biointermediates require unique provisions for ensuring that qualifying renewable biomass was used to make the biointermediate, ensuring that the biointermediate and the resultant renewable fuel processed at separate facilities continues to fall under an approved pathway, and ensuring that the renewable fuel gets used as transportation fuel, heating oil, or jet fuel. In other cases, we have concerns with the potential generation of invalid or fraudulent RINs especially when a biointermediate either is itself or is similar to a renewable fuel. Historically, when we have brought renewable fuels into the program that required unique considerations or had concerns over the generation of valid RINs, we have either promulgated specific regulatory requirements to address any concerns (*e.g.,* renewable fuel oil) or imposed certain terms and conditions on approved pathways as described at 40 CFR 80.1460(a)(7).

Based on the concerns highlighted in comments and what we have learned about individual biointermediates over the last several years, we no longer believe a broad approach to defining biointermediates would allow us to have sufficient oversight of the program (*i.e.,* to ensure that renewable fuels that generate RINs meet the applicable statutory and regulatory requirements). Each biointermediate has particular compliance and enforcement considerations, including how to track the biointermediate back to renewable biomass, how a biointermediate may be processed with other feedstocks to produce renewable fuel, how a biointermediate fits within existing pathways, and how to demonstrate the cellulosic content of the biointermediate. As such, we now believe it is necessary to design a program that allows us to consider and, if necessary, address these challenges on a biointermediate-by-biointermediate basis. We are thus proposing to specifically define the scope of which biointermediates would be covered by a biointermediates program. In other words, under this proposal we are defining the specific situations in which it would be permitted to process feedstocks into renewable fuels at multiple facilities. Under this proposal, if we do not list a ''biointermediate'' explicitly in the definition of biointermediate, the ''biointermediate'' would not be lawful for use in making renewable fuels under the RFS program. In order for a new biointermediate to be brought into the program, under this proposal, we would amend the regulations again in the future to add the new biointermediate to the list and make any other necessary regulatory changes needed to provide proper oversight for its potentially unique circumstances.

In this action, we are proposing to initially include the following biointermediates: Biocrude, free fatty acid (FFA) feedstock, and undenatured ethanol (including ethanol solutions containing less than 95% ethanol). We are also seeking comment on a longer list of additional potential biointermediates that we may choose to include in the final rulemaking depending upon the comments we receive on this proposal. We believe that the three proposed types of biointermediates we are proposing could effectively be accommodated by the updated provisions described in this action. We believe these biointermediates are likely to be available in measurable quantities in the near future and that our proposed biointermediate regulations can ensure proper compliance oversight and enforcement. We have had discussions with a variety of parties interested in producing and using biointermediates since the proposed REGS rule. Some parties making fuels from biocrude, FFA feedstocks, and undenatured ethanol could begin producing volumes as early as 2022. Since these parties are relatively close or already capable of producing renewable fuels from biocrude, FFA feedstock, and undenatured ethanol, and it is relatively clear to us how they will do so and what the compliance oversight issues might be with these biointermediates, we believe that it would be appropriate to allow the use of these biointermediates to produce renewable fuel after we finalize a biointermediates program.

To clearly establish what would be allowed under this proposed biointermediates program, we are also proposing definitions for the specific biointermediates that would initially be included in the program. We are proposing to define undenatured ethanol as ethanol that has not been denatured per Department of Treasury

[163] See 81 FR 80834 (November 16, 2016).

requirements.[164] We are also proposing specific definitions for biocrude and FFA feedstock. In the future as we revise the regulations to allow new biointermediate into the program, we would then also define those biointermediates. We also note that if we finalize additional biointermediates as part of the biointermediate definition in the final rule, we will also include specific definitions for those additional biointermediates.

The inclusion of FFA feedstock in the proposed definition of biointermediates implies that the existing pathways in Table 1 to 40 CFR 80.1426 satisfy the applicable GHG reduction thresholds in cases where FFA is produced from a feedstock and used to produce a renewable fuel in accordance with a process(es) listed in an approved pathway. We believe this conclusion is supported for the feedstocks listed in Table 1 that FFA biointermediates may be produced from, including biogenic waste fats, oils, and greases (FOG), distillers corn oil and sorghum oil, food wastes, oil crops, and algal oil. As discussed in the 2020 proposed rule, our original approval of pathways that use these feedstocks was based on lifecycle GHG assessments; our basis for potentially allowing FFAs produced from those feedstocks as biointermediates is that we believe the potential additional processing and transport associated with the additional FFA production step would add a limited amount of GHG emissions to the fuel's lifecycle.[165] However, where EPA has not conducted a lifecycle GHG assessment and determined that the original renewable biomass feedstock meets the GHG emission reduction requirements of the CAA, we cannot say that FFAs produced from that feedstock fit within existing pathways. Therefore, as explained further below, the proposed definition of FFA feedstock includes the following restriction: ''FFA feedstock must not include any free fatty acids from the refining of crude palm oil.''

The existing pathways using waste FOG feedstocks were approved based on our lifecycle GHG analysis of yellow grease (also known as used cooking oil or ''UCO'') for the RFS2 rule, which found, for example, that biodiesel produced from UCO results in a greater than 80% GHG reduction compared to baseline conventional diesel. In addition to UCO, the waste FOG feedstock category includes inedible animal tallow, the FOG components of food wastes and other similar materials that ''would otherwise normally be discarded or used for another secondary purpose because they are no longer suitable for their original intended use.'' [166] EPA has not determined whether FFA from the refining of crude palm oil (hereafter referred to as palm fatty-acid distillate or ''PFAD'') is consistent with and covered by our existing analyses and pathways. In particular, we have not investigated potential existing markets for PFAD and the potential market effects associated with using it as a biofuel feedstock. Although PFAD is a secondary product from crude palm oil refining, we believe that additional analysis is needed to determine whether fuel produced from PFAD would qualify for the applicable GHG reduction thresholds. Our lifecycle analysis of palm oil biodiesel, which has not been finalized through rulemaking, estimated that palm oil-based biodiesel and renewable diesel do not satisfy the 20% GHG reduction for renewable fuel.[167] Those estimates underscore the need to further evaluate the GHG emissions associated with using PFAD as a biofuel feedstock. For these reasons, we are specifying at this time that FFA feedstock does not include FFA from the refining of crude palm oil.

Our proposed approach to defining biointermediates is not intended to affect pre-processing steps for feedstocks in Table 1 that are limited to form changes. We recognize that it has been common practice for some feedstocks listed in Table 1 to 40 CFR 80.1426 or in an approved pathway pursuant to 40 CFR 80.1416 to be physically pre-processed at separate facilities before they are delivered to a renewable fuel production facility and used to produce renewable fuel. We do not intend to disrupt this practice. However, in order to assure that EPA can verify that renewable fuel was made with qualifying renewable biomass, through production processes corresponding with approved pathways, we need to impose limits on the type of pre-processing of qualifying feedstocks that will be allowed without complying with the biointermediate requirements. We intend to balance these interests by allowing the pre-processing of feedstocks listed in approved pathways at facilities other than the renewable fuel production facility, but only if the pre-processing results only in a form change such as chopping, crushing, grinding, pelletizing, filtering, compacting/compression, centrifuging, degumming, dewatering/drying, melting, or the addition of water to produce a slurry.

To implement this approach, we are proposing to prohibit any person from producing a renewable fuel at more than one facility unless the person uses a biointermediate as defined in 40 CFR 80.1401 or uses feedstocks identified in Table 1 to 40 CFR 80.1426 or in an approved pathway pursuant to 40 CFR 80.1416, which were pre-processed at a different facility, and the pre-processing results only in a form change such as chopping, crushing, grinding, pelletizing, filtering, compacting, compression, centrifuging, degumming, dewatering/drying, melting, or the addition of water to produce a slurry. We seek comment on whether we should expand or narrow the types of pre-processing that should be allowed for feedstocks that are not biointermediates at facilities other than the renewable fuel production facilities. Our intent with this proposed addition is to make clear the specific situations where feedstocks will be allowed to be processed at multiple facilities without being subject to the proposed biointermediates provisions. We believe this change would address comments received in the proposed REGS rule that we were overly inclusive of feedstocks already in use in current pathways.

We recognize that the proposed definition of biointermediates does not reflect the full range of potential biointermediates identified to the Agency over the years. As such, we seek comment on whether we should include other potential biointermediates in the proposed definition for the final rulemaking. We will consider adding these additional biointermediates in the definition in the final rulemaking if the potential biointermediate could appropriately be produced, transferred, and used to make renewable fuel within the proposed provisions for biointermediates in this action. Specifically, we intend to base our consideration of including a potential biointermediate on whether there are adequate controls to limit opportunities to generate fraudulent RINs, whether feedstocks used to produce the biointermediate qualify as renewable biomass, and whether there are any unique considerations for the potential biointermediate that would require further regulatory requirements to ensure that generated RINs are valid. Commenters suggesting that we include a potential biointermediate in the final rulemaking should specifically address

[164] See 27 CFR parts 19 through 21. Ethanol does not become a ''renewable fuel'' under the RFS regulations until it is denatured. The preamble to the RFS2 regulations explains that ''ethanol that is valid under RFS2 must be denatured.'' See 75 FR 14670, 14713 (March 26, 2010).

[165] 84 FR 36801–36803 (July 29, 2019).

[166] 75 FR 14794 (March 26, 2010).

[167] 77 FR 4300 (January 27, 2012).

these issues in their comments. Furthermore, commenters should provide information describing the type of potential biointermediate, the potential volume of renewable fuel(s) that could be produced from it, and the timeline for its development and ultimate production. Based on consideration of information submitted from commenters on potential biointermediates, we would only intend to finalize those potential biointermediates for which we believe that proposed compliance and oversight provisions can be effectively overseen, have a low likelihood of being susceptible to generation of fraudulent RINs, can be verified as being renewable biomass, and would not require further regulatory provisions.

To aid commenters as to some of the potential biointermediates we will consider including in the final rulemaking, we are providing a memorandum to the docket that lists potential biointermediates that have come to our attention over the past 5 years.[168] The list of potential biointermediates described in the memorandum to the docket is not intended to be exhaustive, and we will consider potential biointermediates not included in the memorandum in the final rule.

3. Limits on Biointermediate Transfers

We are proposing that renewable fuel production facilities would be able to receive biointermediates from multiple biointermediate production facilities. However, unlike under the proposed REGS rule provisions, under this new proposal biointermediate production facilities would not be able to send biointermediates to multiple renewable fuel production facilities.[169] We believe this limitation will significantly simplify and improve oversight of RIN generation for renewable fuels produced from biointermediates without unreasonably limiting the production and use of biointermediates. Since the proposed REGS rule, we have become increasingly concerned that, were we to allow biointermediate production facilities to transfer product to multiple renewable fuel production facilities and renewable fuel production facilities to also receive product from multiple biointermediate producers, some parties could take advantage of the increased complexity in tracking relationships and batches to use non-qualifying feedstocks to make renewable fuel or generate fraudulent RINs through double-counting. We believe that without this restriction on biointermediates transfers the use of non-qualifying feedstocks would be more likely to occur and more difficult to detect. In order to effectively audit whether the correct type(s) and volumes of biointermediates were used, all facilities that produced and used biointermediates would need to be audited, which could be a large number of facilities if there were no limits on biointermediate transfers. Such oversight would be unrealistic for EPA or independent third parties to oversee, which would increase opportunities for the generation of invalid or fraudulent RINs and undermine the intent of the program. Since we expect most biointermediate situations will involve relatively small biointermediate production facilities and relatively large renewable fuel production facilities, we have structured the program to provide flexibility where it is most needed and most beneficial for enabling increased renewable fuel production. Namely this new proposal continues to allow multiple biointermediate producers to provide their product to a single renewable fuel production facility to be converted into renewable fuel. We seek comment on our proposal to limit biointermediate transfers such that renewable fuel production facilities can receive biointermediates from multiple biointermediate producers but each biointermediate producer can transfer its product to only one renewable fuel producer.

Under this proposal, the biointermediate and renewable fuel producer would need to designate through registration the receiving renewable fuel production facility to which biointermediate would be transferred. As explained in Section VII.B and docket memo, we are proposing anew the REGS provisions that require tracking of the volumes of biointermediate, and associated properties of the biointermediate, through periodic reporting requirements.[170] Recognizing that biointermediate producers may need to periodically change the receiving renewable fuel production facility, we are proposing that biointermediate producers would be allowed to change their designated renewable fuel production facility no more than one time per calendar year unless, in its sole discretion, EPA determined that it was appropriate to allow the biointermediate producer to change its designated renewable fuel production facility more than once in a year. An example of a situation where EPA would consider it appropriate is the closure of the receiving renewable fuel production facility.

We do not believe this restriction would impose much practical burden on transfers of biointermediate producers. We note that under the proposed biointermediates program, the newly designated receiving renewable fuel production facility would need to be registered to use the biointermediate, which would in turn require an engineering review by a professional engineer. This process can take several months to arrange for a PE to conduct the engineering review, submit the registration update to EPA, and have it ultimately accepted by EPA. Also, as discussed in Section VII.C.4, under this proposal both the biointermediate and renewable fuel producers would need their respective facilities audited under the QAP program, which would also increase the amount of time needed to change the designated receiving renewable fuel production facility. Consequently, because of the time to conduct new engineering reviews and have new quality assurance plans approved by EPA, we believe that biointermediate producers would be practically limited to only being able to change their receiving renewable fuel production facility once per calendar year. Despite these practical limitations, we seek comment on whether and in which narrow circumstances we should allow biointermediate producers to change their designated receiving renewable fuel production facility more than once a calendar year.

We believe that the proposed biointermediate transfer provisions will enable both the production and use of biointermediates and enhance our ability to provide compliance and enforcement oversight. In most cases, we believe that a single renewable fuel production facility would receive all

[168] See memorandum to the docket entitled, ''Potential Biointermediates,'' available in the docket for this action.

[169] Informally, this type of relationship is called a ''many-to-one'' relationship in that under this approach many biointermediate production facilities could only transfer biointermediates to a single renewable fuel production facility. In contrast, the proposed REGS rule would have allowed biointermediate production facilities to transfer a biointermediate to more than one renewable fuel production facility and for renewable fuel production facilities to receive biointermediates from multiple biointermediate production facilities. Informally, this type of relationship is called a ''many-to-many'' relationship in that biointermediate production facilities could transfer biointermediates to many renewable fuel production facilities, and renewable fuel production facilities could receive biointermediates from many biointermediate production facilities.

[170] These provisions are described in greater detail in the memorandum to the docket, ''Proposed Biointermediate Provisions in the proposed Renewables Enhancement Growth Support Rule,'' available in the docket for this action.

biointermediate produced from a biointermediate production facility. This approach is primarily based on discussions with parties interested in the production and use of biointermediates, and on our understanding of how we believe that biointermediate transfers would be contracted by biointermediate and renewable fuel productions and how renewable fuel production facilities would be designed to accommodate the use of biointermediates.

We seek comment on the proposed provisions for biointermediate transfers. We specifically seek comment on specific examples of where the proposed provisions may encourage or restrict the use of biointermediates to generate renewable fuel volumes and the likely volumes that may be affected, as well as on any examples of how the proposed provisions may or may not provide for sufficient oversight or RIN fraud prevention. We also ask that commenters describe any additional or alternative provisions that might allow the use of biointermediates from multiple facilities to be used to produce fuel at multiple renewable fuel producers while still allowing effective oversight.

4. Mandatory QAP

We are proposing anew the revisions to the RFS QAP to cover biointermediate production and use.[171] The RFS QAP provides for auditing of renewable fuel production facilities by independent third-party auditors who review feedstock elements, process elements, and RIN generation elements to determine if renewable fuel production is consistent with EPA requirements. These independent third-party auditors verify the RINs generated from these renewable fuel production facilities. Under this proposal, independent third-party auditors would review feedstock and process elements for biointermediate production facilities like those currently reviewed for renewable fuel production facilities. In turn, these independent third-party auditors would verify that the biointermediate was properly produced.

We are also proposing to require QAP participation for biointermediate producers and renewable fuel producers that use biointermediates. Due to the need to balance the competing priorities of allowing the timely use of biointermediates for the production of renewable fuel in the near term and establishing a program that EPA can effectively oversee for the long term, we are proposing that biointermediate producers and renewable fuel producers that use biointermediates must participate in the RFS QAP. Mandating QAP participation for biointermediate producers and renewable fuel producers that use biointermediates will help ensure that RINs generated from biointermediates are valid.

Under the REGS proposal, we had proposed that participation in the QAP could have become voluntary after the end of the proposed interim period.[172] However, since the time of the proposed REGS rule, we have developed a better understanding of the potential complexity of overseeing the transfers of biointermediates and renewable fuels under the RFS program. Based on this understanding, we believe that allowing the production and use of biointermediates to go unverified would provide increased opportunity for the use of unapproved feedstocks and the generation of fraudulent RINs through double-counting. We believe having an independent third-party auditor verify the production of both the biointermediate and the renewable fuel is necessary to help oversee the added complexity that results from having renewable fuel processing occur at two different facilities. Further, we are proposing that the biointermediate producer and renewable fuel producer must use the same QAP vendor to ensure consistent oversight of the two facilities.

We do not believe that mandatory QAP participation would be overly burdensome. Many of the parties that have encouraged EPA to adopt biointermediate regulations have indicated they intend to participate in the QAP program. We also expect that obligated parties that obtain and use RINs generated for renewable fuels made from biointermediates for compliance would request that biointermediate and renewable fuel producers participate in the QAP as obligated parties would continue to be liable for the replacement of any invalid RINs generated on such renewable fuels.

We seek comment on making QAP participation mandatory for both the biointermediate producer and the renewable fuel producer where renewable fuel is produced from biointermediates.

5. Product Transfer Documents (PTD)

Consistent with the REGS proposal, we are proposing anew PTD requirements for the transfers of biointermediates from biointermediate producers to renewable fuel producers.[173] These PTD requirements include information about the biointermediates type, volume, renewable content, cellulosic content (if applicable), and the transfer of records needed for the renewable fuel producer to demonstrate that the biointermediate was produced using qualifying renewable biomass and that other aspects needed to ensure that the RFS regulations were met.

In addition to reproposing the PTD requirements for transfers of biointermediates, we are also proposing for the first time PTD requirements for RINs generated from renewable fuel produced from biointermediates. In the REGS proposal, we did not propose any changes to the PTD requirements for RINs generated from renewable fuels produced from biointermediates. Since the REGS proposal, due to the way that RINs are transacted in EMTS,[174] we have realized that parties that transfer and use RINs generated from renewable fuels made from biointermediates may not be aware that the RINs came from biointermediates. Such parties may wish to have identified such RINs because 40 CFR 80.1460 prohibits any party from transferring invalid RINs. These parties may wish to have information related to whether the RIN was produced from a renewable fuel made from a biointermediate prior to transacting the RINs. Therefore, we are also proposing additional elements for PTDs related to RINs under 40 CFR 80.1453(a). Under this proposal, RINs PTDs would need to identify that the RINs were generated from renewable fuels produced from biointermediates as well as the EPA-issued company and

[171] As explained in Section VII.B, we are reproposing the biointermediates provisions of the REGS rule. We discuss the proposed QAP requirements in more detail in the memorandum to the docket, ''Proposed Biointermediate Provisions in the proposed Renewables Enhancement Growth Support Rule,'' available in the docket for this action.

[172] In the proposed REGS rule, the interim period was a period of approximately 12 months where a more limited set of regulatory provisions would have applied to parties that produced, transferred, and used biointermediates. This action does not include a proposed interim period.

[173] As explained in Section VII.B, we are reproposing the biointermediates provisions of the REGS rule. We discuss the proposed PTD requirements in more detail in the memorandum to the docket, ''Proposed Biointermediate Provisions in the proposed Renewables Enhancement Growth Support Rule,'' available in the docket for this action.

[174] In EMTS, parties can specify to transact RINs from specific renewable fuel producers by facility and D-code. Current EMTS functionality would not allow parties to transact RINs based on a whether the RINs were generated from renewable fuel made from a specific feedstock (or biointermediate if the proposed biointermediate provisions are finalized). Furthermore, EMTS would not indicate to parties transacting the RINs in any way whether such RINs came from a renewable fuel made from a biointermediate.

facility numbers of the biointermediate producer. We believe that by requiring such information on the RIN PTDs, parties that transfer or use such RINs would better understand whether they were transferring and using RINs generated from renewable fuels produced from biointermediates. This would allow parties that transact RINs generated from renewable fuels made with biointermediates to make decisions on whether to transact the RIN. We seek comment on both the proposed PTD requirements for transfers of biointermediates and on the newly proposed RIN PTD requirements.

6. Registration, EMTS and Reporting Requirements

As in the REGS proposal, we are proposing here the registration, reporting, and EMTS requirements for biointermediates that are needed in order to implement the program.[175] Some of these proposed elements have already been discussed in conjunction with the proposed biointermediates provisions addressed in this section. Others are additional elements reflecting our current implementation of related provisions under the RFS program that have changed since we proposed the REGS rule. Registration elements include proposed requirements for renewable fuel producers that intend to produce or utilize biointermediates as part of their production process to register these processes and related information similar to other feedstock registration requirements. Biointermediate producers must also register production capacities, information on the feedstocks intended for processing, co-products produced and, similar to renewable fuel producers, complete an initial engineering review followed by an update every three years. For EMTS, the renewable fuel producer utilizing biointermediates in the production of renewable fuel would report the type and quantity of biointermediates used for the batch and the EPA facility registration number for each production facility. Renewable fuel producers utilizing biointermediates would report total co-products and the process(es), feedstock(s), and biointermediate(s) used and proportion of renewable volume attributable to each process and feedstock. Biointermediate producers or importers would report for each batch the volume, identifying information for the entity receiving title to the batch and other characteristics of the batch and associated production processes and characteristics of the batch.

We seek comment on the proposed registration, reporting, and EMTS requirements for biointermediates. We are also seeking comment on potential improvements regarding the functionality of EMTS or other information systems related to the production, transfer, and use of biointermediates. While not part of the proposed regulations themselves, we believe it is important to identify areas where functional improvement is desired by the users of our information systems. Such feedback as part of this proposal would help us identify areas for improvement and prioritize development. For example, as discussed in Section VII.C.5, we believe parties that transfer and use RINs generated from renewable fuel produced from biointermediates may want the ability to tie the RINs back to specific biointermediates or biointermediate producers. We believe some parties may want to track whether RINs were generated from a specific biointermediate producer in EMTS. However, such a change would involve significant modification to EMTS, and therefore is not something that EPA would undertake unless desired and resources permitted. However, knowing what additional functionality is desired may allow us to include such features into our upcoming development plans.

