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# Presidential Documents

Title 3—

The President

**Proclamation 10339 of February 4, 2022**

## To Continue Facilitating Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products)

**By the President of the United States of America**

**A Proclamation**

1. On January 23, 2018, pursuant to section 203 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2253), the President issued Proclamation 9693, imposing a safeguard measure for a period of 4 years that included both a tariff-rate quota (TRQ) on imports of certain crystalline silicon photovoltaic (CSPV) cells, not partially or fully assembled into other products, provided for in subheading 8541.40.6025 of the Harmonized Tariff Schedule of the United States (HTS), and an increase in duties (safeguard tariff) on imports of CSPV cells exceeding the TRQ and all imports of other CSPV products, including modules provided for in subheading 8541.40.6015 of the HTS. Proclamation 9693 exempted imports from certain designated beneficiary countries under the Generalized System of Preferences from the application of the safeguard measure.

2. Clause (4) and Annex I of Proclamation 9693 directed the United States Trade Representative (USTR) to establish procedures for interested persons to request the exclusion of particular products from the safeguard measure. These provisions also authorized the USTR, in consultation with the Secretary of Commerce and the Secretary of Energy, to determine whether a particular product should be excluded, and, upon publication of a determination in the *Federal Register*, to modify the HTS to implement such determination. Furthermore, they authorized the USTR to modify or to terminate such determinations. Effective June 13, 2019, the USTR excluded bifacial solar panels that absorb light and generate electricity on each side of the panel and that consist of only bifacial solar cells that absorb light and generate electricity on both sides of the cells (bifacial modules). Exclusion of Particular Products From the Solar Products Safeguard Measure, 84 FR 27684 (June 13, 2019).

3. On February 7, 2020, the United States International Trade Commission (USITC) issued its report, pursuant to section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)), on the results of its monitoring of developments with respect to the domestic solar industry (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry, No. TA–201–075 (Monitoring)). In its report, the USITC found that, following imposition of the safeguard measure, prices for CSPV cells and modules declined in a manner consistent with historical trends, but that prices were higher than they would have been without the safeguard measure.

4. On March 6, 2020, the USITC issued an additional report pursuant to a request from the USTR under section 204(a)(4) of the Trade Act (19 U.S.C. 2254(a)(4)), regarding the probable economic effect on the domestic CSPV cell and module manufacturing industry of modifying the safeguard measure to increase the level of the TRQ on CSPV cells from the current

2.5 gigawatts (GW) to 4.0, 5.0, or 6.0 GW (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Advice on the Probable Economic Effect of Certain Modifications to the Safeguard Measure, No. TA–201–075 (Modification)). In its report, the USITC advised that increasing the TRQ would help to continue growth in solar module production, but that expanded access to imported cells not subject to safeguard duties would put downward pressure on prices for cells made in the United States.

5. After taking into account the information provided in the USITC's reports, and after receiving a petition from a majority of the representatives of the domestic industry with respect to each of the following modifications, and under section 204(b)(1)(B) of the Trade Act (19 U.S.C. 2254(b)(1)(B)), the President issued Proclamation 10101 on October 10, 2020, in which he determined that the domestic industry has begun to make a positive adjustment to import competition, as shown by the increases in domestic module production capacity, production, and market share. Proclamation 10101 also:

(a) revoked the exclusion of bifacial modules from application of the safeguard measure on the basis that it had impaired and was likely to continue to impair the effectiveness of the safeguard action; and

(b) adjusted the safeguard tariff for the fourth year of the safeguard measure from 15 percent to 18 percent on the basis that the exclusion of bifacial modules from application of the safeguard tariffs had impaired the remedial effectiveness of the 4-year action proclaimed in Proclamation 9693, and to achieve the full remedial effect envisaged in that action.

6. On November 16, 2021, the United States Court of International Trade held in Solar Energy Industries Association et al. v. United States (SEIA) that the President acted outside of his statutory authority in issuing Proclamation 10101, and enjoined the Government from enforcing that proclamation. This injunction had the effect of reinstating the exclusion of bifacial modules from the safeguard tariffs and lowering the fourth year safeguard tariff to 15 percent. On January 14, 2022, the Government filed a notice of appeal of SEIA to the United States Court of Appeals for the Federal Circuit.

7. On December 8, 2021, in response to petitions by representatives of the domestic industry, the USITC issued its determination and report pursuant to section 204(c) of the Trade Act (19 U.S.C. 2254(c)), finding that safeguard action continues to be necessary to prevent or remedy the serious injury to the domestic industry, and that there is evidence that the domestic industry is making a positive adjustment to import competition (USITC, Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products, Investigation No. TA–201–75 (Extension)).

8. Section 203(e)(1)(B) of the Trade Act (19 U.S.C. 2253(e)(1)(B)) authorizes the President, after receiving an affirmative determination from the USITC pursuant to section 204(c) of the Trade Act (19 U.S.C. 2254(c)), to extend the effective period of any action taken under section 203 of the Trade Act if the President determines that the action continues to be necessary to prevent or remedy the serious injury, and there is evidence that the domestic industry is making a positive adjustment to import competition.

9. After taking into account the information provided in the USITC's report and the information received from the public through the process published in the *Federal Register* on September 30, 2021 (86 FR 54279), pursuant to section 203(e)(1)(B) of the Trade Act (19 U.S.C. 2253(e)(1)(B)), I have determined that the safeguard action on imports of CSPV cells, whether or not partially or fully assembled into other products, continues to be necessary to prevent or remedy the serious injury to the domestic industry, and that there is evidence that the domestic industry is making a positive adjustment to import competition. I have further determined to extend the safeguard measure proclaimed in Proclamation 9693, as modified by Proclamation 10101 (to the extent permitted by law), as follows:

(a) continuation of the TRQ on imports of solar cells not partially or fully assembled into other products described in paragraph 1 of this proclamation for an additional period of 4 years, with unchanging within-quota quantities of 5.0 GW for each year and annual reductions in the rates of duty applicable to goods entered in excess of those quantities of cells in the fifth, sixth, seventh, and eighth years, as described in Annex I to this proclamation;

(b) continuation of the increase in duties on imports of modules described in paragraph 1 of this proclamation for an additional period of 4 years, with annual reductions in the fifth, sixth, seventh, and eighth years, as described in Annex I to this proclamation; and

(c) exclusion of bifacial panels from the extension of duties proclaimed in this paragraph.

10. I have determined that an extension of this safeguard measure will provide greater economic and social benefits than costs.

11. As provided in Proclamation 9693, this safeguard measure shall continue to apply to imports from all countries, except as provided in clause (4) of this proclamation and paragraph 10 of Proclamation 9693.

12. Section 204(a)(2) of the Trade Act (19 U.S.C. 2254(a)(2)) requires the USITC to issue a report on its monitoring of developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition, no later than the midpoint of the period of the extension. After I receive that report, I will evaluate whether to reduce, modify, or terminate the safeguard measure pursuant to section 204(b)(1) of the Trade Act (19 U.S.C. 2254(b)(1)).

13. As proclaimed in Proclamation 9693, the in-quota quantity in each year of the TRQ described in paragraph 9 of this proclamation shall be allocated among all countries except those countries the products of which are excluded from such TRQ pursuant to clause (4) of this proclamation or paragraph 10 of Proclamation 9693.

14. In order to address certain technical errors in the HTS, the HTS is modified as set forth in Annex II to this proclamation.

15. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including sections 203, 204, and 604 of the Trade Act, do proclaim that:

(1) In order to extend the measure applicable to imports of CSPV cells, not partially or fully assembled into other products, described in paragraph 1 of this proclamation, subchapter III of chapter 99 of the HTS is modified as set forth in Annex I to this proclamation, subject to clauses (3) and (4) below. Any merchandise subject to the safeguard measure that is admitted into United States foreign trade zones on or after 12:01 a.m. eastern standard time on February 7, 2022, must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41, and will be subject upon entry for consumption to any tariffs or quantitative restrictions related to the classification under the applicable HTS subheading.

(2) Except as provided in clause (3) below, imports of CSPV products of World Trade Organization Member countries, as listed in subdivision (b) of Note 18 to subchapter III of chapter 99 of the HTS (Note 18), shall continue to be excluded from the safeguard measure extended by this proclamation, and such imports shall not be counted toward the TRQ limits that trigger the over-quota rates of duties.

(3) If, after the extension proclaimed herein is in effect, the USTR determines that:

(a) the share of total imports of a country listed in subdivision (b) of Note 18 exceeds 3 percent;

(b) imports of the product from all listed countries with less than 3 percent import share collectively account for more than 9 percent of total imports of the product; or

(c) a country listed in subdivision (b) of Note 18 is no longer a developing country for purposes of this proclamation;

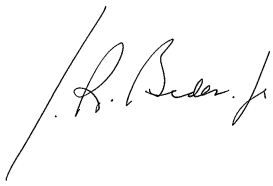
the USTR is authorized, upon publication of a notice in the *Federal Register*, to revise subdivision (b) of Note 18 to remove the relevant country from the list or suspend operation of that subdivision, as appropriate.

(4) I instruct the USTR to enter into negotiations pursuant to section 203(f) of the Trade Act (19 U.S.C. 2253(f)) with Canada and Mexico. In the event that the USTR concludes an agreement that the USTR, in consultation with the Secretary of Commerce and the Secretary of Energy, determines will ensure that imports of Canada or Mexico do not undermine the effectiveness of the action extended through clause (1) of this proclamation, the USTR is authorized, upon publication of a notice in the *Federal Register*, to revise Note 18 to suspend application of that subdivision, in whole or in part, as appropriate, with respect to imports of Canada or Mexico. If the USTR subsequently determines, in consultation with the Secretary of Commerce and the Secretary of Energy, that such an agreement is not effective, the USTR is authorized, pursuant to section 203(f) of the Trade Act, by publication of a notice in the *Federal Register*, to revise Note 18 to terminate any previous suspension of the action with respect to imports of Canada or Mexico.

(5) One year after the termination of the safeguard measure established in this proclamation, the U.S. note and tariff provisions established in Annex I to this proclamation shall be deleted from the HTS.

(6) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

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



Billing code 3395–F2–P

## ANNEX I

## TO MODIFY CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. on February 7, 2022, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified as set forth herein:

1. Subdivision (c)(i) of U.S. note 18 to subchapter III is modified by deleting "8541.40.60" and by inserting in lieu thereof "8541.42.00", and by deleting "8541.40.6025" and by inserting in lieu thereof "8541.42.0010".

2. Subdivision (c)(iii) of U.S. note 18 to subchapter III is modified by deleting the period at the end of subparagraph (16) and inserting in lieu thereof a semicolon, and by inserting at the end thereof the following subparagraph:

> "(17) bifacial solar panels that absorb light and generate electricity on each side of the panel and that consist of only bifacial solar cells that absorb light and generate electricity on each side of the cells."

3. Subdivision (f) of U.S. note 18 to subchapter III is modified by deleting "8541.40.60" and by inserting in lieu thereof "8541.42.00", and by inserting at the end of the table therein the following staged reductions in rates of duty for the periods herein indicated:

> "If entered during the period from
> February 7, 2022 through February 6, 2023.....14.75%
> If entered during the period from
> February 7, 2023 through February 6, 2024.....14.5%
> If entered during the period from
> February 7, 2024 through February 6, 2025.....14.25%
> If entered during the period from
> February 7, 2025 through February 6, 2026.....14%"

4. Subdivision (g) of U.S. note 18 to subchapter III is modified by deleting "8541.40.60" and by inserting in lieu thereof "8541.43.00"; by deleting "8541.40.6015" and inserting in lieu thereof "8541.43.0010"; by deleting "8501.61.00" and inserting in lieu thereof "8501.80.10"; and by deleting "8501.31.80" and inserting in lieu thereof "8501.71.00 or 8501.72.10".

5. Subdivision (h) of U.S. note 18 to subchapter III is modified by deleting "8541.40.60" and by inserting in lieu thereof "8541.43.00", and by inserting at the end of the table therein the following staged reductions in rates of duty for the period herein indicated:

> "If entered during the period from
> February 7, 2022 through February 6, 2023.....14.75%
> If entered during the period from
> February 7, 2023 through February 6, 2024.....14.5%

If entered during the period from
February 7, 2024 through February 6, 2025.....14.25%
If entered during the period from
February 7, 2025 through February 6, 2026.....14%".

6. The article description of subheading 9903.45.21 is modified by deleting "2.5" and by inserting in lieu thereof "5".

## ANNEX II

## TO MAKE TECHNICAL CORRECTIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after January 27, 2022, the Harmonized Tariff Schedule of the United States is hereby modified as follows:

A. Additional U.S. note 1 to chapter 84 is modified by deleting "8479.89.94" and inserting "8479.89.95" in lieu thereof.

B. The Harmonized Tariff Schedule of the United States is modified by inserting "S" in alphabetical order in the rates of duty 1 – special subcolumn of the following subheadings:

8701.21.00
8701.22.00
8701.23.00
8701.24.00
8701.29.00
8704.22.11

C. U.S. note 15(b)(19) to subchapter XV of chapter 99 is modified by deleting "6303.40.75" and inserting "6202.40.75" in lieu thereof.

D. Subheading 7019.90.51 is modified by deleting from the Rates of Duty 1-Special subcolumn the symbol "A" and by inserting "A*" in lieu thereof.

E. Subheading 2202.99.90 is renumbered as subheading 2202.99.91.

[FR Doc. 2022–02906
Filed 2–8–22; 8:45 am]
Billing code 7020–02–C

# Presidential Documents

**Executive Order 14063 of February 4, 2022**

## Use of Project Labor Agreements for Federal Construction Projects

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.,* and in order to promote economy and efficiency in the administration and completion of Federal construction projects, it is hereby ordered that:

**Section 1**. *Policy.* (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise because construction projects typically involve multiple employers at a single location, and a labor dispute involving one employer can delay the entire project. A lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create friction and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On large-scale projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) Project labor agreements are often effective in preventing these problems from developing because they provide structure and stability to large-scale construction projects. Such agreements avoid labor-related disruptions on projects by using dispute-resolution processes to resolve worksite disputes and by prohibiting work stoppages, including strikes and lockouts. They secure the commitment of all stakeholders on a construction site that the project will proceed efficiently without unnecessary interruptions. They also advance the interests of project owners, contractors, and subcontractors, including small businesses. For these reasons, owners and contractors in both the public and private sector routinely use project labor agreements, thereby reducing uncertainties in large-scale construction projects. The use of project labor agreements is fully consistent with the promotion of small business interests.

(c) Accordingly, it is the policy of the Federal Government for agencies to use project labor agreements in connection with large-scale construction projects to promote economy and efficiency in Federal procurement.

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

(a) ''Labor organization'' means a labor organization as defined in 29 U.S.C. 152(5) of which building and construction employees are members, as described in 29 U.S.C. 158(f).

(b) ''Construction'' means construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.

(c) ''Large-scale construction project'' means a Federal construction project within the United States for which the total estimated cost of the construction contract to the Federal Government is $35 million or more. The Federal Acquisition Regulatory Council (FAR Council), in consultation with the Council of Economic Advisers, may adjust this threshold based on inflation using the process at 41 U.S.C. 1908.

(d) ''Agency'' means an executive department or agency, including an independent establishment subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A).

(e) ''Project labor agreement'' means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

**Sec. 3**. *Project Labor Agreement Presumption.* Subject to sections 5 and 6 of this order, in awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, agencies shall require every contractor or subcontractor engaged in construction on the project to agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

**Sec. 4**. *Requirements of Project Labor Agreements.* Any project labor agreement reached pursuant to this order shall:

(a) bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

(b) allow all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(c) contain guarantees against strikes, lockouts, and similar job disruptions;

(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(f) fully conform to all statutes, regulations, Executive Orders, and Presidential Memoranda.

**Sec. 5**. *Exceptions Authorized by Agencies.* A senior official within an agency may grant an exception from the requirements of section 3 of this order for a particular contract by, no later than the solicitation date, providing a specific written explanation of why at least one of the following circumstances exists with respect to that contract:

(a) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. Such a finding shall be based on the following factors:

(i) The project is of short duration and lacks operational complexity;

(ii) The project will involve only one craft or trade;

(iii) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors;

(iv) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable; or

(v) The project implicates other similar factors deemed appropriate in regulations or guidance issued pursuant to section 8 of this order.

(b) Based on an inclusive market analysis, requiring a project labor agreement on the project would substantially reduce the number of potential bidders so as to frustrate full and open competition.

(c) Requiring a project labor agreement on the project would otherwise be inconsistent with statutes, regulations, Executive Orders, or Presidential Memoranda.

**Sec. 6**. *Reporting.* (a) To the extent permitted by law and consistent with national security and executive branch confidentiality interests, agencies shall publish, on a centralized public website, data showing the use of

project labor agreements on large-scale construction projects, as well as descriptions of the exceptions granted under section 5 of this order.

(b) On a quarterly basis, agencies shall report to the Office of Management and Budget (OMB) on their use of project labor agreements on large-scale construction projects and on the exceptions granted under section 5 of this order.

**Sec. 7**. Nothing in this order precludes an agency from requiring the use of a project labor agreement in circumstances not covered by this order, including projects where the total cost to the Federal Government is less than that for a large-scale construction project, or projects receiving any form of Federal financial assistance (including loans, loan guarantees, revolving funds, tax credits, tax credit bonds, and cooperative agreements). This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

**Sec. 8**. *Regulations and Implementation.* (a) Within 120 days of the date of this order, the FAR Council, to the extent permitted by law, shall propose regulations implementing the provisions of this order. The FAR Council shall consider and evaluate public comments on the proposed regulations and shall promptly issue a final rule, to the extent permitted by law.

(b) The Director of OMB shall, to the extent permitted by law, issue guidance to implement the requirements of sections 5 and 6 of this order.

**Sec. 9**. *Contracting Officer Training.* Within 90 days of the date of this order, the Secretary of Defense, the Secretary of Labor, and the Director of OMB shall coordinate in designing a training strategy for agency contracting officers to enable those officers to effectively implement this order. Within 180 days of the date of the publication of proposed regulations, the Secretary of Defense, the Secretary of Labor, and the Director of OMB shall provide a report to the Assistant to the President for Economic Policy and Director of the National Economic Council on the contents of the training strategy.

**Sec. 10**. *Revocation of Prior Orders, Rules, and Regulations.* Executive Order 13502 of February 6, 2009 (Use of Project Labor Agreements for Federal Construction Projects), is revoked as of the effective date of the final regulations issued by the FAR Council under section 8(a) of this order. Upon Executive Order 13502's revocation, the heads of agencies shall consider, to the extent permitted by law, revoking any orders, rules, or regulations implementing Executive Order 13502.

**Sec. 11**. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and its application to any other person or circumstance shall not be affected thereby.

**Sec. 12**. *Effective Date.* This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the final regulations issued by the FAR Council under section 8(a) of this order. For solicitations issued between the date of this order and the effective date of the final regulations issued by the FAR Council under section 8(a) of this order, or solicitations that have already been issued and are outstanding as of the date of this order, agencies are strongly encouraged, to the extent permitted by law, to comply with this order.

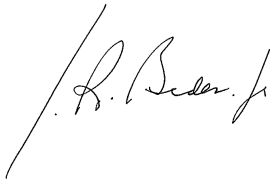
**Sec. 13**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
*February 4, 2022.*

[FR Doc. 2022–02869
Filed 2–8–22; 8:45 am]
Billing code 3395–F2–P

# Rules and Regulations

Federal Register
Vol. 87, No. 27
Wednesday, February 9, 2022

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

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

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Rural Housing Service

### Rural Business-Cooperative Service

### 7 CFR Part 5001

**[Docket No. RUS–19–Agency–0030]**

**RIN 0572–AC56**

## OneRD Guaranteed Loan Regulation; Corrections

**AGENCY:** Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, Department of Agriculture (USDA).

**ACTION:** Final rule; correction and correcting amendments.

**SUMMARY:** On December 10, 2021, Rural Development's Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, agencies of the United States Department of Agriculture (USDA), published a final rule with comment for the oneRD Guarantee Loan Program (oneRD). The final rule made necessary revisions to the policy and procedures that strengthened the oversight and management of the growing Community Facilities, Water and Waste Disposal, Business and Industry, and Rural Energy for America guarantee portfolios. The final rule had an omission of information in the preamble and contained errors in the amendatory language. This document corrects the final regulation.

**DATES:** This rule is effective February 9, 2022.

**ADDRESSES:** Address all comments concerning this correction to Lauren Cusick, Regulations Management Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone (202) 720–1414; email *lauren.cusick@usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Lauren Cusick, Regulations Management Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone (202) 720–1414; email *lauren.cusick@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Rural Development's Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service are issuing corrections to the final rule that published December 10, 2021, at 86 FR 70349 and to 7 CFR part 5001.

### List of Subjects in 7 CFR Part 5001

Business and industry, Community facility, Energy efficiency improvement, Loan programs, Renewable energy, Rural areas, Rural development, Water and waste disposal.

In FR Doc. 2021–26160, appearing on page 70349 in the **Federal Register** of December 10, 2021, make the following correction:

**§ 5001.452 [Corrected]**

■ 1. On page 70358, in the second column, Instruction 22 for § 5001.452, is corrected by removing the phrase ''and adding paragraph (b)(i)(iii)(L)(*3*)''. For the reasons discussed in the preamble, 7 CFR part 5001 is corrected by making the following correcting amendments:

## PART 5001—GUARANTEED LOANS

■ 1. The authority citation for part 5001 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1926(a); 7 U.S.C. 1932(a); and 7 U.S.C. 8107.

■ 2. Amend § 5001.141 by revising paragraph (a)(2) to read as follows:

**§ 5001.141 New markets tax credits.**

* * * * *

(a) * * *

(2) The provisions of § 5001.127(f) notwithstanding, a lender that is a CDE or sub-CDE may have an ownership interest in the borrower provided that each condition specified in paragraphs (a)(2)(i) through (iii) of this section is met.

(i) The lender does not have an ownership interest in the borrower prior to the application.

(ii) The lender does not take a controlling interest in the borrower.

(iii) The lender does not provide equity or take an ownership interest in a borrower at a level that would result in the lender owning 20 percent or more interest in the borrower.

* * * * *

■ 3. Amend § 5001.202 by revising paragraph (b)(5) to read as follows:

**§ 5001.202 Lender's credit evaluation.**

* * * * *

(b) * * *

(5) *Conditions.* This paragraph (b)(5) refers to the general business environment, including the regulatory environment affecting the business or industry, and status of the Borrower's industry. Consideration will be given to items listed in paragraphs (b)(5)(i) through (ix) of this section and when applicable the lender should submit supporting documentation (*e.g.,* feasibility study, market study, preliminary architectural or engineering reports, etc.) in accordance with §§ 5001.304 through 5001.307:

(i) Availability and depth of resource/feedstock market, strength and duration of purchase agreements and availability of substitutes;

(ii) Analysis of current and future market potential and off-take agreements, competition, type of project (service, product, or commodity based);

(iii) Energy infrastructure, availability and dependability, transportation and other infrastructure, and environmental considerations;

(iv) Technical feasibility including demonstrated performance of the technology and integrated processing equipment and systems, developer system performance guarantees, or technology insurance;

(v) Complexity of construction and completion, terms of construction contracts, experience and financial strength of the construction contractor or engineering, procurement, and construction (EPC) contractor;

(vi) Contracts and intellectual property rights, licenses, permits, and state and local regulations;

(vii) Creditworthiness of any counterparties, as applicable;

(viii) Industry-related public policy issues; and

(ix) Other criteria that the lender or Agency deems relevant to the project.