7. Attest Engagement and Recordkeeping Requirements

We are proposing anew the attest engagement and recordkeeping requirements for biointermediates discussed in the proposed REGS rule, as well as some updating some of these requirements for biointermediates since that proposal.[176] Updated proposed requirements for attest engagement audits include validating the list of renewable fuel producers receiving any transfer of biointermediate batches and calculating the total volume received. We believe these updated requirements for attest engagement audit are appropriate to help ensure that the limits on biointermediate transfers discussed in Section VII.C.3 are followed.

We are proposing updated recordkeeping requirements to reflect the other changes discussed in this section. These updates are needed to help independent third parties and EPA conduct audits.

We seek comment on the proposed attest engagement and recordkeeping requirements for biointermediates. Specifically, we request comment on whether the attest engagement and recordkeeping requirements are adequate and whether any additional requirements are needed to enable implementation of the program.

8. Invalid RINs From Biointermediates

We are proposing anew the provisions that address the treatment of invalid RINs generated on renewable fuels produced from biointermediates.[177] Due to the potential complexity involved in determining the validity of RINs generated for renewable fuel produced from a biointermediate, we proposed in the REGS rule and are proposing anew that if any of the RINs in any batch of renewable fuel produced from a biointermediate are deemed invalid, then all RINs generated for that batch of renewable fuel would be considered invalid except to the extent that EPA, in its sole discretion, determines that some portions of these RINs would be valid. Since the proposed REGS rule, we have further considered how invalid RINs generated on renewable fuels produced from biointermediates could potentially be treated in complicated circumstances: Where multiple biointermediate and/or non-biointermediates are simultaneously processed to make renewable fuel with the same D-code, where biointermediate and/or non-biointermediates are simultaneously processed that result in multiple D-codes, and where biointermediates are co-processed with non-renewable biomass (*e.g.,* crude oil). Given the range of biointermediates that would be permitted under this proposal and based on discussions with parties that have expressed interest in using various types of biointermediates in the future, we believe it is important to address this situation clearly in the regulations as apportioning which RINs were tied to which gallons of renewable fuel made in these situations is complicated.

In all cases, where a biointermediate is processed simultaneously with other feedstocks or co-processed with non-

[175] We discuss the proposed registration, EMTS, and reporting requirements for biointermediates in more detail in the memorandum to the docket, ''Proposed Biointermediate Provisions in the proposed Renewables Enhancement Growth Support Rule,'' available in the docket for this action.

[176] We discuss the proposed attest engagement and recordkeeping requirements for biointermediates in more detail in the memorandum to the docket, ''Proposed Biointermediate Provisions in the proposed Renewables Enhancement Growth Support Rule,'' available in the docket for this action.

[177] We discuss the proposed liability provisions for biointermediates in more detail in the memorandum to the docket, ''Proposed Biointermediate Provisions in the proposed Renewables Enhancement Growth Support Rule,'' available in the docket for this action.

renewable biomass, we are proposing that all RINs generated from the renewable fuel would be invalid. This means that even if multiple different RIN batches would be generated in EMTS for apportioned volumes of the batch of renewable fuel, all RIN batches in their entirety would be invalid if any amount of non-qualifying biointermediate was used to generate any RIN on any volume of the renewable fuel. This would also include situations where the multiple RIN batches were for different D-codes or where multiple different biointermediates were used. We proposed this approach in the REGS rule, and we are now proposing additional regulatory provisions to better effectuate the intended outcome. We believe this provision is appropriate to avoid having to determine specifically which RINs are invalid in situations where biointermediates are processed simultaneously with other feedstocks or co-processed with non-renewable biomass, which may be difficult to ascertain. We also believe that this proposed provision would provide a strong incentive for renewable fuel producers to conduct due diligence oversight procedures on the biointermediate producer to avoid the invalidation of an entire batch of RINs.

We are also proposing that in cases where the renewable fuel is a renewable diesel, renewable gasoline, renewable diesel blendstock, or renewable gasoline blendstock, if a RIN is invalid under 40 CFR 80.1431(a)(1), the gallon of gasoline or diesel fuel for which the RIN was generated would incur an RVO. The regulations at 40 CFR 80.1407(f)(1) already exclude ''[a]ny renewable fuel as defined in § 80.1401'' from the volume of gasoline or diesel fuel produced or imported used to calculate an obligated party's annual RVO. In many cases, RINs are determined to be invalid because the renewable fuel was not made from renewable biomass, the RINs were double-counted, or were otherwise invalidly generated. In such cases, any volume of renewable gasoline or renewable diesel fuel would no longer be considered renewable fuel and therefore could not be excluded from an obligated party's RVO. We believe the situation in which a volume of renewable fuel (*e.g.,* a renewable diesel or gasoline) that was excluded from an obligated party's RVO but is no longer considered a renewable fuel will become more common if we allow the use of biocrude processed through crude refineries as a way to produce more advanced and cellulosic biofuels. We are proposing changes to the regulations at 40 CFR 80.1407(f)(1) to reiterate the requirement that renewable fuel for which a RIN is determined to be invalidly generated may not be excluded from a party's RVOs.

Finally, as a result of the proposed changes described above, we are proposing corresponding prohibited activities to address situations where biointermediates are produced, transferred, and used.[178] Specifically, we are proposing the following prohibited activities:

- Use of a feedstock to produce a biointermediate not covered by an existing pathway or in the proposed definition of a biointermediate discussed in Section VII.C.1;
- Illegal transfers of biointermediates consistent with the newly proposed provisions described in Section VII.C.2; and
- Generation of RINs from renewable fuels produced from biointermediates that have not been verified under the QAP as described in Section VII.C.3.

We believe these additional proposed prohibited activities are needed to help us enforce violations and ensure compliance of the proposed biointermediate provisions. We seek comments on these proposed prohibited activities and whether any additional prohibited activities related to the production, transfer, and use of biointermediates are necessary to ensure the integrity of RINs generated from biointermediates.

We believe that these additional elements coupled with the reproposed REGS rule provisions concerning liability and the treatment of invalid biointermediates would provide strong incentives on the part of renewable fuel producers to diligently be involved in overseeing the production, transfer, and use of biointermediates. We believe these provisions are necessary to address the increased complexity of allowing renewable fuels to be processed at more than one production facility. We seek comment on our proposed liability provisions for the production, transfer, and use of biointermediates and the treatment of invalid RINs generated from renewable fuels produced from biointermediates.

D. Other Considerations Related to Biointermediates

1. C–14 Testing and Mass Balance for RIN Generation

We are reproposing the requirement that C–14 testing, specifically Method B (accelerator mass spectrometry) of ASTM International (ASTM) D6866, be used in cases where biointermediates are co-processed with petroleum feedstocks at a renewable fuel production facility.[179] We are also seeking comment on potential alternatives to direct C–14 measurement of renewable content of co-processed fuels. In the proposed REGS rule, we proposed to require C–14 testing for co-processed fuels because we believe that the volume of biointermediate co-processed with petroleum at a crude refinery would likely be a small fraction of the refinery's throughput and would make it difficult to rely on a mass balance approach for RIN generation. Our primary concern was, and is, that the co-processed fuel would contain little or no renewable content from the biointermediate and that using the mass balance approach could result in the generation of RINs for the nonrenewable portion of the co-processed fuel. Additionally, as noted in the REGS proposal Method B of ASTM D6866 has greater precision compared with Method C.[180]

In the proposed REGS rule we sought comment on whether our proposed approach was appropriate, whether there are other methods that could produce similarly accurate and precise renewable content measurement to Method B of ASTM D6866 in co-processed fuels, and whether EPA should allow parties to petition for the use of a company-specific method to determine the renewable content of co-processed, partially renewable fuel produced from a biointermediate. We received a number of comments suggesting that EPA allow for the use of mass balance instead of requiring direct testing of renewable content using C–14 analysis in co-processed fuels. While many commenters highlighted the practical and financial benefits of using mass balance instead of direct C–14 measurements, commenters on the REGS proposal did not substantially address the concerns we raised regarding the accuracy and precision of a mass balance approach especially

[178] For a discussion of the proposed REGS rule liability and prohibited act provisions that we are reproposing see 81 FR 80839 (November 16, 2016).

[179] In the 2010 RFS2 final rule (see 75 FR 14876, March 26, 2010), EPA promulgated requirements for the generation of RINs for renewable fuel co-processed with petroleum-based fuels, and provided two methods for determining the renewable content of co-processed fuels: (1) Mass balance; or (2) Using Methods B or C of ASTM D6866 C–14 testing. See 40 CFR 80.1426(f)(4). These provisions from the proposed REGS rule are described in greater detail in the memorandum to the docket, ''Proposed Biointermediate Provisions in the proposed Renewables Enhancement Growth Support Rule,'' available in the docket for this action.

[180] See Martin R. Haverly *et al.,* Biobased Carbon Content Quantification through AMS Radiocarbon Analysis of Liquid Fuels, 237 Fuel, 1108, (2019).

where the biointermediate constitutes a relatively small portion of the co-processed feedstock. Specifically, commenters noted how difficult it is to collect samples for direct C–14 measurement from a crude refinery, the added expense and time to conduct the testing, and issues related to the validity of C–14 testing when there is only a small amount of renewable content in the co-processed fuel. We also received comments in support of a facility specific approach, but commenters did not provide information on how such a process would work or how such a process could result in sufficiently accurate and precise measurements of renewable content in co-processed fuels.

We continue to believe that direct C–14 measurement is the most accurate and precise way to determine the renewable content of co-processed fuels and that it is necessary to ensure whether a co-processed fuel actually contains renewable content. We also note that in Section VIII.F, we are proposing to define what it means for a renewable fuel to be ''produced from renewable biomass.'' Under this proposed definition, only energy in the renewable content of the finished fuel that was produced from renewable biomass would qualify as renewable fuel for RIN generation. As discussed in Section VIII.F, this proposed regulatory definition of ''produced from renewable biomass'' is consistent with the statutory requirements that renewable fuels be transportation fuel, heating oil, or jet fuel. Our proposal for direct measurement of renewable content in co-processed fuels is consistent with and necessary to effectuate this proposed definition of ''produced from renewable biomass.'' That is, because we do not believe a mass balance approach is capable of accurately determining the renewable content of fuels produced through co-processing of biointermediates, allowing renewable fuel production facilities to rely on this approach for RIN generation would be inconsistent with the definition of ''produced from renewable biomass.''

We seek comment on whether we should provide alternatives to requiring direct C–14 measurement of renewable content in co-processed fuels where biointermediates are used. While we are proposing to remove the allowance for use of mass balance for renewable fuel production facilities that co-process biointermediates with petroleum feedstocks, we also seek comment on whether and under what conditions it might be appropriate to allow for the use of mass balance when there is a sufficient amount of co-processed biointermediate to ensure that mass balance calculations actually represent renewable content in the co-processed fuel. For example, we could allow the use of mass balance if the biointermediate represented at least 10 percent of the total feedstock processed to produce the batch. If a sufficient amount of a biointermediate was used to make the co-processed fuel, we might have assurance that some of the biointermediate was converted into renewable fuel.

We also seek comment on whether we could allow the parties that co-process renewable fuels to develop a facility specific statistical model for use in estimating low levels of renewable content in co-processed fuel. Through such a process, renewable fuel producers could conduct a rigorous test program on a range of biointermediate levels processed through a specific facility to develop a statistical model to estimate renewable content of co-processed fuels at that specific facility for RIN generation. Similar to a mass balance approach, we acknowledge that a poorly-designed statistical model may inaccurately estimate the amount of renewable content in a co-processed fuel or indicate that renewable content was present in a co-processed fuel when there was none, especially at low levels.

Finally, we seek comment on whether there are any circumstances where we could rely upon results from Method C of ASTM D6866 (''Method C'') to measure renewable content of co-processed fuels made from biointermediates. As mentioned above, we continue to have concerns with Method C when measuring relatively small amounts of renewable content in co-processed fuels due to Method C's lower precision. However, we would consider the use of Method C if its accuracy and precision were improved and codified in an updated ASTM method or if Method C was restricted to measuring higher levels of renewable content (*e.g.,* above 10 percent) where we could be assured that measurement represented valid renewable content in co-processed fuels.

When commenting on the proposed requirement for direct C–14 testing, we specifically ask that commenters provide any relevant information or data on any demonstrating that an alternative is as accurate or precise in measuring the renewable content of co-processed fuels as the proposed C–14 method.

2. Standalone Esterification Pathway

In the proposed 2020 RVO rule, we proposed to add a standalone esterification pathway to rows F and H of Table 1 of 40 CFR 80.1426.[181] This would have allowed parties who have processing units that can take feedstocks listed in rows F and H of Table 1 of 40 CFR 80.1426 that have high-FFA content to separate the FFAs and triglycerides for chemical processing in separate standalone esterification and transesterification units, and generate RINs for the biodiesel produced.[182] We also noted in the proposed 2020 RVO rule that while this proposal would allow the separation of FFAs and triglycerides in qualified high-FFA feedstocks at the facility producing the biodiesel through these processes, regulatory amendments were needed to address situations where this separation took place at a facility other than the ultimate renewable fuel production facility.[183] We stated that the biointermediates provisions of the REGS rule would need to be finalized for parties to use FFAs separated from triglycerides in a feedstock at a location other than the biodiesel production facility.[184]

In the final 2020 RVO rule, we did not finalize the standalone esterification pathway, but noted that we may finalize the standalone esterification pathway in a future action.[185] We are proposing to include FFA feedstocks as one of the biointermediates specifically included in the proposed definition of biointermediate. We note that we would also need to finalize the previously proposed standalone esterification pathway for parties to process FFA feedstocks to biodiesel through direct esterification, which is one of the primary methods for producing renewable fuel from FFA feedstocks. If the proposed biointermediates provisions in this action are finalized and FFA feedstocks are included in the definition of biointermediates, we intend to also finalize the previously proposed standalone esterification pathway. In this case, we would respond to the public comments received previously on the proposed standalone esterification pathway in the 2020 RVO rule proposal and any additional public comments related to the standalone esterification pathway received on this proposal in such a final action. Unlike the biointermediates provisions from the REGS rule that are being re-proposed in this action, we are not re-proposing the standalone esterification pathway here and commenters do not have to resubmit

[181] See 84 FR 36801–36802 (July 29, 2019).
[182] See 84 FR 36801–36803 (July 29, 2019).
[183] See 84 FR 36802 (July 29, 2019).
[184] *Id.*
[185] See 85 FR 7058 (February 6, 2019).

previously submitted comments to this docket in order for them to be considered.

3. Intracompany Transfers of Biointermediates

We are seeking comment on whether we should provide flexibility for intracompany transfers of biointermediates (*i.e.,* cases where the same company owns both the biointermediate production facility and the renewable fuel production facility). In the proposed REGS rule, we did not propose any flexibilities for companies that transferred biointermediates between their biointermediate production facility and renewable fuel production facility. Under the proposed REGS rule, such companies would have to comply with all of the requirements regardless of whether they owned both the biointermediate production facility and the renewable fuel production facility.

During the public comment period for the REGS proposal, we received comments suggesting that we should not impose the new requirements for biointermediates when the party produces both the biointermediate and the renewable fuel. These commenters argued that they would be able to effectively track the production and use of biointermediates so additional compliance and enforcement provisions would not be needed. However, we believe that all parties should have consistent requirements on biointermediates. We believe that there could still be concerns with intracompany transfers of biointermediates as this lack of transparency could incent the generation of fraudulent RINs. In fact, we believe that the issues could be worse because if we exempted intracompany transfers from the proposed biointermediates provisions, there would be no required records, reports, or oversight on whether that company appropriately produced, transferred, or used the biointermediate. This would allow ample opportunities for parties to use non-qualifying feedstocks or generate fraudulent RINs and provide EPA no oversight mechanisms. The main purpose of the proposed biointermediate provisions is to ensure that EPA and third parties such as QAP and attest auditors have records and reports to verify the production, transfer, and use of biointermediates. These provisions help ensure that RINs generated from renewable fuels produced from biointermediates are valid.

We continue to believe that the proposed regulatory requirements are needed in this case, and, as such, we are not proposing to provide any flexibilities for intracompany transfers of biointermediates at this time. Nevertheless, we seek comment on whether such flexibilities are appropriate. Commenters should articulate in their public comments specifically what provisions they believe EPA could provide flexibility and how effective oversight of the program would be maintained.

VIII. Amendments to Fuel Quality and RFS Regulations

This section describes the regulatory changes we are proposing for fuel quality and RFS regulations.

A. BBD Conversion Factor for Percentage Standard

In the 2010 RFS2 rule, we determined that because the BBD standard was a ''diesel'' standard, its volume must be met on a biodiesel-equivalent energy basis.[186] In contrast, the other three standards (cellulosic biofuel, advanced biofuel, and total renewable fuel) must be met on an ethanol-equivalent energy basis. At that time, biodiesel was the only advanced renewable fuel that could be blended into diesel fuel, qualified as an advanced biofuel, and was available at greater than de minimis quantities.

The formula for calculating the applicable percentage standards for BBD needed to accommodate the fact that the volume requirement for BBD would be based on biodiesel equivalence while the other three volume requirements would be based on ethanol equivalence. Given the nested nature of the standards, however, RINs representing BBD would also need to be valid for complying with the advanced biofuel and total renewable fuel standards. To this end, we designed the formula for calculating the percentage standard for BBD to include a factor that would convert biodiesel volumes into their ethanol equivalent. This factor was the same as the Equivalence Value for biodiesel, 1.5, as discussed in the 2007 RFS1 final rule.[187] The resulting formula[188] (incorporating the recent modification to the definitions of GE_i and DE_i)[189] is shown below:

$$Std_{BBD,i} = 100 \times \frac{RFV_{BBD,i} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$Std_{BBD,i}$ = The biomass-based diesel standard for year i, in percent.

$RFV_{BBD,i}$ = Annual volume of biomass-based diesel required by 42 U.S.C. 7545(o)(2)(B) for year i, in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

GE_i = The total amount of gasoline projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

DE_i = The total amount of diesel projected to be exempt in year i, in gallons, per §§ 80.1441 and 80.1442.

In the years following 2010 when the percent standard formula for BBD was first promulgated, advanced renewable diesel production has grown. Most renewable diesel has an Equivalence Value of 1.7, and its growing presence in the BBD pool means that

[186] See 75 FR 14670, 14682 (March 26, 2010).

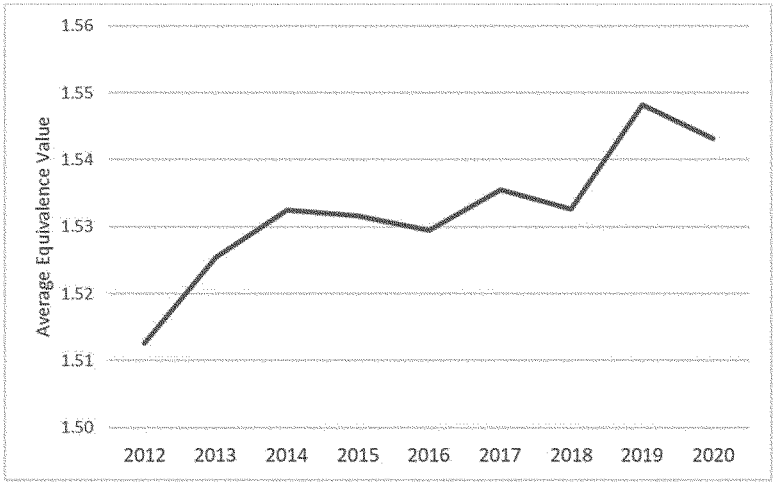
[187] See 72 FR 23900, 23921 at Table III.B.4–1 (May 1, 2007).

[188] See 40 CFR 80.1405(c).

[189] See 85 FR 7016 (February 6, 2020).

the average Equivalence Value of BBD has also grown.[190]

Figure VIII.A-1: Average Equivalence Value for BBD: Containing Both Biodiesel and Renewable Diesel



Source: Consumption of Biodiesel and Renewable Diesel with D4 RINs according to Data from EMTS

Because the formula currently specified in the regulations for calculation of the BBD percentage standard assumes that all BBD used to satisfy the BBD standard is biodiesel, it biases the resulting percentage standard low, given that in reality there is some renewable diesel in BBD. The bias is small, on the order of 2 percent, and has not impacted the supply of BBD since it is the higher advanced biofuel standard rather than the BBD standard that has driven the demand for BBD. Nevertheless, we believe that it would be appropriate to modify the factor used in the formula to more accurately reflect the amount of renewable diesel in the BBD pool. The average Equivalence Value of BBD appears to have grown over time without stabilizing. Given the growth in facilities producing renewable diesel as discussed in Chapter 5.2 of the DRIA, it is possible that the average Equivalence Value for BBD could continue to grow after 2020. As a result, we believe that the average Equivalence Value for BBD is likely to be at least 1.55. We therefore propose and seek comment on replacing the factor of 1.5 in the percentage standard formula for BBD with a factor of 1.55.[191] We are not proposing to change any other aspect of the percentage standard formula for BBD.

The proposed change would have a small impact on the calculation of the applicable percentage standard for BBD. For instance, for the 2021 BBD volume of 2.43 billion gallons finalized in the 2020 final rule, the applicable percentage standard would be 2.20 percent using the factor of 1.55, as compared to 2.13 percent using the factor of 1.5. However, this proposed change would have no impact on the generation of RINs. All biodiesel has generated and would continue to generate 1.5 RINs per gallon, and most renewable diesel has generated and would continue to generate 1.7 RINs per gallon. Similarly, compliance with the applicable percentage standards would not change, in that all D4 RINs would continue to count toward meeting the RVO for BBD.

Finally, the volume requirement for BBD ($RFV_{BBD,i}$ in the formula above) would be unaffected by the change to the formula for calculating the percentage standard.