* * * * *

■ 4. Amend § 5001.204 by revising paragraph (b) to read as follows:

**§ 5001.204 Personal, partnership, and corporate guarantees.**

* * * * *

(b) When warranted by an Agency assessment of potential financial risk, the Agency may require the following:

(1) Guarantees to be secured;

(2) Guarantees from any person or entity owning less than a 20-percent Interest or membership in the borrower; and

(3) Guarantees from persons whose ownership Interest in the borrower is held indirectly through intermediate or affiliated entities.

* * * * *

**§ 5001.451 [Amended]**

■ 5. Amend § 5001.451 by redesignating the second paragraph (b)(3)(xiii) and paragraph (b)(3)(xiv) as paragraphs (b)(3)(xiv) and (xv), respectively.

**Justin Maxson,**

*Deputy Under Secretary, Rural Development.*

[FR Doc. 2022–02710 Filed 2–8–22; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–1003; Project Identifier AD–2021–01141–R; Amendment 39–21899; AD 2022–02–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.) Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to Bell Textron Inc. (type certificate previously held by Bell Helicopter Textron Inc.) Model 204B, 205A, 205A–1, 205B, 210, and 212 helicopters with a certain outboard main rotor hub strap pin (pin) installed. As published, the AD number specified in the regulatory text is incorrect. This document corrects that error. In all other respects, the original document remains the same.

**DATES:** This correction is effective February 16, 2022. The effective date of AD 2022–02–02 remains February 16, 2022.

**ADDRESSES:** You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1003, 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 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:** David Wilson, Aerospace Engineer, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5786; email *david.wilson@faa.gov.*

**SUPPLEMENTARY INFORMATION:** AD 2022–02–02, Amendment 39–21899 (87 FR 1668, January 12, 2022) (AD 2022–02–02), requires removing any pin part number 204–012–104–005 with a serial number prefix ''FNFS'' from service and prohibits installing the affected pin on any helicopter.

### Need for the Correction

As published, the AD number specified in the regulatory text is incorrect. The incorrectly specified AD number was FAA–2021–1003; the correct AD number is 2022–02–02.

### Correction of Publication

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

The effective date of this AD remains February 16, 2022.

Since this action only corrects the AD number, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public comment procedures are unnecessary.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Correction

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 [Corrected]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–15–51, Amendment 39–21678 (86 FR 43406, August 9, 2021); and

■ b. Adding the following new airworthiness directive:

**2022–02–02 Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.):** Amendment 39–21899; Docket No. FAA–2021–1003; Project Identifier AD–2021–01141–R.

**(a) Effective Date**

This airworthiness directive (AD) is effective February 16, 2022.

**(b) Affected ADs**

This AD replaces AD 2021–15–51, Amendment 39–21678 (86 FR 43406, August 9, 2021) (AD 2021–15–51).

**(c) Applicability**

This AD applies to Bell Textron Inc. (type certificate previously held by Bell Helicopter Textron Inc.) Model 204B, 205A, 205A–1, 205B, 210, and 212 helicopters, certificated in any category, with an outboard main rotor hub strap pin (pin) part number 204–012–104–005 with a serial number prefix ''FNFS'' installed.

**(d) Subject**

Joint Aircraft System Component (JASC) Code: 6200, Main Rotor System.

**(e) Unsafe Condition**

This AD was prompted by a fatal accident in which a pin sheared off during flight, which resulted in the main rotor blade and the main rotor head detaching from the helicopter. The FAA is issuing this AD to address this unsafe condition and prevent loss of control of the helicopter.

**(f) Compliance**

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

**(g) Required Actions**

(1) For Model 204B, 205A, 205A–1, 205B, and 212 helicopters:

(i) Before further flight from August 24, 2021 (the effective date of AD 2021–15–51), remove from service any pin that is identified in paragraph (c) of this AD.

(ii) After August 24, 2021 (the effective date of AD 2021–15–51), do not install any pin that is identified in paragraph (c) of this AD on any helicopter.

(2) For Model 210 helicopters:

(i) Before further flight after the effective date of this AD, remove from service any pin that is identified in paragraph (c) of this AD.

(ii) As of the effective date of this AD, do not install any pin that is identified in paragraph (c) of this AD on any helicopter.

**(h) Special Flight Permits**

Special flight permits are prohibited.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, DSCO Branch, Compliance & Airworthiness Division, 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 DSCO Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ASW-190-COS@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 David Wilson, Aerospace Engineer, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5786; email *david.wilson@faa.gov.*

**(k) Material Incorporated by Reference**

None.

Issued on January 27, 2022.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2022–02131 Filed 2–8–22; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Parts 501, 510, 535, 536, 539, 541, 542, 544, 546, 547, 548, 549, 551, 552, 560, 561, 566, 576, 583, 584, 588, 590, 592, 594, 597, and 598

## Inflation Adjustment of Civil Monetary Penalties

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this final rule to adjust certain civil monetary penalties for inflation 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.

**DATES:** This rule is effective February 9, 2022.

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

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

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

### Background

Section 4 of the Federal Civil Penalties Inflation Adjustment Act (1990 Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, 129 Stat. 599, 28 U.S.C. 2461 note) (the FCPIA Act), requires each federal agency with statutory authority to assess civil monetary penalties (CMPs) to adjust CMPs annually for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living based adjustments.

OFAC has adjusted its CMPs seven times since the Federal Civil Penalties Inflation Adjustment Act Improvements Act went into effect on November 2, 2015: An initial catch-up adjustment on August 1, 2016 (81 FR 43070, July 1, 2016); an additional initial catch-up adjustment related to CMPs for failure to comply with a requirement to furnish information, the late filing of a required report, and failure to maintain records (''recordkeeping CMPs'') that were inadvertently omitted from the August 1, 2016 initial catch-up adjustment on October 5, 2020 (85 FR 54911, September 3, 2020); and annual adjustments on February 10, 2017 (82 FR 10434, February 10, 2017); March 19, 2018 (83 FR 11876, March 19, 2018); June 14, 2019 (84 FR 27714, June 14, 2019); April 9, 2020 (85 FR 19884, April 9, 2020); and March 17, 2021 (86 FR 14534, March 17, 2021).

*Method of Calculation*

The method of calculating CMP adjustments applied in this final rule is required by the FCPIA Act. Under the FCPIA Act and the Office of Management and Budget guidance required by the FCPIA Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers (''CPI–U'') for the October preceding the date of the adjustment and the prior year's October CPI–U. As set forth in Office of Management and Budget Memorandum M–22–07 of December 15, 2021, the adjustment multiplier for 2022 is 1.06222. In order to complete the 2022 annual adjustment, each current CMP is multiplied by the 2022 adjustment multiplier. Under the FCPIA Act, any increase in CMP must be rounded to the nearest multiple of $1.

*New Penalty Amounts*

OFAC imposes CMPs pursuant to the penalty authority in five statutes: The Trading With the Enemy Act (50 U.S.C. 4301–4341, at 4315) (TWEA); the International Emergency Economic Powers Act (50 U.S.C. 1701–1706, at 1705) (IEEPA); the Antiterrorism and Effective Death Penalty Act of 1996 (18 U.S.C. 2339B) (AEDPA); the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908, at 1906) (FNKDA); and the Clean Diamond Trade Act (19 U.S.C. 3901–3913, at 3907) (CDTA).

The table below summarizes the existing and new maximum CMP amounts for each statute.

TABLE 1—MAXIMUM CMP AMOUNTS FOR RELEVANT STATUTES

| Statute | Existing maximum CMP amount | Maximum CMP amount effective February 9, 2022 |
|---|---|---|
| TWEA | $91,816 | $97,529 |
| IEEPA | 311,562 | 330,947 |
| AEDPA | 82,244 | 87,361 |
| FNKDA | 1,548,075 | 1,644,396 |
| CDTA | 14,074 | 14,950 |

In addition to updating these maximum CMP amounts, OFAC is also updating two references to one-half the IEEPA maximum CMP from $155,781 to $165,474, and is adjusting the recordkeeping CMP amounts found in OFAC's Economic Sanctions Enforcement Guidelines in appendix A to 31 CFR part 501. The table below summarizes the existing and new maximum CMP amounts for OFAC's recordkeeping CMPs.

TABLE 2—MAXIMUM CMP AMOUNTS FOR RECORDKEEPING CMPS

| Violation | Existing maximum CMP amount | Maximum CMP amount effective February 9, 2022 |
|---|---|---|
| Failure to furnish information pursuant to 31 CFR 501.602 irrespective of whether any other violation is alleged | $24,046 | $25,542 |
| Failure to furnish information pursuant to 31 CFR 501.602 where OFAC has reason to believe that the apparent violation(s) involves a transaction(s) valued at greater than $500,000, irrespective of whether any other violation is alleged | 60,115 | 63,855 |
| Late filing of a required report, whether set forth in regulations or in a specific license, if filed within the first 30 days after the report is due | 3,005 | 3,192 |
| Late filing of a required report, whether set forth in regulations or in a specific license, if filed more than 30 days after the report is due | 6,012 | 6,386 |
| Late filing of a required report, whether set forth in regulations or in a specific license, if the report relates to blocked assets, an additional CMP for every 30 days that the report is overdue, up to five years | 1,203 | 1,278 |
| Failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license | 60,226 | 63,973 |

Finally, OFAC is making changes in the authorities citations of 31 CFR parts 583 and 584, to more specifically reference one of the relevant statutory authorities in each citation.

**Public Participation**

The FCPIA Act expressly exempts this final rule from the notice and comment requirements of the Administrative Procedure Act by directing agencies to adjust CMPs for inflation ''notwithstanding section 553 of title 5, United States Code'' (Pub. L. 114–74, 129 Stat. 599; 28 U.S.C. 2461 note). As such, this final rule is being issued without prior public notice or opportunity for public comment, with an effective date of February 9, 2022.

**Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**List of Subjects in 31 CFR Parts 501, 510, 535, 536, 539, 541, 542, 544, 546, 547, 548, 549, 551, 552, 560, 561, 566, 576, 583, 584, 588, 590, 592, 594, 597, and 598**

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Licensing, Penalties, Sanctions.

For the reasons set forth in the preamble, OFAC amends 31 CFR chapter V as follows:

## PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

**Authority:** 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c, 2370(a), 6009, 6032, 7205, 8501–8551; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706, 4301–4341; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

### Subpart D—Trading With the Enemy Act (TWEA) Penalties

**§ 501.701 [Amended]**

■ 2. In § 501.701, in paragraph (a)(3), remove ''$91,816'' and add in its place ''$97,529''.

■ 3. Amend appendix A to part 501 as follows:

■ a. In paragraph IV.A., remove ''$24,046'' and add in its place ''$25,542'' and remove ''$60,115'' and add in in its place ''$63,855''.

■ b. In paragraph IV.B., remove ''$3,005'' and add in its place ''$3,192'', remove ''$6,012'' and add in its place ''$6,386'', and remove ''$1,203'' and add in its place ''$1,278''.

■ c. In paragraph IV.C., remove ''$60,226'' and add in its place ''$63,973''.

■ d. In paragraph V.B.2.a.i., remove ''$155,781'' and add in its place ''$165,474'' and remove ''$311,562'' and add in its place ''$330,947''.

■ e. In paragraph V.B.2.a.ii., remove ''$311,562'' wherever it appears and add in its place ''$330,947''.

■ f. In paragraph V.B.2.a.v., remove ''$311,562'' and add in its place ''$330,947'', remove ''$91,816'' and add in its place ''$97,529'', remove ''$1,548,075'' and add in its place ''$1,644,396'', remove ''$82,244'' and add in its place ''$87,361'', and remove ''$14,074'' and add in its place ''$14,950''.

■ g. Revise paragraph V.B.2.a.vi.

The revision reads as follows:

**Appendix A to Part 501—Economic Sanctions Enforcement Guidelines.**

* * * * *

V. * * *

B. * * *

2. * * *

a. * * *

vi. The following matrix represents the base amount of the proposed civil penalty for each category of violation:

## BASE PENALTY MATRIX

| Voluntary Self-Disclosure | Egregious Case: NO | Egregious Case: YES |
|---|---|---|
| YES | (1) One-Half of Transaction Value (capped at lesser of $165,474 or one-half of the applicable statutory maximum per violation) | (3) One-Half of Applicable Statutory Maximum |
| NO | (2) Applicable Schedule Amount (capped at lesser of $330,947 or the applicable statutory maximum per violation) | (4) Applicable Statutory Maximum |

* * * * *

## PART 510—NORTH KOREA SANCTIONS REGULATIONS

■ 4. The authority citation for part 510 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c, 9201–9255; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13466, 73 FR 36787, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, 3 CFR, 2010 Comp., p. 242; E.O. 13570, 76 FR 22291, 3 CFR, 2011 Comp., p. 233; E.O. 13687, 80 FR 819, 3 CFR, 2015 Comp., p. 259; E.O. 13722, 81 FR 14943, 3 CFR, 2016 Comp., p. 446; E.O. 13810, 82 FR 44705, 3 CFR, 2017 Comp., p. 379.

### Subpart G—Penalties

**§ 510.701 [Amended]**

■ 5. In § 510.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 535—IRANIAN ASSETS CONTROL REGULATIONS

■ 6. The authority citation for part 535 continues to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12170, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR, 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR, 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR, 1981 Comp., p. 112; E.O. 12282, 46 FR 7925, 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR, 1981 Comp., p. 114; E.O. 12294, 46 FR 14111, 3 CFR, 1981 Comp., p. 139.

### Subpart G—Penalties

**§ 535.701 [Amended]**

■ 7. In § 535.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

■ 8. The authority citation for part 536 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

### Subpart G—Penalties

**§ 536.701 [Amended]**

■ 9. In § 536.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

■ 10. The authority citation for part 539 continues to read as follows:

**Authority:** 3 U.S.C. 301; 22 U.S.C. 2751–2799aa–2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

### Subpart G—Penalties

**§ 539.701 [Amended]**

■ 11. In § 539.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 541—ZIMBABWE SANCTIONS REGULATIONS

■ 12. The authority citation for part 541 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13288, 68 FR 11457, 3 CFR, 2003 Comp., p. 186; E.O. 13391, 70 FR 71201, 3 CFR, 2005 Comp., p. 206; E.O. 13469, 73 FR 43841, 3 CFR, 2008 Comp., p. 1025.

### Subpart G—Penalties

**§ 541.701 [Amended]**

■ 13. In § 541.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 542—SYRIAN SANCTIONS REGULATIONS

■ 14. The authority citation for part 542 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2332d; 22 U.S.C. 287c; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 116–92, Div. F, Title LXXIV, 133 Stat. 2290 (22 U.S.C. 8791 note); E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR 2008 Comp., p. 181; E.O. 13572, 76 FR 24787, 3 CFR 2011 Comp., p. 236; E.O. 13573, 76 FR 29143, 3 CFR 2011 Comp., p. 241; E.O. 13582, 76 FR 52209, 3 CFR 2011 Comp., p. 264; E.O. 13606, 77 FR 24571, 3 CFR 2012 Comp., p. 243.

### Subpart G—Penalties

**§ 542.701 [Amended]**

■ 15. In § 542.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 544—WEAPONS OF MASS DESTRUCTION PROLIFERATORS SANCTIONS REGULATIONS

■ 16. The authority citation for part 544 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

### Subpart G—Penalties

**§ 544.701 [Amended]**

■ 17. In § 544.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 546—DARFUR SANCTIONS REGULATIONS

■ 18. The authority citation for part 546 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13400, 71 FR 25483, 3 CFR, 2006 Comp., p. 220.

### Subpart G—Penalties

**§ 546.701 [Amended]**

■ 19. In § 546.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

■ 20. The authority citation for part 547 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247; E.O. 13671, 79 FR 39949, 3 CFR, 2015 Comp., p. 280.

### Subpart G—Penalties

**§ 547.701 [Amended]**

■ 21. In § 547.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 548—BELARUS SANCTIONS REGULATIONS

■ 22. The authority citation for part 548 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13405, 71 FR 35485, 3 CFR, 2007 Comp., p. 231.

### Subpart G—Penalties

**§ 548.701 [Amended]**

■ 23. In § 548.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 549—LEBANON SANCTIONS REGULATIONS

■ 24. The authority citation for part 549 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13441, 72 FR 43499, 3 CFR, 2008 Comp., p. 232.

### Subpart G—Penalties

**§ 549.701 [Amended]**

■ 25. In § 549.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 551—SOMALIA SANCTIONS REGULATIONS

■ 26. The authority citation for part 551 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13536, 75 FR 19869, 3 CFR, 2010 Comp., p. 203; E.O. 13620, 77 FR 43483, 3 CFR, 2012 Comp., p. 281.

### Subpart G—Penalties

**§ 551.701 [Amended]**

■ 27. In § 551.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 552—YEMEN SANCTIONS REGULATIONS

■ 28. The authority citation for part 552 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13611, 77 FR 29533, 3 CFR, 2012 Comp., p. 260.

### Subpart G—Penalties

**§ 552.701 [Amended]**

■ 29. In § 552.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 560—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

■ 30. The authority citation for part 560 continues to read as follows:

**Authority:** 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa-9, 7201–7211, 8501–8551, 8701–8795; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13846, 83 FR 38939, 3 CFR, 2018 Comp., p. 854.

### Subpart G—Penalties

**§ 560.701 [Amended]**

■ 31. In § 560.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS

■ 32. The authority citation for part 561 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 8501–8551, 8701–8795; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, 3 CFR, 2010 Comp., p. 253; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13846, 83 FR 38939, 3 CFR, 2018 Comp., p. 854; E.O. 13871, 84 FR 20761, 3 CFR, 2019 Comp., p. 309.

### Subpart G—Penalties

**§ 561.701 [Amended]**

■ 33. In § 561.701, in paragraph (a)(4), remove ''$311,562'' and add in its place ''$330,947''.

## PART 566—HIZBALLAH FINANCIAL SANCTIONS REGULATIONS

■ 34. The authority citation for part 566 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 114–102, 129 Stat. 2205 (50 U.S.C. 1701 note); Pub. L. 115–272, 132 Stat. 4144 (50 U.S.C. 1701 note).

### Subpart G—Penalties

**§ 566.701 [Amended]**

■ 35. In § 566.701, in paragraph (b), remove ''$311,562'' and add in its place ''$330,947''.

## PART 576—IRAQ STABILIZATION AND INSURGENCY SANCTIONS REGULATIONS

■ 36. The authority citation for part 576 continues to read as follows:

**Authority:** 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13303, 68 FR 31931, 3 CFR, 2003 Comp., p. 227; E.O. 13315, 68 FR 52315, 3 CFR, 2003 Comp., p. 252; E.O. 13350, 69 FR 46055, 3 CFR, 2004 Comp., p. 196; E.O. 13364, 69 FR 70177, 3 CFR, 2004 Comp., p. 236; E.O. 13438, 72 FR 39719, 3 CFR, 2007 Comp., p. 224; E.O. 13668, 79 FR 31019, 3 CFR, 2014 Comp., p. 248.

### Subpart G—Penalties

**§ 576.701 [Amended]**

■ 37. In § 576.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 583—GLOBAL MAGNITSKY SANCTIONS REGULATIONS

■ 38. The authority citation for part 583 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 114–328, Div. A, Title XII, Subt. F, 130 Stat. 2533 (22 U.S.C. 2656 note); E.O. 13818, 82 FR 60839, 3 CFR, 2017 Comp., p. 399.

**§ 583.701 [Amended]**

■ 39. In § 583.701, in paragraph (c), remove ''$311,562'' and add in its place ''$330,947''.

## PART 584—MAGNITSKY ACT SANCTIONS REGULATIONS

■ 40. The authority citation for part 584 is revised to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 112–208, Title IV, 126 Stat. 1502 (22 U.S.C. 5811 note).

**§ 584.701 [Amended]**

■ 41. In § 584.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

■ 42. The authority citation for part 588 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13219, 66 FR 34777, 3 CFR, 2001 Comp., p. 778; E.O. 13304, 68 FR 32315, 3 CFR, 2004 Comp. p. 229.

### Subpart G—Penalties

**§ 588.701 [Amended]**

■ 43. In § 588.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 590—TRANSNATIONAL CRIMINAL ORGANIZATIONS SANCTIONS REGULATIONS

■ 44. The authority citation for part 590 continues to read as follows:

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13581, 76 FR 44757, 3 CFR, 2011 Comp., p. 260; E.O. 13863, 84 FR 10255, 3 CFR, 2019 Comp., p. 267.

### Subpart G—Penalties

**§ 590.701 [Amended]**

■ 45. In § 590.701, in paragraph (a)(2), remove ''$311,562'' and add in its place ''$330,947''.

## PART 592—ROUGH DIAMONDS CONTROL REGULATIONS

■ 46. The authority citation for part 592 continues to read as follows:

**Authority:** 3 U.S.C. 301; 19 U.S.C. 3901–3913; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13312, 68 FR 45151, 3 CFR, 2003 Comp., p. 246.

### Subpart F—Penalties

**§ 592.601 [Amended]**

■ 47. In § 592.601, in paragraph (a)(2), remove ''$14,074'' and add in its place ''$14,950''.

## PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 48. The authority citation for part 594 continues to read as follows:

**Authority:** 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); Pub. L. 115–348, 132 Stat. 5055 (50 U.S.C. 1701 note); Pub. L. 115–272, 132 Stat. 4144 (50 U.S.C. 1701 note); E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161; E.O. 13372, 70 FR 8499, 3 CFR, 2006 Comp., p. 159.

### Subpart G—Penalties

**§ 594.701 [Amended]**

■ 49. In § 594.701, in paragraph (a)(2), remove ''$311,562''and add in its place ''$330,947''.

## PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 50. The authority citation for part 597 continues to read as follows:

**Authority:** 8 U.S.C. 1189; 18 U.S.C. 2339B; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

### Subpart G—Penalties

**§ 597.701 [Amended]**

■ 51. In § 597.701, in paragraph (b)(3), remove ''$82,244'' and add in its place ''$87,361''.

## PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

■ 52. The authority citation for part 598 continues to read as follows:

**Authority:** 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

### Subpart G—Penalties

**§ 598.701 [Amended]**

■ 53. In § 598.701, in paragraph (a)(4), remove ''$1,548,075'' and add in its place ''$1,644,396''.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control.*

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**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**31 CFR Part 550**

## Ethiopia Sanctions Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is adding regulations to implement a September 17, 2021 Ethiopia-related Executive order. OFAC intends to supplement these regulations with a more comprehensive set of regulations, which may include additional interpretive guidance and definitions, general licenses, and other regulatory provisions.

**DATES:** This rule is effective February 9, 2022.

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

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

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

### Background

On September 17, 2021, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued Executive Order (E.O.) 14046 of September 17, 2021, ''Imposing Sanctions on Certain Persons With Respect to the Humanitarian and Human Rights Crisis in Ethiopia'' (86 FR 52389, September 21, 2021).