B. Changes To Registration for Baseline Volume

We are proposing to revise the registration requirements at 40 CFR 80.1450(b)(1)(v) as well as the definition of ''baseline volume'' at 40 CFR 80.1401 to allow non-exempt (*i.e.,* non-grandfathered) renewable fuel producers to use either nameplate capacity or actual peak capacity for their facility's baseline volume if permitted capacity cannot be determined. We are not proposing to change the requirements for establishing the baseline volume of grandfathered facilities.[192] [193] All non-grandfathered facilities with an applicable permitted capacity would continue to be required to register using the permitted capacity pursuant to 40 CFR 80.1450(b)(1)(v)(A). Under the existing requirement, these facilities

[190] Under 40 CFR 80.1415(b)(4), renewable diesel with a lower heating value of at least 123,500 Btu/gallon is assigned an Equivalence Value of 1.7. A minority of renewable diesel has a lower heating value below 123,500 BTU/gallon and is therefore assigned an Equivalence Value of 1.5 or 1.6 based on applications submitted under 40 CFR 80.1415(c)(2).

[191] While we are proposing to only revise the factor of 1.5 in the percentage standard formula for BBD, we are including all four of the percentage standard formulas in our proposed amendatory text for 40 CFR 80.1405(c). This is due to the manner in which the original formulas were published in the CFR, which does not allow for revisions to a single formula without republishing all of the formulas. We are not reexamining any aspect of these formulas beyond the change to the factor of 1.5 in the BBD formula, and any comments on other aspects of the formulas are beyond the scope of this rulemaking.

[192] For purposes of this preamble, a ''grandfathered facility'' is a renewable fuel production facility that has volumes that are exempt from the renewable fuel lifecycle GHG reduction threshold under 40 CFR 80.1403(c). This provision exempts (*i.e.,* ''grandfathers'') facilities that commenced construction on or before December 19, 2007, did not discontinue construction for a period of 18 months after commencement of construction, and completed construction by December 19, 2010.

[193] For grandfathered facilities, baseline volume is the maximum volume of grandfathered fuel for which the facility is allowed to generate RINs. For non-grandfathered facilities, baseline volume is intended to indicate the maximum amount of renewable fuel that the facility is capable of producing. Actual peak capacity, however, may not be a good indicator of maximum capacity.

must use their actual peak capacity [194] as their baseline volume if the air permits do not specify the maximum rated annual output of renewable fuel and can only use nameplate capacity [195] to establish baseline volume if insufficient production records existed to establish actual peak capacity. The proposed regulatory revision would give non-grandfathered facilities that do not have an applicable permitted capacity the flexibility to establish baseline volume using either actual peak capacity or nameplate capacity.

We are proposing this revision in order to allow for more up-to-date information to be used in establishing the baseline volumes of non-grandfathered facilities. Actual peak capacity is based on actual production tied to when EISA was enacted (*i.e.,* December 2007), which is now more than a decade in the past. This historical peak capacity is not necessarily an accurate reflection of the facility's current production capacity. Since the passage of EISA, facilities may have improved efficiency, expanded the facility, or experienced an increase in production due to increased demand, resulting in larger production than the year used to calculate actual peak capacity. Having accurate capacity information for registered renewable fuel facilities is important for EPA in helping to identify whether facilities are generating an appropriate number of RINs.[196] This proposed change would allow a non-exempt facility to choose whether to use actual peak capacity or nameplate capacity if permitted capacity cannot be determined. Non-exempt facilities already registered using actual peak capacity would have the option to switch to nameplate capacity at any time.[197] This change would have no impact on facilities who choose not to use this option. We seek comment on this proposed change.

C. Changes To Attest Engagements for Parties Owning RINs (''RIN Owner Only'')

We are proposing to exempt parties that transact a relatively small number of RINs from the annual attest engagement requirements. In order to qualify for the proposed exemption, parties would need to be registered as a ''RIN Owner Only'' and not registered or engaged in any other role (*e.g.,* obligated party, exporter of renewable fuel, renewable fuel producer, renewable fuel importer, etc.). Such parties are currently required to submit an annual attest engagement under 40 CFR 80.1464(c), regardless of the number of RINs they transact or hold in a compliance year. Under the existing regulations, for example, a party whose only activity was to buy and sell a single RIN in any given compliance year would be required to complete an attest engagement for that year. Additionally, some parties that own a small number of RINs have difficulty selling such small denominations of RINs (*e.g.,* hundreds of separated D6 RINs) and can hold such RINs until they expire. These parties must then arrange for an annual attest engagement performed by a certified professional accountant (CPA) for those RINs, which can be quite costly especially when compared to the relatively low value of the small number of RINs owned.

We believe that parties who, in a given compliance year, are registered as a ''RIN Owner Only,'' who transact 10,000 or fewer RINs, and who do not exceed a RIN holding threshold under 40 CFR 80.1435, should not be required to complete an attest engagement for that compliance year. A party who is registered as a ''RIN Owner Only'' does not generate RINs and does not have an RVO. We believe that the information contained in EMTS and RIN activity reports for a RIN Owner Only who transacts a relatively small number of RINs and who does not exceed a RIN holding threshold conveys the necessary compliance information, and that the attest engagements for these parties do not add much value relative to their expense. Many of the affected parties are smaller businesses that are required to arrange the services of a CPA to perform their annual attest engagement. Making this change to the attest engagement requirements may result in a cost savings to these typically smaller businesses, without adversely affecting RFS program oversight.

We intend that the total number of RINs transacted in the year be counted toward the 10,000 RIN limit. RINs ''transacted'' includes RINs retired for reasons other than compliance retirements, such as the reason code ''voluntary RIN retirement.'' This means that if a party buys 5,000 RINs and sells 6,000 RINs in a year, the party will have transacted 11,000 RINs and would be required to complete the attest engagement for that year. We are proposing the 10,000 RIN limit based upon programmatic experience—specifically, we believe it reflects a reasonable level of activity below which the utility of the attest engagement is reduced. We seek comment on establishing this proposed attest engagement exemption for parties that transact fewer than 10,000 RINs in a compliance year and what the appropriate level of RIN transactions for this exemption should be.

D. Public Access to Information

Exemption 4 of the Freedom of Information Act (FOIA) exempts from disclosure ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' [198] In order for information to meet the requirements of Exemption 4, EPA must find that the information is either: (1) A trade secret, or (2) commercial or financial information that is: (a) Obtained from a person, and (b) privileged or confidential. Information meeting these criteria is commonly referred to as ''confidential business information'' or ''CBI.'' [199]

In June 2019, the U.S. Supreme Court issued its decision in *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356 (2019) (*Argus Leader*). *Argus Leader* addressed the meaning of ''confidential'' within the context of FOIA Exemption 4. The Court held that ''[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4.'' [200] The Court identified two conditions ''that might be required for information communicated to another to be considered confidential.'' [201] Under the first condition, ''information communicated to another remains confidential whenever it is customarily kept private, or at least closely held, by the person imparting it.'' [202] The second condition provides that ''information might be considered confidential only if the party receiving it provides some assurance that it will remain secret.'' [203] The Court found the first condition necessary for information to be considered confidential within the

[194] Actual peak capacity is based on either the five years prior to registration or, if there was no production prior to registration, the first three years after start-up.

[195] Nameplate capacity is the peak designed capacity of the facility.

[196] Because the baseline volume of an exempt (*i.e.,* grandfathered) facility is by definition tied to either December 19, 2007, or December 31, 2009 (see 40 CFR 80.1403(c) and (d) and 80.1450(b)(1)(v)(B)), current production capacity is not relevant for such a facility.

[197] Facilities could also choose to keep their baseline volume as actual peak capacity.

[198] 5 U.S.C. 552(b)(4).

[199] We note that CAA section 114(c) explicitly excludes emissions data from treatment as confidential information.

[200] *Argus Leader,* 139 S. Ct. at 2366.

[201] *Id.* at 2363.

[202] *Id.* (internal citations omitted).

[203] *Id.* (internal citations omitted).

meaning of Exemption 4, but did not address whether the second condition must also be met.

Following the issuance of the Court's opinion, the U.S. Department of Justice (DOJ) issued guidance concerning the confidentiality prong of Exemption 4, articulating ''the newly defined contours of Exemption 4'' post-*Argus Leader.*[204] Where the Government provides an express or implied indication to the submitter prior to or at the time the information is submitted to the Government that the Government would publicly disclose the information, then the submitter generally cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4.[205]

1. Treatment of Information Contained in Enforcement Actions and Invalid RIN Determinations

EPA has a longstanding practice of posting on its website or otherwise publicly releasing information describing fuels violations and invalid RIN determinations.[206] Accordingly, we are proposing regulations to codify the types of information contained in fuels-related enforcement actions and invalid RIN determinations that are not entitled to confidential treatment pursuant to Exemption 4 of FOIA. This proposal covers notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments related to EPA's fuel quality and RFS regulations in 40 CFR parts 80 and 1090 and invalid RIN determinations related to EPA's RFS regulations in 40 CFR part 80.

Since at least 2013,[207] EPA has posted on its website or otherwise publicly released information relating to violations of the fuel quality and RFS regulations. This information includes the company name and identification number, the total quantity of fuel and parameter, information relating to the generation, transfer, or use of credits or RINs, and the total quantity of RINs in question. Therefore, EPA has already provided an implied indication to any submitters of such information after at least 2013 that EPA may publicly disclose such information. Accordingly, the information is not entitled to confidential treatment, and EPA intends to continue to release such information without further notice.

Through this proposal, we are also providing an express indication that such information is not entitled to confidential treatment and will be affirmatively disclosed to the public without providing further notice or process to the affected businesses. Once finalized, this rule will effectively serve as an advance confidentiality determination through rulemaking and will cover the information identified below. Except as otherwise provided, 40 CFR 2.201 through 2.215 and 2.301 do not apply to the specified information submitted under this part and 40 CFR part 1090 that is determined through this rulemaking to not qualify for confidential treatment. In particular, this proposal will impact certain information contained in EPA determinations that RINs are invalid under 40 CFR 80.1474(b)(4)(i)(C)(*2*) and (b)(4)(ii)(C)(*2*), notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments. The information that EPA intends to continue release in the context of these determinations and actions includes the company name and company identification number, the facility name and facility identification number, the total quantity of fuel and parameter, information relating to the generation, transfer, or use of credits or RINs, the total quantity of RINs in question, the batch number(s) and the D codes of the RINs in question, the time period when the RINs in question were generated or when the violation occurred, and any other information relevant to describing the violation at issue. We are proposing to codify this determination at 40 CFR 80.11 and 80.1402(b) as well as 40 CFR 1090.15.

Publicly disclosing this information is important in providing transparency to stakeholders and the public with respect to violations of EPA's fuel quality and RFS programs and the relief EPA is seeking to remedy those violations through its enforcement actions. Public disclosure is also important to the successful operation and integrity of the RFS program as it may prevent parties from unwittingly transferring or attempting to use invalid RINs for compliance, in contravention of the RFS regulations, or from buying invalid RINs that they will be unable to use for compliance. We seek comment on whether any additional EPA enforcement-related determinations and actions, or additional factual information relating to such determinations and actions described above should be identified as not entitled to confidential treatment. Therefore, although the public release of such information since at least 2013 constitutes an implied indication that such information is not entitled to confidential treatment, EPA is also providing an express indication that such information is not entitled to confidential treatment through this proposal.

2. Treatment of Information Contained in Requests Submitted Under the RFS Program

We are proposing regulations that would help facilitate our processing of claims that RFS-related information should be withheld from public disclosure under FOIA, 5 U.S.C. 552(b)(4), as CBI. If finalized, the proposed regulations would identify certain types of RFS information collected by EPA under 40 CFR part 80, subpart M, that EPA would consider as not entitled to confidential treatment pursuant to Exemption 4 of the FOIA and that EPA will release without further notice.

We are proposing regulations that would facilitate our processing of claims that requests for information submitted under 40 CFR part 80, subpart M, should be withheld from the public under Exemption (b)(4) of the FOIA, 5 U.S.C. 552(b)(4), as CBI. If finalized, this rule would provide an express indication that we would not consider certain basic information incorporated into EPA actions on petitions and submissions, as well as that same information as it appears in the submissions to EPA under 40 CFR part 80, subpart M, to be entitled to treatment as CBI under Exemption 4 of the FOIA. In particular, this proposal would apply to all submissions to EPA under 40 CFR part 80, subpart M,

[204] ''Exemption 4 After the Supreme Court's Ruling in Food Marketing Institute v. Argus Leader Media and Accompanying Step-by-Step Guide,'' Office of Information Policy, U.S. DOJ, (October 4, 2019), available at *https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media.*

[205] See *id.;* see also ''Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential under Exemption 4 of the FOIA,'' Office of Information Policy, U.S. DOJ, (updated October 7, 2019), available at *https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential.*

[206] See, *e.g.,* ''Clean Air Act Fuels Settlement Information,'' U.S. EPA, available at *https://www.epa.gov/enforcement/clean-air-act-fuels-settlement-information;* ''Civil Enforcement of the Renewable Fuel Standard Program,'' U.S. EPA, available at *https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program.*

[207] EPA began posting RFS enforcement-related determinations and actions in 2013. See ''Civil Enforcement of the Renewable Fuel Standard Program,'' U.S. EPA, available at *https://www.epa.gov/enforcement/civil-enforcement-renewable-fuel-standard-program.* EPA has been posting gasoline and diesel enforcement actions for much longer. *See* ''Clean Air Act Fuels Settlement Information,'' U.S. EPA, available at *https://www.epa.gov/enforcement/clean-air-act-fuels-settlement-information.*

including, but not limited to: SREs submitted under 40 CFR 80.1441, small refiner exemptions under 40 CFR 80.1442, pathway petitions under 40 CFR 80.1416, and compliance demonstration reports. Accordingly, if finalized, such information will be released without further notice to the submitter and without following EPA's procedures set forth in 40 CFR part 2, subpart B. We are proposing to codify this determination at 40 CFR 80.1402(c) and (d).

Through this proposal, we are providing an express indication that, after finalization of this rule, such information is not entitled to confidential treatment and will be affirmatively disclosed to the public without providing further notice to affected businesses. Once finalized, this rule will effectively serve as an advance confidentiality determination through rulemaking covering the information identified below. Except as otherwise provided, 40 CFR 2.201 through 2.215 and 2.301 do not apply to the specified information submitted under this part that is determined through this rulemaking not to qualify for confidential treatment. In particular, the information affected by this proposal is the submitter's name, the name and location of the facility, the date the submission was transmitted to EPA, any EPA-issued company or facility identification numbers associated with the submission, the general nature or purpose of the submission, and the relevant time period for the request. Additionally, for submissions making requests that EPA must adjudicate, under this proposal, once we have adjudicated the request, we will release the following information: The submitter's name; the name and location of the facility; the date the request was transmitted to EPA; any EPA-issued company or facility identification numbers associated with the request, the general nature or purpose of the request, the relevant time period for the request, the extent to which EPA either granted or denied the request, and any relevant terms and conditions. For information submitted under 40 CFR part 80, subpart M, and not specified in the proposed regulations at 40 CFR 80.1402, EPA would continue to evaluate such CBI claims in accordance with 40 CFR part 2, subpart B.

It is appropriate to release the information described above in the interest of transparency and to provide the public with information about entities seeking exemptions or requests under part 80, subpart M. If finalized, this proposed approach would also provide certainty to submitters regarding the release of information under 40 CFR part 80, subpart M. With this advance notice, each submitter would have certainty regarding how EPA would treat the information specified above, and, as applicable, have the discretion to decide whether to make such a request with the understanding that EPA may release certain information about the request without further notice.

We seek comment on our proposal to release the aforementioned basic information about submissions and EPA's adjudication of those submissions under the RFS program.

E. Clarifying the Definition of ''Agricultural Digester''

Row Q in Table 1 to 40 CFR 80.1426 makes renewable compressed natural gas, renewable liquefied natural gas, and renewable electricity eligible to generate cellulosic biofuel (D–code 3) RINs if the fuel is produced from, among other feedstocks, biogas from agricultural digesters and if the producer meets all of the other regulatory requirements under the RFS program. An agricultural digester is currently defined at 40 CFR 80.1401 as ''an anaerobic digester that processes predominantly cellulosic materials, including animal manure, crop residues, and/or separated yard waste.'' In the preamble to the Pathways II final rule, we explained that predominantly cellulosic materials are materials that are at least 75 percent cellulose, hemi-cellulose or lignin by mass.[208] We received multiple questions from stakeholders asking if they could generate D3 RINs for biogas produced in a digester if materials that are not predominantly cellulosic are used in the digester. We are proposing revisions to the definition of agricultural digester to clarify that each and every material processed must be predominantly cellulosic in order for the digester to qualify as an agricultural digester under the RFS regulations. This revision does not change the existing requirements but will make it easier for the regulated community to understand the limitations on generating D3 RINs for biogas produced in anerobic digesters.

The existing definition of agricultural digester states that the digester must processes ''predominantly cellulosic materials,'' including animal manure, crop residues, and/or separated yard waste. The preamble to the Pathways II rule makes it clear that the term ''predominantly cellulosic'' means that eligible feedstocks must contain a cellulosic content of at least 75%, and that this term does not authorize renewable fuel producers to introduce non-cellulosic materials into an agricultural digester. Allowing other materials into the digester or any materials that are not at least 75 percent cellulosic would be inconsistent with the analysis underlying the rule and the definition of agricultural digester. The Pathways II rule identified agricultural digesters as a type of digester that will process wastes that are predominantly cellulosic. For the Pathways II rule we defined agricultural digesters narrowly based on the feedstocks we understood to be the most common inputs and assessed in that rulemaking, all of which we determined to be predominantly cellulosic. Thus, the ability to generate cellulosic RINs for 100 percent of the fuel produced under the pathway in row Q is predicated on the assumption and associated requirement that all the inputs to an agricultural digester are predominantly cellulosic. However, EPA does allow renewable fuel to be produced by ''other waste digesters'' and in some cases this fuel may qualify as cellulosic or partly cellulosic. A digester processing at least one type of material that is not at least 75 percent cellulosic content cannot be an agricultural digester and is instead an ''other waste digester'' under row T of Table 1 to 40 CFR 80.1426. If cellulosic material is used in an ''other waste digester,'' the renewable compressed natural gas would either be eligible for 100 percent D5 RINs or may be eligible to generate D3 RINs for the portion of the fuel that was demonstrated to be produced from cellulosic biomass through proper testing and D5 RINs for the rest of the fuel produced as specified at 40 CFR 80.1426(f)(15)(i)(B).

In order to clarify the materials that may be processed in an agricultural digester, we are proposing to revise the definition of agricultural digester to specify that such digesters may process ''only'' predominantly cellulosic materials and that ''each and every material processed in an agricultural digester must be predominantly cellulosic.'' These revisions are consistent with the current regulations, and the analyses undertaken for the

[208] The Pathways II final rule contained a list of feedstocks EPA determined are ''predominately cellulosic feedstocks'': ''Crop residue, slash, pre-commercial thinnings and tree residue, switchgrass, miscanthus, Arundo donax, Pennisetum purpureum, and biogas from landfills, municipal wastewater treatment facility digesters, agricultural digesters, and separated MSW digesters'' (79 FR 42130–31, July 18, 2014). EPA further determined that feedstocks with minimum average adjusted cellulosic content of 75 percent, measured on a dry mass basis, were ''predominantly cellulosic,'' meaning fuel produced from these feedstocks would be eligible to generate 100 percent cellulosic RINs.

Pathway II rule that formed the basis for the agricultural digester pathways. They are a clarification of the regulatory text, but not a change in our interpretation of our existing regulations or practice in implementing them. The revisions are meant to clarify that a digester that processes multiple feedstocks, including a material that is less than 75 percent cellulosic content is not an agricultural digester, even if the total cellulosic content of all the processed materials taken together exceeds the 75 percent threshold.

F. Definition of ''Produced From Renewable Biomass''

CAA section 211(o)(1)(J) defines renewable fuel as ''fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.'' In order to satisfy the definition of renewable fuel under the RFS regulations, the fuel must: (1) Be ''produced from renewable biomass''; (2) be ''used to replace or reduce the quantity of fossil fuel present in a transportation fuel, heating oil, or jet fuel''; and (3) have ''lifecycle [GHG] emissions that are at least 20 percent less than baseline lifecycle [GHG] emissions'' (unless exempted under 40 CFR 80.1403). We are proposing to define in 40 CFR 80.1401 that ''produced from renewable biomass'' means the energy in the finished fuel comes from renewable biomass. This definition would align the regulatory definition with our existing interpretation of the statute and regulations. We believe this definition is needed because we have received multiple questions from stakeholders on this aspect of the renewable fuel definition.

The statutory requirement that renewable fuel be produced from renewable biomass is fairly straightforward for the vast majority of renewable fuel produced under the RFS program. For example, corn starch ethanol is clearly produced from renewable biomass [209] because essentially all of the mass, volume, and energy contained in the undenatured fuel ethanol comes from fermented corn starch. However, the application of this requirement is less clear for some fuels that are produced by co-processing multiple feedstocks. For example, some relatively new process technologies seek to produce transportation fuel by bonding carbon atoms obtained from biogenic carbon dioxide with hydrogen atoms obtained from fossil fuels. In this case, some of the mass and volume in the finished fuel may come from renewable biomass,[210] but, since carbon dioxide is not an energy carrier, all of the energy in the finished fuel would come from the fossil-based hydrogen. In these cases, we look at the existing RFS regulations to determine whether or how much of this fuel qualifies as renewable fuel.

The RFS regulations at 40 CFR 80.1426(f)(4) determine the number of gallon-RINs generated for fuel that is produced by co-processing renewable biomass and non-renewable feedstocks simultaneously to produce a fuel. The formula in the regulations states that the share of the fuel that is renewable is calculated as the feedstock energy from renewable biomass divided by the total feedstock energy. In the example given above, the carbon dioxide provides zero feedstock energy, so the regulations stipulate that zero RINs would be generated for the fuel. In other words, no portion of the fuel would qualify as renewable fuel. We believe this outcome is appropriate given that the fundamental purpose of transportation fuel is to provide energy, thus the source of the energy in the finished fuel should be the criterion for determining from what the fuel was produced, as opposed to the source of the mass or volume of the fuel. It is also consistent with statutory definition that renewable fuel must ''be used to replace or reduce the quantity of fossil fuel present in a transportation fuel.'' Fuel that derives its energy from fossil fuel (a subset of non-renewable feedstocks) is replacing one form of fossil fuel for another, not reducing the quantity of fossil fuel present in a transportation fuel.