In E.O. 14046, the President found that the situation in and in relation to northern Ethiopia, which has been marked by activities that threaten the peace, security, and stability of Ethiopia and the greater Horn of Africa region—in particular, widespread violence, atrocities, and serious human rights abuse, including those involving ethnic-based violence, rape and other forms of gender-based violence, and obstruction of humanitarian operations—constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat.

OFAC is issuing the Ethiopia Sanctions Regulations, 31 CFR part 550 (the ''Regulations''), to implement E.O. 14046, pursuant to authorities delegated to the Secretary of the Treasury in E.O. 14046. A copy of E.O. 14046 appears in appendix A to this part.

Additionally, OFAC is incorporating three general licenses that were previously issued on OFAC's website into the Regulations. Sections 550.510 through 550.512 incorporate General Licenses 1, 2, and 3, which authorize, respectively: Official business of certain international organizations and entities; certain transactions in support of nongovernmental organizations' activities; and transactions related to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates. General Licenses 1, 2, and 3 were each issued on September 17, 2021 on OFAC's website, and each will be removed from OFAC's website upon publication of this rule.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 550 with a more comprehensive set of regulations, which may include additional interpretive guidance and definitions, general licenses, and other regulatory provisions. The appendix to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

### Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

### Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

### List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Eritrea, Ethiopia, Foreign trade, Penalties, Prohibitions on certain credit, investments, loans, purchases, or other transactions, Reporting and recordkeeping requirements, Sanctions, Services.

■ For the reasons set forth in the preamble, OFAC adds part 550 to 31 CFR chapter V to read as follows:

## PART 550—ETHIOPIA SANCTIONS REGULATIONS

**Subpart A—Relation of This Part to Other Laws and Regulations**

Sec.
550.101 Relation of this part to other laws and regulations.

**Subpart B—Prohibitions**

550.201 Prohibited transactions.
550.202 Effect of transfers violating the provisions of this part.
550.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
550.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.
550.205 Exempt transactions.

**Subpart C—General Definitions**

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550.301 Blocked account; blocked property.
550.302 Effective date.
550.303 Entity.
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550.312 Property; property interest.
550.313 Sanctioned person.
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550.315 United States.
550.316 United States person; U.S. person.
550.317 U.S. financial institution.

**Subpart D—Interpretations**

550.401 [Reserved]
550.402 Effect of amendment.
550.403 Termination and acquisition of an interest in blocked property.
550.404 Transactions ordinarily incident to a licensed transaction.
550.405 Setoffs prohibited.
550.406 Status of entities owned by one or more persons whose property and interests in property are blocked.

**Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**

550.501 General and specific licensing procedures.

550.502 [Reserved]
550.503 Exclusion from licenses.
550.504 Payments and transfers to blocked accounts in U.S. financial institutions.
550.505 Entries in certain accounts for normal service charges.
550.506 Provision of certain legal services.
550.507 Payments for legal services from funds originating outside the United States.
550.508 Emergency medical services.
550.509 Official business of the United States Government.
550.510 Official business of certain international organizations and entities.
550.511 Certain transactions in support of nongovernmental organizations' activities.
550.512 Transactions related to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates.

**Subpart F—Reports**

550.601 Records and reports.

**Subpart G—Penalties and Findings of Violation**

550.701 Penalties and Findings of Violation.

**Subpart H—Procedures**

550.801 Procedures.
550.802 Delegation of certain authorities of the Secretary of the Treasury.

**Subpart I—Paperwork Reduction Act**

550.901 Paperwork Reduction Act notice.
Appendix A to Part 550—Executive Order 14046 of September 17, 2021

**Authority:** 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 14046, 86 FR 52389, September 21, 2021.

## Subpart A—Relation of This Part to Other Laws and Regulations

### § 550.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

**Note 1 to § 550.101.** This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive guidance and definitions, general licenses, and other regulatory provisions.

## Subpart B—Prohibitions

### § 550.201 Prohibited transactions.

(a) All transactions prohibited pursuant to Executive Order (E.O.) 14046 of September 17, 2021 are prohibited pursuant to this part.

(b) All transactions prohibited pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 14046 are prohibited pursuant to this part.

**Note 1 to § 550.201.** The names of persons whose property and interests in property are blocked pursuant to this section are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) using the following identifier formulation: ''[ETHIOPIA–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked]].'' The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 550.406(a) concerning the status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, by one or more persons whose property and interests in property are blocked pursuant to § 550.201(a).

**Note 2 to § 550.201.** The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List using the following identifier formulation: ''[BPI–ETHIOPIA–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked pending investigation]].''

**Note 3 to § 550.201.** Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

**Note 4 to § 550.201.** The names of persons on whom non-blocking sanctions implemented by the Department of the Treasury are imposed pursuant to this section are incorporated into a data file containing OFAC's Consolidated Non-SDN data and are provided in a human readable format on OFAC's Non-SDN Menu-Based Sanctions List (NS–MBS List) on the following page on OFAC's website: *www.treasury.gov/consolidated-sanctions-list-non-sdn-lists.* These listings are published in the **Federal Register** and include specific information on the non-blocking sanctions imposed on such persons. However, for any persons on whom blocking and non-blocking sanctions are imposed pursuant to this section, such persons' names are instead incorporated into OFAC's SDN List using the identifier ''[ETHIOPIA–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked]].''

**Note 5 to § 550.201.** Section 501.807 of this chapter describes the procedures to be followed by persons seeking administrative reconsideration of their inclusion on the NS–MBS List for the imposition of non-blocking sanctions pursuant to this section.

### § 550.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 550.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or interest in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 550.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with

whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

(e) The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(f) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 550.201.

**§ 550.203 Holding of funds in interest-bearing accounts; investment and reinvestment.**

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, blocked pursuant to § 550.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For the purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For the purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For the purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become blocked pursuant to § 550.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become blocked pursuant to § 550.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds blocked pursuant to § 550.201 may not be held, invested, or reinvested in a manner that provides financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 550.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

**§ 550.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.**

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 550.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 550.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

**§ 550.205 Exempt transactions.**

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Official business.* The prohibitions contained in § 550.201(a) do not apply to any transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

## Subpart C—General Definitions

**§ 550.300 Applicability of definitions.**

The definitions in this subpart apply throughout the entire part.

**§ 550.301 Blocked account; blocked property.**

The terms *blocked account* and *blocked property* mean any account or property subject to the prohibitions in § 550.201 held in the name of a person whose property and interests in property are blocked pursuant to § 550.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

**Note 1 to § 550.301.** *See* § 550.406 concerning the status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, by one or more persons whose property and interests in property are blocked pursuant to § 550.201.

**§ 550.302 Effective date.**

(a) The term *effective date* refers to the effective date of the applicable

prohibitions and directives contained in this part, and with respect to a person whose property and interests in property are blocked pursuant to § 550.201 or on whom other sanctions are imposed, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked or that other sanctions are imposed on such person.

(b) For the purposes of this section, c*onstructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property or imposition of other sanctions is published in the **Federal Register**.

**§ 550.303 Entity.**

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

**§ 550.304 Financial, material, or technological support.**

The term *financial, material, or technological support* means any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this section means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

**§ 550.305 [Reserved]**

**§ 550.306 Government of Eritrea.**

The term *Government of Eritrea* means the Government of Eritrea, any political subdivision, agency, or instrumentality thereof, including the Bank of Eritrea, and any person owned, controlled, or directed by, or acting for or on behalf of, the Government of Eritrea.

**§ 550.307 Government of Ethiopia.**

The term *Government of Ethiopia* means the Government of Ethiopia, any political subdivision, agency, or instrumentality thereof, including the National Bank of Ethiopia, and any person owned, controlled, or directed by, or acting for or on behalf of, the Government of Ethiopia.

**§ 550.308 Interest.**

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

**§ 550.309 Licenses; general and specific.**

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

**Note 1 to § 550.309.** *See* § 501.801 of this chapter on licensing procedures.

**§ 550.310 OFAC.**

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

**§ 550.311 Person.**

The term *person* means an individual or entity.

**§ 550.312 Property; property interest.**

The terms *property* and *property interest* include money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

**§ 550.313 Sanctioned person.**

The term *sanctioned person* means a foreign person that the Secretary of the Treasury, in consultation with the Secretary of State, has determined meets any of the criteria described in section 1 of E.O. 14046 and has selected, in consultation with the Secretary of State, one or more of the sanctions set forth in section 2(a) of E.O. 14046 to impose on that foreign person.

**§ 550.314 Transfer.**

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

**§ 550.315 United States.**

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

**§ 550.316 United States person; U.S. person.**

The term *United States person* or *U.S. person* means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

**§ 550.317 U.S. financial institution.**

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, money services businesses, trust companies, insurance companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

## Subpart D—Interpretations

**§ 550.401 [Reserved]**

**§ 550.402 Effect of amendment.**

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

**§ 550.403 Termination and acquisition of an interest in blocked property.**

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 550.201, such property shall no longer be deemed to be property blocked pursuant to § 550.201, unless there exists in the property another interest that is blocked pursuant to § 550.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 550.201, such property shall be deemed to be property in which such person has an interest and therefore blocked.

**§ 550.404 Transactions ordinarily incident to a licensed transaction.**

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 550.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

**§ 550.405 Setoffs prohibited.**

A setoff against blocked property (including a blocked account), whether by a U.S. financial institution or other U.S. person, is a prohibited transfer under § 550.201 if effected after the effective date.

**§ 550.406 Status of entities owned by one or more persons whose property and interests in property are blocked.**

(a) No entity shall be blocked pursuant to § 550.201(a) solely because it is owned in whole or in part, directly or indirectly, by one or more sanctioned persons, unless the entity is itself a sanctioned person and the sanctions in section 2(a)(i)(A) of E.O. 14046 are imposed on the entity.

(b) Unless otherwise stated in the relevant Executive order, persons whose property and interests in property are blocked pursuant to § 550.201(b) have an interest in all property and interests in property of an entity in which such persons directly or indirectly own, whether individually or in the aggregate, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 550.201(b), regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

## Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

**§ 550.501 General and specific licensing procedures.**

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Ethiopia sanctions page on OFAC's website: *www.treasury.gov/ofac.*

**§ 550.502 [Reserved]**

**§ 550.503 Exclusion from licenses.**

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

**§ 550.504 Payments and transfers to blocked accounts in U.S. financial institutions.**

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 550.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

**Note 1 to § 550.504.** *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 550.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

**§ 550.505 Entries in certain accounts for normal service charges.**

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

**§ 550.506 Provision of certain legal services.**

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 550.201 is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to § 550.507, which authorizes certain payments for legal services from funds originating outside the United States; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 550.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by this section. Additionally, U.S. persons who provide services authorized by this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. *See* § 550.404.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 550.201 is prohibited unless licensed pursuant to this part.

**Note 1 to § 550.506.** Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available.

**§ 550.507 Payments for legal services from funds originating outside the United States.**

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 550.506(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 550.201 is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 550.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in this paragraph (a) authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 550.201, any other part of this chapter, or any Executive order or statute has an interest.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) Email (preferred method): *OFACReport@treasury.gov;* or

(ii) U.S. mail: OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

**§ 550.508 Emergency medical services.**

The provision and receipt of nonscheduled emergency medical services that are prohibited by this part are authorized.

**§ 550.509 Official business of the United States Government.**

All transactions prohibited by this part that are for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof are authorized.

**§ 550.510 Official business of certain international organizations and entities.**

All transactions prohibited by this part that are for the conduct of the official business of the following entities by employees, grantees, or contractors thereof are authorized:

(a) The United Nations, including its Programmes, Funds, and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations;

(b) The International Centre for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA);

(c) The African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group (IDB Group), including any fund entity administered or established by any of the foregoing;

(d) The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies; and

(e) The African Union, including the African Union Commission and other subsidiary bodies and organs.

**§ 550.511 Certain transactions in support of nongovernmental organizations' activities.**

All transactions prohibited by this part that are ordinarily incident and necessary to the following activities by nongovernmental organizations are authorized, including the processing and transfer of funds; payment of taxes, fees, and import duties; and purchase or receipt of permits, licenses, or public utility services:

(a) Activities to support humanitarian projects to meet basic human needs in Ethiopia or Eritrea, including drought and flood relief; food, nutrition, and medicine distribution; the provision of health services; assistance for vulnerable or displaced populations, including individuals with disabilities, the elderly, and survivors of sexual- and gender-based violence; and environmental programs;

(b) Activities to support democracy building in Ethiopia or Eritrea, including activities to support rule of law, citizen participation, government accountability and transparency, human rights and fundamental freedoms, access to information, and civil society development projects;

(c) Activities to support education in Ethiopia or Eritrea, including combating illiteracy, increasing access to education, international exchanges, and assisting education reform projects;

(d) Activities to support non-commercial development projects in Ethiopia or Eritrea directly benefitting the people of such countries, including related to health, food security, and water and sanitation; and

(e) Activities to support environmental and natural resource protection in Ethiopia or Eritrea, including the preservation and protection of threatened or endangered species, responsible and transparent management of natural resources, and the remediation of pollution or other environmental damage.

**§ 550.512 Transactions related to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates.**

(a) All transactions prohibited by this part that are ordinarily incident and necessary to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices to Ethiopia or Eritrea, or to persons in third countries purchasing specifically for resale to Ethiopia or Eritrea, are authorized.

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

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) That are intended for ultimate use in Ethiopia or Eritrea as:

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

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

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

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

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

**Note 1 to § 550.512.** Nothing in this section relieves any person from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security.

## Subpart F—Reports

**§ 550.601 Records and reports.**

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

## Subpart G—Penalties and Findings of Violation

**§ 550.701 Penalties and Findings of Violation.**

(a) The penalties available under section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), as adjusted annually pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note) or, in the case of criminal violations, as adjusted pursuant to 18 U.S.C. 3571, are applicable to violations of the provisions of this part.

(b) OFAC has the authority, pursuant to IEEPA, to issue Pre-Penalty Notices, Penalty Notices, and Findings of Violation; impose monetary penalties; engage in settlement discussions and enter into settlements; refer matters to the United States Department of Justice for administrative collection; and, in appropriate circumstances, refer matters to appropriate law enforcement agencies for criminal investigation and/or prosecution. For more information, see appendix A to part 501 of this chapter, which provides a general framework for the enforcement of all economic sanctions programs administered by OFAC, including enforcement-related definitions, types of responses to apparent violations, general factors affecting administrative actions, civil penalties for failure to comply with a requirement to furnish information or keep records, and other general civil penalties information.

## Subpart H—Procedures

**§ 550.801 Procedures.**

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

**§ 550.802 Delegation of certain authorities of the Secretary of the Treasury.**

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 14046 of September 17, 2021, and any further Executive orders issued pursuant to the national emergency declared therein, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

## Subpart I—Paperwork Reduction Act

**§ 550.901 Paperwork Reduction Act notice.**

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures, and other procedures, see

§ 501.901 of this chapter. 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 control number assigned by OMB.

## Appendix A to Part 550—Executive Order 14046 of September 17, 2021

### Executive Order 14046 of September 17, 2021, Imposing Sanctions on Certain Persons With Respect to the Humanitarian and Human Rights Crisis in Ethiopia

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), sections 212(f) and 215(a) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f) and 1185(a)), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, find that the situation in and in relation to northern Ethiopia, which has been marked by activities that threaten the peace, security, and stability of Ethiopia and the greater Horn of Africa region—in particular, widespread violence, atrocities, and serious human rights abuse, including those involving ethnic-based violence, rape and other forms of gender-based violence, and obstruction of humanitarian operations—constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States. I hereby declare a national emergency to deal with that threat.

The widespread humanitarian crisis precipitated by the violent conflict in northern Ethiopia has left millions of people in need of humanitarian assistance and has placed an entire region on the brink of famine. While maintaining pressure on those persons responsible for the crisis, the United States will seek to ensure that appropriate personal remittances to non-blocked persons and humanitarian assistance to at-risk populations can flow to Ethiopia and the greater Horn of Africa region through legitimate and transparent channels, including governments, international organizations, and non-profit organizations. The United States supports ongoing international efforts to promote a negotiated ceasefire and political resolution of this crisis, to ensure the withdrawal of Eritrean forces from Ethiopia, and to promote the unity, territorial integrity, and stability of Ethiopia.

Accordingly, I hereby order:

*Section 1.* The Secretary of the Treasury is authorized to impose any of the sanctions described in section 2(a) of this order on any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(a) To be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following:

(i) Actions or policies that threaten the peace, security, or stability of Ethiopia, or that have the purpose or effect of expanding or extending the crisis in northern Ethiopia or obstructing a ceasefire or a peace process;

(ii) corruption or serious human rights abuse in or with respect to northern Ethiopia;

(iii) the obstruction of the delivery or distribution of, or access to, humanitarian assistance in or with respect to northern Ethiopia, including attacks on humanitarian aid personnel or humanitarian projects;

(iv) the targeting of civilians through the commission of acts of violence in or with respect to northern Ethiopia, including involving abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or any conduct that would constitute a violation of international humanitarian law;

(v) planning, directing, or committing attacks in or with respect to northern Ethiopia against United Nations or associated personnel or African Union or associated personnel;

(vi) actions or policies that undermine democratic processes or institutions in Ethiopia; or

(vii) actions or policies that undermine the territorial integrity of Ethiopia;

(b) to be a military or security force that operates or has operated in northern Ethiopia on or after November 1, 2020;

(c) to be an entity, including any government entity or a political party, that has engaged in, or whose members have engaged in, activities that have contributed to the crisis in northern Ethiopia or have obstructed a ceasefire or peace process to resolve such crisis;

(d) to be a political subdivision, agency, or instrumentality of the Government of Ethiopia, the Government of Eritrea or its ruling People's Front for Democracy and Justice, the Tigray People's Liberation Front, the Amhara regional government, or the Amhara regional or irregular forces;

(e) to be a spouse or adult child of any sanctioned person;

(f) to be or have been a leader, official, senior executive officer, or member of the board of directors of any of the following, where the leader, official, senior executive officer, or director is responsible for or complicit in, or who has directly or indirectly engaged or attempted to engage in, any activity contributing to the crisis in northern Ethiopia:

(i) An entity, including a government entity or a military or security force, operating in northern Ethiopia during the tenure of the leader, official, senior executive officer, or director;

(ii) an entity that has, or whose members have, engaged in any activity contributing to the crisis in northern Ethiopia or obstructing a ceasefire or a peace process to resolve such crisis during the tenure of the leader, official, senior executive officer, or director; or

(iii) the Government of Ethiopia, the Government of Eritrea or its ruling People's Front for Democracy and Justice, the Tigray People's Liberation Front, the Amhara regional government, or the Amhara regional or irregular forces, on or after November 1, 2020;

(g) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any sanctioned person; or

(h) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any sanctioned person.

*Sec. 2.* (a) When the Secretary of the Treasury, in consultation with the Secretary of State, has determined that a foreign person meets any of the criteria described in section 1(a)–(h) of this order, the Secretary of the Treasury is authorized to select, in consultation with the Secretary of State, one or more of the sanctions set forth in subsections (a)(i)(A)–(E) or (a)(ii)(A)–(B) of this section to impose on that foreign person:

(i) The Secretary of the Treasury shall take the following actions as necessary to implement the selected sanctions:

(A) Block all property and interests in property of the sanctioned person that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

(B) prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the sanctioned person;

(C) prohibit any United States financial institution from making loans or providing credit to the sanctioned person;

(D) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest; or

(E) impose on the leader, official, senior executive officer, or director of the sanctioned person, or on persons performing similar functions and with similar authorities as such leader, official, senior executive officer, or director, any of the sanctions described in subsections (a)(i)(A)–(D) of this section that are applicable.

(ii) the heads of the relevant executive departments and agencies, in consultation with the Secretary of the Treasury, shall take the following actions as necessary and appropriate to implement the sanctions selected by the Secretary of the Treasury:

(A) Actions required to deny any specific license, grant, or any other specific permission or authority under any statute or regulation that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or technology to the sanctioned person; or

(B) actions required to deny a visa to and exclude from the United States any noncitizen whom the Secretary of the Treasury, in consultation with the Secretary of State, determines is a leader, official, senior executive officer, or director, or a shareholder with a controlling interest in, the sanctioned person.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order. No entity shall be blocked

pursuant to this order solely because it is owned in whole or in part, directly or indirectly, by one or more sanctioned persons, unless the entity is itself a sanctioned person and the sanctions in section 2(a)(i)(A) of this order are imposed on the entity.

*Sec. 3.* The prohibitions in section 2(a) of this order include:

(a) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

*Sec. 4.* (a) The unrestricted immigrant and nonimmigrant entry into the United States of noncitizens determined to meet one or more of the criteria in section l of this order, and for whom the sanctions described in section 2(a)(i)(A) or section 2(a)(ii)(B) of this order have been selected, would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended, except when the Secretary of State or the Secretary of Homeland Security, as appropriate, determines that the person's entry would not be contrary to the interests of the United States, including when the Secretary of State or the Secretary of Homeland Security, as appropriate, so determines, based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives.

(b) The Secretary of State shall implement this order as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish.

(c) The Secretary of Homeland Security shall implement this order as it applies to the entry of noncitizens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish.

(d) Such persons shall be treated by this section in the same manner as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

*Sec. 5.* (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

*Sec. 6.* I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 2 of this order.

*Sec. 7.* For the purposes of this order:

(a) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term ''Government of Ethiopia'' means the Government of Ethiopia, any political subdivision, agency, or instrumentality thereof, including the National Bank of Ethiopia, and any person owned, controlled, or directed by, or acting for or on behalf of, the Government of Ethiopia;

(c) the term ''Government of Eritrea'' means the Government of Eritrea, any political subdivision, agency, or instrumentality thereof, including the Bank of Eritrea, and any person owned, controlled, or directed by, or acting for or on behalf of, the Government of Eritrea;

(d) the term ''noncitizen'' means any person who is not a citizen or noncitizen national of the United States;

(e) the term ''person'' means an individual or entity;

(f) the term ''sanctioned person'' means a foreign person that the Secretary of the Treasury, in consultation with the Secretary of State, has determined meets any of the criteria described in section 1 of this order and has selected, in consultation with the Secretary of State, one or more of the sanctions set forth in section 2(a) of this order to impose on that foreign person; and

(g) the term ''United States person'' means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

*Sec. 8.* For those persons whose property and interests in property are blocked or affected by this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds and other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

*Sec. 9.* The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All executive departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.

*Sec. 10.* Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government by employees, grantees, and contractors thereof.

*Sec. 11.* The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

*Sec. 12.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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

JOSEPH R. BIDEN JR.
THE WHITE HOUSE,
*September 17, 2021.*

**Andrea M. Gacki,**
*Director, Office of Foreign Assets Control.*

[FR Doc. 2022–02722 Filed 2–8–22; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2022–0074]**

**RIN 1625–AA87**

## Security Zone; Grounded Tug and Barge, Deerfield Beach, FL

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

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone for certain navigable waters of the Atlantic Ocean within a 1000 yard radius of a grounded tug and barge, the SEA EAGLE, on Deerfield Beach containing a cargo of national security interest. This action is necessary to protect the cargo and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Miami.