As stated above, we have received multiple questions related to fuels that derive their energy from non-renewable feedstocks, and whether such fuels qualify as renewable fuel under the RFS program. We believe that adding this definition would reduce future confusion on this issue. In particular, we want to avoid a situation where resources may be allocated to researching or developing a new fuel technology with the hopes of generating RINs only to later find out that the fuel does not qualify because its energy does not come from renewable biomass. Thus, we propose to add a definition of ''produced from renewable biomass'' at 40 CFR 80.1401 that defines it as the energy in the finished fuel comes from renewable biomass. As explained above, this proposed definition is consistent with our existing interpretation of the statute and implementing regulations. We seek comment on this proposed regulatory definition.

G. Estimating Landfill Emissions for Lifecycle GHG Analysis of Fuels Produced From Separated Municipal Solid Waste

EPA has previously approved fuel pathways that use the biogenic components of separated municipal solid waste (MSW), as defined at 40 CFR 80.1426(f)(5)(i)(C), as satisfying the 60 percent lifecycle GHG reduction for qualification as cellulosic biofuel under the RFS program (see Table 1 to 40 CFR 80.1426). Through the petition process at 40 CFR 80.1416 and engagement with stakeholders, we are aware of growing interest in the use of biogenic components of separated MSW to produce diesel, gasoline, and jet fuel. The existing separated MSW pathways were based on engineering assessments and other projections about the processes, process efficiencies and types of process energy that would be used to convert separated MSW to fuels. In some cases, there are separated MSW-to-fuel projects under consideration that likely do not fit the assumptions underlying our previous assessments. For example, our previous assessments [211] were based on engineering and cost projections that separated MSW would be used as both the feedstock and the predominant source of fuel to heat the conversion process.[212] However, some of the projects being developed intend to use natural gas for process heat fuel instead of the separated MSW itself. In such cases, the fuels produced would be unlikely to meet the 60 percent GHG reduction threshold using our existing assessment methodology. However, stakeholders have suggested that our past assessment methodology does not fully capture the full lifecycle GHG impacts of using the biogenic components of separated MSW as biofuel feedstock because it does not account for the future reductions in methane emissions from the landfills and improved recycling that may occur by diverting separated MSW from the landfill. Inclusion of change in landfill emissions could allow fuels produced from separated MSW to satisfy the 60 percent GHG reduction threshold even if the process heat comes from fossil

[209] Provided the corn starch qualifies as renewable biomass (*e.g.,* it must come from qualifying land).

[210] Provided the biogenic carbon dioxide was produced from renewable biomass (*e.g.,* carbon dioxide from fermented corn starch).

[211] 78 FR 14190 (March 5, 2013).

[212] Kinchin, Christopher. Catalytic Fast Pyrolysis with Upgrading to Gasoline and Diesel Blendstocks. National Renewable Energy Laboratory (NREL). 2011. Docket Item No. EPA–HQ–OAR–2011–0542–0007.

sources. We have not estimated the GHG emissions effects of using the biogenic components of separated MSW as feedstock instead of its current fate (*e.g.,* landfill, landfill with flaring, landfill with power generation, composting, waste to energy). Thus, we are seeking comment on the appropriateness of doing so and on the appropriate methodologies, models, and data to estimate the potential effects of diverting separated MSW from landfills. Seeking comment on this topic is particularly relevant in this rulemaking because some of the projects under consideration intend to use separated MSW to produce a biocrude, which we are proposing to consider a biointermediate (see Section VII).

The concept of avoided landfill emissions is that diverting separated MSW from a landfill would reduce the subsequent GHG emissions associated with landfilling that material. When landfilled, biogenic materials decompose under anaerobic conditions and produce landfill gas composed of methane, carbon dioxide, and other gases. Landfills in the United States typically capture the landfill gas and flare it or use it to produce electricity or CNG or for other purposes. However, a share of the landfill gas evades capture or is not fully combusted by the flares and is emitted from the landfill. Since landfill gas generation is a function of the amount and biogenic content of MSW landfilled, diverting separated MSW from a landfill can reduce the overall amount of landfill GHG emissions. On the other hand, some of the biogenic MSW decomposes slowly and remains in the landfill when the landfill cell is capped, resulting in long-term carbon storage at the landfill. Combusting carbon that would otherwise be stored, in the form of transportation fuel, increases GHG emissions. The net result of all of these processes in a landfill requires modelling to estimate the effect of diverting the separated MSW on landfill emissions.

In addition to avoided methane emissions, there may be emissions reductions from enhanced recycling associated with the use of MSW as a biofuel feedstock. Using MSW as a biofuel feedstock may entail additional separation and recycling than would otherwise occur, enhancing the effectiveness of recycling efforts for metals, plastics, and potentially other materials. The reduced GHG emissions associated with recycling these additional materials as opposed to producing new metals, plastics and other materials could then provide additional GHG reduction that could be estimated and allocated to the finished fuel for purposes of lifecycle GHG analysis.

A number of models and data sources are available to estimate landfill emissions—we briefly describe a few here but this is not intended as a comprehensive list. The GREET–2020 fuel cycle model includes data and formulas to estimate the lifecycle GHG emissions associated with ethanol and CNG produced from MSW feedstock, and these data and formulas could be adapted for analysis of other MSW to fuel pathways.[213] The EPA Waste Reduction Model (WARM) is a tool to help solid waste planners estimate GHG emissions reductions, energy savings, and economic impacts from several different waste management practices.[214] WARM estimates avoided landfill emissions based on user inputs on MSW composition and landfill characteristics. WARM does not model pathways for manufacturing fuel from MSW. Municipal solid waste landfills report annually under EPA's GHG reporting program based on protocols and formulas specified at 40 CFR part 98, subpart HH. Subpart HH includes formulas to estimate landfill emissions each year but does not address carbon storage at landfills or metal and plastic recycling. In 2019, the International Civil Aviation Organization (ICAO) published a methodology for calculating landfill emissions for aviation fuels produced from MSW.[215] These models and methodologies have many similarities but they differ in their intended purposes and the default assumptions they recommend for certain key inputs, such as the decay rates for certain types of biogenic MSW components and the oxidation rates for uncaptured landfill methane. Based on our review of these models, formulas and estimates we observe that the landfill emissions estimates are sensitive to inputs for key assumptions.

We seek comment on the appropriateness of accounting for changes in landfill emissions and, if appropriate, on the best available models, data, and methodologies to estimate changes in landfill emissions associated with the use of biogenic components of separated MSW as a feedstock for the production of biofuel for purposes of lifecycle GHG analysis for the RFS program. Specifically, we seek comment on the extent to which we should account for net emissions associated with changes in landfill methane emissions, landfill carbon storage, metal and plastic recycling, or other activities. In our previous assessments of landfill biogas, we used landfill gas flaring as the alternative baseline scenario (Pathways II rule, 79 FR 42141–2); in this rulemaking, we seek comment on whether there are any new data that would support using a different baseline for evaluation of using biogenic components of separate MSW as feedstock for biofuel production. Given the fact that landfill emissions can occur for decades after material is disposed, we also seek comment on the most appropriate methodology for addressing the temporal aspects of landfill emissions. In other parts of EPA's lifecycle analysis, we consider emissions over a 30-year period. We seek comment on whether a 30-year period is also appropriate for the purposes of quantifying changes in landfill emissions.

The composition of separated MSW used as biofuel feedstock has a significant impact on the potential emissions from the landfill. We seek comment on whether and how EPA should track and verify the feedstock composition if accounting for net avoided landfill emissions under the RFS program as well as changes in stored carbon. In addition, landfill emissions can differ significantly from one landfill to another based on differences in climate, management practices and other characteristics; however, evaluating individual landfills requires additional collection, tracking, and verification of data. We seek comment on whether to consider landfill emissions from individual landfills or take a more aggregated approach whereby landfills are evaluated nationally, regionally or based on a limited set of other characteristics (*e.g.,* temperature, moisture, gas collection technology). We intend to consider the comments received on this topic as we evaluate new fuel pathway petitions, submitted pursuant to 40 CFR 80.1416, that include the use of separated MSW feedstock.

H. Technical Corrections and Clarifications

We are proposing to make numerous technical corrections to the RFS

[213] The Greenhouse gases, Regulated Emissions, and Energy use in Technologies (GREET) Model is developed and maintained by Argonne National Laboratory. *https://greet.es.anl.gov.*

[214] EPA. (2019). Waste Reduction Model (WARM) Tool User's Guide. May 2019. EPA530–R–19–002. *https://www.epa.gov/sites/production/files/2020-12/documents/warm-users-guide_v15_10-29-2020.pdf.*

[215] ICAO. (2019). Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) Methodology for Calculating Actual Life Cycle Emissions Values. November 2019. 19 pages. *https://www.icao.int/environmental-protection/CORSIA/Documents/ICAO%20document%2007%20-%20Methodology%20for%20Actual%20Life%20Cycle%20Emissions.pdf.*

regulations. These amendments are being made to correct minor inaccuracies and updates in the current regulations. These changes are described in Table VIII.H–1 below.

TABLE VIII.H–1—MISCELLANEOUS TECHNICAL CORRECTIONS AND CLARIFICATIONS TO RFS REGULATIONS

Part and section of title 40	Description of revision
80.1401	Amended by revising the definition of ''Renewable fuel'' to reiterate that undenatured ethanol is not renewable fuel.
80.1401, 80.1426(f)(5)(i)–(iii), (f)(5)(iv)(A) and (B), and (f)(5)(v), 80.1450(b)(1)(vii)(A) and (B) and (b)(1)(viii), 80.1451(b)(1)(ii)(R), and 80.1454(j).	Amended by moving the definitions of ''Separated yard waste,'' ''Separated food waste,'' and ''Separated municipal solid waste'' from § 80.1426(f)(5) to the RFS definitions section (§ 80.1401) and updating associated cross-references.
80.1401, 80.1426(f)(17)(i), 80.1450(b)(1)(xii), 80.1451(b)(1)(ii)(T), 80.1454(l), and 80.1468(b).	Amended by updating the incorporation by reference (IBR) for ''Standard Specification for Diesel Fuel,'' ASTM D975–13a, to now be ASTM D975–21, which is the most recent ASTM version.
80.1401 and 80.1468(b)	Amended by updating the IBR for ''Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels,'' ASTM D6751–09, to now be ASTM D6751–20a, which is the most recent ASTM version.
80.1426(f)(7)(v)(A) and 80.1468(b)	Amended by updating the IBR for ''Standard Test Methods for Analysis of Wood Fuels,'' ASTM E870–82(2006), to now be ASTM E870–82(2019), which is the most recent ASTM version.
80.1426(f)(7)(v)(B) and 80.1468(b)	Amended by updating the IBR for ''Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Based Materials,'' ASTM D4442–07, to now be ASTM D4442–20, which is the most recent ASTM version.
80.1426(f)(7)(v)(B) and 80.1468(b)	Amended by updating the IBR for ''Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters,'' ASTM D4444–08, to now be ASTM D4444–13 (2018), which is the most recent ASTM version.
80.1426(f)(8)(ii)(B) and 80.1468(b)	Amended by updating the IBR for ''Standard Guide for the Use of the Joint American Petroleum Institute (API) and ASTM Adjunct for Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils: API Manual of Petroleum Measurement Standards (MPMS) Chapter 11.1,'' ASTM D1250–08, to now be ASTM D1250–19e1, which is the most recent ASTM version.
80.1426(f)(9)(ii), 80.1430(e)(2), and 80.1468(b)	Amended by updating the IBR for ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis,'' ASTM D6866–08, to now be ASTM D6866–21, which is the most recent ASTM version.
80.1426(f)(17)(i)	Amended by adding ''renewable gasoline,'' consistent with other related sections.
80.1426(f)(17)(i)(B)(*1*) and (*2*), 80.1450(b)(1)(xii)(B) and (C), 80.1451(b)(1)(ii)(T)(*1*), and 80.1454(1)(1).	Amended by replacing ''diesel'' with ''distillate'' to clarify that parties that blend renewable jet fuel with conventional jet fuel must currently comply with these requirements. This would remove perceived ambiguity over whether these provisions apply to producers of blended renewable jet fuel (jet fuel is not diesel fuel per the definition of ''diesel fuel'' at 40 CFR 80.2 but rather distillate fuel).
80.1428(b)(2)	Amended to be consistent with the restriction that independent third-party auditors may not own RINs under § 80.1471(a)(3).
80.1429(b)(9)	Amended to limit the number of RINs that a party can separate when they incur an RVO due to redesignating certified-NTDF under § 80.1408. This is consistent with similar situations involving exporters of renewable fuel or importers of gasoline and diesel fuel.
80.1450(g)(11)(ii), 80.1473(f), 80.1474(b)(2), (b)(3), (b)(4)(i)(C), and (b)(4)(ii)(C).	Amended by updating the email address for EPA's EMTS help desk to *fuelsprogramsupport@epa.gov.*
80.1450(h)(2)(i)	Amended by changing the time for responding to EPA's notice of intent to deactivate a company's registration from 14 to 30 calendar days to allow additional time for company action.
80.1451(b)(1)(ii)(T)(*2*) and 80.1454(l)(3)	Amended to clarify reporting instructions and move the affidavit requirement from the reporting section (§ 80.1451) to the recordkeeping section (§ 80.1454).
80.1460(b)(6)	Amended to clarify that generating a RIN for fuel for which RINs have previously been generated is not a prohibited act if those RINs were generated pursuant to § 80.1426(c)(6).
80.1464(a)(3)(ii), (b)(3)(ii), and (c)(2)(ii)	Amended to modify the attest engagements requirements to be consistent with the RIN activity report requirements in § 80.1451(c)(2).
80.1464(a)(4)(ii), (b)(5)(ii), and (c)(3)(ii) and 80.1475(a)(2) and (d)(4).	Amended by updating outdated references to expired provisions of part 80 to part 1090.
80.1464(a)(7), (b)(8), (c)(7), (i)(1)(i), and (i)(2)(i)	Amended to add the requirement that the attest auditor verifies the submission of required compliance reports and states as a finding any compliance reports missing.
80.1464(b)(4)(i) and (iii)	Amended to modify the requirements to include verification of last date of independent third-party engineering review as occurring within the three-year cycle under § 80.1450(d)(3).
80.1469(c)(1)(vii)	Amended to modify the requirements for Quality Assurance Plans to allow for a renewable fuel for which RINs were previously generated to be used as a feedstock if done in accordance with § 80.1426(c)(6).
80.1471(c)	Amended to correct an erroneous reference to 31 CFR 50.5(q) to now be 31 CFR 50.4(t), and to allow comparable financial strength ratings if acceptable to EPA.
80.1475(d)(1) and (3)	Amended by correcting erroneous references to paragraph (b) to now be to paragraph (c).

IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *http://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of potential costs and benefits associated with this action. This analysis is presented in the DRIA, available in the docket for this action.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2691.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information to be collected is necessary to implement the proposed inclusion of biointermediates to the RFS program. As part of this proposal, biointermediate producers and importers would be added as respondents and certain existing respondents (*e.g.,* renewable fuel producers) may have additional reporting and recordkeeping requirements related to their use of biointermediates. Recordkeeping and reporting requirements include the registration of biointermediate producers and their facilities; product transfer documentation; records retention related to the production, transfer, and use of biointermediates; annual attest engagements; quality assurance plans for biointermediates; and the submission of information related to renewable fuels produced using biointermediates. These items are discussed in detail in the supporting statement in the docket.

Respondents/affected entities: Biointermediate producers, renewable fuel producers, biointermediate importers, and third parties who submit reports for these parties.

Respondent's obligation to respond: Mandatory, under 40 CFR parts 80 and 1090.

Estimated number of respondents: 1,670.

Frequency of response: On occasion, daily, quarterly, or annually.

Total estimated burden: 47,988 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,828,180 (per year), all of which is purchased services, and which includes $0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than January 20, 2022. EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.

With respect to the proposed biointermediates provisions, we do not believe that a small biointermediate producer or renewable fuel producer would choose to take advantage of the proposed program for biointermediates unless there was sufficient economic incentive for them to do so. Current small renewable fuel producers would not be compelled to use biointermediates, and as such, any costs associated with these provisions are purely voluntary. With respect to the other proposed amendments to the RFS regulations, this action makes relatively minor corrections and modifications to those regulations. As such, we do not anticipate that there will be any significant adverse economic impact on directly regulated small entities as a result of these provisions.

The small entities directly regulated by the annual percentage standards associated with the RFS volumes are small refiners, which are defined at 13 CFR 121.201. With respect to the 2020, 2021, and 2022 percentage standards and 2022 supplemental standard, we have evaluated the impacts on small entities from two perspectives: As if the standards were a standalone action or if they are a part of the overall impacts of the RFS program as a whole.

To evaluate the impacts of the volume requirements on small entities, we have conducted a screening analysis [216] to assess whether we should make a finding that this action will not have a significant economic impact on a substantial number of small entities. Currently available information shows that the impact on small entities from implementation of this rule will not be significant. We have reviewed and assessed the available information, which shows that obligated parties, including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[217] This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs. The costs of the RFS program are thus generally being passed on to consumers in the highly competitive marketplace. Even if we were to assume that the cost of acquiring RINs was not recovered by obligated parties, a cost-to-sales ratio test shows that the costs to small entities of the proposed RFS standards are far less than 1 percent of the value of their sales.

While the screening analysis described above supports a certification that this rule will not have a significant economic impact on small refiners, we continue to believe that it is more appropriate to consider the standards as a part of our ongoing implementation of the overall RFS program. When considered this way, the impacts of the RFS program as a whole on small entities were addressed in the RFS2 final rule, which was the rule that implemented the entire program as required by EISA 2007.[218] As such, the

[216] See Chapter 11 of the DRIA.

[217] For a further discussion of the ability of obligated parties to recover the cost of RINs see ''Denial of Petitions for Rulemaking to Change the RFS Point of Obligation,'' EPA–420–R–17–008, November 2017.

[218] 75 FR 14670 (March 26, 2010).

Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process that took place prior to the 2010 rule was also for the entire RFS program and looked at impacts on small refiners through 2022.

For the SBREFA process for the RFS2 final rule, we conducted outreach, fact-finding, and analysis of the potential impacts of the program on small refiners, which are all described in the Final Regulatory Flexibility Analysis, located in the rulemaking docket (EPA–HQ–OAR–2005–0161). This analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities, and that this impact was expected to decrease over time, even as the standards increased. For gasoline and/or diesel small refiners subject to the standards, the analysis included a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company. From this test, we estimated that all directly regulated small entities would have compliance costs that are less than one percent of their sales over the life of the program (75 FR 14862, March 26, 2010).

We have determined that this proposed rule will not impose any additional requirements on small entities beyond those already analyzed, since the impacts of this rule are not greater or fundamentally different than those already considered in the analysis for the RFS2 final rule assuming full implementation of the RFS program. The proposed cellulosic biofuel, advanced biofuel, and total renewable fuel volumes remain significantly below the statutory volume targets analyzed in the RFS2 final rule. Compared to the burden that would be imposed under the volumes that we assessed in the screening analysis for the RFS2 final rule (*i.e.,* the volumes specified in the Clean Air Act), the proposed volume requirements in this rule reduce burden on small entities. Regarding the BBD standard, it is a nested standard within the advanced biofuel category, and as discussed in Section III.D, the proposed 2022 BBD volume requirement is below the volume of BBD that is anticipated to be produced and used to satisfy the advanced biofuel requirement. In other words, the volume of BBD actually used in 2022 will be driven not by the proposed 2022 BBD standard, but rather by the proposed 2022 advanced biofuel standard, and potentially also by the total renewable fuel standard. The net result of the standards being proposed in this action is a reduction in burden as compared to implementation of the statutory volume targets assumed in the RFS2 final rule analysis.

While the rule will not have a significant economic impact on a substantial number of small entities, there are compliance flexibilities in the program that can help to reduce impacts on small entities. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20 percent RIN rollover allowance (up to 20 percent of an obligated party's RVO can be met using previous-year RINs), and deficit carry-forward (the ability to carry over a deficit from a given year into the following year, provided that the deficit is satisfied together with the next year's RVO). In the RFS2 final rule, we discussed other potential small entity flexibilities that had been suggested by the SBREFA panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.

In sum, this proposed rule will not change the compliance flexibilities currently offered to small entities under the RFS program and available information shows that the impact on small entities from implementation of this rule will not be significant when viewed either from the perspective of it being a standalone action or a part of the overall RFS program. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in CAA section 211(o), and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This action will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments will be affected only to the extent they produce, purchase, or use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes (CAA section 211(o)). While this action is not covered by Executive Order 13045, a discussion of environmental health impacts is included in Chapter 3 of the DRIA.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes the required renewable fuel content of the transportation fuel supply for 2020, 2021, and 2022 pursuant to the CAA. The RFS program and this rule are designed to achieve positive effects on the nation's transportation fuel supply by increasing energy independence and security.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This proposed action involves technical standards. We are proposing to update the existing test methods and standards in the RFS regulations to more recent versions. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference the use of test methods and standards from American Society for Testing and Materials International (ASTM International). A detailed discussion of these test methods and standards can be found in Section VIII.H. The standards and test methods may be obtained through the ASTM International website (*www.astm.org*) or by calling ASTM at (877) 909–2786.

(ASTM E711 is referenced in the regulatory text of this proposed rule. It was approved for IBR as of July 1, 2010 and no changes are being proposed.)

ASTM International routinely updates many of its reference documents. If ASTM International publishes an updated version of any of reference documents included in this proposal, we will consider referencing that updated version in the final rule.

TABLE IX.I–1—PROPOSED STANDARDS AND TEST METHODS TO BE INCORPORATED BY REFERENCE

Organization and standard or test method	Description
ASTM D975–21, Standard Specification for Diesel Fuel, approved August 1, 2021.	Diesel fuel specifications that must be met to qualify for RINs for renewable fuels.
ASTM D1250–19e1, Standard Guide for the Use of the Joint API and ASTM Adjunct for Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils: API MPMS Chapter 11.1, approved May 1, 2019.	Standard guide used by industry for determining temperature corrected standardized volumes under the RFS program.
ASTM D4442–20, Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Based Materials, approved March 1, 2020.	Test method used for determining moisture content of wood samples that must be met when qualifying for RINs for renewable fuels.
ASTM D4444–13 (2018), Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, reapproved July 1, 2018.	Test method used for determining moisture content of wood samples that must be met when qualifying for RINs for renewable fuels.
ASTM D6751–20a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, approved August 1, 2020.	Biodiesel fuel specifications that must be met to qualify for RINs for renewable fuels.
ASTM D6866–21, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, approved January 15, 2021.	Radiocarbon dating test method to determine the renewable content of transportation fuel.
ASTM E870–82 (2019), Standard Test Methods for Analysis of Wood Fuels, reapproved April 1, 2019.	Test method that covers the proximate and ultimate analysis of wood fuels, as well as the determination of the gross caloric value of wood sampled and prepared by prescribed test methods and analyzed according to ASTM established procedures that must be met when qualifying for RINs for renewable fuels.

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

Due to time constraints and uncertainty about where impacts are likely to occur, EPA is able to evaluate only qualitatively the extent to which this action may result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). While there is the potential for significant GHG emission reductions as a result of this action, changes in air and water quality could occur due to increases in ethanol or biodiesel production. Land use change to bring more corn, soy, or other crops into production in response to the action could also affect air, water, and soil quality in specific locations. The extent to which such changes—as well as future climate change impacts—may be unevenly distributed spatially in ways that coincide with patterns of pre-existing exposure and vulnerabilities for minority populations, low-income populations, and/or indigenous peoples is uncertain and would require predicting where these changes would occur on a fine spatial scale. A summary of our approach for considering potential EJ concerns as a result of this action can be found in Section I.I, and our EJ analysis (including a discussion of this action's potential impacts on GHGs, air quality, water quality, and fuel and food prices) can be found in Chapter 8 of the DRIA, available in the docket for this action.

X. Statutory Authority

Statutory authority for this action comes from sections 114, 203–05, 208, 211, and 301 of the Clean Air Act, 42 U.S.C. 7414, 7522–24, 7542, 7545, and 7601.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Incorporation by reference, Oil imports, Petroleum, Renewable fuel.

40 CFR Part 1090

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR parts 80 and 1090 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart A—General Provisions

■ 2. Add § 80.11 to read as follows:

§ 80.11 Confidentiality of information.

(a) Except as specified in paragraph (b) of this section, information obtained by the Administrator or his representatives pursuant to this part shall be treated, in so far as its confidentiality is concerned, in accordance with the provisions of 40 CFR part 2, subpart B.

(b) Information contained in EPA notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments is not entitled to confidential treatment and therefore EPA may publicly disclose such information. Such information includes the company name and EPA-issued company identification number, the facility name and EPA-issued facility identification number, the total quantity of fuel and parameter, the time or time period when the violation occurred, information relating to the generation, transfer, or use of credits, and any other

information relevant to describing the violation.

Subpart M—Renewable Fuel Standard

■ 3. Amend § 80.1401 by:
■ a. Revising the definitions of ''Agricultural digester'' and ''Baseline volume'';
■ b. Adding in alphabetical order the definition of ''Biocrude'';
■ c. Revising the definition of ''Biodiesel'';
■ d. Adding in alphabetical order the definitions of ''Biointermediate,'' ''Biointermediate import facility,'' ''Biointermediate importer,'' ''Biointermediate producer,'' and ''Biointermediate production facility'';
■ e. Revising the definitions of ''Combined heat and power (CHP),'' ''Co-processed,'' ''Facility,'' and ''Foreign renewable fuel producer'';
■ f. Adding in alphabetical order the definition of ''Free fatty acid (FFA) feedstock'';
■ g. Revising paragraph (1) in the definition of ''Non-ester renewable diesel'' and the definition of ''Non-renewable feedstock'';
■ h. Adding in alphabetical order the definition of ''Produced from renewable biomass'';
■ i. Revising the definitions of ''Quality assurance audit,'' ''Quality assurance plan,'' paragraph (7) in the definition of ''Renewable biomass,'' the introductory text and paragraph (1)(i) in the definition of ''Renewable fuel''; and
■ j. Adding in alphabetical order the definitions of ''Separated food waste,'' ''Separated municipal solid waste (MSW),'' ''Separated yard waste,'' and ''Undenatured ethanol''.

The revisions and additions read as follows:

§ 80.1401 Definitions.

* * * * *

Agricultural digester means an anaerobic digester that processes only animal manure, crop residues, or separated yard waste with an adjusted cellulosic content of at least 75%. Each and every material processed in an agricultural digester must have an adjusted cellulosic content of at least 75%.

* * * * *

Baseline volume means the permitted capacity or, if permitted capacity cannot be determined, the actual peak capacity or nameplate capacity as applicable pursuant to § 80.1450(b)(1)(v)(A) through (C), of a specific renewable fuel production facility on a calendar year basis.

Biocrude means a liquid biointermediate produced from renewable biomass through gasification or pyrolysis at a biointermediate production facility to be used to produce renewable fuel at a refinery as defined in 40 CFR 1090.80.

Biodiesel means a mono-alkyl ester that meets ASTM D6751 (incorporated by reference, see § 80.1468).

* * * * *

Biointermediate means any feedstock material that is used to produce renewable fuel and meets all of the following requirements:

(1) It is derived from renewable biomass.

(2) It does not meet the definition of renewable fuel in this section and RINs were not generated for it as a renewable fuel in its own right.

(3) It is produced at a facility registered with EPA that is different than the facility at which it is used to produce renewable fuel.

(4) It is made from the feedstock and will be used to produce the renewable fuel in accordance with the process(es) listed in the approved pathway (as described in table 1 to § 80.1426 or a pathway approval pursuant to § 80.1416) that the biointermediate producer and renewable fuel producer are using to convert renewable biomass to renewable fuel.

(5) Is one of the following:

(i) Biocrude.

(ii) Free fatty acid (FFA) feedstock.

(iii) Undenatured ethanol feedstock.

(6) A feedstock listed in a pathway in Table 1 to § 80.1426, or in an approved pathway petition under § 80.1416, and used to produce the renewable fuel specified in that pathway or approved petition using the specified process requirements, as applicable, is not a biointermediate.

Biointermediate import facility means any facility as defined in 40 CFR 1090.80 where a biointermediate is imported from outside the covered location into the covered location.

Biointermediate importer means any person who owns, leases, operates, controls, or supervises a biointermediate import facility.

Biointermediate producer means any person who owns, leases, operates, controls, or supervises a biointermediate production facility.

Biointermediate production facility means all of the activities and equipment associated with the production of a biointermediate starting from the point of delivery of feedstock material to the point of final storage of the end biointermediate product, which are located on one property, and are under the control of the same person (or persons under common control).

* * * * *

Combined heat and power (CHP), also known as cogeneration, refers to industrial processes in which waste heat from the production of electricity is used for process energy in a biointermediate or renewable fuel production facility.

* * * * *

Co-processed means that renewable biomass or a biointermediate was simultaneously processed with fossil fuels or other non-renewable feedstock in the same unit or units to produce a fuel that is partially derived from renewable biomass or a biointermediate.

* * * * *

Facility means all of the activities and equipment associated with the production of renewable fuel or a biointermediate starting from the point of delivery of feedstock material to the point of final storage of the end product, which are located on one property, and are under the control of the same person (or persons under common control).

* * * * *

Foreign renewable fuel producer means a person from a foreign country or from an area outside the covered locations who produces renewable fuel for use in transportation fuel, heating oil, or jet fuel. Foreign ethanol producers are considered foreign renewable fuel producers.

* * * * *

Free fatty acid (FFA) feedstock means a biointermediate that is composed of at least 80 percent free fatty acids that are separated from renewable biomass. FFA feedstock must not include any free fatty acids from the refining of crude palm oil.

* * * * *

Non-ester renewable diesel * * *

(1) A fuel or fuel additive that meets the ASTM D975 (incorporated by reference, see § 80.1468) Grade No. 1–D or No. 2–D specifications and can be used in an engine designed to operate on conventional diesel fuel; or

* * * * *

Non-renewable feedstock means a feedstock (or any portion thereof) that does not meet the definition of renewable biomass or biointermediate in this section.

* * * * *

Produced from renewable biomass means that the energy in the finished fuel or biointermediate comes from renewable biomass.

* * * * *

Quality assurance audit means an audit of a renewable fuel production facility or biointermediate production facility conducted by an independent third-party auditor in accordance with a

QAP that meets the requirements of §§ 80.1469, 80.1472, and 80.1477.

Quality assurance plan, or QAP, means the list of elements that an independent third-party auditor will check to verify that the RINs generated by a renewable fuel producer or importer are valid or to verify the appropriate production of a biointermediate. A QAP includes both general and pathway specific elements.

* * * * *

Renewable biomass * * *

(7) Separated yard waste or food waste, including recycled cooking and trap grease.

* * * * *

Renewable fuel means a fuel that meets all of the requirements of paragraph (1) and (2) of this definition:

(1)(i) Fuel that is produced from renewable biomass or a biointermediate produced from renewable biomass.

* * * * *

Separated food waste means a feedstock stream consisting of food waste kept separate since generation from other waste materials, and which includes food and beverage production waste and post-consumer food and beverage waste.

Separated municipal solid waste (MSW) means material remaining after separation actions have been taken to remove recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass from municipal solid waste, and which is composed of both cellulosic and non-cellulosic materials.

Separated yard waste means a feedstock stream consisting of yard waste kept separate since generation from other waste materials.

* * * * *

Undenatured ethanol means ethanol that has not been denatured as required in 27 CFR parts 19 through 21. Undenatured ethanol is not renewable fuel.

* * * * *

■ 4. Amend § 80.1402 by removing the second sentence in paragraph (a) and adding paragraphs (b) through (f) to read as follows:

§ 80.1402 Availability of information; confidentiality of information.

* * * * *

(b) Information contained in EPA determinations that RINs are invalid under § 80.1474(b)(4)(i)(C)(*2*) and (b)(4)(ii)(C)(*2*), notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments under the Renewable Fuel Standard (RFS) program is not entitled to confidential treatment and therefore EPA may publicly disclose such information. Such information includes the company name and company identification number of the party that produced the fuel or generated the RINs in question, the facility name and facility identification number of the facility at which the fuel associated with the RINs in question was allegedly produced or imported, the total quantity of fuel and RINs in question, the time period when the fuel was allegedly produced, the time period when the RINs in question were generated, the batch number(s) and the D code(s) of the RINs in question, information relating to the generation, transfer, or use of RINs, and any other information relevant to describing the violation.

(c) The following information contained in submissions under this subpart is not entitled to confidential treatment and, except as otherwise provided, the provisions of 40 CFR part 2, subpart B, do not apply:

(1) Submitter's name.

(2) The name and location of the facility, if applicable.

(3) The date the submission was transmitted to EPA.

(4) Any EPA-issued company or facility identification numbers associated with the request.

(5) The purpose of the submission.

(6) The relevant time period for the request, if applicable.

(d) The following information incorporated into EPA determinations on submissions under this subpart is not entitled to confidential treatment and, except as otherwise provided, the provisions of 40 CFR part 2, subpart B, do not apply:

(1) Submitter's name.

(2) The name and location of the facility, if applicable.

(3) The date the submission was transmitted to EPA.

(4) Any EPA-issued company or facility identification numbers associated with the request.

(5) The purpose of the submission.

(6) The relevant time period of the request, if applicable.

(7) The extent to which EPA either granted or denied the request and any relevant terms and conditions.

(e) Except as otherwise specified in this section, any information submitted under this part claimed as confidential remains subject to evaluation by EPA under 40 CFR part 2, subpart B.

(f) EPA may disclose the information specified in paragraphs (a) through (d) of this section on its website, or otherwise make it available to interested parties, without additional notice or process, notwithstanding any claims that the information is entitled to confidential treatment under 40 CFR part 2, subpart B.

■ 5. Amend § 80.1405 by revising paragraph (a)(11), adding paragraphs (a)(12) and (13), and revising the equations in paragraph (c) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(11) *Renewable Fuel Standards for 2020.* (i) The value of the cellulosic biofuel standard for 2021 shall be 0.32 percent.

(ii) The value of the biomass-based diesel standard for 2021 shall be 2.37 percent.

(iii) The value of the advanced biofuel standard for 2021 shall be 2.91 percent.

(iv) The value of the renewable fuel standard for 2021 shall be 10.78 percent.

(12) *Renewable Fuel Standards for 2021.* (i) The value of the cellulosic biofuel standard for 2021 shall be 0.36 percent.

(ii) The value of the biomass-based diesel standard for 2021 shall be 2.19 percent.

(iii) The value of the advanced biofuel standard for 2021 shall be 3.03 percent.

(iv) The value of the renewable fuel standard for 2021 shall be 10.79 percent.

(13) *Renewable Fuel Standards for 2022.* (i) The value of the cellulosic biofuel standard for 2022 shall be 0.44 percent.

(ii) The value of the biomass-based diesel standard for 2022 shall be 2.42 percent.

(iii) The value of the advanced biofuel standard for 2022 shall be 3.27 percent.

(iv) The value of the renewable fuel standard for 2022 shall be 11.76 percent.

(v) The value of the supplemental renewable fuel standard for 2022 shall be 0.14 percent.

* * * * *

(c) * * *

$$Std_{CB,i} = 100 \times \frac{RFV_{CB,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$Std_{BBD,i} = 100 \times \frac{RFV_{BBD,i} \times 1.55}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$Std_{AB,i} = 100 \times \frac{RFV_{AB,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$Std_{RF,i} = 100 \times \frac{RFV_{RF,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

* * * * *

■ 6. Amend § 80.1407 by revising paragraph (f)(1) to read as follows:

§ 80.1407 How are the Renewable Volume Obligations calculated?

* * * * *

(f) * * *

(1) Any renewable fuel as defined in § 80.1401. Renewable fuel for which a RIN is determined to be invalidly generated under § 80.1431 may not be excluded from a party's Renewable Volume Obligations.

* * * * *

§ 80.1408 [Amended]

■ 7. Amend § 80.1408 by, in paragraphs (a)(2)(i)(B) and (a)(2)(ii)(B), removing ''§ 80.1454(t)'' and adding ''§ 80.1454(o)'' in its place.

■ 8. Amend § 80.1415 by revising paragraphs (c)(2)(ii) and (iii) to read as follows:

§ 80.1415 How are equivalence values assigned to renewable fuel?

* * * * *

(c) * * *

(2) * * *

(ii) For each feedstock, biointermediate, component, or additive that is used to make the renewable fuel, provide a description, the percent input, and identify whether or not it is renewable biomass or is derived from renewable biomass.

(iii) For each feedstock or biointermediate that also qualifies as a renewable fuel, state whether or not RINs have been previously generated for such feedstock.

* * * * *

■ 9. Amend § 80.1416 by revising paragraphs (b)(1)(ii) and (iii) to read as follows:

§ 80.1416 Petition process for evaluation of new renewable fuels pathways.

* * * * *

(b)(1) * * *

(ii) A technical justification that includes a description of the renewable fuel, feedstock(s), and biointermediate(s) used to make it, and the production process. The justification must include process modeling flow charts.

(iii) A mass balance for the pathway, including feedstocks and biointermediates, fuels produced, co-products, and waste materials production.

* * * * *

■ 10. Amend § 80.1426 by:

■ a. Adding paragraphs (a)(4);

■ b. Removing the headings from paragraphs (c)(2) and (3);

■ c. Adding paragraph (c)(8);

■ d. Removing paragraph (f)(1) introductory text;

■ e. Adding paragraph (f)(1) heading and paragraphs (f)(1)(i) through (vi) prior to Table 1 to § 80.1426;

■ f. Redesignating paragraph (f)(3)(vi) as paragraph (f)(3)(vi)(A);

■ g. In newly redesignated paragraph (f)(3)(vi)(A):

■ i. Revising the introductory text and the definitions of ''FE_3,'' ''FE_4,'' ''FE_5,'' ''FE_6,'' and ''FE_7'' following Table 4 to § 80.1426; and

■ ii. Designating the undesignated text following the definition of ''FE_7'' as paragraph (f)(3)(vi)(B);

■ h. In newly designated paragraph (f)(3)(vi)(B), revising the definitions of ''FE,'' ''M,'' ''m,'' ''CF,'' and ''E'';

■ i. Revising the paragraph (f)(4) heading;

■ j. Revising the definitions of ''FE_R'' and ''FE_{NR}'' in paragraph (f)(4)(i)(A)(*1*);

■ k. Adding paragraph (f)(4)(iv);

■ l. Revising paragraphs (f)(5) heading, (f)(5)(i) and (ii), (f)(5)(iii) introductory text, (f)(5)(iv)(A) introductory text, (f)(5)(iv)(B) introductory text, (f)(5)(v) introductory text, (f)(7)(v)(A) and (B), (f)(8)(ii)(B), (f)(9)(ii), (f)(15)(i) introductory text, (f)(16)(iii);

■ m. Adding paragraph (f)(17) heading; and

■ n. Revising paragraphs (f)(17)(i) introductory text and (f)(17)(i)(B)(*1*) and (*2*).

The additions and revisions read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel?

(a) * * *

(4) Where a feedstock or biointermediate is used to produce renewable fuel and is not entirely renewable biomass, RINs may only be generated for the portion of fuel that is derived from renewable biomass, as calculated under paragraph (f)(4) of this section.

* * * * *

(c) * * *

(8) RINs must not be generated for a biointermediate.

* * * * *

(f) * * *

(1) *Applicable pathways.* (i) D codes shall be used in RINs generated by producers or importers of renewable fuel according to the pathways listed in Table 1 to this section, paragraph (f)(6) of this section, or as approved by the Administrator.

(ii) In choosing an appropriate D code, producers and importers may disregard any incidental, *de minimis* feedstock contaminants that are impractical to remove and are related to customary feedstock production and transport.

(iii) Tables 1 and 2 to this section do not apply to, and impose no requirements with respect to, volumes of fuel for which RINs are generated pursuant to paragraph (f)(6) of this section.

(iv) Pathways in Table 1 to this section and advanced technologies in Table 2 to this section also apply in cases where the renewable fuel producer is using a biointermediate.

(v) For the purposes of identifying the appropriate pathway in Table 1 to this section, biointermediates used for the production of renewable fuel are considered to be equivalent to the renewable biomass from which they were derived, with the following exceptions:

(A) Oil that is physically separated from any woody or herbaceous biomass and used to produce renewable fuel shall not generate D-code 3 or 7 RINs.

(B) Sugar or starch that is physically separated from cellulosic biomass and used to produce renewable fuel shall not generate D-code 3 or 7 RINs.

(vi) If a renewable fuel producer uses a biointermediate for the production of renewable fuel, additional requirements apply to both the renewable fuel producer and the biointermediate producer as described in § 80.1476.

* * * * *

(3) * * *

(vi)(A) If a producer produces a single type of renewable fuel using two or more different feedstocks or biointermediates which are processed simultaneously, and each batch is comprised of a single type of fuel, then the number of gallon-RINs that shall be generated for a batch of renewable fuel and assigned a particular D code shall be determined according to the formulas in Table 4 to this section.

* * * * *

FE_3 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 3 under Table 1 to this section, or a D code of 3 as approved by the Administrator, in Btu.

FE_4 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 4 under Table 1 to this section, or a D code of 4 as approved by the Administrator, in Btu.

FE_5 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 5 under Table 1 to this section, or a D code of 5 as approved by the Administrator, in Btu.

FE_6 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 6 under Table 1 to this section, or a D code of 6 as approved by the Administrator, in Btu.

FE_7 = Feedstock energy from all feedstocks or biointermediates whose pathways have been assigned a D code of 7 under Table 1 to this section, or a D code of 7 as approved by the Administrator, in Btu.

(B) * * *

FE = Feedstock or biointermediate energy, in Btu.

M = Mass of feedstock or biointermediate, in pounds, measured on a daily or per-batch basis.

m = Average moisture content of the feedstock or biointermediate, in mass percent.

CF = Converted Fraction in annual average mass percent, except as otherwise provided by § 80.1451(b)(1)(ii)(U), representing that portion of the feedstock or biointermediate that is converted into renewable fuel by the producer.

E = Energy content of the components of the feedstock or biointermediate that are converted to renewable fuel, in annual average Btu/lb, determined according to paragraph (f)(7) of this section.

(4) *Renewable fuel that is produced by co-processing renewable biomass (including a biointermediate) and non-renewable feedstocks simultaneously to produce a fuel that is partially renewable.* (i) * * *

(A) * * *

(*1*) * * *

FE_R = Feedstock energy from renewable biomass (including the renewable portion of a biointermediate) used to make the transportation fuel, in Btu.

FE_{NR} = Feedstock energy from non-renewable feedstocks (including the non-renewable portion of a biointermediate) used to make the transportation fuel, heating oil, or jet fuel, in Btu.

* * * * *

(iv) In determining the RIN volume V_{RIN} for co-processed fuels produced from a biointermediate, RIN-generating parties must use Method B as described in paragraph (f)(4)(i)(B) of this section and calculate the renewable fraction of a fuel R using Method B of ASTM D6866 (incorporated by reference, see § 80.1468) as described in paragraph (f)(9)(ii) of this section.

(5) *Renewable fuel produced from separated yard waste, separated food waste, and separated MSW.* (i)(A) Separated yard waste is deemed to be composed entirely of cellulosic materials.

(B) Separated food waste is deemed to be composed entirely of non-cellulosic materials, unless a party demonstrates that a portion of the feedstock is cellulosic through approval of their facility registration.

(ii)(A) A feedstock qualifies as separated yard waste or separated food waste only if it is collected according to a plan submitted to and accepted by EPA under the registration procedures specified in § 80.1450(b)(1)(vii).

(B) A feedstock qualifies as separated MSW only if it is collected according to a plan submitted to and approved by EPA.

(iii) Separation and recycling actions for separated MSW are considered to occur if:

* * * * *

(iv)(A) The number of gallon-RINs that shall be generated for a batch of renewable fuel derived from separated yard waste shall be equal to a volume V_{RIN} and is calculated according to the following formula:

* * * * *

(B) The number of gallon-RINs that shall be generated for a batch of renewable fuel derived from separated food waste shall be equal to a volume V_{RIN} and is calculated according to the following formula:

* * * * *

(v) The number of cellulosic biofuel gallon-RINs that shall be generated for the cellulosic portion of a batch of renewable fuel derived from separated MSW shall be determined according to the following formula:

* * * * *

(7) * * *

(v) * * *

(A) ASTM E870 or ASTM E711 for gross calorific value (both incorporated by reference, see § 80.1468).