**DATES:** This rule is effective without actual notice from February 9, 2022, through 11:00 a.m. on February 11, 2022. For the purposes of enforcement, actual notice will be used from 12:00 p.m. on February 4, 2022, until February 9, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0074 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Omar Beceiro, Waterways Management Division, U.S. Coast Guard; telephone: (305) 535–4317, email: *Omar.Beceiro@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 immediate action is needed to protect a cargo of national security interest, on board the grounded barge. This vessel ran aground in the early morning hours of February 4, 2022, and immediate action is needed to protect the vessel, it's cargo, response personnel, and the waterway. It would be impracticable to publish an NPRM because we must establish this security zone by February 4, 2022.

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 impracticable because immediate action is needed to protect the cargo of national security interest, the vessel, response personnel, and the waterway.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP Miami has determined a cargo of national security interest is on board the grounded tug and barge, and the cargo presents a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. This security zone is needed to protect the cargo of national security interest, response personnel, the vessel, and the surrounding waterway, until the tug and barge is refloated or cargo removed.

## IV. Discussion of the Rule

This rule establishes a security zone from 12:00 p.m. on February 4, 2022 to 11:00 a.m. on February 11, 2022. The security zone will cover all navigable waters of the Atlantic Ocean within 1000 yards of the grounded tug and barge. The duration of the zone is intended to protect a cargo of national security interest, response personnel, the vessel, and surrounding waterway until the brage is refloated or cargo removed. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under 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, duration, and scope of the security zone. The zone is limited in size, location, and duration as it will cover all navigable waters of the Atlantic Ocean within 1000 yards of the grounded SEA EAGLE, and will last only one week. The zone is limited in scope as vessel traffic will be able to safely transit around this security zone and vessels may seek permission from the COTP to enter the zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the security 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 security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined 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 an emergency security zone lasting less than 7 days that will prohibit entry within 1000 yards of the grounded tug and barge. This type of action is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051; 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.T07–0074 to read as follows:

**§ 165.T07–0074 Security Zone; Grounded Tug and Barge, Deerfield Beach, FL.**

(a) *Locations.* The following is a temporary security zone: All waters of the Atlanic Ocean witin a 1000 yard radius of position 26°19′13.94″ N, 080′4′25.68″ W. The coordinates are in NAD 83.

(b) *Definition.* The term *designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Miami in the enforcement of the security zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the security zone unless authorized by the COTP Miami or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP Miami or designated representative.

(2) Persons who must notify or request authorization from the COTP may do so by telephone at (305) 535–4313, or may contact a designated representative via VHF radio on channel 16.

(d) *Enforcement period.* This section will be enforced from 12:00 p.m. on February 4, 2022, through 11:00 a.m. on February 11, 2022.

Dated: February 4, 2022.

**J.F. Burdian,**

*Captain, U.S. Coast Guard, Captain of the Port Miami.*

[FR Doc. 2022–02743 Filed 2–8–22; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2022–0072]**

**RIN 1625–AA00**

## Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of persons, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge, which will occur from 8 p.m. on February 4, 2022, through 8 p.m. on February 11, 2022. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

**DATES:** This rule is effective without actual notice from February 9, 2022, through 8 p.m. on February 11, 2022. For the purposes of enforcement, actual notice will be issued from 8 p.m. on February 4, 2022, until February 9, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0072 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
§ Section
TFR Temporary Final Rule
U.S.C. United States Code

## II. Background Information and Regulatory History

On February 2, 2022, Skanska-Corman-McLean, Joint Venture notified the Coast Guard that the company will be setting structural steel sections across the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge. The bridge contractor stated the work required to set structural steel across the channel, which was originally scheduled to occur in November 2021, then rescheduled to December 2021, then rescheduled to January 3–15, 2022, and again rescheduled to January 11–22, 2022, was scheduled to occur from January 22, 2022 through February 4, 2022. However, an unexpected major winter weather event and the resulting clean-up activity required on site following that event halted operations and caused additional delays. The work is now scheduled to occur from February 4, 2022, through February 11, 2022.

The work described by the contractor requires the movement in and anchoring at multiple points of a large crane barge within the federal navigation channel. This crane can accommodate all of the steel to be hoisted and placed, which will streamline the operation by avoiding multiple reloads of steel and reducing the time in the channel by multiple days. This operation will impede vessels requiring the use of the channel. Note, the Coast Guard previously issued other temporary safety zones at this location for placement of fender ring elements in association with construction of the new bridge (Search dockets USCG–2021–0127; USCG–2021–0650; USCG–2021–0745; USCG–2021–0906; USCG–2022–0021; and USCG–2022–0031).

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 doing so would be impracticable and contrary to the public interest. Construction operations involving large crane heavy lifts at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge must occur within the federal navigation channel. Immediate action is needed to respond to the potential safety hazards associated with bridge construction. Hazards from the construction operations include low-hanging or falling ropes, cables, large piles and cement cast portions, dangerous projectiles, and or other debris. We must establish this safety zone by February 4, 2022 to guard against these hazards.

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 impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge to be conducted within the federal navigation channel.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with bridge construction starting February 4, 2022 will be a safety concern for anyone within the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge construction site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. on February 4, 2022 through 8 p.m. on February 11, 2022. The safety zone will cover all navigable waters of the Potomac River encompassed by a line connecting the following points beginning at 38°21′50.96″ N, 076°59′22.04″ W, thence south to 38°21′43.08″ N, 076°59′20.55″ W, thence west to 38°21′41.00″ N, 076°59′34.90″ W, thence north to 38°21′48.90″ N, 076°59′36.80″ W, and east back to the beginning point located between Charles County, MD and King George County, VA.

The duration of the zone is intended to protect personnel and the marine environment in these navigable waters while structural steel is being set across the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge.

Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Maryland-National Capital Region or a designated representative.

The COTP Maryland-National Capital Region will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a).

## 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 size and duration of the safety zone. The temporary safety zone is approximately 450 yards in width and 270 yards in length. We anticipate that there will be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. Vessel traffic not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east or the west of the federal navigation channel, as similar vertical clearance and water depth exist under the next bridge span to the east and west. This safety zone will impact a small designated area of the Potomac River for 7 days, but coincides with the non-peak season for recreational boating.

*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 received no comments from the Small Business Administration on this rulemaking. 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 7 total days that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051; 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.T05–0072 to read as follows:

**§ 165.T05–0072 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21′50.96″ N, 076°59′22.04″ W, thence south to 38°21′43.08″ N, 076°59′20.55″ W, thence west to 38°21′41.00″ N, 076°59′34.90″ W, thence north to 38°21′48.90″ N, 076°59′36.80″ W, and east back to the beginning point, located between Charles County, MD and King George County, VA. These coordinates are based on datum NAD 83.

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

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

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

*Marine equipment* means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, except for marine equipment, you may not enter the safety zone described in paragraph (a) of this

section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

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

(e) *Enforcement period.* The section will be enforced from 8 p.m. on February 4, 2022, through 8 p.m. on February 11, 2022.

Dated: February 4, 2022.

**James R. Bendle,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Sector Maryland-National Capital Region.*

[FR Doc. 2022–02797 Filed 2–8–22; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2021–0441; FRL–9160–02–R5]

## Air Plan Approval; Michigan; Base Year Emissions Inventory for the 2010 Sulfur Dioxide Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), revisions to the State Implementation Plan (SIP) submitted by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on June 30, 2021. The revisions address the emission inventory requirements for the St. Clair County nonattainment area under the 2010 sulfur dioxide ($SO_2$) National Ambient Air Quality Standard (NAAQS or standard). The CAA requires states to develop and submit, as SIP revisions, emission inventories for all areas designated as nonattainment for any NAAQS. EPA proposed to approve this action on October 26, 2021, and received no adverse comments.

**DATES:** This final rule is effective on March 11, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2021–0441. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Emily Crispell, Environmental Scientist, at (312) 353–8512 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Emily Crispell, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8512, *crispell.emily@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

### I. Background Information

On October 26, 2021, EPA proposed to approve revisions to Michigan's SIP addressing the $SO_2$ emissions inventory requirement of CAA section 172(c)(3) and certification of a fully approved Nonattainment New Source Review (NSR) program for the partial St. Clair County $SO_2$ nonattainment area for the 2010 $SO_2$ NAAQS (86 FR 59073). An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on November 26, 2021. EPA received no comments on the proposal.

### II. Final Action

EPA is approving EGLE's SIP revision submitted to address the $SO_2$-related emission inventory and NSR certification requirements for the partial St. Clair County $SO_2$ nonattainment area for the 2010 $SO_2$ NAAQS. A Clean Data Determination for the St. Clair County area was finalized in a separate action on December 6, 2021 (86 FR 69173). The emission inventory we are approving into the SIP is specified in Table 1 of the NPRM (86 FR 59073). We are approving the emission inventory because it contains comprehensive, accurate, and current inventories of actual emissions for all relevant sources in accordance with CAA section 172(c)(3), and because EGLE adopted the emission inventories after providing reasonable public notice. EPA is also approving the certification of Michigan's fully approved NSR program, which was approved by the EPA into the SIP on December 16, 2013 (78 FR 76064) and meets the requirements of CAA section 172(c)(5).

### III. Statutory and Executive Order Reviews

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

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

application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: February 2, 2022.

**Debra Shore,**

*Regional Administrator, Region 5.*

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

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for ''2010 $SO_2$ Nonattainment New Source Review Certification'' immediately after the entry for ''2010 Sulfur Dioxide Clean Data Determination'' and adding an entry under the subheading ''Emissions Inventories'' for ''2010 $SO_2$ Standard 2014 base year'' after the entry for ''2010 $SO_2$ Standard 2012 base year'' to read as follows:

**§ 52.1170 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| 2010 $SO_2$ Nonattainment New Source Review Certification. | St. Clair County (part) ..... | 6/30/2021 | 2/9/2022, [INSERT **Federal Register** CITATION]. | |
| * | * | * | * | * |
| **Emissions Inventories** | | | | |
| * | * | * | * | * |
| 2010 $SO_2$ Standard 2014 base year. | St. Clair County (part) ..... | 6/30/2021 | 2/9/2022, [INSERT **Federal Register** CITATION]. | |
| * | * | * | * | * |

[FR Doc. 2022–02676 Filed 2–8–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2020–0419 and EPA–HQ–OPP–2021–0020; FRL–9482–01–OCSPP]**

## Fludioxonil; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes or amends tolerances for residues of fludioxonil in or on multiple crops that are referenced later in this document. The Interregional Project Number 4 (IR–4) and Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective February 9, 2022. Objections and requests for hearings must be received on or before April 11, 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 dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPP–2020–0419 and EPA–HQ–OPP–2021–0020, are available online at *https://www.regulations.gov* or in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001.

Due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services, docket

access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Acting Director, 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, 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 numbers EPA–HQ–OPP–2020–0419 and EPA–HQ–OPP–2021–0020 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 11, 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 numbers EPA–HQ–OPP–2020–0419 and EPA–HQ–OPP–2021–0020, 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/where-send-comments-epa-dockets.*

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

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 28, 2021 (86 FR 33922) (FRL–10025–08) and in the **Federal Register** of February 25, 2021 (86 FR 11488) (FRL–10020–47), 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 0E8847) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The February 25, 2021, notice erroneously identified Syngenta as the petitioner. The petition requested that 40 CFR 180.516 be amended by establishing tolerances for residues of fludioxonil, [4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile] in or on the raw agricultural commodities: Carrot, roots at 7 parts per million (ppm); Celtuce at 15 ppm; Cottonseed subgroup 20C at 0.05 ppm; Dragon fruit at 20 ppm; Durian at 20 ppm; Fennel, Florence, fresh leaves and stalk at 15 ppm; Jackfruit at 20 ppm; Leaf petiole vegetable subgroup 22B at 15 ppm; Leafy greens subgroup 4–16A at 30 ppm; Mangosteen at 5 ppm; Persimmon, Japanese at 5 ppm; Sunflower subgroup 20B at 0.01 ppm; Tropical and subtropical, small fruit, inedible peel, subgroup 24A at 20 ppm; Vegetable, legume, group 6, except bean, dry and bean, succulent at 0.01 ppm; Vegetable, root, except sugar beet, subgroup 1B, except carrot and ginseng at 0.75 ppm; and Vegetable, tuberous and corm, subgroup 1C, except yam, true, tuber at 6 ppm. The petition also requested to remove established tolerances for residues of fludioxonil, [4-(2, 2-difluoro-1,3- benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile] in or on the raw agricultural commodities: Carrots at 7.0 ppm; Cotton, undelinted seed at 0.05 ppm; Dragon fruit at 1.0 ppm; Leaf petioles subgroup 4B at 15 ppm; Leafy greens subgroup 4A at 30 ppm; Longan at 20 ppm; Lychee at 20 ppm; Melon subgroup 9A at 0.03 ppm; Safflower, seed at 0.01 ppm; Spanish lime at 20 ppm; Sunflower, seed at 0.01 ppm; Vegetable, legume, group 6 at 0.01 ppm; Vegetable, root, except sugar beet, subgroup 1B at 0.75 ppm; and Vegetable, tuberous and corm, subgroup 1C at 6.0 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in docket ID number EPA–HQ–OPP–2020–0419 at *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

Also, in the **Federal Register** of February 25, 2021 (86 FR 11488) (FRL–10020–47) 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 0F8858) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.516 be amended by establishing tolerances for residues of fludioxonil, [4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile] in or on the raw agricultural commodities tree nut crop group 14–12, except pistachios at 0.2 ppm and almond hulls at 15 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in docket ID number EPA–HQ–OPP–2021–0020 at *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing one tolerance at a different level than petitioned for, has modified the nut tolerances, and has modified some of the commodity definitions. A discussion of these modifications can be found in unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

FFDCA Section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fludioxonil including exposure resulting from the tolerance established by this action. EPA's assessment of exposures and risks associated with fludioxonil follows.

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

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

*Toxicological profile.* For a discussion of the Toxicological Profile of fludioxonil, see Unit III.A. of the November 6, 2018, final rulemaking (83 FR 55491) (FRL–9982–75).

*Toxicological points of departure/ Levels of concern.* For a summary of the Toxicological Points of Departure/ Levels of Concern for fludioxonil used for human risk assessment, please reference Unit III.B. of the August 14, 2015, rulemaking (80 FR 48743) (FRL–9931–06).

*Exposure assessment.* Much of the exposure assessment remains the same although updates have occurred to accommodate exposures from the petitioned-for tolerances. These updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, please reference Unit III.C. of the November 6, 2018, rulemaking.

EPA's dietary exposure assessments have been updated to include the additional exposure from the new uses of fludioxonil on the crops and the crop group conversions and expansions requested in these actions. The dietary exposure assessment used the same assumptions as the November 6, 2018, final rule, including tolerance level residues and 100 percent crop treated (PCT).

*Drinking water exposure.* The new uses do not result in an increase in the estimated residue levels in drinking water, so the estimated drinking water concentrations used in 2018 final rule are the same as those used in this assessment.

*Non-occupational exposure.* The assessment used the same assumptions as the November 6, 2018, final rule. The residential exposures used in the aggregate assessment are inhalation exposures from handlers applying paints with airless sprayers for adults and incidental oral exposures (hand-to-mouth) from post-application exposure to outdoor treated turf for children 1 to <2 years old.

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

*Safety factor for infants and children.* EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor. See Unit III.D. of the November 6, 2018, rulemaking for a discussion of the Agency's rationale for that determination.

*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 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 performed as there were no appropriate toxicological effects attributable to a single exposure (dose) observed in available oral toxicity studies, including maternal toxicity in the developmental toxicity studies. Fludioxonil is not expected to pose an acute risk. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD: They are 52% of the cPAD for children 1 to 2 years old, the group with the highest exposure. EPA has concluded the combined short-term food, water, and residential exposures result in margins of exposure above the level of concern of 100 for all scenarios assessed and are not of concern. Intermediate- and long-term aggregate risk assessments were not performed because there are no registered or proposed uses of fludioxonil that result in intermediate- or long-term residential exposures. A cancer dietary exposure and risk assessment was not conducted for fludioxonil as it is a Group D chemical—not classifiable as to human carcinogenicity.

Therefore, 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 fludioxonil residues. More detailed information on this action can be found in the document titled ''Fludioxonil. Human Health Risk Assessment for Section 3 Registration for Crop Group Conversions/Expansions for Cottonseed subgroup 20C, Fennel, Florence, Fresh Leaves and Stalk; Leaf Petiole Vegetable Subgroup 22B; Leafy Greens Subgroup 4–16A; Sunflower Subgroup 20B, Tropical and Subtropical, Small Fruit, Inedible Peel, Subgroup 24A and to Establish an Individual Tolerance for Residues in/on Tree Nuts Crop Group 14–12, Dragon Fruit, Durian, Japanese Persimmon,

Jackfruit, and Mangosteen.'' (hereafter ''the Fludioxonil Human Health Risk Assessment'') in docket ID numbers EPA–HQ–OPP–2020–0419 and EPA–HQ–OPP–2021–0020.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

For a discussion of the available analytical enforcement method, see Unit IV.A. of the November 6, 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).

The U.S. tolerances for cottonseed subgroup 20C; leaf petiole vegetable subgroup 22B; and persimmon, Japanese are harmonized with Codex MRLs. There are no Codex MRLs for many of the commodities included in this action, including almond; almond, hulls; celtuce; dragon fruit; durian; jackfruit; mangosteen; pecan; sugar apple; sunflower subgroup 20B; and tropical and subtropical, small fruit, inedible peel, subgroup 24A.

Several U.S. tolerances are higher than the corresponding Codex MRLs. The following U.S. tolerances cannot be harmonized with Codex because U.S. growers could have violative residues despite legal use of fludioxonil: Carrot, roots at 7 ppm (Codex MRL is 1 ppm) and fennel, Florence, fresh leaves and stalk at 15 ppm (Codex MRL is 9 ppm).

The U.S. tolerance for vegetable, legume group 6 at 0.01 ppm reflects seed treatment use. It is not appropriate to harmonize with the significantly higher Codex MRL of 0.6 ppm because the tolerance would not be effective for determining misuse. For a few other U.S. subgroup tolerances, EPA is not harmonizing with relevant Codex MRLs, which are established for individual commodities and vary widely among those commodities. The available representative commodity data support the crop subgroup and EPA's general approach is to establish a crop group or subgroup tolerance when supported by available representative commodity data, rather than break up the group or subgroup for harmonization purposes. The U.S. tolerance for leafy greens subgroup 4–16A at 30 ppm is not harmonized with all relevant Codex MRLs for commodities in that group (*e.g.,* head lettuce at 10 ppm and leaf lettuce at 40 ppm), although it is harmonized with the tolerance for spinach. The registrant requested that the leafy greens subgroup 4–16A tolerance be harmonized with the Canadian MRL of 30 ppm because Canada is a major trading partner with the U.S. for these crops. For vegetable, root, except sugar beet, subgroup 1B, the U.S. tolerance is harmonized with the Canadian MRL at 0.75 ppm, rather than splitting the group and harmonizing individually with the Codex MRLs of 4 ppm for ginseng, root and 0.3 ppm for radish, root. Finally, the U.S. tolerance for vegetable, tuberous and corm, subgroup 1C is harmonized with the Canadian MRL at 6 ppm, rather than splitting the group and harmonizing individually with the Codex MRLs of 5 ppm for potato and 10 ppm for sweet potato. Finally, EPA is not harmonizing the U.S. tolerance for vegetable, cucurbit, group 9 with the Codex MRL of 0.5 ppm because the registrant requested that EPA harmonize this tolerance group with the Canadian MRL of 0.45 ppm instead because Canada is a major trading partner for these crops.

### *C. Revisions to Petitioned-For Tolerances*

One petitioner requested an exception for carrot and ginseng from vegetable, root, except sugar beet, subgroup 1B; and yam, true, tuber from vegetable, tuberous and corm, subgroup 1C. EPA is not excepting carrot and yam from their respective subgroups because representative crops may not be excepted from a crop subgroup under 40 CFR 180.40(h). Although an individual tolerance has been established for ginseng, EPA does not believe it is necessary to exclude ginseng from the vegetable, root, except sugar beet, subgroup 1B tolerance, as residues will be enforced according to the higher tolerance. EPA is adjusting the tolerance level for vegetable, tuberous and corm, subgroup 1C to be consistent with Agency rounding class practice. For tree nut crop group 14–12, maximum fludioxonil residues in representative crops were not within a factor of five of each other. Based on the residue data, the recommended tolerance for residues in/on almond is 0.2 ppm and the recommended tolerance for residues in/on pecan is 0.01 ppm. In those circumstances, the Agency will normally establish individual crop tolerances, if supported by the available residue data. EPA has determined that the available data supports individual nut tolerance levels, based on translation from the representative commodities to the various nut commodities as specified in the 2010 EPA analysis of IR–4's petition to amend crop group. *See* U.S. EPA, Memorandum re: ''Crop Grouping—Part IX: Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41(c)(16) and Commodity Definitions (40 CFR 180.1(g)) Related to the Crop Group 14 Tree Nuts. Part I. Analysis.'' at 134–136 (Sept. 30, 2010). Specifically, EPA is establishing tolerances of 0.2 ppm for the nut commodities that identified almond as the representative commodity and tolerances of 0.01 ppm for the nut commodities that identified pecan as the representative commodity.

## V. Conclusion

Therefore, tolerances are established for residues of fludioxonil in or on African Tree Nut at 0.01 ppm; Almond at 0.2 ppm; Almond, hulls at 15 ppm; Beechnut at 0.2 ppm; Brazil nut at 0.01 ppm; Brazilian pine at 0.2 ppm; Bunya at 0.2 ppm; Bur oak at 0.01 ppm; Butternut at 0.01 ppm; Cajou at 0.01 ppm; Candlenut at 0.2 ppm; Carrot, roots at 7 ppm; Cashew at 0.01 ppm; Celtuce at 15 ppm; Chestnut at 0.2 ppm; Chinquapin at 0.2 ppm; Coconut at 0.01 ppm; Coquito nut at 0.01 ppm; Cottonseed subgroup 20C at 0.05 ppm; Dika nut at 0.01 ppm; Durian at 20 ppm; Fennel, Florence, fresh leaves and stalk at 15 ppm; Ginkgo at 0.2 ppm; Guiana chestnut at 0.01 ppm; Hazelnut at 0.01 ppm; Heartnut at 0.01 ppm; Hickory nut at 0.01 ppm; Jackfruit at 20 ppm; Japanese horse-chestnut at 0.01 ppm; Leaf petiole vegetable subgroup 22B at 15 ppm; Leafy greens subgroup 4–16A at 30 ppm; Macadamia nut at 0.01 ppm; Mangosteen at 5 ppm; Mongongo nut at 0.01 ppm; Monkey puzzle at 0.2 ppm; Monkey-pot at 0.01 ppm; Okari nut at 0.2 ppm; Pachira nut at 0.01 ppm; Peach palm nut at 0.2 ppm; Pecan at 0.01 ppm; Pequi at 0.2 ppm; Persimmon, Japanese at 5 ppm; Pili nut at 0.2 ppm; Pine nut at 0.2 ppm; Sapucaia nut at 0.01 ppm; Sunflower subgroup 20B at 0.01 ppm; Tropical almond at 0.2 ppm; Tropical and subtropical, small fruit, inedible peel, subgroup 24A at 20 ppm; Walnut, black at 0.01 ppm; Walnut, English at 0.01 ppm; and Yellowhorn at 0.01 ppm.