(B) ASTM D4442 or ASTM D4444 for moisture content (both incorporated by reference, see § 80.1468).

* * * * *

(8) * * *

(ii) * * *

(B) The standardized volume of biodiesel at 60 °F, in gallons, as calculated from the use of the American Petroleum Institute Refined Products Table 6B, as referenced in ASTM D1250 (incorporated by reference, see § 80.1468).

* * * * *

(9) * * *

(ii) Parties must use Method B or Method C of ASTM D6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by EPA.

* * * * *

(15) * * *

(i) If a producer seeking to generate D code 3 or D code 7 RINs produces a single type of renewable fuel using two or more feedstocks or biointermediates converted simultaneously, and at least one of the feedstocks or biointermediates does not have a minimum 75% average adjusted cellulosic content, one of the following additional requirements apply:

* * * * *

(16) * * *

(iii) Recordkeeping requirements under § 80.1454(n).

(17) *Qualifying use demonstration for certain renewable fuels.* (i) For purposes of this section, any renewable fuel other than ethanol, biodiesel, renewable gasoline, or renewable diesel that meets the ASTM D975 Grade No. 1–D or No. 2–D specifications (incorporated by reference, see § 80.1468) is considered renewable fuel and the producer or

importer may generate RINs for such fuel only if all of the following apply:

* * * * *

(B) * * *

(*1*) Blending the renewable fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

(*2*) Entering into a written contract for the sale of the renewable fuel, which specifies the purchasing party must blend the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

* * * * *

■ 11. Amend § 80.1428 by revising paragraph (b)(2) to read as follows:

§ 80.1428 General requirements for RIN distribution.

* * * * *

(b) * * *

(2) Unless otherwise specified, any person that has registered pursuant to § 80.1450 can own a separated RIN.

* * * * *

■ 12. Amend § 80.1429 by revising paragraph (b)(9) introductory text to read as follows:

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel.

* * * * *

(b) * * *

(9) Except as provided in paragraphs (b)(2) through (5) and (8) of this section, parties whose non-export renewable volume obligations are solely related to the importation of products listed in § 80.1407(c) or (e), the addition of blendstocks into a volume of finished gasoline, finished diesel fuel, or BOB, or that incur a renewable volume obligation (RVO) under § 80.1408, can only separate RINs from volumes of renewable fuel if the number of gallon-RINs separated in a calendar year is less than or equal to a limit set as follows:

* * * * *

■ 13. Amend § 80.1430 by revising paragraph (e)(2) to read as follows:

§ 80.1430 Requirements for exporters of renewable fuels.

* * * * *

(e) * * *

(2) Determination of the renewable portion of the blend using Method B or Method C of ASTM D6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by the EPA.

* * * * *

■ 14. Amend § 80.1431 by adding paragraph (a)(3) to read as follows:

§ 80.1431 Treatment of invalid RINs.

(a) * * *

(3) In the event that EPA determines that any RIN generated for a batch of renewable fuel produced using a biointermediate is invalid, then all RINs generated for that batch of renewable fuel are deemed invalid, unless EPA in its sole discretion determines that some portion of those RINs are valid.

* * * * *

§ 80.1435 [Amended]

■ 15. Amend § 80.1435 by, in paragraph (a)(4), removing ''§ 80.1454(u)'' and adding ''§ 80.1454(p)'' in its place.

■ 16. Amend § 80.1449 by revising paragraph (a)(4)(iii) to read as follows:

§ 80.1449 What are the Production Outlook Report requirements?

(a) * * *

(4) * * *

(iii) Feedstocks, biointermediates, and production processes to be used at each production facility.

* * * * *

■ 17. Amend § 80.1450 by:

■ a. Revising paragraphs (b) introductory text, (b)(1) introductory text, (b)(1)(i), and (b)(1)(ii) introductory text;

■ b. Adding paragraph (b)(1)(ii)(B); and

■ c. Revising paragraphs (b)(1)(iii), (b)(1)(iv)(A)(*1*) and (*2*), (b)(1)(iv)(B)(*3*), (b)(1)(v)(B) and (C), (b)(1)(vii)(A) introductory text, (b)(1)(vii)(B) introductory text, (b)(1)(viii) introductory text, (b)(1)(viii)(B)(*1*) through (*3*), (b)(1)(xii) introductory text, (b)(1)(xii)(B), (b)(1)(xii)(C) introductory text, (b)(1)(xiii)(A), (b)(1)(xiii)(B) introductory text, (b)(1)(xiii)(B)(*1*) and (*5*), (b)(1)(xv) introductory text, (b)(2)(i)(A) and (B), (b)(2)(ii)(A) through (C), (b)(2)(iv), and (d);

■ d. Adding paragraph (g) heading; and

■ e. Revising the second sentence of paragraph (g) introductory text, paragraphs (g)(5) through (7) and (9) and (g)(10)(ii), the second sentence of paragraph (g)(11)(ii), (h)(1)(i), and the last sentence of paragraph (h)(2)(i).

The revisions and additions read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(b) *Producers.* Any RIN-generating foreign producer, any non-RIN-generating foreign producer, any domestic renewable fuel producer that generates RINs, or any biointermediate producer that transfers any biointermediate for the production of a renewable fuel for RIN generation, must provide EPA the information specified under 40 CFR 1090.805 if such information has not already been provided under the provisions of this part, and must receive EPA-issued company and facility identification numbers prior to the generation of any RINs for their fuel or for fuel made with their ethanol, or prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated. Unless otherwise specifically indicated, all the following registration information must be submitted and accepted by EPA 60 days prior to the generation of RINs or the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated.

(1) A description of the types of renewable fuels, ethanol, or biointermediates that the producer intends to produce at the facility and that the facility is capable of producing without significant modifications to the existing facility. For each type of renewable fuel, ethanol, or biointermediate the renewable fuel producer or foreign ethanol producer must also provide all the following:

(i)(A) A list of all the feedstocks and biointermediates the facility intends to utilize without significant modification to the existing facility.

(B) A description of the type(s) of renewable biomass that will be used as feedstock material to produce the biointermediate, if applicable.

(C) A list of the EPA-issued company and facility registration numbers of all biointermediate producers and biointermediate production facilities that will supply biointermediates for renewable fuel production.

(ii) A description of the facility's renewable fuel, ethanol, or biointermediate production processes, including:

* * * * *

(B) For registrations indicating the production of any biointermediate, the biointermediate producer must provide all of the following:

(*1*) For each biointermediate production facility, the company name, EPA company registration number, and EPA facility registration number of the renewable fuel producer and renewable fuel production facility at which the biointermediate produced from the biointermediate production facility will be transferred and used.

(*2*) Copies of documents and corresponding calculations demonstrating production capacity of each biointermediate produced at the biointermediate production facility.

(*3*) For each type of feedstock that the biointermediate producer intends to process the biointermediate producer must provide all the following:

(*i*) A list of all the feedstocks the facility intends to utilize without significant modification to the existing facility.

(*ii*) A description of the type(s) of renewable biomass that will be used as feedstock material to produce the biointermediate.

(*4*) The pathway(s) in Table 1 to § 80.1426 or the approved pathway under § 80.1416 that the biointermediate could be used in to produce renewable fuel.

(iii) The type(s) of co-products produced with each type of renewable fuel, ethanol, or biointermediate.

(iv) * * *

(A) * * *

(*1*) Each type of process heat fuel used at the facility to produce the renewable fuel, ethanol, or biointermediate.

(*2*) The name and address of the company supplying each process heat fuel to the renewable fuel facility, foreign ethanol facility, or biointermediate production facility.

(B) * * *

(*3*) An affidavit from the biogas supplier stating its intent to supply biogas to the renewable fuel producer, foreign ethanol producer, or biointermediate producer, and the quantity and energy content of the biogas that it intends to provide to the renewable fuel producer or foreign ethanol producer.

(v) * * *

(B) For facilities claiming the exemption described in § 80.1403(c) or (d):

(*1*) Applicable air permits issued by EPA, state, local air pollution control agencies, or foreign governmental agencies that govern the construction and/or operation of the renewable fuel facility that were:

(*i*) Issued or revised no later than December 19, 2007, for facilities described in § 80.1403(c); or

(*ii*) Issued or revised no later than December 31, 2009, for facilities described in § 80.1403(d).

(*2*) If the air permits specified in paragraph (b)(1)(v)(B)(*1*) of this section do not specify the maximum rated annual volume output of renewable fuel, copies of documents demonstrating the facility's actual peak capacity.

(C) For facilities not claiming the exemption described in § 80.1403(c) or (d) and that are exempt from air permit requirements or for which the maximum rated annual volume output of renewable fuel is not specified in their air permits, appropriate documentation demonstrating the facility's actual peak capacity or nameplate capacity.

* * * * *

(vii)(A) For a renewable fuel producer, foreign ethanol producer, or biointermediate producer using separated yard waste:

* * * * *

(B) For a renewable fuel producer, foreign ethanol producer, or biointermediate producer using separated food waste:

* * * * *

(viii) For a renewable fuel producer, foreign ethanol producer, or biointermediate producer using separated municipal solid waste:

* * * * *

(B) * * *

(*1*) Extent and nature of recycling that occurred prior to receipt of the waste material by the renewable fuel producer, foreign ethanol producer, or biointermediate producer;

(*2*) Identification of available recycling technology and practices that are appropriate for removing recycling materials from the waste stream by the fuel producer, foreign ethanol producer, or biointermediate producer; and

(*3*) Identification of the technology or practices selected for implementation by the fuel producer, foreign ethanol producer, or biointermediate producer including an explanation for such selection, and reasons why other technologies or practices were not.

* * * * *

(xii) For a producer or importer of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets the ASTM D975 Grade No. 1–D or No. 2–D specifications (incorporated by reference, see § 80.1468), biogas, or renewable electricity, all the following:

* * * * *

(B) A statement regarding whether the renewable fuel producer or importer will blend the renewable fuel into gasoline or diesel fuel or enter into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel that meets all applicable standards under this part and 40 CFR part 1090.

(C) If the renewable fuel producer or importer enters into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or distillate fuel to produce a transportation fuel, heating oil, or jet fuel, provide all the following:

* * * * *

(xiii)(A) A renewable fuel producer seeking to generate D code 3 or D code 7 RINs, a foreign ethanol producer seeking to have its product sold as cellulosic biofuel after it is denatured, or a biointermediate producer seeking to have its biointermediate made into cellulosic biofuel, who intends to produce a single type of fuel using two or more feedstocks converted simultaneously, where at least one of the feedstocks does not have a minimum 75% average adjusted cellulosic content, and who uses only a thermochemical process to convert feedstock into renewable fuel, must provide all the following:

(*1*) Data showing the average adjusted cellulosic content of the feedstock(s) to be used to produce fuel or biointermediate, based on the average of at least three representative samples. Cellulosic content data must come from an analytical method certified by a voluntary consensus standards body or using a method that would produce reasonably accurate results as demonstrated through peer reviewed references provided to the third party engineer performing the engineering review at registration. Samples must be of representative feedstock from the primary feedstock supplier that will provide the renewable fuel or biointermediate producer with feedstock subsequent to registration.

(*2*) For renewable fuel and biointermediate producers who want to use a new feedstock(s) after initial registration, updates to their registration under paragraph (d) of this section indicating the average adjusted cellulosic content of the new feedstock.

(*3*) For renewable fuel producers already registered as of August 18, 2014, to produce a single type of fuel that qualifies for D code 3 or D code 7 RINs (or would do so after denaturing) using two or more feedstocks converted simultaneously using only a thermochemical process, the information specified in this paragraph (b)(1)(xiii)(A) shall be provided at the next required registration update under paragraph (d) of this section.

(B) A renewable fuel producer seeking to generate D code 3 or D code 7 RINs, a foreign ethanol producer seeking to have its product sold as cellulosic biofuel after it is denatured, or a biointermediate producer seeking to have its biointermediate made into cellulosic biofuel, who intends to produce a single type of fuel using two or more feedstocks converted simultaneously, where at least one of the feedstocks does not have a minimum 75% adjusted cellulosic content, and who uses a process other than a thermochemical process or a combination of processes to convert feedstock into renewable fuel or

biointermediate, must provide all the following:

(*1*) The expected overall fuel or biointermediate yield, calculated as the total volume of fuel produced per batch (*e.g.,* cellulosic biofuel plus all other fuel) divided by the total feedstock mass per batch on a dry weight basis (*e.g.,* cellulosic feedstock plus all other feedstocks).

* * * * *

(*5*) For renewable fuel producers already registered as of August 18, 2014, to produce a single type of fuel that qualifies for D code 3 or D code 7 RINs (or would do so after denaturing) using two or more feedstocks converted simultaneously using a combination of processes or a process other than a thermochemical process, the information specified in this paragraph (b)(1)(xiii)(B) shall be provided at the next required registration update under paragraph (d) of this section.

* * * * *

(xv) For a producer of cellulosic biofuel made from crop residue, a foreign ethanol producer making ethanol from crop residue and seeking to have it sold after denaturing as cellulosic biofuel, or a biointermediate producer producing a biointermediate for use in the production of a cellulosic biofuel made from crop residue, provide all the following information:

* * * * *

(2) * * *

(i) * * *

(A) For a domestic renewable fuel production facility, a foreign ethanol production facility, or a biointermediate production facility, a professional engineer who is licensed by an appropriate state agency in the United States, with professional work experience in the chemical engineering field or related to renewable fuel production.

(B) For a foreign renewable fuel or foreign biointermediate production facility, an engineer who is a foreign equivalent to a professional engineer licensed in the United States with professional work experience in the chemical engineering field or related to renewable fuel production.

(ii) * * *

(A) The third-party shall not be operated by the renewable fuel producer, foreign ethanol producer, or biointermediate producer, or any subsidiary or employee of the renewable fuel producer foreign ethanol producer, or biointermediate producer.

(B) The third-party shall be free from any interest in the renewable fuel producer, foreign ethanol producer, or biointermediate producer's business.

(C) The renewable fuel producer, foreign ethanol producer, or biointermediate producer shall be free from any interest in the third-party's business.

* * * * *

(iv) The renewable fuel producer, foreign ethanol producer, or biointermediate producer must retain records of the review and verification, as required in § 80.1454(b)(6) or (i)(4), as applicable.

* * * * *

(d) *Registration updates.* (1)(i)(A) Any renewable fuel producer or any foreign ethanol producer that makes changes to their facility that will allow them to produce renewable fuel or use a biointermediate that is not reflected in the producer's registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new type of renewable fuel.

(B) Any biointermediate producer who makes changes to their biointermediate production facility that will allow them to produce a biointermediate for use in the production of a renewable fuel that is not reflected in the biointermediate producer's registration information on file with EPA must update their registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new biointermediate for use in the production of the renewable fuel.

(ii) The renewable fuel producer, foreign ethanol producer, or biointermediate producer may also submit an addendum to the independent third-party engineering review on file with EPA provided the addendum meets all the requirements in paragraph (b)(2) of this section and verifies for EPA the most up-to-date information at the producer's existing facility.

(2)(i) Any renewable fuel producer or any foreign ethanol producer that makes any other changes to a facility that will affect the producer's registration information but will not affect the renewable fuel category for which the producer is registered per paragraph (b) of this section must update their registration information 7 days prior to the change.

(ii)(A) Any biointermediate producer that makes any other changes to a biointermediate production facility that will affect the biointermediate producer's registration must update their registration information 7 days prior to the change.

(B)(*1*) Any biointermediate producer that intends to change the designated renewable fuel production facility under paragraph (b)(1)(ii)(G)(*1*) of this section for one of its biointermediate production facilities must update their registration information with EPA at least 30 days prior to transferring the biointermediate to the newly designated renewable fuel production facility.

(*2*) A biointermediate producer may only change the designated renewable fuel production facility under paragraph (b)(1)(ii)(G)(*1*) of this section for each biointermediate production facility one time per calendar year unless EPA, in its sole discretion, allows the biointermediate producer to change the designated renewable fuel production facility more frequently.

(3) All renewable fuel producers, foreign ethanol producers, and biointermediate producers must update registration information and submit an updated independent third-party engineering review according to the schedule in paragraph (d)(3)(i) or (ii) of this section, and include the information specified in paragraph (d)(3)(iii) or (iv) of this section, as applicable:

(i) For all renewable fuel producers and foreign ethanol producers registered in calendar year 2010, the updated registration information and independent third-party engineering review must be submitted to EPA by January 31, 2013, and by January 31 of every third calendar year thereafter; or

(ii) For all renewable fuel producers, foreign ethanol producers, and biointermediate producers registered in any calendar year after 2010, the updated registration information and independent third-party engineering review must be submitted to EPA by January 31 of every third calendar year after the first year of registration.

(iii) For all renewable fuel producers, in addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review must include a detailed review of the renewable fuel producer's calculations used to determine V_{RIN} of a representative sample of batches of each type of renewable fuel produced since the last registration. The representative sample must be selected in accordance with the sample size guidelines set forth at 40 CFR 1090.1805.

(iv) For biointermediate producers, in addition to conducting the engineering review and written report and

verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review must include a detailed review of the biointermediate producer's calculations used to determine the renewable biomass and cellulosic renewable biomass proportions, as required to be reported to EPA under § 80.1451(i)(2), of a representative sample of batches of each type of biointermediate produced since the last registration. The representative sample must be selected in accordance with the sample size guidelines set forth at 40 CFR 1090.1805.

* * * * *

(g) *Independent third-party auditors.* * * * Registration information must be submitted at least 30 days prior to conducting audits of renewable fuel production or biointermediate production facilities. * * *

* * * * *

(5) *List of audited producers.* Name, address, and company and facility identification numbers of all renewable fuel production or biointermediate production facilities that the independent third-party auditor intends to audit under § 80.1472.

(6) *Audited producer associations.* An affidavit, or electronic consent, from each renewable fuel producer, foreign renewable fuel producer, or biointermediate producer stating its intent to have the independent third-party auditor conduct a quality assurance audit of any of the renewable fuel producer's or foreign renewable fuel producer's facilities.

(7) *Independence affidavits.* An affidavit stating that an independent third-party auditor and its contractors and subcontractors are independent, as described in § 80.1471(b), of any renewable fuel producer, foreign renewable fuel producer, or biointermediate producer.

* * * * *

(9) *Registration updates.* (i) Any independent third-party auditor who makes changes to its quality assurance plan(s) that will allow it to audit new renewable fuel production or biointermediate production facilities, as defined in § 80.1401, that is not reflected in the independent third-party auditor's registration information on file with EPA must update its registration information and submit a copy of an updated QAP on file with EPA at least 60 days prior to auditing new renewable fuel production or biointermediate production facilities.

(ii) Any independent third-party auditor who makes any changes other than those specified in paragraphs (g)(9)(i), (iii), and (iv) of this section that will affect the third-party auditor's registration information must update its registration information 7 days prior to the change.

(iii) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated or biointermediate produced by a renewable fuel or biointermediate production facility, respectively, for a pathway not covered in the independent third-party auditor's QAPs.

(iv) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated or biointermediate produced by any renewable fuel or biointermediate production facility not identified in the independent third-party auditor's existing registration.

(10) * * *

(ii) The independent third-party auditor submits an affidavit affirming that he or she has only verified RINs and biointermediates using a QAP approved under § 80.1469, notified all appropriate parties of all potentially invalid RINs as described in § 80.1471(d), and fulfilled all of his or her RIN replacement obligations under § 80.1474.

* * * * *

(11) * * *

(ii) * * * Communications should be sent to the EMTS support line (*fuelsprogramsupport@epa.gov*). * * *

* * * * *

(h) * * *

(1) * * *

(i) Unless the party is a biointermediate producer, the party has reported no activity in EMTS for twenty-four consecutive months.

* * * * *

(2) * * *

(i) * * * The party will have 30 calendar days from the date of the notification to correct the deficiencies identified or explain why there is no need for corrective action.

* * * * *

■ 18. Amend § 80.1451 by:

■ a. Revising paragraphs (b)(1)(ii)(K) and (L), the first sentence of paragraph (b)(1)(ii)(R), (b)(1)(ii)(T), (b)(1)(ii)(U) introductory text, (g)(1)(i), (g)(1)(ii) introductory text, (g)(1)(ii)(A) through (C), (K), and (L), and (g)(2)(vii) and (viii);

■ b. Redesignating paragraph (g)(2)(x) as paragraph (g)(2)(xi) and adding new paragraph (g)(2)(x); and

■ c. Redesignating paragraphs (j) and (k) as paragraphs (k) and (l) and adding new paragraph (j).

The revisions and additions read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(K) The types and quantities of feedstocks and biointermediates used.

(L) The process(es), feedstock(s), and biointermediate(s) used and proportion of renewable volume attributable to each process and feedstock.

* * * * *

(R) Producers or importers of renewable fuel made from separated municipal solid waste must report the amount of paper, cardboard, plastics, rubber, textiles, metals, and glass separated from municipal solid waste for recycling. * * *

* * * * *

(T) Producers or importers of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets ASTM D975 Grade No. 1–D or No. 2–D specifications (incorporated by reference, see § 80.1468), biogas or renewable electricity, must report, on a quarterly basis, all the following for each volume of fuel:

(*1*) Total volume of renewable fuel produced or imported, total volume of renewable fuel blended into gasoline and distillate fuel by the producer or importer, and the percentage of renewable fuel in each batch of finished fuel.

(*2*) If the producer or importer generates RINs under § 80.1426(f)(17)(i)(B)(*2*), report the name, location, and contract information for each party that purchased the renewable fuel.

(U) Producers generating D code 3 or D code 7 RINs for fuel derived from feedstocks or biointermediates other than biogas (including through pathways listed in rows K, L, M, and N of Table 1 to § 80.1426), and that was produced from two or more feedstocks converted simultaneously, at least one of which has less than 75% average adjusted cellulosic content, and using a combination of processes or a process other than a thermochemical process or a combination of processes shall report all of the following:

* * * * *

(g) * * *

(1)(i) For RINs verified beginning on September 16, 2014, RIN and biointermediate verification reports for each renewable fuel or biointermediate production facility audited by the independent third-party auditor shall be submitted according to the schedule specified in paragraph (f)(2) of this section.