EPA is amending the tolerance for Dragon fruit from 1.0 ppm to 20 ppm, the tolerance for Pistachio from 0.10 ppm to 0.1 ppm, and the tolerance for Vegetable, tuberous and corm, subgroup 1C from 6.0 ppm to 6 ppm. The commodity definition for Vegetable, legume, group 6 is amended to Vegetable, legume, group 6, except bean while maintaining the tolerance at 0.01 ppm.

Additionally, the following tolerances are removed as unnecessary due to the establishment of the above tolerances: Carrots at 7.0 ppm; Cotton, undelinted seed at 0.05 ppm; Leaf petioles subgroup 4B at 15 ppm; Leafy greens subgroup 4A at 30 ppm; Longan at 20 ppm; Lychee at 20 ppm; Safflower, seed at 0.01 ppm; Spanish lime at 20 ppm; and Sunflower, seed at 0.01 ppm. In addition, EPA is removing the tolerance for the Melon subgroup, since it is unnecessary due to the tolerance for cucurbit vegetables, group 9 at 0.45 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 to 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 (CRA)

Pursuant to the CRA (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: February 2, 2022.

**Marietta Echeverria,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter 1 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 § 180.516, amend the table in paragraph (a) (1) by:

■ a. Adding in alphabetical order the entries ''African Tree Nut''; ''Almond''; ''Almond, hulls''; ''Beechnut''; ''Brazil nut''; ''Brazilian pine''; ''Bunya''; ''Bur oak''; ''Butternut''; ''Cajou''; and ''Candlenut''.

■ b. Removing the entry for ''Carrots''.

■ c. Adding in alphabetical order the entries ''Carrot, roots''; ''Cashew''; ''Celtuce''; ''Chestnut''; ''Chinquapin''; ''Coconut''; ''Coquito nut''; and ''Cottonseed subgroup 20C''.

■ d. Removing the entry for ''Cotton, undelinted seed''.

■ e. Adding in alphabetical order the entry ''Dika nut''.

■ f. Revising the entry for ''''Dragon fruit''.

■ g. Adding in alphabetical order the entries ''Durian''; ''Fennel, Florence, fresh leaves and stalk''; ''Ginkgo''; ''Guiana chestnut''; ''Hazelnut''; ''Heartnut''; ''Hickory nut''; ''Jackfruit''; and ''Japanese horse-chestnut''.

■ h. Removing the entry for ''Leaf petioles subgroup 4B''.

■ i. Adding in alphabetical order the entry ''Leaf petiole vegetable subgroup 22B''.

■ j. Removing the entry for ''Leafy greens subgroup 4A''.

■ k. Adding in alphabetical order the entry ''Leafy greens subgroup 4–16A''.

■ l. Removing the entries for ''Longan''; and ''Lychee''.

■ m. Adding in alphabetical order the entries ''Macadamia nut''; and ''Mangosteen''.

■ n. Removing the entry for ''Melon subgroup 9A''.

■ o. Adding in alphabetical order the entries ''Mongongo nut''; ''Monkey puzzle''; ''Monkey-pot''; ''Okari nut''; ''Pachira nut''; ''Peach palm nut''; ''Pecan''; ''Pequi''; ''Persimmon, Japanese''; ''Pili nut''; and ''Pine nut''.

■ p. Revising the entry for ''Pistachio''.

■ q. Removing the entry for ''Safflower, seed''.

■ r. Adding in alphabetical order the entry ''Sapucaia nut''.

■ s. Removing the entries for ''Spanish lime''; and ''Sunflower, seed''.

■ t. Adding in alphabetical order the entries ''Sunflower subgroup 20B''; ''Tropical almond''; and ''Tropical and subtropical, small fruit, inedible peel, subgroup 24A''.

■ u. Removing the entry for ''Vegetable, legume, group 6''.

■ v. Adding in alphabetical order the entry ''Vegetable, legume, group 6, except bean''.

■ w. Revising the entry for ''Vegetable, tuberous and corm, subgroup 1C''.

■ x. Adding in alphabetical order the entries ''Walnut, black''; ''Walnut, English''; and ''Yellowhorn''.

The additions and revisions read as follows:

### § 180.516 Fludioxonil; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| African Tree Nut | 0.01 |
| Almond | 0.2 |
| Almond, hulls | 15 |
| * * * * * | |
| Beechnut | 0.2 |
| * * * * * | |
| Brazil nut | 0.01 |
| Brazilian pine | 0.2 |
| Bunya | 0.2 |
| Bur oak | 0.01 |
| * * * * * | |
| Butternut | 0.01 |
| Cajou | 0.01 |
| Candlenut | 0.2 |
| * * * * * | |
| Carrot, roots | 7 |
| Cashew | 0.01 |
| Celtuce | 15 |
| * * * * * | |
| Chestnut | 0.2 |
| Chinquapin | 0.2 |
| * * * * * | |
| Coconut | 0.01 |
| Coquito nut | 0.01 |
| * * * * * | |
| Cottonseed subgroup 20C | 0.05 |
| * * * * * | |
| Dika nut | 0.01 |
| Dragon fruit | 20 |
| Durian | 20 |
| * * * * * | |
| Fennel, Florence, fresh leaves and stalk | 15 |
| * * * * * | |
| Ginkgo | 0.2 |
| * * * * * | |
| Guiana chestnut | 0.01 |
| Hazelnut | 0.01 |
| Heartnut | 0.01 |
| * * * * * | |
| Hickory nut | 0.01 |
| * * * * * | |
| Jackfruit | 20 |
| Japanese horse-chestnut | 0.01 |
| * * * * * | |
| Leaf petiole vegetable subgroup 22B | 15 |
| Leafy greens subgroup 4–16A | 30 |
| Macadamia nut | 0.01 |
| * * * * * | |
| Mangosteen | 5 |
| Mongongo nut | 0.01 |
| Monkey puzzle | 0.2 |
| Monkey-pot | 0.01 |
| Okari nut | 0.2 |
| * * * * * | |
| Pachira nut | 0.01 |
| * * * * * | |
| Peach palm nut | 0.2 |
| * * * * * | |
| Pecan | 0.01 |

TABLE 1 TO PARAGRAPH (a)(1)—Continued

| Commodity | Parts per million |
|---|---|
| Pequi | 0.2 |
| Persimmon, Japanese | 5 |
| Pili nut | 0.2 |
| Pine nut | 0.2 |
| * * * * * | |
| Pistachio | 0.1 |
| * * * * * | |
| Sapucaia nut | 0.01 |
| * * * * * | |
| Sunflower subgroup 20B | 0.01 |
| * * * * * | |
| Tropical almond | 0.2 |
| Tropical and subtropical, small fruit, inedible peel, subgroup 24A | 20 |
| * * * * * | |
| Vegetable, legume, group 6, except bean | 0.01 |
| * * * * * | |
| Vegetable, tuberous and corm, subgroup 1C | 6 |
| Walnut, black | 0.01 |
| Walnut, English | 0.01 |
| * * * * * | |
| Yellowhorn | 0.01 |

[1] There are no U.S. registrations as of July 28, 2021.

* * * * *

[FR Doc. 2022–02560 Filed 2–8–22; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 501, 502, 511, 539, 552, and 570

**[GSAR Case 2016–G511 Docket No. 2021–0018; Sequence No. 1]**

**RIN 3090–AJ84**

### General Services Acquisition Regulation (GSAR); Contract Requirements for GSA Information Systems

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

**ACTION:** Final rule.

**SUMMARY:** GSA is amending the General Services Administration Acquisition Regulation (GSAR) to streamline and update requirements for contracts that involve GSA information systems. The revision of GSA's cybersecurity and other information technology requirements will lead to the elimination of a duplicative and outdated provision and clause from the GSAR. The final rule will replace the outdated text with existing policies of the GSA Office of the Chief Information Officer (OCIO) and provide centralized guidance to ensure consistent application across the organization. The updated GSA policy will align cybersecurity requirements based on the items being procured by ensuring contract requirements are coordinated with GSA's Chief Information Security Officer and included in all applicable solicitations and contracts.

**DATES:** Effective March 11, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Johnnie McDowell, Procurement Analyst, at 202–718–6112 or *gsarpolicy@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *gsaregsec@gsa.gov.* Please cite GSAR Case 2016–G511.

**SUPPLEMENTARY INFORMATION:**

## I. Background

GSA published a proposed rule in the **Federal Register** at 86 FR 50689 on September 10, 2021, to amend the General Services Administration Regulations (GSAR) to revise GSAR part 511, Describing Agency Needs, part 539, Acquisition Information Technology, and other related parts; to maintain consistency with the Federal Acquisition Regulation (FAR); and to incorporate and consolidate existing cybersecurity and other information technology requirements previously implemented through various Office of the Chief Information Officer (OCIO) or agency policies.

In general, the changes are necessary to bring long-standing GSA information system practices into the GSAR, consolidating policy into one area. Because of that consolidation, contractors may need less time and fewer resources to read and understand all the requirements relevant to their contract.

## 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

The proposed rule received one comment. The General Services Administration has reviewed the comment in the development of the final rule. The comment was determined to be irrelevant. Therefore, no changes were made between the proposed rule and this final rule as a result of the comment. GSA for clarity of internal procedures made editorial changes to GSAR 511.171 *Requirements*

*for GSA Information Systems* regarding the role of the CIO and the contracting officer. No substantive changes were made to the proposed rule.

## IV. Executive Order 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. The Office of Management and Budget (OMB) has determined that this is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 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. This rule has been reviewed and determined by OMB not to be a ''major rule'' under 5 U.S.C. 804(2).

## VI. Regulatory Flexibility Act

GSA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, *et seq.,* because the rule will incorporate clauses that are currently in use in GSA construction solicitations and contracts and contractors are familiar with and are currently complying with these practices. However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared. There were no comments submitted in response to the initial regulatory flexibility analysis provided in the proposed rule.

The FRFA has been prepared consistent with the criteria of 5 U.S.C. 604 and is summarized as follows:

The final rule amends the General Services Administration Acquisition Regulation (GSAR) coverage on GSA's policies involving the accessing of GSA's information systems, including the streamlining and consolidating of policies addressing information technology and administration procedures, and the deletion of a provision and clause for solicitations and resultant contracts. GSA's policies on cybersecurity and other information technology requirements have been previously implemented through various Office of the Chief Information Officer (OCIO) policies separately disseminated to the workforce. Contractors have already been performing the majority of the requirements.

The objective of the final rule is to formalize the changes to the existing guidance for contracts involving the accessing of GSA's information systems.

The final rule requires contractors to comply with applicable requirements contained in *CIO 09–48 GSA IT Security Procedural Guide: Security and Privacy Requirements for IT Acquisition Efforts* and *CIO 12–2018, IT Policy Requirements Guide.* The legal basis for the rule is 40 U.S.C. 121(c), 10 U.S.C. chapter 137, and 51 U.S.C. 20113.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis. The one public comment received was irrelevant, therefore; there were no changes made to the proposed rule as a result of the comment.

The final rule applies to large and small businesses, which are awarded contracts involving GSA information systems. Information generated from the beta.SAM, formerly FPDS, for Fiscal Years 2017–2020 has been used as the basis for estimating the number of contractors that may involve GSA information systems as a requirement of their contract. The analysis focused on contracts in the Product Service Code (PSC) category D-Information and Technology and Telecommunications.

Examination of this data revealed there was an average of 132 new contracts awarded in the targeted PSC for fiscal year (FY) 2017–2020. Of these contract actions, 63 or 48 percent were small businesses. The number of potential subcontractors in the selected PSC to which the requirements would flow down was calculated by using a ratio of 0.3:1, subcontractors to prime contractors (including other than small businesses), which equates to 44 annual subcontractors, of which GSA estimates that 75 percent would be small businesses (*i.e.,* 33). Therefore, the total number of small businesses, including prime contractors and subcontractors, impacted annually would be 96.

GSA does not expect this final rule to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601. This final rule incorporates requirements currently in use in solicitations and contracts involving GSA information systems, and does not implement new or changed requirements. In addition, the rule establishes a waiver process for cases where it is not cost effective or where it is unreasonably burdensome.

The final rule does not include any new reporting, recordkeeping, or other compliance requirements for small business entities.

There are no known alternatives to this rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business contractors.

The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division.

## VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 3090–0300, Implementation of Information Technology Security Provision, in all correspondence.

## List of Subjects in 48 CFR Parts 501, 502, 511, 539, 552, and 570

Government procurement.

**Jeffrey A. Koses,**

*Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.*

Therefore, GSA amends 48 CFR parts 501, 502, 511, 539, 552, and 570 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 502, 511, 539, 552, and 570 continues to read as follows:

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

## PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 2. In section 501.106, amend table 1 by—

■ a. Adding an entry for ''511.171'' in numerical order; and

■ b. Removing the entry for ''552.239–71''

The addition reads as follows:

**501.106 OMB approval under the Paperwork Reduction Act.**

* * * * *

TABLE 1 TO 501.106

| GSAR reference | OMB control No. |
|---|---|
| * * * * * | |
| 511.171 ..... | 3090–0300 |
| * * * * * | |

* * * * *

## PART 502—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 502.101 by adding in alphabetical order definitions for ''GSA Information System'' and ''Information System'' to read as follows:

**502.101 Definitions.**

* * * * *

*GSA Information System* means an information system used or operated by the U.S. General Services Administration (GSA) or by a contractor or other organization on behalf of the U.S. General Services Administration including:

(1) *Cloud information system* means information systems developed using cloud computing. Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (*e.g.,* networks, servers, storage, applications) that can be rapidly provisioned and released with minimal management effort or service provider interaction. Cloud information systems include Infrastructure as a Service (IaaS), Platform as a Service (PaaS), or Software as a Service (SaaS). Cloud information systems may connect to the GSA network.

(2) *External information system* means information systems that reside in contractor facilities and typically do not connect to the GSA network. External information systems may be government-owned and contractor-operated or contractor-owned and -operated on behalf of GSA or the Federal Government (when GSA is the managing agency).

(3) *Internal information system* means information systems that reside on premise in GSA facilities and may connect to the GSA network. Internal systems are operated on behalf of GSA or the Federal Government (when GSA is the managing agency).

(4) *Low Impact Software as a Service (LiSaaS) System* means cloud applications that are implemented for a limited duration, considered low impact and would cause limited harm to GSA if breached.

(5) *Mobile application* means a type of application software designed to run on a mobile device, such as a smartphone or tablet computer.

*Information System* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

* * * * *

## PART 511—DESCRIBING AGENCY NEEDS

■ 4. Add section 511.171 to read as follows:

**511.171 Requirements for GSA Information Systems.**

(a) *CIO coordination.* The contracting officer shall ensure the requirements office has coordinated and identified possible CIO policy inclusions with the GSA IT prior to publication of a Statement of Work, or equivalent as well as the Security Considerations section of the acquisition plan to determine if the CIO policies apply. The CIO policies and GSA IT points of contact are available on the Acquisition Portal at *https://insite.gsa.gov/itprocurement.*

(b) *GSA requirements.* For GSA procurements (contracts, actions, or orders) that may involve GSA Information Systems, excluding GSA's government-wide contracts (*e.g.,* Federal Supply Schedules and Governmentwide Acquisition Contracts), the contracting officer shall incorporate the applicable sections of the following policies in the Statement of Work, or equivalent:

(1) *CIO 09–48, IT Security Procedural Guide: Security and Privacy IT Acquisition Requirements;* and

(2) *CIO 12–2018, IT Policy Requirements Guide.*

(c) *Waivers.* (1) In cases where it is not effective in terms of cost or time or where it is unreasonably burdensome to include *CIO 09–48, IT Security Procedural Guide: Security and Privacy IT Acquisition Requirements* or *CIO 12–2018, IT Policy Requirements Guide* in a contract or order, a waiver may be granted by the Acquisition Approving Official as identified in the thresholds listed at 507.103(b), the Information System Authorizing Official, and the GSA IT Approving Official.

(2) The waiver request must provide the following information—

(i) The description of the procurement and GSA Information Systems involved;

(ii) Identification of requirement requested for waiver;

(iii) Sufficient justification for why the requirement should be waived; and

(iv) Any residual risks posed by waiving the requirement.

(3) Waivers must be documented in the contract file.

(d) *Classified information.* For any procurements that may involve access to classified information or a classified information system, see subpart 504.4 for additional requirements.

## PART 539—[REMOVED AND RESERVED]

■ 5. Remove and reserve part 539

## PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**552.239–70 [Removed and Reserved]**

■ 6. Remove and reserve section 552.239–70

**552.239–71 [Removed and Reserved]**

■ 7. Remove and reserve section 552.239–71

## PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

■ 8. In section 570.101, revise the table in paragraph (b) to read as follows:

**570.101 Applicability.**

TABLE 1 TO PARAGRAPH (b)—GSAR RULES APPLICABLE TO ACQUISITIONS OF LEASEHOLD INTERESTS IN REAL PROPERTY

| | | | |
|---|---|---|---|
| 501 | 515.209–70 | 519.12 | 536.271 |
| 502 | 515.305 | 522.805 | 537.2 |
| 503 | 517.202 | 522.807 | 539 |
| 509.4 | 517.207 | 538.270 | 552 |
| 514.407 | 519.7 | 533 | 553 |

* * * * *

[FR Doc. 2022–02662 Filed 2–8–22; 8:45 am]

BILLING CODE 6820–61–P

# Proposed Rules

Federal Register
Vol. 87, No. 27
Wednesday, February 9, 2022

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

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

**[Docket No. [EERE–2020–BT–STD–0039]**

**RIN 1904–AF00**

## Energy Conservation Program: Energy Conservation Standards Preliminary Analysis for Miscellaneous Refrigeration Products

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

**ACTION:** Notification of rescheduled public meeting.

**SUMMARY:** On January 21, 2022, the U.S. Department of Energy (''DOE'') published a notification of a webinar and availability of a preliminary technical support document for miscellaneous refrigeration products (''MREFs''). The notification announced that a public meeting webinar would be held on February 17, 2022. On January 28, 2022, DOE received a request from the Association of Home Appliance Manufactures (''AHAM'') to move the webinar date due to significant scheduling constraints. To accommodate these scheduling issues, DOE is moving the public meeting webinar for MREFs to Monday, March 7, 2022.

**DATES:** The public meeting webinar regarding the MREF preliminary analysis will now be held on March 7, 2022, from 1:00 p.m. until 4:00 p.m.

**ADDRESSES:** See the ''Public Participation'' section of this document for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. Interested persons are encouraged to submit comments via email or by using the Federal eRulemaking Portal at *www.regulations.gov.* Further information on how to submit written comments is provided in the **Federal Register** notices for the MREF preliminary analysis.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandards Questions@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandards Questions@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** On January 21, 2022, the U.S. Department of Energy (''DOE'') published a notification of a webinar and availability of preliminary technical support document for miscellaneous refrigeration products (''MREFs''). (87 FR 3229) The notification also announced a public meeting webinar would be held on February 17, 2022. Subsequent to the publication of that notification, on January 28, 2022, DOE received a request from the Association of Home Appliance Manufactures (''AHAM'') to move the webinar date due to significant scheduling constraints (*www.regulations.gov/docket/EERE–2020–BT–STD–0039/document*). Particularly, AHAM referenced several DOE webinars that are scheduled to take place in close succession to the scheduled MREF meeting. To accommodate AHAM's request in addressing these scheduling issues, DOE is moving the public meeting webinar for MREFs to Monday, March 7, 2022.

### Public Participation

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. 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=39&action=viewlive.* Participants are responsible for ensuring their systems are compatible with the webinar software.

Any person who has an interest in the topics addressed in either document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Requests should be sent by email to: *ApplianceStandards Questions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in these rulemakings and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar, and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will allow time for prepared general

statements by participants and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

## Signing Authority

This document of the Department of Energy was signed on February 3, 2022, by Kelly J. 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 February 4, 2022.

**Treena V. Garrett,**

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

[FR Doc. 2022–02713 Filed 2–8–22; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2022–0086; Project Identifier MCAI–2021–01035–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) 2021–13–06, which applies to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–13–06 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2021–13–06, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2021–13–06 and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is 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 March 28, 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 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–2022–0086.

## 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–2022–0086; 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:** Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0086; Project Identifier MCAI–2021–01035–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 Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Discussion**

The FAA issued AD 2021–13–06, Amendment 39–21611 (86 FR 40934, July 30, 2021) (AD 2021–13–06), for certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–13–06 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2021–13–06 to address hazardous or catastrophic airplane system failures. AD 2021–13–06 specifies that accomplishing the actions required by AD 2021–13–06 terminates the repetitive greasing task for batch 02 group of affected thrust reverser actuators required by paragraph (g) of AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01).

**Actions Since AD 2021–13–06 Was Issued**

Since the FAA issued AD 2021–13–06, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0208, dated September 15, 2021 (EASA AD 2021–0208) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after July 20, 2021 must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address hazardous or catastrophic airplane system failures. See the MCAI for additional background information.

**Related Service Information Under 1 CFR Part 51**

EASA AD 2021–0208 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2020–0211, dated October 5, 2020, and EASA AD 2021–0026, dated January 20, 2021, which the Director of the Federal Register approved for incorporation by reference as of September 3, 2021 (86 FR 40934, July 30, 2021).

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 has 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 retain the requirements of AD 2021–13–06. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0208 described previously, as incorporated by reference. Any differences with EASA AD 2021–0208 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (n)(1) of this proposed AD.

**Explanation of Required Compliance Information**

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0208 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0208 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 2021–0208 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 2021–0208. Service information required by EASA AD 2021–0208 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0086 after the FAA final rule is published.

**Airworthiness Limitation ADs Using the New Process**

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

airworthiness limitation documents, such as airworthiness limitation sections.

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

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

## Costs of Compliance

The FAA estimates that this proposed AD affects 27 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2021–13–06 to be $7,650 (90 work-hours × $85 per work-hour).

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

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

## Authority for This Rulemaking

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

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

## Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–13–06, Amendment 39–21611 (86 FR 40934, July 30, 2021); and

■ b. Adding the following new AD:

**Airbus SAS:** Docket No. FAA–2022–0086; Project Identifier MCAI–2021–01035–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by March 28, 2022.

**(b) Affected ADs**

(1) This AD replaces AD 2021–13–06, Amendment 39–21611 (86 FR 40934, July 30, 2021) (AD 2021–13–06).

(2) This AD affects AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01).

**(c) Applicability**

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 20, 2021.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address hazardous or catastrophic airplane system failures.