(ii) The RIN and biointermediate verification reports shall include all the following information for each batch of renewable fuel produced or imported verified per § 80.1469(c), where ''batch'' means a discrete quantity of renewable fuel produced or imported and assigned a unique batch-RIN per § 80.1426(d):

(A) The RIN generator or biointermediate producer's name.

(B) The RIN generator or biointermediate producer's EPA company registration number.

(C) The renewable fuel or biointermediate producer's EPA facility registration number.

* * * * *

(K) The volume and type of each feedstock and biointermediate used to produce the verified batch.

(L) Whether the feedstocks and biointermediates used to produce each verified batch met the definition of renewable biomass.

* * * * *

(2) * * *

(vii) A list of all renewable fuel and biointermediate facilities including the EPA's company and facility registration numbers audited under an approved quality assurance plan under § 80.1469 along with the date the independent third-party auditor conducted the on-site visit and audit.

(viii) Mass and energy balances calculated for each renewable fuel and biointermediate production facility audited under an approved quality assurance plan under § 80.1469.

* * * * *

(x) A list of all biointermediates that were identified as potentially improperly produced biointermediates under § 80.1477(d).

* * * * *

(j) *Biointermediate producers.* For each biointermediate production facility, any biointermediate producer must submit quarterly reports for biointermediate batch production to EPA containing all of the information in this paragraph (j).

(1) Include all the following information for each batch of biointermediate produced:

(i) The biointermediate producer's name.

(ii) The biointermediate producer's EPA company registration number.

(iii) The biointermediate producer's EPA facility registration number.

(iv) The applicable compliance period.

(v) The production date.

(vi) The batch number.

(vii) The adjusted cellulosic content of each batch, as defined in § 80.1401, and certification that the cellulosic content of each batch was derived from cellulose, hemicellulose, or lignin that was derived from renewable biomass, as defined in § 80.1401.

(viii) The volume of each batch produced.

(ix) The types and quantities of feedstocks used.

(x) The renewable fuel type(s) each batch of biointermediate was designated to be used as a feedstock material for.

(xi) The EPA company registration number and EPA facility registration number for each renewable fuel producer or foreign renewable fuel producer that received title to each batch.

(xii) The percentage of each batch of biointermediate that met the definition of renewable feedstock and certification that this portion of the batch of biointermediate was derived from renewable biomass, as defined in § 80.1401.

(xiii) The process(es) and feedstock(s) used and proportion of biointermediate volume attributable to each process and feedstock.

(xiv) The type of co-products produced with each batch.

(xv) The quantity of co-products produced in each quarter.

(xvi) Any additional information the Administrator may require.

(2) Quarterly reports under this paragraph of this section must be submitted according to the schedule in paragraph (f)(2) of this section.

* * * * *

■ 19. Amend § 80.1452 by redesignating paragraph (b)(16) as paragraph (b)(18) and adding new paragraphs (b)(16) and (17) to read as follows:

§ 80.1452 What are the requirements related to the EPA Moderated Transaction System (EMTS)?

* * * * *

(b) * * *

(16) The type and quantity of each biointermediate used for the batch, if applicable.

(17) The EPA facility registration number of each biointermediate production facility at which a biointermediate used for the batch was produced, if applicable.

* * * * *

■ 20. Amend § 80.1453 by adding paragraphs (a)(11)(v) and (f) to read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

(a) * * *

(11) * * *

(v) For RINs that are generated from renewable fuel produced from a biointermediate, the PTD must include the following:

(A) The EPA-issued company and facility identification number of each biointermediate producer for which the RINs represent renewable fuel generated from biointermediates.

(B) The type(s) of biointermediate used to make the renewable fuel.

(C) The following statement: ''These RINs were generated from renewable fuel produced from a biointermediate.''

* * * * *

(f) On each occasion when any party transfers title or custody of a biointermediate, the transferor must provide to the transferee documents that include all of the following information:

(1) The name and address of the transferor and transferee.

(2) The transferor's and transferee's EPA company registration and applicable facility registration numbers.

(3) The volume of biointermediate that is being transferred.

(4) The date of the transfer.

(5) The location of the biointermediate at the time of the transfer.

(6) The renewable fuel type the biointermediate was designated to be used as a feedstock material for by the biointermediate producer under § 80.1476(i).

(7) The composition of the biointermediate being transferred, including:

(i) The type and quantity of each feedstock that was used to make the biointermediate.

(ii) The percentage of each feedstock that is renewable biomass, rounded to two decimal places.

(iii) For a biointermediate that contains both renewable and non-renewable feedstocks:

(A) The percentage of each feedstock that is not renewable biomass, rounded to two decimal places.

(B) The feedstock energy from the renewable biomass used to make the biointermediate, in Btu.

(C) The feedstock energy from the non-renewable biomass used to make the biointermediate, in Btu.

(D) The total percentage of the biointermediate that may generate RINs, rounded to two decimal places.

(E) The total percentage of the biointermediate that may not generate RINs, rounded to two decimal places.

(iv) For a biointermediate that contains cellulosic material:

(A) The percentage of each feedstock in paragraph (f)(7)(ii) of this section that is cellulosic, rounded to two decimal places.

(B) The percentage of each feedstock in paragraph (f)(7)(ii) of this section that

is non-cellulosic, rounded to two decimal places, if applicable.

(C) The total percentage of the biointermediate that may generate cellulosic RINs, rounded to two decimal places.

(D) For separated municipal solid waste, the cellulosic portion of the biointermediate is equivalent to the biogenic portion.

(E) For separated food waste, the non-cellulosic percentage is assumed to be zero percent unless it is demonstrated to be partially cellulosic.

(F) For separated yard waste, 100% of separated yard waste is deemed to be cellulosic.

(G) The following statement: ''I certify that the cellulosic content of this feedstock was derived from cellulose, hemicellulose, or lignin that was derived from renewable biomass.''

(8) Copies of records specified in § 80.1454(i)(3), (5), and (6) for the volume being transferred, as applicable.

(9) The following statement designating the volume of biointermediate as feedstock for the production of a renewable fuel: ''This volume is designated and intended for use as biointermediate in the production of renewable fuel as defined in 40 CFR 80.1401. Parties may not generate RINs on this feedstock material.''

■ 21. Amend § 80.1454 by:

■ a. Redesignating paragraphs (b)(3)(vii) through (xii) as paragraphs (b)(3)(viii) through (xiii) and adding new paragraph (b)(3)(vii);

■ b. Revising paragraphs (b)(6), the first sentence of paragraph (d)(4), (i), and (j) introductory text;

■ c. Adding paragraph (k) heading;

■ d. Revising paragraphs (l) introductory text and (l)(1);

■ e. Redesignating paragraph (l)(3) as paragraph (l)(4) and adding new paragraph (l)(3);

■ f. Revising the first sentence of paragraph (m) introductory text;

■ g. Redesignating paragraph (m)(10) as paragraph (m)(11) and adding new paragraph (m)(10);

■ h. Removing paragraphs (n), (o), (p), and (q);

■ i. Redesignating paragraphs (s), (t), (u), and (v) as paragraphs (n), (o), (p), and (q);

■ j. Revising newly redesignated paragraph (n) introductory text;

■ k. Revising paragraph (r);

■ l. Adding new paragraphs (s), (t), (u), and (v); and

■ m. Removing paragraph (w).

The revisions and addition read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(b) * * *

(3) * * *

(vii) Type and quantity of biointermediates used.

* * * * *

(6) Copies of registration documents required under § 80.1450, including information on fuels and products, feedstocks, biointermediates, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review report submitted to EPA per § 80.1450(b)(2).

* * * * *

(d) * * *

(4) Domestic producers of renewable fuel or biointermediates made from any other type of renewable biomass must have documents from their feedstock supplier certifying that the feedstock qualifies as renewable biomass as defined in § 80.1401, describing the feedstock. * * *

* * * * *

(i) *Requirements for biointermediate producers.* Any biointermediate producer producing a biointermediate must keep all of the following records in addition to those required under paragraphs (a) through (m) of this section:

(1) Product transfer documents consistent with § 80.1453(e) and associated with the biointermediate producer's activities, if any, as transferor or transferee of biointermediates.

(2) Copies of all reports submitted to EPA under § 80.1451(i).

(3) Records related to the production of biointermediates for each biointermediate production facility, including all of the following:

(i) Batch volume.

(ii) Batch number.

(iii) Type and quantity of co-products produced.

(iv) Type and quantity of feedstocks used.

(v) Type and quantity of fuel used for process heat.

(vi) Feedstock energy calculations per § 80.1426(f)(4), as applicable.

(vii) Date of production.

(viii) Results of any laboratory analysis of batch chemical composition or physical properties.

(4) Copies of registration documents required under § 80.1450, including information on products, feedstocks, facility production processes, process changes, and capacity, energy sources, and a copy of the independent third party engineering review submitted to EPA per § 80.1450(b)(2)(i).

(5) Records demonstrating that feedstocks are renewable biomass, as required under paragraphs (d), (g), (h), and (j) of this section, as applicable.

(6) For any biointermediate made from Arundo donax or Pennisetum purpureum per § 80.1426(f)(14), all applicable records described in paragraph (b)(7) of this section.

(7) Records, including contracts, related to the implementation of a QAP under §§ 80.1469 and 80.1477.

(j) *Additional requirements for producers that use separated yard waste, separate food waste, separated municipal solid waste, or biogenic waste oils/fats/greases.* A renewable fuel or biointermediate producer that produces fuel or biointermediate from separated yard waste, separated food waste, separated municipal solid waste, or biogenic waste oils/fats/greases must keep all the following additional records:

* * * * *

(k) *Additional requirements for producers of renewable fuel using biogas.* * * *

(l) *Additional requirements for producers or importers of any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel, biogas, or renewable electricity.* A renewable fuel producer that generates RINs for any renewable fuel other than ethanol, biodiesel, renewable gasoline, renewable diesel that meets ASTM D975 Grade No. 1–D or No. 2–D specifications (incorporated by reference, see § 80.1468), biogas or renewable electricity shall keep all of the following additional records:

(1) Documents demonstrating the total volume of renewable fuel produced, total volume of renewable fuel blended into gasoline and distillate fuel, and the percentage of renewable fuel in each batch of finished fuel.

* * * * *

(3) For each batch of renewable fuel that generated RINs under § 80.1426(f)(17)(i)(B)(*2*), one or more affidavits from the party that blended or used the renewable fuel that includes all the following information:

(i) Quantity of renewable fuel received from the producer or importer.

(ii) Date the renewable fuel was received from producer.

(iii) A description of the fuel that the renewable fuel was blended into and the blend ratios for each batch, if applicable.

(iv) A description of the finished fuel, and a statement that the fuel meets all applicable standards and was sold for use as a transportation fuel, heating oil or jet fuel.

(v) Quantity of assigned RINs received with the renewable fuel, if applicable.

(vi) Quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.

* * * * *

(m) *Requirements for independent third-party auditors.* * * *

(10) Copies of all reports required under § 80.1464.

* * * * *

(n) *Additional requirements for producers of renewable fuel using crop residue.* Producers of renewable fuel using crop residue must keep records of all of the following:

* * * * *

(r) *Transaction requirement.* Beginning July 1, 2010, all parties must keep transaction information sent to EMTS in addition to other records required under this section.

(1) For buy or sell transactions of separated RINs, parties must retain records substantiating the price reported to EPA under § 80.1452.

(2) For buy or sell transactions of separated RINs on or after January 1, 2020, parties must retain records demonstrating the transaction mechanism (*e.g.,* spot market or fulfilling a term contract).

(s) *Record retention requirement.* (1) The records required under paragraphs (a) through (d), (f) through (l), (n), and (r) of this section and under § 80.1453 must be kept for five years from the date they were created, except that records related to transactions involving RINs must be kept for five years from the date of the RIN transaction.

(2) The records required under paragraph (e) of this section must be kept through calendar year 2022.

(t) *Record availability requirement.* On request by the EPA, the records required under this section and under § 80.1453 must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available; or, if requested by the EPA, electronic records shall be converted to paper documents.

(u) *Record transfer requirement.* The records required in paragraphs (b)(3) and (c)(1) of this section must be transferred with any renewable fuel sent to the importer of that renewable fuel by any non-RIN-generating foreign producer.

(v) *English language records.* Any document requested by the Administrator under this section must be submitted in English or must include an English translation.

■ 22. Amend § 80.1460 by revising paragraphs (b)(5) and (6) and adding paragraphs (b)(8) and (k) to read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(b) * * *

(5) Introduce into commerce any renewable fuel produced from a feedstock, biointermediate, or through a process that is not described in the person's registration information.

(6) Generate a RIN for fuel for which RINs have previously been generated unless the RINs were generated under § 80.1426(c)(6).

* * * * *

(8) Generate a RIN for fuel that was produced from a biointermediate for which the fuel and biointermediate were not audited under an EPA-approved quality assurance plan.

* * * * *

(k) *Biointermediate-related violations.* No person may do any of the following:

(1) Introduce into commerce for use in the production of a renewable fuel any biointermediate produced from a feedstock or through a process that is not described in the person's registration information.

(2) Produce a renewable fuel at more than one facility unless the person uses a biointermediate as defined under § 80.1401 or the renewable biomass is not substantially altered. Form changes of renewable biomass such as chopping, crushing, grinding, pelletizing, filtering, compacting/compression, centrifuging, degumming, dewatering/drying, melting, or the addition of water to produce a slurry do not constitute substantial alteration.

(3) Transfer a biointermediate from a biointermediate production facility to a facility other than the renewable fuel production facility specified in the biointermediate producer's registration under § 80.1450(b)(1)(ii)(G)(*1*).

(4) Isolate or concentrate non-characteristic components of the feedstock to yield an intermediate product not contemplated by EPA in establishing an approved pathway that the biointermediate producer and the renewable fuel producer are using to convert renewable biomass to renewable fuel.

■ 23. Amend § 80.1461 by revising paragraphs (a)(1) and (2) and adding paragraph (e) to read as follows:

§ 80.1461 Who is liable for violations under the RFS program?

(a) * * *

(1) Any person who violates a prohibition under § 80.1460(a) through (d) or (g) through (k) is liable for the violation of that prohibition.

(2) Any person who causes another person to violate a prohibition under § 80.1460(a) through (d) or (g) through (k) is liable for a violation of § 80.1460(e).

* * * * *

(e) *Biointermediate liability.* When a biointermediate contained in any storage tank at any facility owned, leased, operated, controlled, or supervised by any biointermediate producer, biointermediate importer, renewable fuel producer, or foreign ethanol producer is found in violation of a prohibition described in § 80.1460(k)(1) and (3), the following persons shall be deemed in violation:

(1) Each biointermediate producer, biointermediate importer, renewable fuel producer, renewable fuel importer, or foreign ethanol producer who owns, leases, operates, controls, or supervises the facility where the violation is found.

(2) Each biointermediate producer, biointermediate importer, renewable fuel producer, renewable fuel importer, or foreign ethanol producer who manufactured, imported, sold, offered for sale, dispensed, offered for supply, stored, transported, or caused the transportation of any biointermediate that is in the storage tank containing the biointermediate found to be in violation.

(3) Each carrier who dispensed, supplied, stored, or transported any biointermediate that was in the storage tank containing the biointermediate found to be in violation, provided that EPA demonstrates, by reasonably specific showings using direct or circumstantial evidence, that the carrier caused the violation.

■ 24. Amend § 80.1463 by revising paragraph (d) to read as follows:

§ 80.1463 What penalties apply under the RFS program?

* * * * *

(d) Any person liable under § 80.1461(a) for a violation of § 80.1460(b)(1) through (4) or (6) through (8) is subject to a separate day of violation for each day that an invalid RIN remains available for an obligated party or exporter of renewable fuel to demonstrate compliance with the RFS program.

■ 25. Amend § 80.1464 by:

■ a. Removing ''§ 80.127'' everywhere it appears and adding ''40 CFR 1090.1805'' in its place;

■ b. Revising paragraph (a)(3)(ii);

■ c. Adding paragraph (a)(7);

■ d. Revising paragraph (b)(1)(v)(A);

■ e. Adding paragraph (b)(1)(v)(C);

■ f. Revising paragraphs (b)(3)(ii) and (b)(4)(i);

■ g. Adding paragraphs (b)(4)(iii) and (b)(8);

■ h. Revising paragraphs (c) introductory text and (c)(2)(ii);
■ i. Adding paragraphs (c)(6) and (7) and (h); and
■ j. Revising paragraphs (i)(1) heading, (i)(1)(i) and (iii), (i)(2) heading, and (i)(2)(i) and (ii).

The revisions and additions read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(a) * * *

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (a)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume and type of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

* * * * *

(7) *Compliance reports.* Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

(b) * * *

(1) * * *

(v)(A) Obtain documentation, as required under § 80.1451(b), (d), and (e), associated with feedstock and biointermediate purchases for a representative sample of feedstocks and biointermediates separately, selected in accordance with the guidelines in 40 CFR 1090.1805, of renewable fuel batches produced or imported during the year being reviewed.

* * * * *

(C) Verify that biointermediates were properly identified in the reports, as applicable.

* * * * *

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (b)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; report the total number of each RIN generated during each quarter and compute and report the total number of current-year and prior-year RINs owned at the start and end of each quarter, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(4) * * *

(i) Obtain documentation of independent third-party engineering reviews required under § 80.1450(b)(2). Such documentation must include the date of the last engineering review along with date of the actual site visit by the professional engineer.

* * * * *

(iii) Verify that independent third-party engineering reviews conducted under § 80.1450(d)(3) occurred within the three-year cycle. Report as a finding if the engineering review was not updated as part of the three-year cycle under § 80.1450(d)(3).

* * * * *

(8) *Compliance reports.* Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

(c) *Other parties owning RINs.* Except as specified in paragraph (c)(6) of this section, the following attest procedures must be completed for any party other than an obligated party or renewable fuel producer or importer that owns any RINs during a calendar year:

* * * * *

(2) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (c)(1) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

* * * * *

(6) *Low-volume RIN owner exemption.* Any party who meets all the following criteria in a given compliance period is not required to submit an attest engagement for that compliance period:

(i) The party must be solely registered as a party owning RINs (*i.e.,* a ''RIN Owner Only'') and must not also be registered in any other role under § 80.1450 (*e.g.,* the party must not also be an obligated party, exporter of renewable fuel, renewable fuel producer, RIN generating importer, etc.).

(ii) The party must have transacted (*e.g.,* generated, bought, sold, separated, or retired) 10,000 or fewer RINs in the given compliance period.

(iii) The party has not exceeded the RIN holding threshold(s) specified in § 80.1435.

(7) *Compliance reports.* Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

* * * * *

(h) *Biointermediate producers.* The following attest reports must be completed for any biointermediate producer that produces a biointermediate in a compliance year:

(1) *Biointermediate production reports.* (i) Obtain and read copies of the quarterly biointermediate production reports required under § 80.1451(i); compare the reported information to the requirements under § 80.1451(i); and report as a finding any missing or incomplete information in the reports.

(ii) Obtain any database, spreadsheet, or other documentation used to generate the information in the biointermediate production reports; compare the corresponding entries in the database or spreadsheet and report as a finding any discrepancies.

(iii) For a representative sample of biointermediate batches, selected in accordance with the guidelines in 40 CFR 1090.1805, obtain records required under § 80.1454(i); compare these records to the corresponding batch entries in the reports procured in paragraph (h)(1)(i) of this section and report as a finding any discrepancies.

(iv) Obtain the list of designated renewable fuel production facilities under § 80.1450(b)(1)(ii)(G)(*1*); compare the list of registered designated renewable fuel production facilities to those identified in the biointermediate production report; and report as a finding any discrepancies.

(v) Provide the list of renewable fuel producers receiving any transfer of biointermediate batches and calculate the total volume from the batches received.

(2) *Independent third-party engineering review.* (i) Obtain documentation of independent third-party engineering reviews required under § 80.1450(b)(2).

(ii) Review and verify the written verification and records generated as part of the independent third-party engineering review.

(iii) Provide the date of the submission of the last engineering review along with the date of the actual site visit by the professional engineer. Report as a finding if the engineering review was not updated as part of the three-year cycle under § 80.1450(d)(3).

(iv) Compare and provide the total volume of produced biointermediate during the compliance year as compared to the production capacity stated in the engineering review and report as a finding if the volume of produced biointermediate is greater than the stated production capacity.

(3) *Product transfer documents.* (i) Obtain contracts, invoices, or other documentation for each batch in the representative sample under paragraph (h)(1)(iii) of this section and the corresponding copies of product transfer documents required under § 80.1453; compare the product transfer documents with the contracts and invoices and report as a finding any discrepancies.

(ii) Verify that the product transfer documents obtained in paragraph (h)(3)(i) of this section contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iii) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (h)(3)(ii) of this section with the records obtained and reviewed under paragraph (h)(1)(iii) of this section and report as a finding any exceptions.

(i) * * *

(1) *Comparing RIN and biointermediate verification reports with approved QAPs.* (i) Obtain and read copies of reports required under § 80.1451(g)(1). Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

* * * * *

(iii) Confirm that the independent third-party auditor only verified RINs and biointermediates covered by approved QAPs under § 80.1469. Identify as a finding any discrepancies.

(2) *Checking third-party auditor's RIN and biointermediate verification.* (i) Obtain and read copies of reports required under § 80.1451(g)(2). Compare the list of compliance reports submitted to EPA during the compliance period to the reporting requirements for the entity in § 80.1451. Report as a finding any reporting requirements that were not completed.

(ii) Obtain all notifications of potentially invalid RINs and potentially improperly produced biointermediate submitted to the EPA under §§ 80.1474(b)(3) and 80.1477(d)(2) respectively.

* * * * *

■ 26. Revise § 80.1468 to read as follows:

§ 80.1468 Incorporation by reference.

(a) 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 material is available for inspection at U.S. EPA, Air and Radiation Docket and Information Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460, (202) 566–1742, and is available from the sources listed in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, (877) 909–2786, or *www.astm.org.*

(1) ASTM D975–21, Standard Specification for Diesel Fuel, approved August 1, 2021 (''ASTM D975''); IBR approved for §§ 80.1401, 80.1426(f), 80.1450(b), 80.1451(b), and 80.1454(l).

(2) ASTM D1250–19e1, Standard Guide for the Use of the Joint API and ASTM Adjunct for Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils: API MPMS Chapter 11.1, approved May 1, 2019 (''ASTM D1250''); IBR approved for § 80.1426(f).