**(f) Compliance**

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

**(g) Retained Maintenance or Inspection Program Revision, With No Changes**

This paragraph restates the requirements of paragraph (g) of AD 2021–13–06, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 22, 2020: 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 2020–0211, dated October 5, 2020 (EASA AD 2020–0211); and EASA AD 2021–0026, dated January 20, 2021 (EASA AD 2021–0026). Where EASA AD 2021–0026 affects the same airworthiness limitations (tasks and life limits) as those in EASA AD 2020–0211, the airworthiness limitations referenced in EASA AD 2021–0026 prevail. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

**(h) Retained Exceptions to EASA AD 2020–0211 and EASA AD 2021–0026, With No Changes**

This paragraph restates the requirements of paragraph (h) of AD 2021–13–06, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 22, 2020:

(1) Where EASA AD 2020–0211 and EASA AD 2021–0026 refers to its effective date, this AD requires using September 3, 2021 (the effective date of AD 2021–13–06).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0211 and EASA AD 2021–0026 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2020–0211 and EASA AD 2021–0026 specifies revising

''the approved AMP [aircraft maintenance program]'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0211 and EASA AD 2021–0026 within 90 days after September 3, 2021 (the effective date of AD 2021–13–06).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0211 and EASA AD 2021–0026 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2020–0211 and EASA AD 2021–0026, or within 90 days after September 3, 2021 (the effective date of AD 2021–13–06), whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0211 do not apply to this AD.

(6) The provisions specified in paragraph (4) of EASA AD 2021–0026 do not apply to this AD.

(7) The ''Remarks'' section of EASA AD 2020–0211 and EASA AD 2021–0026 does not apply to this AD.

**(i) Retained Provisions for Alternative Actions and Intervals, With a New Exception**

This paragraph restates the requirements of paragraph (i) of AD 2021–13–06, with a new exception. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 22, 2020: Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0211 or EASA AD 2021–0026.

**(j) New Maintenance or Inspection Program Revision**

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0208, dated September 15, 2021. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

**(k) Exceptions to EASA AD 2021–0208**

(1) Where EASA AD 2021–0208 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0208 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0208 specifies to revise ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0208 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0208, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0208 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0208 does not apply to this AD.

(7) Where EASA AD 2021–0208 refers to Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Revision 6 and Variation 6.1, replace the text ''Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Revision 6 and Variation 6.1,'' with ''Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Revision 6 and Variation 6.1; for any airworthiness limitations (tasks and life limits) that are in both documents, the airworthiness limitations (tasks and life limits) specified in Variation 6.1 prevail.''

**(l) New Provisions for Alternative Actions and Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0208.

**(m) Terminating Action for Certain Requirements of AD 2019–20–01**

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the repetitive greasing task for batch 02 group of affected thrust reverser actuators required by paragraph (g) of AD 2019–20–01.

**(n) 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 (o)(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.

**(o) Related Information**

(1) For the EASA ADs identified 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 these EASA ADs 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–2022–0086.

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

Issued on January 31, 2022.

**Lance T. Gant,**

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

[FR Doc. 2022–02317 Filed 2–8–22; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2022–0038; Airspace Docket No. 22–AEA–1]**

**RIN 2120–AA66**

## Proposed Amendment of Class E Airspace; Greenville, PA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the Class E airspace at Greenville, PA. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Youngstown VHF omnidirectional range (VOR) navigation aids as part of the VOR Minimum Operational Network (MON) Program.

**DATES:** Comments must be received on or before March 28, 2022.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2022–0038/Airspace Docket No. 22–AEA–1, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments

received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Greenville Municipal Airport, Greenville, PA, to support instrument flight rule operations at this airport.

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–0038/Airspace Docket No. 22–AEA–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

## Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface at Greenville Municipal Airport, Greenville, PA, by removing the Youngstown VORTAC and the associated extension from the airspace legal description.

This action is the result of an airspace review caused by the decommissioning of the Youngstown VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

## Regulatory Notices and Analyses

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

## Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR 71 as follows:

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

■ 1. The authority citation for 14 CFR 71 continues to read as follows:

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

**AEA PA E5 Greenville, PA [Amended]**

Greenville Municipal Airport, PA
(Lat. 41°26′48″ N, long. 80°23′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Greenville Municipal Airport.

Issued in Fort Worth, Texas, on February 3, 2022.

**Martin A. Skinner,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2022–02619 Filed 2–8–22; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 38

**RIN 2900–AR43**

## Requesting Disinterment of an Eligible Decedent From a National Cemetery

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend regulations governing disinterment of eligible decedents interred in VA national cemeteries. The amendment is necessary to clarify the requirements that must be met before VA can decide a disinterment request. Clarification of the requirements will help ensure consistent administration of disinterment requests at all VA national cemeteries.

Current regulations permit disinterment only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not such person is a member of the immediate family), all give their written consent, or when VA receives an order from a court or State instrumentality of competent jurisdiction directing the disinterment. We propose to clarify that if the individual who initiated the interment does not consent, or is not alive to provide consent, or all living immediate family members are not in agreement, anyone seeking disinterment of an eligible decedent must obtain an order from a court or State instrumentality of competent jurisdiction to direct the disinterment. This clarification will support the regulatory principle that all burials in national cemeteries are considered permanent and final and that a disinterment will be permitted only for cogent reasons, preserve the intent of the individual who initiated the interment, and ensure that a court or other appropriate entity rather than VA will adjudicate family disputes.

**DATES:** Comments must be received by VA on or before April 11, 2022.

**ADDRESSES:** Comments may be submitted through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR43—Requesting Disinterment of an Eligible Decedent from a National Cemetery.'' Comments received will be available at *www.regulations.gov* for public viewing, inspection, or copies.

**FOR FURTHER INFORMATION CONTACT:** Alan Amelinckx, Management and Program Analyst, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Email: *Alan.Amelinckx@va.gov.* Telephone: 202–461–5658 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 2400(a) of title 38, United States Code (U.S.C.), provides that NCA is responsible for the interment of deceased servicemembers and veterans. The authority to disinter, if appropriate, is a necessary and corresponding component of VA's responsibility to inter eligible veterans or other eligible persons in a national cemetery. Interment of an eligible decedent in a national cemetery is considered permanent and final, and disinterment is approved only in limited circumstances.

Currently, VA disinterment request and review criteria are codified in 38 CFR 38.621, which states that ''[d]isinterment from a national cemetery will be approved only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment.'' 38 CFR 38.621(a).

The regulation is not clear whether the condition of ''living'' also extends to the person who initiated the interment, as it does to immediate family members. Therefore, it could be interpreted that if the individual who initiated the interment is deceased and thus cannot provide written consent, VA could consider a family's disinterment request without a court order or direction from a State instrumentality of competent jurisdiction if all living immediate family members of the decedent give their written consent.

To eliminate ambiguity, VA proposes to clarify in § 38.621(a) and (b) that if the individual who initiated the interment does not consent, or is not alive to provide consent, or all living immediate family members are not in agreement, anyone seeking disinterment of an eligible decedent must seek a court order or State instrumentality of competent jurisdiction to direct the disinterment. This change supports the regulatory principle that all burials in national cemeteries are considered permanent and final and that a disinterment will be permitted only for cogent reasons, preserves the intent of the individual who initiated the interment, and ensures a deliberative court or administrative process that is better suited than VA to adjudicate family disputes.

In addition to revising the regulatory text for disinterment requests, VA would revise VA Form 40–4970, Request for Disinterment, to reflect the changes to the regulatory text. VA also proposes to add a provision in § 38.621(b)(2) stating: ''If the person provides a false certification on VA Form 40–4970, he or she may be subject to penalties, to include fine or imprisonment or both.'' VA would revise VA Form 40–4970 to include such a penalty statement. This change is necessary because VA Form 40–4970 does not contain this penalty statement, which appears on most other burial and memorialization forms. In addition to making it consistent with other forms, the addition of the penalty statement to VA Form 40–4970 would help dissuade requestors from submitting the form without the required endorsement of the individual who initiated the interment and all living family members.

We also note the current version of 38 CFR 38.621 uses the title ''National Cemetery Area Office Director,'' but since 1998, that title has not been used and has been replaced by the current title ''National Cemetery District

Executive Director,'' which would be used in the updated regulation.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This certification is based on the fact that most disinterment requests are submitted by families. Although local courts and State instrumentalities may be involved if family members differ on a contemplated disinterment action, processing and adjudicating those requests for a court-ordered disinterment would likely be rare and would be conducted as part of that entity's routine operations. VA cannot estimate the number of entities that may be affected by this proposed rule given that each disinterment case is based on the unique needs of families. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act**

This proposed rule includes provisions that would amend a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that is currently approved by the Office of Management and Budget (OMB) under OMB control number 2900–0365. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA 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. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Proposed § 38.621 would require revision of the instructions on VA Form 40–4970 to require an order from a court or State instrumentality of competent jurisdiction if a living immediate family member will not provide consent to the disinterment, or if the person who initiated the decedent's burial request will not provide consent to the disinterment or is deceased and cannot provide consent to the disinterment. The proposed rule would also revise the form to add a penalty statement for false certifications on the form.

The proposed revision to the form instructions and addition of a penalty statement would not increase or decrease the number of respondents using VA Form 40–4970. Therefore, these proposed revisions would not result in any increase or decrease in respondents, respondent burden hours, or respondent burden costs.

Comments on the revised collection of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR43, Requesting Disinterment of an Eligible Decedent from a National Cemetery'' and should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a revised collection of information in—

- Evaluating whether the revised collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The collection of information associated with this rulemaking contained in 38 CFR 38.621 is described immediately following this paragraph, under its respective title.

*Title:* Request for Disinterment.

*OMB Control No:* 2900–0365.

*CFR Provision:* 38 CFR 38.621.

- *Summary of collection of information:* The revised collection of information in proposed 38 CFR 38.621 would require an individual requesting disinterment to obtain consent from all living immediate family members of an eligible decedent and from the individual who originally requested the decedent's burial. If a living immediate family member will not provide consent to the disinterment, or the individual who requested the decedent's burial will not provide consent to the disinterment or is deceased and cannot provide consent to the disinterment request, the requester would be required to obtain an order from a court or State instrumentality of competent jurisdiction to direct disinterment. The proposed rule would also revise the form to include a penalty statement for false certifications.
- *Description of need for information and proposed use of information:* The information will be used by VA to determine whether to approve a disinterment request.
- *Description of likely respondents:* Personal representatives and family members of eligible Veterans and other

eligible individuals who are interred in national cemeteries.

• *Estimated number of respondents:* 1,777 in FY2019.

• *Estimated frequency of responses:* One time per application as needed by families.

• *Estimated average burden per response:* 10 minutes for respondents.

• *Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 296 hours.

• *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be $8,012 (296 burden hours for respondents × (multiplied by) $27.07 per hour).

**Assistance Listing**

The Assistance Listing number and title for the programs affected by this document are 64.201, National Cemeteries.

**List of Subjects in 38 CFR part 38**

Administrative practice and procedure, Cemeteries, Claims, Crime, Veterans.

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 1, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Luvenia Potts,**

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

For the reasons set forth in the preamble, 38 CFR part 38 is proposed to be amended as follows:

## PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

**Authority:** 38 U.S.C. 107, 501, 512, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

■ 2. Revise § 38.621 to read as follows:

### § 38.621 Disinterments.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery District Executive Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when:

(1) A court order or State instrumentality of competent jurisdiction directs the disinterment; or

(2) All living immediate family members of the decedent, and the individual who initiated the interment (whether or not the individual is a member of the immediate family), give their written consent.

(i) If the individual who initiated the interment does not consent, or is not alive to provide consent, or all living immediate family members are not in agreement, anyone seeking disinterment of an eligible decedent must provide VA with an order from a court or State instrumentality of competent jurisdiction to direct the disinterment as provided in paragraph (a)(1) of this section.

(ii) For purposes of this section, ''immediate family members'' are defined as surviving spouse, whether or not he or she is or was remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent's parents will be considered ''immediate family members.''

(b)(1) All requests to disinter remains as described in paragraph (a)(2) of this section must be submitted on VA Form 40–4970, Request for Disinterment, and must include the following information:

(i) A full statement of reasons for the proposed disinterment.

(ii) Notarized statement(s) by all living immediate family members of the decedent, and by the person who initiated the interment (whether or not the individual is a member of the immediate family), that all parties consent to the proposed disinterment.

(iii) A notarized statement by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased and the individual who initiated the interment.

(2) If the person provides a false certification on VA Form 40–4970, he or she may be subject to penalties, to include fine or imprisonment or both.

(c) Any VA-approved disinterment in this section must be accomplished without expense to the Government.

(The reporting and recordkeeping requirements contained in paragraph (b) of this section have been approved by the Office of Management and Budget under OMB control number 2900–0365)

(Authority: 38 U.S.C. 2404)

[FR Doc. 2022–02682 Filed 2–8–22; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2021–0010; FRL–9539–01–R4]**

## Air Plan Approval; Alabama; Birmingham Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via a letter dated September 15, 2020. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Birmingham, Alabama Area (hereinafter referred to as the ''Birmingham Area'' or ''Area''). The Birmingham Area is comprised of Jefferson and Shelby Counties. EPA is proposing to approve the Birmingham Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Birmingham Area federally enforceable as part of the Alabama SIP.

**DATES:** Comments must be received on or before March 11, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0010 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary

submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the Birmingham Area LMP for the 1997 8-hour ozone NAAQS, adopted by ADEM on September 16, 2020, and submitted by ADEM as a revision to the Alabama SIP on September 17, 2020. In 2004, the Birmingham Area was designated as nonattainment for the 1997 8-hour ozone NAAQS. Subsequently, in 2006, after having clean data and EPA's approval of a maintenance plan, the Area was redesignated to attainment for the 1997 8-hour ozone NAAQS. *See* 71 FR 27631 (May 12, 2006).

The Birmingham Area LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A. As a general matter, the Birmingham Area LMP relies on the same control measures and contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by ADEM for the first 10-year period.

## II. Background

Ground-level ozone is formed when oxides of nitrogen ($NO_X$) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and in adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.[1]

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).[2] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour NAAQS would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Birmingham Area, which includes Jefferson and Shelby Counties, as nonattainment for the 1997 8-hour ozone NAAQS, and the designation became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004). Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. EPA designated the Birmingham Area as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. This designation became effective on July 20, 2012. *See* 77 FR 30088. On November 16, 2017, areas were designated for the 2015 8-hour ozone NAAQS. The Birmingham Area was again designated attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date of January 16, 2018. *See* 82 FR 54232 (November 16, 2017).

A state may submit a request that EPA redesignate a nonattainment area that is attaining the NAAQS to attainment, and if the area has met other required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation request.[3] One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.,* ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing

[1] *See* ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010, and 27 FR 2938 (January 19, 2010).

[2] In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

[3] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

maintenance plans.[4] The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value[5] being well below the standard and the area having a historically stable design value.[6] EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: An attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,[7] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.[8]

In this case, EPA is proposing to approve Alabama's LMP because the State has made a showing that the Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that it has met the other maintenance plan requirements. ADEM submitted this LMP for the Birmingham Area to fulfill the second maintenance plan requirement in the Act. EPA's evaluation of the Birmingham Area LMP is presented below.

In January of 2006, ADEM submitted to EPA a request to redesignate the Birmingham Area to attainment for the 1997 8-hour ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 8-hour ozone NAAQS in Birmingham through 2017 as a revision to the Alabama SIP. EPA approved the Birmingham Area's maintenance plan and the State's request to redesignate the Birmingham Area to attainment for the 1997 8-hour ozone NAAQS effective June 12, 2006. *See* 71 FR 27631 (May 12, 2006).[9]

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b). *See* 80 FR 12264, 12315 (March 6, 2015).

In *South Coast Air Quality Management District* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for ''orphan maintenance areas,'' *i.e.,* areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS maintenance areas and were designated attainment for the 2008 ozone NAAQS. *South Coast,* 882 F.3d 1138 (DC Cir. 2018). Thus, states with these ''orphan maintenance areas'' under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, on September 17, 2020, Alabama submitted a second maintenance plan for the Birmingham Area that shows that the Area is expected to remain in attainment of the 1997 8-hour ozone NAAQS through 2026.

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Birmingham Area well below the 1997 8-hour ozone NAAQS, ADEM chose the LMP option for the development of a second 1997 8-hour ozone NAAQS maintenance plan. On September 16, 2020, ADEM adopted the second 10-year 1997 8-hour ozone maintenance plan, and on September 17, 2020, ADEM submitted the Birmingham Area LMP to EPA as a revision to the Alabama SIP.

## III. Alabama's SIP Submittal

As mentioned above, on September 17, 2020, ADEM submitted the Birmingham Area 1997 8-hour ozone NAAQS LMP to EPA as a revision to the Alabama SIP. The submittal includes the LMP, air quality data, emissions inventory information, and appendices as well as certification of adoption of the plan by ADEM. Appendices to the plan include EPA's Guidance Memorandum for Ozone Limited Maintenance Plans and documentation of notice, hearing, and public participation prior to adoption of the plan by ADEM on September 16, 2020. The Birmingham Area LMP does not include any additional emissions reduction measures but relies on the same emission reduction strategy as their first 10-year maintenance plan that provides for the maintenance of the 1997 8-hour ozone NAAQS through 2017. Specifically, the measures upon which the second 10-year LMP for the Birmingham Area relies include, among other things, continued implementation of federal measures (*e.g.,* Tier 3 Motor

[4] John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

[5] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

[6] *See* ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas,'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas,'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate $PM_{10}$ Nonattainment Areas,'' from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

[7] The prior memos addressed: Unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the $PM_{10}$ (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment for the carbon monoxide (CO) NAAQS.

[8] *See, e.g.,* 79 FR 41900 (July 18, 2014) (approval of the second ten-year LMP for the Grant County 1971 Sulfur Dioxide maintenance area).

[9] After redesignation to attainment, the Birmingham area violated the NAAQS with 2004–2006 monitoring data. On February 6, 2008, Alabama submitted a SIP revision to EPA to fulfill ADEM's commitment to adopt, within 18 months of a violation of the 1997 8-hour ozone NAAQS, one or more contingency measures to help the area re-attain the standard. *See* 74 FR 37945.

Vehicle Emission and Fuel Standards,[10] $NO_X$ SIP Call,[11] and interstate transport rules such as the Cross-State Air Pollution Rule (CSAPR)[12] and CSAPR Update[13]).

## IV. EPA's Evaluation of Alabama's SIP Submittal

EPA has reviewed the Birmingham Area's LMP which is designed to maintain the 1997 8-hour ozone NAAQS within Birmingham through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA's interpretation of the section 175A requirements[14] and EPA's evaluation of how each requirement is met.

### *A. Attainment Emissions Inventory*

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and $NO_X$, as these pollutants are precursors to ozone formation. The Birmingham LMP instead includes an ozone attainment inventory for the Birmingham area that reflects annual emissions of VOC and $NO_X$ in 2014. Table 1 presents a summary of the inventory for 2014 contained in the LMP.

TABLE 1—2014 VOC AND $NO_X$ EMISSIONS FOR THE BIRMINGHAM AREA

[Tons/year]

| | Point source | Area source | Onroad mobile source | Nonroad mobile source | Total |
|---|---|---|---|---|---|
| VOC | 3,899.07 | 78,794.64 | 9,587.72 | 4,046.32 | 96,327.75 |
| $NO_X$ | 31,365.76 | 7,679.80 | 17,394.50 | 3,470.60 | 59,910.66 |

The Attainment Emissions Inventory section of the Birmingham Area LMP describes the methods, models, and assumptions used to develop the attainment inventory and notes that ADEM relied on version 2 of the 2014 NEI.[15] Point source emissions were calculated from data collected annually from the sources and reported to the State or local air agencies. Area source emissions were estimated by multiplying an emission factor by some known indicator of collective activity, such as fuel usage, and were estimated on the county level. Nonroad mobile source emissions in the 2014NEIv2, in part, were estimated using the latest version of the EPA's motor vehicles emission model, MOVES (which includes estimates nonroad emissions like agriculture, commercial and mining, industrial and recreational equipment, and commercial and residential lawn and garden equipment). Locomotives, aircraft, and marine nonroad sources are not included in MOVES, and ADEM relied on EPA-generated emissions for these sectors.[16] Onroad mobile sources in the 2014NEIv2 were estimated using MOVES and the latest planning assumptions regarding vehicle type, vehicle activity, and vehicle speeds to estimate vehicular emissions for 2014. ADEM's estimates for vehicles reflect emissions inventories and ancillary data files used for emissions modeling, as well as the meteorological, initial condition, and boundary condition files need to run the air quality model.

Although an ozone LMP would typically include an inventory of typical summer day emissions rather than annual emissions, EPA proposes to find that Alabama's annual inventory is sufficient here because the 2014 annual inventory data are consistent with 2014 summer emissions inventory data for the Birmingham Area.[17] Based on our review of the methods, models, and assumptions used by Alabama to develop the inventory, as well as our review of the 2014 summer emissions data, EPA proposes to find that the Alabama 1997 ozone NAAQS LMP includes a comprehensive, reasonably accurate inventory of actual ozone precursor emissions in attainment year 2014, and proposes to conclude that this is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

### *B. Maintenance Demonstration*

The maintenance demonstration requirement is considered to be satisfied in an LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the standard, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.[18] These criteria are evaluated below with regard to the Birmingham Area.

#### 1. Evaluation of Ozone Air Quality Levels

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the NAAQS is attained if the design value is 0.084 ppm or below. At the time of submission, EPA evaluated quality assured and certified 2016–2018 monitoring data and determined that the design value for the Birmingham Area was 0.067 ppm, or 79 percent of the level of the 1997 8-hour ozone NAAQS. Based on quality assured and certified monitoring data for 2018–2020, the current design value for the Birmingham Area is 0.066 ppm, or 79 percent of the level of the 1997 8-hour ozone NAAQS. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (*e.g.,* below 85% of the

[10] *See* 79 FR 23414 (April 28, 2014).

[11] *See* 63 FR 57355 (October 27, 1998).

[12] *See* 76 FR 48208 (August 8, 2011).

[13] *See* 81 FR 74504 (October 26, 2016).

[14] *See* Calcagni memo.

[15] Documentation and data for the 2014 NEIv2 can be accessed via the following website: *http://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.*

[16] EPA developed emissions for these sectors based on AP–42 emissions factor, and information supplied by the Eastern Regional Technical Advisory Committee for locomotives and Federal Aviation Administration's Emissions and Dispersion Modeling System (since replaced by the Aviation Environmental Design Tool).

[17] The 2014 summer emissions data for the Birmingham Area are from the EPA 2014 version 7.0 modeling platform, which is based on the National Emissions Inventory (2014 NEI version 2), and are available at *https://www.epa.gov/sites/default/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx.* The 2017 NEI is the most recent NEI, but it was unavailable to Alabama when the State developed its SIP revision.

[18] See footnote 6.

standard, or in this case below 0.071 ppm), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of prevention of significant deterioration requirements and any control measures already in the SIP and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 2 presents the 2014–2020 design values for each monitor in the Birmingham Area. As shown in Table 2, all sites have been well below the level of the 1997 8-hour ozone NAAQS during that time period, and the most current design value is below the level of 85 percent of the NAAQS, consistent with prior LMP guidance.