(3) ASTM D4442–20, Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Based Materials, approved March 1, 2020 (''ASTM D4442''); IBR approved for § 80.1426(f).

(4) ASTM D4444–13 (2018), Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, reapproved July 1, 2018 (''ASTM D4444''); IBR approved for § 80.1426(f).

(5) ASTM D6751–20a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, approved August 1, 2020 (''ASTM D6751''); IBR approved for § 80.1401.

(6) ASTM D6866–21, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, approved January 15, 2021 (''ASTM D6866''); IBR approved for §§ 80.1426(f) and 80.1430(e).

(7) ASTM E711–87 (2004), Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, reapproved 2004 (''ASTM E711''); IBR approved for § 80.1426(f).

(8) ASTM E870–82 (2019), Standard Test Methods for Analysis of Wood Fuels, reapproved April 1, 2019 (''ASTM E870''); IBR approved for § 80.1426(f).

■ 27. Amend § 80.1469 by revising the introductory text and paragraphs (c)(1)(vi) and (vii), (c)(2)(i), (c)(3)(i), (c)(5), and (f)(1) and (2) to read as follows:

§ 80.1469 Requirements for Quality Assurance Plans.

This section specifies the requirements for Quality Assurance Plans (QAPs) for renewable fuels and biointermediates.

* * * * *

(c) * * *

(1) * * *

(vi) Feedstock(s) and biointermediate(s) are consistent with production process and D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416, and is consistent with information recorded in EMTS.

(vii) Feedstock(s) and biointermediate(s) are not renewable fuel for which RINs were previously generated unless the RINs were generated under § 80.1426(c)(6). For renewable fuels that have RINs generated under § 80.1426(c)(6), verify that renewable fuels used as a feedstock meet all applicable requirements of this paragraph (c)(1).

* * * * *

(2) * * *

(i) Production process is consistent with the renewable fuel producer or biointermediate producer's registration under § 80.1450(b).

* * * * *

(3) * * *

(i) If applicable, renewable fuel was designated for qualifying uses as transportation fuel, heating oil, or jet fuel in the covered location pursuant to § 80.1453.

* * * * *

(5) *Representative sampling.* Independent third-party auditors may

use a representative sample of batches of renewable fuel or biointermediate in accordance with the procedures described in 40 CFR 1090.1805 for all components of this paragraph (c) except for paragraphs (c)(1)(ii) and (iii), (c)(2)(ii), (c)(3)(vi), and (c)(4)(ii) and (iii) of this section. If a facility produces both a renewable fuel and a biointermediate, the independent third-party auditor must select separate representative samples for the renewable fuel and biointermediate.

* * * * *

(f) * * *

(1) A new QAP must be submitted to EPA according to paragraph (e) of this section and the independent third-party auditor must update their registration according to § 80.1450(g)(9) whenever any of the following changes occur at a renewable fuel or biointermediate production facility audited by an independent third-party auditor and the auditor does not possess an appropriate pathway-specific QAP that encompasses the change:

(i) Change in feedstock or biointermediates.

(ii) Change in type of fuel or biointermediate produced.

(iii) Change in facility operations or equipment that may impact the capability of the QAP to verify that RINs are validly generated or biointermediates are properly produced.

(2) A QAP ceases to be valid as the basis for verifying RINs or a biointermediate under a new pathway until a new pathway-specific QAP, submitted to the EPA under this paragraph (f), is approved pursuant to paragraph (e) of this section.

■ 28. Amend § 80.1471 by:

■ a. Revising paragraphs (b)(1), (4), (5), and (6) and (c);

■ b. Adding paragraph (e)(5); and

■ c. Revising paragraphs (f)(1) introductory text, (f)(1)(ii), and (g).

The revisions and addition read as follows:

§ 80.1471 Requirements for QAP auditors.

* * * * *

(b) * * *

(1) The independent third-party auditor and its contractors and subcontractors must not be owned or operated by the renewable fuel producer, foreign renewable fuel producer, or biointermediate producer or any subsidiary or employee of the renewable fuel producer, foreign ethanol producer, or biointermediate producer.

* * * * *

(4) The independent third-party auditor and its contractors and subcontractors must be free from any interest or the appearance of any interest in the renewable fuel producer, foreign renewable fuel producer, or biointermediate producer's business.

(5) The renewable fuel producer, foreign renewable fuel producer, or biointermediate producer must be free from any interest or the appearance of any interest in the third-party auditor's business and the businesses of third-party auditor's contractors and subcontractors.

(6) The independent third-party auditor and its contractors and subcontractors must not have performed an attest engagement under § 80.1464 for the renewable fuel producer, foreign renewable fuel producer, or biointermediate producer in the same calendar year as a QAP audit conducted pursuant to § 80.1472.

* * * * *

(c) Independent third-party auditors must maintain professional liability insurance, as defined in 31 CFR 50.4(t). Independent third-party auditors must use insurance providers that possess a financial strength rating in the top four categories from Standard & Poor's or Moody's (*i.e.,* AAA, AA, A or BBB for Standard & Poor's and Aaa, Aa, A, or Baa for Moody's), or a comparable rating acceptable to EPA. Independent third-party auditors must disclose the level of professional liability insurance they possess when entering into contracts to provide RIN verification services.

* * * * *

(e) * * *

(5) The independent third-party auditor must not identify RINs generated for renewable fuel produced using a biointermediate as having been verified under a QAP unless the biointermediate used to produce the renewable fuel was verified under an approved QAP pursuant to § 80.1477.

(f)(1) Except as specified in paragraph (f)(2) of this section, auditors may only verify RINs that have been generated after the audit required under § 80.1472 has been completed. Auditors may only verify biointermediates that were produced after the audit required under § 80.1472 has been completed. Auditors must only verify RINs generated from renewable fuels produced from biointermediates after the audit required under § 80.1472 has been completed for both the biointermediate production facility and the renewable fuel production facility.

* * * * *

(ii) Verification of RINs or biointermediates may continue for no more than 200 days following an on-site visit or 380 days after an on-site visit if a previously the EPA-approved remote monitoring system is in place at the renewable fuel production facility.

* * * * *

(g) The independent third-party auditor must permit any representative of the EPA to monitor at any time the implementation of QAPs and renewable fuel and biointermediate production facility audits.

* * * * *

■ 29. Amend § 80.1472 by revising paragraphs (a)(4), (b)(3)(i) introductory text, (b)(3)(ii)(B), and (b)(3)(iii) to read as follows:

§ 80.1472 Requirements for quality assurance audits.

(a) * * *

(4) Each audit shall include a review of documents generated by the renewable fuel producer or biointermediate producer.

(b) * * *

(3) * * *

(i) As applicable, the independent third-party auditor shall conduct an on-site visit at the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility:

* * * * *

(ii) * * *

(B) 380 days after the previous on-site visit if a previously approved (by EPA) remote monitoring system is in place at the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility, as applicable. The 380-day period shall start the day after the previous on-site visit ends.

(iii) An on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility, foreign ethanol production facility, or biointermediate production facility, as applicable.

* * * * *

§ 80.1473 [Amended]

■ 30. Amend § 80.1473 by, in the first sentence of paragraph (f), removing ''*support@epamts-support.com*'' and adding ''*fuelsprogramsupport@epa.gov*'' in its place.

§ 80.1474 [Amended]

■ 31. Amend § 80.1474 by, in paragraphs (b)(2) introductory text, (b)(3), (b)(4)(i)(C) introductory text, and (b)(4)(ii)(C) introductory text, removing ''*support@epamts-support.com*'' and adding ''*fuelsprogramsupport@epa.gov*'' in its place.

■ 32. Amend § 80.1475 by:

■ a. In paragraph (a)(2), removing ''§§ 80.125 through 80.127 and

§ 80.130'' and adding ''40 CFR 1090.1800 through 1090.1850'' in its place;

■ b. Revising the first sentence of paragraph (d)(1) and paragraph (d)(3); and

■ c. In paragraph (d)(4), removing ''§ 80.127'' and adding ''40 CFR 1090.1805'' in its place.

The revisions read as follows:

§ 80.1475 What are the additional attest engagement requirements for parties that redesignate certified NTDF as MVNRLM diesel fuel?

* * * * *

(d) * * *

(1) For each of the volumes listed in paragraphs (c)(1)(iii) through (vi) of this section, obtain a separate listing of all tenders from the refiner or importer for the reporting period. * * *

* * * * *

(3) Agree the volume totals on the listing to the tender volume total in the inventory reconciliation analysis obtained in paragraph (c) of this section.

* * * * *

■ 33. Section 80.1476 is added to read as follows:

§ 80.1476 Requirements for biointermediate producers.

Biointermediate producers must comply with the following requirements:

(a) *Registration.* No later than 60 days prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated, biointermediate producers must register with EPA pursuant to the requirements of § 80.1450(b).

(b) *Reporting.* Biointermediate producers must comply with the reporting requirements pursuant to § 80.1451(i).

(c) *Recordkeeping.* Biointermediate producers must comply with the recordkeeping requirements pursuant to § 80.1454(i).

(d) *PTDs.* Biointermediate producers must comply with the PTD requirements pursuant to § 80.1453(e).

(e) *Quality Assurance Plans.* Prior to the transfer of any biointermediate to be used in the production of a renewable fuel for which RINs may be generated, biointermediate producers must have an approved quality assurance plan pursuant to § 80.1477(b) and the independent third-party auditor must have conducted a site visit of the biointermediate production facility under § 80.1472.

(f) *Attest engagements.* Biointermediate producers must comply with the annual attest engagement requirements pursuant to § 80.1464(h).

(g) *Limitations on biointermediate transfers and production.* (1) A biointermediate producer must only transfer a biointermediate produced from a single biointermediate facility to a single renewable fuel production facility as designated under § 80.1450(b)(1)(ii)(G)(*1*).

(2) A batch of biointermediate must be segregated from other batches of biointermediate (even if it is the same type of biointermediate) and other feedstocks from the point that the batch of biointermediate is produced to the point where the batch of biointermediate is received at the renewable fuel production facility designated under § 80.1450(b)(1)(ii)(G)(*1*).

(3) Renewable fuel producers that receive biointermediate at a renewable fuel production facility may not be a biointermediate producer.

(4) A biointermediate must not be used to make another biointermediate.

(h) *Batch numbers and volumes.* (1) Each batch of biointermediate produced at a biointermediate production facility must be assigned a number (the ''batch number''), consisting of the EPA-assigned company registration number, the EPA-assigned facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (*e.g.,* 4321–54321–95–000001, 4321–54321–95–000002, etc.).

(2) The volume of each batch of biointermediate must be adjusted to a standard temperature of 60 °F.

(i) *Designation.* Each batch of biointermediate produced at a biointermediate production facility must be designated for use in the production of a renewable fuel in accordance with the biointermediate producer's registration under § 80.1450. The designation for the batch of biointermediate must be clearly indicated on PTDs for the biointermediate as described in § 80.1453(e)(6).

■ 34. Section 80.1477 is added to read as follows:

§ 80.1477 Requirements for QAPs for biointermediate producers.

(a) Independent third-party auditors that verify biointermediate production must meet the requirements of § 80.1471(a) through (c) and (f) through (h), as applicable.

(b) QAPs approved by EPA to verify biointermediate production must meet the requirements in § 80.1469(c) through (f), as applicable.

(c) Quality assurance audits, when performed, must be conducted in accordance with the requirements in § 80.1472(a) and (b)(3).

(d)(1) If an independent third-party auditor identifies a potentially improperly produced biointermediate, the independent third-party auditor must notify EPA, the biointermediate producer, and the renewable fuel producer that may have been transferred the biointermediate within five business days of the identification, including an initial explanation of why the biointermediate may have been improperly produced.

(2) If RINs were generated from the potentially improperly produced biointermediate, the RIN generator must follow the applicable identification and treatment of PIRs as specified in § 80.1474.

(e) For the generation of Q–RINs for renewable fuels that were produced from a biointermediate, the biointermediate must be verified under an approved QAP as described in paragraph (b) of this section and the RIN generating facility must be verified under an approved QAP as described in § 80.1469.

■ 35. Section 80.1478 is added to read as follows:

§ 80.1478 Requirements for foreign biointermediate producers and importers.

(a) *Foreign biointermediate producer.* For purposes of this subpart, a foreign biointermediate producer is a person located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as ''the United States'') that has been approved by EPA to produce biointermediate for use in the production of renewable fuel by a RIN-generating renewable fuel producer.

(b) *Foreign biointermediate producer requirements.* Any foreign biointermediate producer must meet all requirements that apply to biointermediate producers under this subpart as a condition of being approved as a foreign biointermediate producer under this subpart.

(c) *Foreign biointermediate producer commitments.* Any foreign biointermediate producer must commit to the following provisions as a condition of being approved as a foreign biointermediate producer under this subpart:

(1) Any EPA inspector or auditor must be given full, complete, and immediate access to conduct inspections and

audits of the foreign biointermediate producer facility.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Biointermediate is produced.

(B) Documents related to foreign biointermediate producer operations are kept.

(C) Biointermediate is stored or transported between the foreign biointermediate producer and the renewable fuel producer, including storage tanks, vessels, and pipelines.

(iii) EPA inspectors and auditors may be EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits may include review and copying of any documents related to the following:

(A) The volume of biointermediate produced or delivered to renewable fuel production facilities.

(B) Transfers of title or custody to the biointermediate.

(C) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, including work papers.

(vi) Inspections and audits by EPA may include interviewing employees.

(vii) Any employee of the foreign biointermediate producer must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 business days as defined in 40 CFR 1090.80.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia must be named, and service on this agent constitutes service on the foreign biointermediate producer or any employee of the foreign biointermediate producer for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations in this title promulgated thereunder must be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws apply to any civil or criminal enforcement action against the foreign biointermediate producer or any employee of the foreign biointermediate producer related to the provisions of this section.

(5) Applying to be an approved foreign biointermediate producer under this section, or producing or exporting biointermediate under such approval, and all other actions to comply with the requirements of this subpart relating to such approval constitute actions or activities covered by and within the meaning of the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign biointermediate producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign biointermediate producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(6) The foreign biointermediate producer, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors for actions performed within the scope of EPA employment or contract related to the provisions of this section.

(7) The commitment required by this paragraph (c) must be signed by the owner or president of the foreign biointermediate producer company.

(8) In any case where the biointermediate produced at a foreign biointermediate production facility is stored or transported by another company between the production facility and the vessel that transports the biointermediate to the United States, the foreign biointermediate producer must obtain from each such other company a commitment that meets the requirements specified in paragraphs (c)(1) through (7) of this section, and these commitments must be included in the foreign biointermediate producer's application to be an approved foreign biointermediate producer under this subpart.

(d) *Sovereign immunity.* By submitting an application to be an approved foreign biointermediate producer under this subpart, or by producing and exporting biointermediate fuel to the United States under such approval, the foreign biointermediate producer, and its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign biointermediate producer, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign biointermediate producer under this subpart, including conduct that violates the False Statements Accountability Act of 1996 (18 U.S.C. 1001) and section 113(c)(2) of the Clean Air Act (42 U.S.C. 7413).

(e) *English language reports.* Any document submitted to EPA by a foreign biointermediate producer must be in English or must include an English language translation.

(f) *Foreign biointermediate producer contractual relationship.* Any foreign biointermediate producer must establish a contractual relationship with the RIN-generating renewable fuel producer prior to the sale of a biointermediate. Any foreign biointermediate producer must retain contracts and documents memorializing the sale of biointermediates for five years from the date they were created and must deliver such records to the Administrator upon request.

(g) *Withdrawal or suspension of foreign biointermediate producer approval.* EPA may withdraw or suspend a foreign biointermediate producer's approval where any of the following occur:

(1) A foreign biointermediate producer fails to meet any requirement of this section.

(2) A foreign government fails to allow EPA inspections or audits as provided in paragraph (c)(1) of this section.

(3) A foreign biointermediate producer asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart.

(h) *Additional requirements for applications, reports, and certificates.* Any application for approval as a foreign biointermediate producer, any report, certification, or other submission required under this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Signed by the president or owner of the foreign biointermediate producer company, or by that person's immediate designee, and must contain the following declarations:

(i) ''I hereby certify:

(A) That I have actual authority to sign on behalf of and to bind [NAME OF

FOREIGN BIOINTERMEDIATE PRODUCER] with regard to all statements contained herein;

(B) That I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart M, and that the information is material for determining compliance under these regulations; and

(C) That I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.''

(ii) ''I affirm that I have read and understand the provisions of 40 CFR part 80, subpart M, including 40 CFR 80.1478 apply to [NAME OF FOREIGN BIOINTERMEDIATE PRODUCER]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000 U.S., and/or imprisonment for up to five years.''

(i) *Requirements for biointermediate importers.* Any biointermediate importer must meet all the following requirements:

(1) For each biointermediate batch, any biointermediate importer must have an independent third party do all the following:

(i) Determine the volume of biointermediate in the truck, railcar, vessel, or other shipping container.

(ii) Determine the name and EPA-assigned registration number of the foreign biointermediate producer that produced the biointermediate.

(iii) Determine the name and country of registration of the truck, railcar, vessel, or other shipping container used to transport the biointermediate to the United States.

(iv) Determine the date and time the truck, railcar, vessel, or other shipping container arrives at the United States port of entry.

(2) Any biointermediate importer must submit documentation of the information determined under paragraph (i)(1) of this section within 30 days following the date any truck, railcar, vessel, or other shipping container transporting biointermediate arrives at the United States port of entry to all the following:

(i) The foreign biointermediate producer.

(ii) The renewable fuel producer.

(3) The biointermediate importer and the independent third party must keep records of the audits and reports required under paragraphs (h)(1) and (2) of this section for five years from the date of creation.

PART 1090—REGULATION OF FUELS, FUEL ADDITIVES, AND REGULATED BLENDSTOCKS

■ 36. The authority citation for part 1090 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7522–7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601.

Subpart A—General Provisions

■ 37. Amend § 1090.15 by:

■ a. In paragraph (a), removing ''(b) and (c)'' and adding ''(b) through (d)'' in its place;

■ b. In paragraph (c) introductory text, removing ''section'' and adding ''part'' in its place;

■ c. Redesignating paragraph (d) as paragraph (e);

■ d. Adding a new paragraph (d); and

■ e. In newly redesignated paragraph (e), removing ''(b) and (c)'' and adding ''(b) through (d)'' in its place.

The addition reads as follows:

§ 1090.15 Confidential business information.

* * * * *

(d)(1) The following information contained in any enforcement action taken under this part is not entitled to confidential treatment under 40 CFR part 2, subpart B:

(i) The company's name.

(ii) The facility's name.

(iii) Any EPA-issued company and facility identification numbers.

(iv) The time or time period when any violation occurred.

(v) The quantity of fuel, fuel additive, or regulated blendstock affected by the violation.

(vi) Information relating to the exceedance of the fuel standard associated with the violation.

(vii) Information relating to the generation, transfer, or use of credits associated with the violation.

(viii) Any other information relevant to describing the violation.

(2) Enforcement actions within the scope of paragraph (d)(1) of this section include notices of violation, settlement agreements, administrative complaints, civil complaints, criminal information, and criminal indictments.

* * * * *

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Part VI

The President

Proclamation 10324—Wright Brothers Day, 2021

Federal Register
Vol. 86, No. 242
Tuesday, December 21, 2021

Presidential Documents

Title 3—

The President

Proclamation 10324 of December 16, 2021

Wright Brothers Day, 2021

By the President of the United States of America

A Proclamation

On December 17, 1903, Wilbur and Orville Wright achieved a feat that humankind had dreamed of since time immemorial—a sustained, controlled, powered flight that opened the skies to all humanity. Today, we honor the extraordinary achievements of the Wright Brothers and celebrate their enduring contributions to America's unparalleled leadership in flight.

Many intrepid souls had tried and failed at what the two brothers from Dayton, Ohio—inventors, engineers, dreamers—were able to achieve. After years of designing, testing, and building the Wright Flyer in their hometown workshop, they launched it into flight from the sand dunes and wind of Kitty Hawk, North Carolina on that historic day—covering 120 feet in 12 seconds and taking humankind into a new era.

The first flight made history, but it was only the beginning. The Wright Brothers kept innovating. With every flight, they learned how to improve their techniques and their flying machine. As the flights lengthened, their acclaim grew, and they drew interest from people across our Nation and around the world. The Wright Brothers' unyielding dedication, creativity, and bravery gave birth to modern aviation—skyrocketing our Nation's leadership in flight, and inspiring generations of Americans to take to the skies.

From Amelia Earhart's daring solo flights across the Atlantic and Pacific Oceans, to the Tuskegee Airmen's heroic defense of our country in World War II, to brave astronauts who ventured to the Moon and beyond—America's ingenuity and innovation has continued to soar to new heights. We were the first to break the sound barrier. The first to fly non-stop around the world. Today, we are developing more sustainable fuels and energy sources for the planet, technologies to coordinate increases in air traffic, and satellite systems that can clean up manmade debris in space—and we are harnessing our resources and knowledge from decades of flight missions to take on the existential threat of climate change.

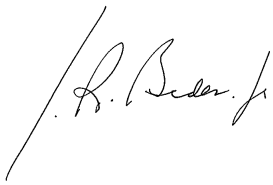
And 118 years after the Wright Brothers' flight into history, earlier this year the National Aeronautics and Space Administration's (NASA) historic Perseverance mission launched the Ingenuity rotorcraft—a small helicopter—10 feet above the surface of Mars. It was the first powered, controlled takeoff and landing on another celestial body. Tucked beneath the propellers was a small cloth taken from the wing of the original Wright Flyer, which now resides at the Smithsonian National Air and Space Museum in Washington, D.C. The ground over which Ingenuity hovered is now called Wright Brothers field—an everlasting reminder of America as the Nation of possibilities.

As we continue to build our progress in flight and space technology, we honor our hard-working pilots, aircrews, astronauts, and aviation scientists that make flying possible across the globe. They represent some of the best of who we are as Americans—restless, bold, and optimistic. Thanks to the tenacity and uniquely American spirit of the Wright Brothers and the pioneers who followed them, the skies are open and connecting people and communities around the world.

The Congress, by a joint resolution approved December 17, 1963, as amended (77 Stat. 402; 36 U.S.C. 143), has designated December 17 of each year as ''Wright Brothers Day,'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim December 17, 2021, as Wright Brothers Day.

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



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