TABLE 2—1997 8-HOUR OZONE NAAQS 2014–2020 DESIGN VALUES (ppm) AT MONITORING SITES IN THE BIRMINGHAM AREA +

| Location | AQS site ID | 2012–2014 DV | 2013–2015 DV | 2014–2016 DV | 2015–2017 DV | 2016–2018 DV | 2017–2019 DV | 2018–2020 DV |
|---|---|---|---|---|---|---|---|---|
| Helena | 01–117–0004 | 0.068 | 0.065 | 0.067 | 0.066 | 0.067 | 0.066 | 0.065 |
| Fairfield | 01–073–1003 | 0.068 | 0.065 | 0.066 | 0.066 | ^0.064 | 0.067 | 0.066 |
| McAdory | 01–073–1005 | 0.068 | 0.064 | 0.066 | 0.065 | 0.065 | 0.066 | 0.066 |
| Hoover | 01–073–2006 | 0.067 | 0.065 | 0.066 | 0.066 | (-) | (-) | (-) |
| Tarrant | 01–073–6002 | ^0.070 | 0.067 | 0.068 | 0.068 | (*) | (*) | (*) |
| Corner | 01–073–5003 | 0.065 | 0.063 | 0.064 | 0.064 | 0.063 | 0.062 | 0.061 |
| North Birmingham | 01–073–0023 | 0.067 | 0.064 | 0.068 | 0.066 | 0.065 | (*) | 0.066 |
| Leeds | 01–073–1010 | 0.069 | 0.063 | 0.064 | 0.063 | 0.066 | 0.064 | 0.063 |

+ The Metropolitan Statistical Area (MSA) is required to have a minimum of two ozone monitoring sites. The MSA still maintains seven regulatory ozone monitoring sites offering adequate coverage of the MSA.

* These design values are invalid due to data completeness issues.

- The Hoover monitor (Site ID 01–073–2006) was approved to be shut down at the end of October 31, 2017, through the annual network plan review process.

^ The data handling methodology associated with the 1997 8-hour ozone NAAQS was used to calculate these 2014–2020 DVs. Using this appropriate methodology, two DVs were calculated as being slightly lower (0.001 ppm lower) than what was included in ADEMS's submittal.

Therefore, the Birmingham Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and $NO_X$ emissions control programs, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Area through the second 10-year maintenance period and beyond.

Additional supporting information that the Area is expected to continue to maintain the NAAQS can be found in projections of future year design values that EPA recently completed for the Revised CSAPR Update for the 2008 Ozone NAAQS that EPA finalized on April 30, 2021.[19] Those projections, made for the year 2023, show that the highest design value of any monitor in the Area is expected to be 0.056 ppm. EPA is not proposing to make any finding in this rulemaking regarding interstate transport obligations for any state.

2. Stability of Ozone Levels

As discussed above, the Birmingham Area has maintained air quality well below the 1997 8-hour ozone NAAQS over the past seven years. Additionally, the design value data shown within Table 2 illustrates that ozone levels have been relatively stable over this timeframe, with a modest downward trend. For example, the data within Table 2 indicates that the largest year over year change in design value at any one monitor during these seven years was six parts per billion which occurred between the 2014 and 2015 design values, representing a nine percent decrease at monitor 01–073–1010 (Leeds). Furthermore, the overall trend for the Birmingham Area shows a decrease of three percent between the 2014 and 2017 design values at the highest monitor, Tarrant monitor 01–073–6002, and shows a decrease of nine percent between the 2014 and 2020 design values at the second-highest monitor, Leeds monitor 01–073–1010. This downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the Birmingham Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

*C. Monitoring Network and Verification of Continued Attainment*

EPA periodically reviews the ozone monitoring network that ADEM and Jefferson County Department of Health (JCDH) operates and maintains in accordance with 40 CFR part 58. This network plan, which is submitted annually to EPA, is consistent with the most recent ambient air quality monitoring network assessment. The annual network plan developed by ADEM follows a public notification and review process. EPA has reviewed and approved the 2020 Ambient Air Monitoring Network Plan (''2020 Annual Network Plan'').[20]

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, ADEM and JCDH's monitoring network in Birmingham has been approved by EPA in accordance with 40 CFR part 58, and the State and JCDH have committed to continue to maintain a network in accordance with EPA requirements. EPA proposes to find that ADEM and JCDH's monitoring network is adequate to verify continued attainment of the 1997 8-hour ozone NAAQS in Birmingham.

*D. Contingency Plan*

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the

[19] On April 30, 2021, EPA published the final Revised Cross-State Air Pollution (CSAPR) Update (RCU) using updated modeling that focused on analytic years 2023 and 2028 and an ''interpolation'' analysis of these modeling results to generate air quality and contribution values for the 2021 analytic year. *See* 86 FR 23054. *https://www.govinfo.gov/content/pkg/FR-2021-04-30/pdf/2021-05705.pdf.* This modeling included projected ozone design values for ozone monitors in the Birmingham maintenance area. See the spreadsheet titled ''Data File with Ozone Design Values and Ozone Contributions (xlsx)'' at *https://www.epa.gov/csapr/revised-cross-state-air-pollution-rule-update.*

[20] The letters approving the network plan are in the docket for this proposed rulemaking.

maintenance period. These contingency measures are required to be implemented expeditiously once they are triggered by a future violation of the NAAQS or some other trigger. The state should identify specific triggers which will be used to determine when the contingency measures need to be implemented.

The LMP states that the initial trigger of Alabama's contingency plan is when any individual monitor in the Birmingham Area records an annual fourth high reading of 85 ppb or higher. If this trigger is activated and ambient monitoring data indicates that a violation of the 3-year design value may be imminent, the maintenance plan requires Alabama to evaluate existing control measures to determine whether any further emission reduction measures should be implemented at that time. The second contingency plan trigger will be a quality assured/quality controlled (QA/QC) violating design value of the 1997 8-hour ozone NAAQS at any monitor in the Birmingham Area.[21] As expeditiously as possible and within 18 to 24 months after a monitored violation, Alabama will adopt and implement appropriate contingency measures needed to assure future attainment.[22] In addition to at least one contingency measure being implemented upon a monitored violation, pursuant to CAA section 175A(d), all control measures in place prior to redesignation to attainment will remain in place.

EPA proposes to find that the contingency provisions in Alabama's second maintenance plan for the 1997 8-hour ozone NAAQS meet the requirements of the CAA section 175A(d).

*E. Conclusion*

EPA proposes to find that the Birmingham LMP for the 1997 8-hour ozone NAAQS includes an approvable update of the various elements (including attainment inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) of the initial EPA-approved maintenance plan for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the Birmingham Area, a former subpart 1 marginal 1997 8-hour ozone NAAQS nonattainment area, qualifies for the LMP option, and adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels below the NAAQS and historically stable design values. EPA believes the Birmingham Area's LMP, which retains all existing control measures in the SIP, is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Area over the second maintenance period (*i.e.,* through 2026) and thereby satisfies the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve Alabama's September 17, 2020, submission of the Birmingham Area 1997 8-hour ozone NAAQS LMP as a revision to the Alabama SIP.

## V. Transportation Conformity and General Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93 subpart A requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicles emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as ''the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.'' *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). On February 23, 2006, EPA made a finding that the MVEBs in the first 10 years of the 1997 8-hour ozone maintenance plan for the Birmingham Area were adequate for transportation conformity purposes. *See* 71 FR 9332 (February 23, 2006). This adequacy determination became effective on March 10, 2006. After approval of this LMP or an adequacy finding for this LMP, there is no requirement to meet the budget test pursuant to the transportation conformity rule for the maintenance area. All actions that would require a transportation conformity determination for the Birmingham Area ozone maintenance area under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 as a result of EPA's adequacy finding for this LMP. *See* 69 FR 40004 (July 1, 2004).

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113) as well as meet the hot-spot requirements for projects (40 CFR 93.116).[23] Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, in order for projects to be approved they must come from a currently conforming RTP and TIP. *See* 40 CFR 93.114 and 40 CFR 93.115.

## VI. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Birmingham Area LMP for the 1997 8-hour ozone NAAQS, submitted by ADEM on September 17, 2020, as a revision to the Alabama SIP. EPA is proposing to approve the Birmingham Area LMP because it includes an acceptable update of the various elements of the 1997 8-hour ozone

[21] If QA/QC data indicates a violating design value for the 8-hour ozone NAAQS, then the triggering event will be the date of the design value violation, and not the final QA/QC date. However, if initial monitoring data indicates a possible design value violation but later QA/QC indicates that a NAAQS violation did not occur, then a triggering event will not have occurred, and contingency measures will not need to be implemented.

[22] See the Contingency Plan section of the LMP for further information regarding the contingency plan, including measures that Alabama will consider for adoption if a monitored violation occurs.

[23] A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section (93.109(e)) is still required, including the hot-spot requirements for projects in CO, $PM_{10}$, and $PM_{2.5}$ areas.

NAAQS maintenance plan approved by EPA for the first 10-year period and retains the relevant provisions of the SIP.

EPA also finds that the Birmingham Area qualifies for the LMP option and that, therefore, the Birmingham Area LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes the Birmingham Area's 1997 8-hour ozone LMP to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Birmingham Area over the second 10-year maintenance period, through 2026, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

## VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, reporting and recordkeeping Requirements, Volatile organic compounds.

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

Dated: February 3, 2022.

**Daniel Blackman,**

*Regional Administrator, Region 4.*

[FR Doc. 2022–02683 Filed 2–8–22; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R01–OAR–2022–0089; FRL–9546–01–R1]**

## Air Plan Approval; Connecticut; Negative Declaration for the Oil and Gas Industry

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. The revision provides the State's determination, via a negative declaration, that there are no facilities within its borders subject to EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry. The intended effect of this action is to approve this item into the Connecticut SIP. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before March 11, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2022–0089 at *https://www.regulations.gov,* or via email *rackauskas.eric@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

**FOR FURTHER INFORMATION CONTACT:** Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1628, email *rackauskas.eric@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

**Table of Contents**

I. Background
II. Summary of SIP Revision and EPA Analysis
III. Proposed Action
IV. Statutory and Executive Order Reviews

## I. Background and Purpose

On October 27, 2016, EPA published in the **Federal Register** the ''Final Control Techniques Guidelines for the Oil and Natural Gas Industry'' (81 FR 74798). The CTG provided information to state, local, and tribal air agencies to assist them in determining reasonably available control technology (RACT) for volatile organic compounds (VOC) emissions from select oil and natural gas industry emission sources. CAA section 182(b)(2)(A) requires that for ozone nonattainment areas classified as Moderate or above, states must revise their SIPs to include provisions to implement RACT for each category of VOC sources covered by a CTG document. CAA section 184(b)(1)(B) extends the RACT obligation to all areas of states within the Ozone Transport Region (OTR). In addition to Connecticut being classified as nonattainment for the 2008 and 2015 ozone standards in both the Connecticut portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT area and Greater Connecticut areas, Connecticut is a member state of the OTR. States subject to RACT requirements are required to adopt controls that are at least as stringent as those found within the CTG either via the adoption of regulations, or by issuance of single source orders or permits that outline what the source is required to do to meet RACT. If no source for a particular CTG exists within a state, the state must submit as a SIP revision a negative declaration documenting this fact.

## II. Summary of SIP Revision and EPA Analysis

On December 29, 2020, the Connecticut Department of Energy and Environmental Protection (DEEP) submitted a negative declaration for the 2016 Oil and Natural Gas Industry CTG.[1] The term ''negative declaration'' means that the state has explored whether any facilities subject to the applicability requirements of the CTG exist within the state and concluded that there are no such sources within its borders. As part of this determination, DEEP reviewed the inventory of sources for facilities covered by the CTGs, interviewed its field staff, and searched telephone directories and internet web pages, including other state government databases, to identify and evaluate sources that might meet the applicability requirements. Connecticut DEEP ultimately determined there are no sources covered by this CTG in the State. This is consistent with EPA's understanding of where sources subject to the Oil and Natural Gas Industry CTG are located.

EPA has historically allowed states to submit a negative declaration for a particular CTG category if the state finds that no sources exist in the state which would be subject to that CTG. EPA has addressed the idea of negative declarations numerous times and for various NAAQS including in the General Preamble to the 1990 Amendments,[2] the 2006 RACT Q&A Memo,[3] and the 2008 Ozone Implementation Rule.[4] In each of these documents, EPA asserted that if no sources exist in the nonattainment area for a particular CTG category, the state would be allowed to submit a negative declaration SIP revision. This principle also applies to states in the OTR. EPA is not aware of any information indicating that a facility subject to the 2016 Oil and Natural Gas Industry CTG exists within the State of Connecticut and so we are proposing to approve Connecticut's negative declaration into the SIP.

## III. Proposed Action

EPA is proposing to approve Connecticut's negative declaration for the 2016 Oil and Natural Gas Industry CTG. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

## IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

[1] This submittal was part of Connecticut's larger RACT and Nonattainment New Source Review (NNSR) Certification submittal, which will be acted upon separately and are not part of this rulemaking.

[2] ''*State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,*'' *(57 FR 13498at 13512 (April 16, 1992)).*

[3] RACT Q's and A's—Reasonably Available Control Technology RACT: Questions and Answers Memorandum from William T. Harnett, May 18, 2006.

[4] ''*Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,*'' *(80 FR 12263at 12278 (March 6, 2015)).*

**List of Subjects in 40 CFR Part 52**

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

Dated: February 3, 2022.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

[FR Doc. 2022–02675 Filed 2–8–22; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 141

**[EPA–HQ–OW–2022–0114; FRL–8543–O3–OW]**

## Notice of Public Meeting: Environmental Justice Considerations for the Development of the Proposed Per- and Polyfluoroalkyl Substances (PFAS) National Primary Drinking Water Regulation (NPDWR)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** The Environmental Protection Agency (EPA) is hosting two identical public meetings to discuss and solicit input on environmental justice considerations related to the development of the proposed per- and polyfluoroalkyl substances (PFAS) national primary drinking water regulation (NPDWR) under the Safe Drinking Water Act (SDWA). In the context of developing this proposed regulation, environmental justice considerations include 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 with a particular focus on unique challenges faced by communities disproportionately burdened by environmental harms and risks. EPA is holding these meetings to share information and provide an opportunity for communities to offer input on the development of the proposed PFAS NPDWR. Information on how to register and request to speak during one of the meetings is detailed in the **SUPPLEMENTARY INFORMATION** section of this announcement.

**DATES:** Comments must be received on or before April 20, 2022. The two identical public meetings will be held on March 2, 2022 (1 p.m. to 4 p.m., eastern time) and April 5, 2022 (5 p.m. to 8 p.m., eastern time). The public meetings will be held in an online-only format.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OW–2022–0114, to the Federal eRulemaking Portal: *https://www.regulations.gov/.* Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. EPA–HQ–OW–2022–0114 for this action. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this announcement.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries, contact Ashley Greene, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460 at (202) 566–1738 or *greene.ashley@epa.gov.* For more information about the proposed PFAS NPDWR, visit: *https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas.*

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation

These online meetings will be open to the public and EPA encourages input and will provide opportunities for public engagement.

*A. Written Comments*

Submit your comments, identified by Docket ID No, EPA–HQ–OW–2022–0114 at *https://www.regulations.gov;* see instructions identified in the **ADDRESSES** section of this announcement. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

*B. Participation in Public Meeting*

*Registration:* Individuals planning to participate in either of the online public meetings must register at *https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas* no later than March 1, 2022, for the March 2, 2022 meeting and April 4, 2022, for the April 5, 2022 meeting. Individuals are also invited to speak during the meetings. Those interested in speaking can sign-up to make brief verbal remarks as a part of their registration. EPA will do its best to include all those interested in attending and requesting verbal input, but may have to limit attendance due to web conferencing size or limit verbal remarks due to meeting time limitations; therefore, EPA urges people to register early. Meeting information and web conferencing meeting details, including telephone call-in information, will be emailed to registered participants in advance of each of the meetings. If you have any difficulty registering or have additional questions or comments about the public meeting, please email *PFASmeetingsupport@cadmusgroup.com.*

*Special Accommodations:* For information on electronic access or accommodations for individuals with disabilities or other requested assistance (*e.g.,* language translation), please contact Ashley Greene at (202) 566–1738 or by email at *greene.ashley@epa.gov.* Please allow at least five business days prior to each of the meetings to give EPA time to process your request.

### II. The Proposed PFAS National Primary Drinking Water Regulation

Under SDWA, EPA sets public health goals and enforceable standards for drinking water quality. On March 3, 2021, EPA published a final determination (*https://www.epa.gov/ccl/regulatory-determination-4*) to regulate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in drinking water. EPA is currently developing a proposed NPDWR for PFOA and PFOS. EPA is also evaluating additional PFAS and assessing the available science to consider regulations for groups of PFAS. NPDWRs are legally

enforceable maximum contaminant levels (MCLs) or treatment techniques that apply to public water systems. MCLs and treatment techniques protect public health by limiting the levels of contaminants in drinking water.

In October 2021, EPA released the PFAS Strategic Roadmap (*https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024*) laying out an overall approach to addressing PFAS. Establishing an NPDWR for PFOA and PFOS is a key action in the Roadmap. EPA expects to issue a proposed regulation in fall 2022 (before the agency's statutory deadline of March 2023). EPA anticipates issuing a final regulation in fall 2023 after considering public comments on the proposal.

**Jennifer L. McLain,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 2022–02733 Filed 2–8–22; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 11

**[PS Docket No. 15–94; FCC 21–125; FR ID 66157]**

### The Emergency Alert System

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In the Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (the FCC or the Commission) proposes action to improve the clarity and accessibility of visual Emergency Alert System messages to the public, particularly to people who are deaf or hard of hearing. In addition, in the included Notice of Inquiry (NOI), the Commission launches an examination of broader measures to enhance the Emergency Alert System's overall functionality and accessibility.

**DATES:** Comments on the NPRM are due on or before March 11, 2022, and reply comments are due on or before March 28, 2022. Comments on the NOI are due on or before April 11, 2022, and reply comments are due on or before May 10, 2022.

**ADDRESSES:** You may submit comments, identified by PS Docket No. 15–94, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

*People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

**FOR FURTHER INFORMATION CONTACT:** For further information concerning the information contained in this document, send an email to David Munson, Attorney Advisor, Public Safety and Homeland Security Bureau at 202–418–2921 or *David.Munson@fcc.gov,* or Christopher Fedeli, Attorney Advisor, Public Safety and Homeland Security Bureau at *Christopher.Fedeli@fcc.gov* or call 202–418–1514.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI), in PS Docket Nos. 15–94, FCC 21–725, adopted on December 14, 2021, and released on December 15, 2021. The full text of this document is available at *https://www.fcc.gov/document/fcc-seeks-improve-accessibility-clarity-emergency-alerts-0.*

### Synopsis

The nation's Emergency Alert System (EAS) ensures that the public is quickly informed about emergency alerts issued by government entities and delivered over broadcast, cable, and satellite television and radio media. The EAS is comprised of both a legacy broadcast system and an internet-based Common Alerting Protocol (CAP) system. The legacy EAS distributes alerts over-the-air from one broadcast station antenna to another. Alerts can also be sent over the internet in CAP format for distribution to stations via the Federal Emergency Management Agency's Integrated Public Alert and Warning System.

Because legacy EAS alerts only relay audio and not text, the visual messages for such alerts contain only basic location and event information generated from certain data codes of the alerts, which can cause the visual message to lack clarity. The legacy EAS visual message also typically contains less information than that included in the audio message. CAP EAS alerts, by contrast, can be sent with enhanced text, enabling the visual and audio messages transmitted to the public to contain more expansive information. The procedures for constructing and converting CAP EAS alerts into legacy EAS alerts are set forth in the ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0 (May 17, 2010) (''ECIG Implementation Guide''), developed and published by the EAS–CAP Industry Group. The limitations on visual alert information in legacy EAS alerts may result in different or less information displayed visually for those who are unable to access the audio portion of an alert.

The NPRM seeks to improve the clarity and accessibility of EAS visual messages to the public, including persons who are deaf or hard of hearing, and others who are unable to access the audio message. In the NPRM, the Commission proposes to require use of a predetermined script as the visual message for legacy EAS nationwide tests (but not for CAP-based nationwide EAS tests, because CAP already provides for relaying enhanced text to form the visual message). To improve the clarity of visual messages displayed to the public for CAP-based nationwide EAS tests, the Commission proposes to revise the terminology associated with the codes for nationwide tests.. Although the Commission does not propose to apply the script approach to CAP-based nationwide EAS test alerts, it does seek comment on whether its proposed script approach or its proposed change to the national test code terminology would require changes to the ECIG Implementation Guide, and if so, what revisions would be required.

In addition, the Commission proposes to require that stations check for and use the available CAP versions of all State and Local Area alerts (which includes alerts issued by the National Weather Service) instead of the legacy EAS versions, to increase the use of CAP in light of CAP's superior visual messaging capabilities. The Commission seeks comment on whether implementing this proposal would require changes to the ECIG Implementation Guide, and if so, what changes would be required.

In the companion NOI, the Commission seeks comment on additional EAS improvements and redesigns to enable matching visual and audio alert content and otherwise improve the clarity and accessibility of EAS messages for all persons who might receive them. In the NOI, the Commission seeks comment on how the legacy EAS architecture can be modified, augmented, or redesigned to enable alert originators to relay visual text that matches their audio message in legacy EAS alerts, as well as to enable more functionality within the EAS as a whole.

**Initial Regulatory Flexibility Analysis**

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' As required by the RFA, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

*A. Need for, and Objectives of, the Proposed Rules*

In the NPRM, the Commission seeks comment on proposed changes to the Emergency Alert System (EAS) rules associated with visual messages constructed from legacy EAS-based alerts and visual messages constructed from Common Alerting Protocol (CAP)-formatted alerts. Specifically, the Commission seeks comment on proposed rule changes to: (i) Replace the EAS National Periodic Test (or ''NPT'') event code terminology from ''National Periodic Test'' to ''Nationwide Test of the Emergency Alert System''; (ii) require EAS Participants to use the following scripted text: ''This is a nationwide test of the Emergency Alert System issued by the Federal Emergency Management Agency covering the United States from [time] until [time]. This is only a test. No action is required by the public.'' as the visual crawl (or block text) whenever they receive a legacy EAS alert containing the NPT event code and the ''All-U.S.'' geographic location code (instead of generating a visual crawl or block text from the header codes); and (iii) require EAS Participants to poll the Integrated Public Alert and Warning System (IPAWS) CAP EAS server when they receive a state or local legacy EAS-based alert to confirm whether there is a CAP version of that alert, and if so, use the CAP version instead of the legacy EAS-based version. The proposed rule changes are intended to improve the clarity and descriptiveness of the visual messages generated for nationwide EAS test alerts and State and Local Area alerts issued using the legacy EAS; improve the chances that visual messages for State and Local Area alerts will contain the same information contained in the audio message, so members of the public who are unable to access the audio message of the alert are able to receive critical informational elements of an EAS test in plain, understandable language; and increase the use of CAP alerting which has superior visual messaging capabilities relative to legacy EAS.

*B. Legal Basis*

The proposed action is authorized pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 613 and Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010, as amended (also codified at 47 U.S.C. 613).

*C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply*

The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

*Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 30.7 million businesses.

Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

*Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $41.5 million or less in annual receipts. Economic Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

In addition to the U.S. Census Bureau's data, based on Commission data we estimate that there are 4,560 licensed AM radio stations, 6,704 commercial FM radio stations and 8,339 FM translator and booster stations. The Commission has also determined that there are 4,196 noncommercial educational (NCE) FM radio stations. The Commission however does not compile and does not otherwise have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities under the SBA size standard.

We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a ''small business,'' an entity may not be dominant in its field of operation. We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these bases, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

*FM Translator Stations and Low-Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations. This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard which consists of all radio stations whose annual receipts are $38.5 million dollars or less. U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

We note again, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of ''small business'' is that an entity would not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the rule revisions discussed in the NPRM includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

*Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, and 25 had annual receipts between $25,000,000 and $49,999,999. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

The Commission has estimated the number of licensed commercial television stations to be 1,368. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, 1,258 stations (or about 91 percent) had revenues of $38.5 million or less, and therefore these licensees qualified as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 390. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,246 low power television stations, including Class A stations (LPTV), and 3,543 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult

at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

*Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA size standard for this industry establishes as small, any company in this category which receives annual receipts of $41.5 million or less. According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year. Of that number, 319 operated with annual receipts of less than $25 million a year and 48 firms operated with annual receipts of $25 million or more. Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

*Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are 4,600 active cable systems in the United States. Of this total, all but five cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

*Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. Accordingly, an operator serving fewer than 486,460 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

*Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there was a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

*All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

*Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).

*BRS*—In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual

gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

*EBS*—Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to U.S. Census Bureau data, March 2019 there are 1,300 licensees holding over 2,190 active EBS licenses. The Commission estimates that of these 2,190 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

*Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the category of ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA size standard considers a wireline business is small if it has fewer than 1,500 employees. U.S. Census Bureau data for 2012 indicates that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable SBA standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that, in general, DBS service is provided only by large firms.

*Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees, and 12 firms had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

*Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

*Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees, and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

The proposed changes for which comment is sought in the NPRM, if adopted, would impose new or modified reporting, recordkeeping or other compliance obligations on certain small, as well as other, entities required to distribute EAS alerts to the public (*i.e.,* ''EAS Participants''), and that manufacture EAS equipment. At this time the Commission is not currently in a position to determine whether, if adopted, the proposed changes will require small entities to hire attorneys, engineers, consultants, or other professionals to comply and cannot quantify the cost of compliance with the potential rule changes and compliance obligations raised for comment in the NPRM. In our request for comments on the proposals, we have requested

information on the cost of implementing the proposed changes as well as potential alternatives to the proposals, particularly less costly alternatives that should be considered.

The Commission's proposal to replace the EAS event code terminology for the NPT event code from ''National Periodic Test'' to ''Nationwide Test of the Emergency Alert System,'' to require using prepared script for the visual message for the legacy-based nationwide EAS test alert, and to require EAS Participants, when they receive a state or local legacy EAS alert, to poll the IPAWS CAP EAS server to confirm whether there is a CAP version of that alert and use that CAP version will likely require EAS equipment manufacturers to develop software updates to implement such changes in deployed EAS equipment and EAS equipment in production. EAS Participants would also be required to acquire and install such software updates in their EAS devices. Any EAS device models currently in deployment incapable of being updated to reflect these proposed changes likely would have to be replaced. Updating or replacing deployed devices to reflect these proposed changes would be at the expense of EAS Participants.

To help the Commission more fully evaluate the cost of compliance if we were to adopt the proposed changes, in the NPRM we request comments on the cost implications to implement these proposals and ask whether there are more efficient and less burdensome alternatives that might achieve the same results, including alternatives specific to smaller entities. We expect the information we receive in comments including cost and benefit analyses, to help the Commission identify and evaluate relevant matters for small entities, including compliance costs and other burdens that may result if the proposed recommendations in the NPRM were adopted.

*E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.''

In the NPRM, the Commission raised for consideration the alternatives discussed below, which could minimize any significant economic impact on small entities, if the EAS proposed rules changes are adopted. The proposed nationwide test event code change is limited in scope and only changes the terminology/text seen by the public. The proposal does not change the system event code for the nationwide EAS tests. The system event code will remain ''NPT,'' which the Commission believes should minimize the installation burdens borne by EAS Participants. Similarly, the proposed use of scripted text requirement is also limited in scope. Rather than proposing this requirement for both for legacy-based EAS alerts and CAP alerts, we have only proposed the requirement for legacy-based EAS alerts. The Commission recognizes that implementation of the proposed changes associated with the nationwide EAS test alert will require small entities and other EAS Participants to make changes to EAS enabled devices and take additional steps to effectuate. With this in mind, we inquire about the implications for EAS and other equipment, for other EAS and related Commission rules, and for technical and operation plans and protocols relating to implementation of the proposed changes to EAS alerts and seek comment on these matters. In addition, we seek information on the costs that would be incurred and by whom, in implementing the proposed changes, on what, if any ancillary costs would be associated with modifying equipment, and whether the costs of implementing the proposal be would be outweighed by any benefit of making the visual alert crawl more informative to hearing impaired individuals.

Having data on the various issues the Commission has raised and requested comment on in the NPRM relating to the technical feasibility, costs, benefits and the potential impact of implementing the proposed EAS rule changes, including alternatives specific to smaller entities, will assist with the Commission's evaluation of the economic impact on small entities, and help to determine if the proposed rule changes are adopted, how to minimize any significant economic for small entities and identify any potential alternatives not already considered. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and reply comments filed in response to the NPRM. Moreover, the Commission's evaluation of the comments will shape the final alternatives it considers, the final conclusions it reaches, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities, if any of the proposed rule changes are adopted.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

None.

**Initial Paperwork Reduction Act of 1995 Analysis**

The NPRM may contain potential new or revised information collection requirements. Therefore, we seek comment on potential new or revised information collections subject to the Paperwork Reduction Act of 1995. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the general public and the Office of Management and Budget to comment on the information collection requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

**Comments and Reply Comments**

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998), *https://transition.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf.*

**Ex Parte Rules**

The NPRM portion of this proceeding shall be treated as ''permit-but-disclose'' proceedings in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different

deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules. The NOI portion of this proceeding is exempt from the *ex parte* rules. *See, e.g.,* 47 CFR 1204(b)(1).

**Incorporation by Reference**

The material referenced in the regulatory text was approved for incorporation by reference on April 23, 2012, and the NPRM seeks comment on whether changes to those stamdards might be necessary in light of changes proposed.

**Ordering Clauses**

Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 613 and Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010, as amended (also codified at 47 U.S.C. 613), that this Notice of Proposed Rulemaking and Notice of Inquiry in PS Docket Nos. 15–94 *are hereby adopted* and *are effective* upon publication in the **Federal Register**.

*It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 11**

Incorporation by reference, Radio, Television.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 11 as follows:

## PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 613, and Pub. L. 116–283, 134 Stat. 3388, § 9201.

■ 2. Amend § 11.31 by revising paragraph (e) to read as follows:

**§ 11.31 EAS protocol.**

* * * * *

(e) The following Event (EEE) codes are presently authorized:

TABLE 2 TO PARAGRAPH (e)

| Nature of activation | Event codes |
|---|---|
| National Codes (Required): | |
| Emergency Action Notification (National only). | EAN. |
| National Information Center. | NIC |
| Nationwide Test of the Emergency Alert System. | NPT. |
| Required Monthly Test. | RMT. |
| Required Weekly Test | RWT. |
| State and Local Codes (Optional): | |
| Administrative Message. | ADR. |
| Avalanche Warning | AVW. |
| Avalanche Watch | AVA. |
| Blizzard Warning | BZW. |
| Blue Alert | BLU. |
| Child Abduction Emergency. | CAE. |
| Civil Danger Warning | CDW. |

TABLE 2 TO PARAGRAPH (e)—Continued

| Nature of activation | Event codes |
|---|---|
| Civil Emergency Message. | CEM. |
| Coastal Flood Warning. | CFW. |
| Coastal Flood Watch | CFA. |
| Dust Storm Warning | DSW. |
| Earthquake Warning | EQW. |
| Evacuation Immediate | EVI. |
| Extreme Wind Warning. | EWW. |
| Fire Warning | FRW. |
| Flash Flood Warning | FFW. |
| Flash Flood Watch | FFA. |
| Flash Flood Statement. | FFS. |
| Flood Warning | FLW. |
| Flood Watch | FLA. |
| Flood Statement | FLS. |
| Hazardous Materials Warning. | HMW. |
| High Wind Warning | HWW. |
| High Wind Watch | HWA. |
| Hurricane Warning | HUW. |
| Hurricane Watch | HUA. |
| Hurricane Statement | HLS. |
| Law Enforcement Warning. | LEW. |
| Local Area Emergency. | LAE. |
| Network Message Notification. | NMN. |
| 911 Telephone Outage Emergency. | TOE. |
| Nuclear Power Plant Warning. | NUW. |
| Practice/Demo Warning. | DMO. |
| Radiological Hazard Warning. | RHW. |
| Severe Thunderstorm Warning. | SVR. |
| Severe Thunderstorm Watch. | SVA. |
| Severe Weather Statement. | SVS. |
| Shelter in Place Warning. | SPW |
| Special Marine Warning. | SMW. |
| Special Weather Statement. | SPS. |
| Storm Surge Watch | SSA. |
| Storm Surge Warning | SSW. |
| Tornado Warning | TOR. |
| Tornado Watch | TOA. |
| Tropical Storm Warning. | TRW. |
| Tropical Storm Watch | TRA. |
| Tsunami Warning | TSW. |
| Tsunami Watch | TSA. |
| Volcano Warning | VOW. |
| Winter Storm Warning | WSW. |
| Winter Storm Watch | WSA. |

* * * * *

■ 3. Amend § 11.51 by revising paragraphs (d), (g)(3), (h)(3), (j)(2), (m) introductory text, and (m)(2) to read as follows:

**§ 11.51 EAS code and Attention Signal Transmission requirements.**

* * * * *

(d)(1) Analog and digital television broadcast stations shall transmit a visual message containing the Originator, Event, Location and the valid time period of an EAS message, except that for national test alerts (EAS messages using the NPT Event code) received in the EAS Protocol format (as opposed to the Common Alerting Protocol (CAP) format), with the ''All U.S.'' location code specified at § 11.31(f), the required visual message shall state the following: ''This is a nationwide test of the Emergency Alert System issued by the Federal Emergency Management Agency covering the United States from [time] until [time]. This is only a test. No action is required by the public.''

**Note 1 to paragraph (d)(1):** The ''from [time] until [time]'' portion of the message shall be determined from the alert's release date/time (JJJHHMM) and valid time period (+TTTT) header codes specified at § 11.31(c).

(2) Visual messages derived from CAP-formatted EAS messages shall contain the Originator, Event, Location and the valid time period of the message and shall be constructed in accordance with § 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010).

* * * * *

(g) * * *

(3)(i) Shall transmit a visual EAS message on at least one channel. The visual message shall contain the Originator, Event, Location, and the valid time period of the EAS message, except that for national test alerts (EAS messages using the NPT Event code) received in the EAS Protocol format (as opposed to the CAP format), with the ''All U.S.'' location code specified at § 11.31(f), the required visual message shall state the following: ''This is a nationwide test of the Emergency Alert System issued by the Federal Emergency Management Agency covering the United States from [time] until [time]. This is only a test. No action is required by the public.''

**Note: 2 to paragraph (g)(3)(i):** The ''from [time] until [time]'' portion of the message shall be determined from the alert's release date/time (JJJHHMM) and valid time period (+TTTT) header codes specified at § 11.31(c).

(ii) Visual messages derived from CAP-formatted EAS messages shall contain the Originator, Event, Location and the valid time period of the message and shall be constructed in accordance with section 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010).

* * * * *

(h) * * *

(3)(i) Shall transmit the EAS visual message on all downstream channels. The visual message shall contain the Originator, Event, Location, and the valid time period of the EAS message, except that for national test alerts (EAS messages using the NPT Event code) received in the EAS Protocol format (as opposed to the CAP format), with the ''All U.S.'' location code specified at § 11.31(f), the required visual message shall state the following: ''This is a nationwide test of the Emergency Alert System issued by the Federal Emergency Management Agency covering the United States from [time] until [time]. This is only a test. No action is required by the public.''

**Note 3 to paragraph (h)(3)(i):** The ''from [time] until [time]'' portion of the message shall be determined from the alert's release date/time (JJJHHMM) and valid time period (+TTTT) header codes specified at § 11.31(c).

(ii) Visual messages derived from CAP-formatted EAS messages shall contain the Originator, Event, Location and the valid time period of the message and shall be constructed in accordance with § 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010).

* * * * *

(j) * * *

(2)(i) The visual message shall contain the Originator, Event, Location, and the valid time period of the EAS message, except that for national test alerts (EAS messages using the NPT Event code) received in the EAS Protocol format (as opposed to the CAP format), with the ''All U.S.'' location code specified at § 11.31(f), the required visual message shall state the following: ''This is a nationwide test of the Emergency Alert System issued by the Federal Emergency Management Agency covering the United States from [time] until [time]. This is only a test. No action is required by the public.''

**Note 4 to paragraph (j)(2)(i):** The ''from [time] until [time]'' portion of the message shall be determined from the alert's release date/time (JJJHHMM) and valid time period (+TTTT) header codes specified at § 11.31(c).

(ii) Visual messages derived from CAP-formatted EAS messages shall contain the Originator, Event, Location and the valid time period of the message and shall be constructed in accordance with § 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010).

* * * * *

(m) EAS Participants are required to transmit all received EAS messages in which the header code contains the Event codes for Emergency Action Notification (EAN), Nationwide Test of the Emergency Alert System (NPT), and Required Monthly Test (RMT), and when the accompanying location codes include their State or State/county. These EAS messages shall be retransmitted unchanged except for the LLLLLLLL-code which identifies the EAS Participant retransmitting the message. See § 11.31(c). If an EAS source originates an EAS message with the Event codes in this paragraph, it must include the location codes for the State and counties in its service area (except for national event codes using the ''All U.S.'' location code, which includes all States and counties). When transmitting the required weekly test, EAS Participants shall use the event code RWT. The location codes are the State and county for the broadcast station city of license or system community or city. Other location codes may be included upon approval of station or system management. EAS messages may be transmitted automatically or manually.

* * * * *

(2) Manual interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code, or the NPT Event code in the case of a national test of the EAS, must be transmitted immediately; Monthly EAS test messages must be transmitted within 60 minutes. All actions must be logged and include the minimum information required for EAS video messages.

* * * * *

■ 4. Amend § 11.52 by revising paragraph (d)(2), adding paragraph (d)(5), and revising paragraphs (e) introductory text and (e)(2) to read as follows:

**§ 11.52 EAS code and Attention Signal Monitoring requirements.**

* * * * *

(d) * * *

(2) With respect to monitoring EAS messages formatted in accordance with the specifications set forth in § 11.56(a)(2), EAS Participants' EAS equipment must interface with the Federal Emergency Management Agency's Integrated Public Alert and Warning System (IPAWS) EAS Atom Feed to enable the distribution of Common Alert Protocol (CAP)-formatted

alert messages from the IPAWS system to EAS Participants' EAS equipment.

* * * * *

(5) Immediately upon receipt of a State or Local EAS message that has been formatted in the EAS Protocol, EAS Participants must poll the IPAWS EAS Atom Feed to determine whether a CAP-formatted version of that received EAS Protocol-formatted alert is available, and if a CAP version of the alert is available, acquire and process that CAP version instead of the EAS Protocol-formatted version, as specified in § 11.55(c).

* * * * *

(e) EAS Participants are required to interrupt normal programming either automatically or manually when they receive an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN), Nationwide Test of the Emergency Alert System (NPT), or the Required Monthly Test (RMT) for their State or State/county location.

* * * * *

(2) Manual interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code, or the NPT Event code in the case of a national test of the EAS, must be transmitted immediately; Monthly EAS test messages must be transmitted within 60 minutes. All actions must be logged and recorded as specified in §§ 11.35(a) and 11.54(a)(3). Decoders must be programmed for the EAN, NPT, RMT and RWT Event header codes with the appropriate accompanying location codes.

■ 5. Amend § 11.55 by revising paragraph (c) introductory text to read as follows:

**§ 11.55 EAS operation during a State or Local Area emergency.**

* * * * *

(c) Immediately upon receipt of a State or Local Area EAS message that has been formatted in the EAS Protocol, EAS Participants must poll the Federal Emergency Management Agency's Integrated Public Alert and Warning System (IPAWS) EAS Atom Feed to determine whether a Common Alerting Protocol (CAP)-formatted version of that received EAS Protocol-formatted alert is available, and if a CAP version of the alert is available, acquire and process that CAP version instead of the EAS Protocol-formatted version. Following this step, whether processing the alert formatted in the EAS Protocol or CAP, EAS Participants participating in the State or Local Area EAS must do the following:

* * * * *

■ 6. Amend § 11.61 by revising paragraph (a)(3)(i) to read as follows:

**§ 11.61 Tests of EAS procedures.**

* * * * *

(a) * * *

(3) * * *

(i)(A) All EAS Participants shall participate in national tests as scheduled by the Commission in consultation with the Federal Emergency Management Agency (FEMA). Such tests will use the NPT event code and may be initiated in the EAS Protocol format and/or the Common Alerting Protocol (CAP) format. If an EAS Participant receives a national test alert (an EAS message using the NPT Event code) in the EAS Protocol format (as opposed to the CAP format), with the ''All U.S.'' location code specified at § 11.31(f), and is required to transmit a visual message, such visual message shall state the following: ''This is a nationwide test of the Emergency Alert System issued by the Federal Emergency Management Agency covering the United States from [time] until [time]. This is only a test. No action is required by the public.''

**Note 1 to paragraph (a)(3)(i)(A):** The ''from [time] until [time]'' portion of the message shall be determined from the alert's release date/time (JJJHHMM) and valid time period (+TTTT) header codes specified at § 11.31(c).

(B) Visual messages derived from CAP-formatted national test alerts shall contain the Originator, Event, Location and the valid time period of the message and shall be constructed in accordance with § 3.6 of the ''ECIG Recommendations for a CAP EAS Implementation Guide, Version 1.0'' (May 17, 2010).

* * * * *

[FR Doc. 2022–00146 Filed 2–8–22; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register
Vol. 87, No. 27
Wednesday, February 9, 2022

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

## 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 Wednesday, February 23, 2022, at 12:00 p.m. (ET) for the Committee to discuss and potentially decide on a topic for their next project.

**DATES:** February 23, 2022, Wednesday at 12:00 p.m. (ET):

- *To join by web conference: https://tinyurl.com/2w8e5sht.*
- To join by phone only, dial 1–800–360–9505; Access code: 2760 320 6327#.

**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**

*Wednesday, February 23, 2022, at 12:00 p.m. (ET)*

I. Roll Call
II. Discussion and Possible Vote: Project Topics
III. Open Comment
IV. Adjourn

Dated: February 4, 2022.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2022–02709 Filed 2–8–22; 8:45 am]

BILLING CODE P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Florida Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of virtual business 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 Florida Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Webex at 4:00 p.m. ET on Monday, February 28, 2022. The purpose of the meeting is for the Committee to discuss potential panelists for their project on Voting Rights.

**DATES:** The meeting will take place on Monday, February 28, 2022, at 4:00 p.m. ET.

**ADDRESSES:**

*Link to Join (Audio/Visual): https://tinyurl.com/yeh5fbc3*

*Telephone (Audio Only):* Dial 800–360–9505 USA Toll Free; Access code: 2761 969 6204.

**FOR FURTHER INFORMATION CONTACT:** Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or (202) 809–9618.

**SUPPLEMENTARY INFORMATION:** Committee meetings are available to the public through the conference 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 (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 *mtrachtenberg@usccr.gov* at least seven (7) business 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 Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, 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, Florida 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 phone number.

**Agenda**

I. Welcome & Roll Call
II. Discussion: Potential Panelists
III. Public Comment
IV. Next Steps

V. Adjournment

Dated: Friday, February 4, 2022.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2022–02711 Filed 2–8–22; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–968]**

### Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2019

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

**SUMMARY:** The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of aluminum extrusions from the People's Republic of China (China) during the period of review (POR), January 1, 2019, through December 31, 2019. In addition, we are rescinding the review for numerous companies for which the request for review was withdrawn.

**DATES:** Applicable February 9, 2022.

**FOR FURTHER INFORMATION CONTACT:** Davina Friedmann, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0698.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 6, 2021, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register**.[1] We invited parties to comment on the *Preliminary Results.* On September 7, 2021, case briefs were filed by the following interested parties: Global Aluminum Distributor; Kingtom Aluminio S.R.L. (Kingtom); and JL Trading Co., Puertas Y Ventanas JM Inc., and Industrias Feliciano Al Inc.[2] On September 17, 2021, the Aluminum Fair Trade Committee (the petitioner) submitted a rebuttal brief.[3] On December 2, 2021, Commerce extended the final results of review by 48 days, until January 21, 2021.[4] On January 20, 2022, Commerce extended the final results by an additional 12 days, until February 2, 2022.[5] For a full description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[6] On January 27, 2022, Commerce placed a memorandum on the record regarding Commerce's AFA determination with respect to Kingtom for the preliminary results of review (Kingtom AFA Memorandum) and invited interested parties to submit comments.[7] On January 31, 2022, and on February 1, 2022, the petitioner and Kingtom, respectively, submitted comments on the Kingtom AFA Memorandum.[8]

#### Scope of the Order[9]

The merchandise covered by the *Order* is aluminum extrusions from China. For the complete description of the scope of the *Order, see* Issues and Decision Memorandum.

#### Analysis of Comments Received

All issues raised in interested parties' briefs and comments are addressed in the Issues and Decision Memorandum. A list of the issues raised by interested parties, and to which Commerce responded in the Issues and Decision Memorandum, is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.*

#### Changes Since the Preliminary Results

Based on our review and analysis of the comments received from parties, Commerce made changes to certain program-specific rates applied to Kingtom on the basis of adverse facts available (AFA). *See* AFA Calculation Memorandum.[10]

#### Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and the subsidy is specific.[11] For a full description of the methodology underlying all of Commerce's conclusions, including any determination that relied upon the use of AFA pursuant to section 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

#### Rescission of Administrative Review, in Part

In the *Preliminary Results,* we stated our intent to rescind the review with respect to companies named in the *Initiation Notice* for which all review requests were timely withdrawn in accordance with 19 CFR 351.213(d)(1). These companies are listed in Appendix II of this notice. For these companies, Commerce is rescinding the administrative review and will assess duties at rates equal to the rates of the cash deposits for estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the

[1] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Intent to Rescind, in Part; 2019,* 86 FR 43173 (August 6, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Global Aluminum Distributor, LLC's Letter, ''Aluminum Extrusions from the People's Republic of China; C–570–968; Case Brief,'' dated September 4, 2021; *see also* Kingtom Aluminio S.R.L.'s Letter, ''Case Brief of Kingtom Aluminio S.R.L.,'' dated September 7, 2021; and JL Trading Corp.'s, Puertas Y Ventanas JM Inc.'s, and Industrias Feliciano Al Inc.'s Letter, ''Aluminum Extrusions from the People's Republic of China: Case Brief,'' dated September 7, 2021.

[3] *See* Petitioner's Letter, ''Aluminum Extrusions from the People's Republic of China: Rebuttal Brief,'' dated September 16, 2021.

[4] *See* Memorandum, ''Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2019,'' dated December 2, 2021.

[5] *See* Memorandum, ''Aluminum Extrusions from the People's Republic of China: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2019,'' dated January 19, 2022.

[6] *See* Memorandum, ''Decision Memorandum for Final Results of 2019 Administrative Review of Aluminum Extrusions from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *See* Memorandum, ''Placement of 'Kingtom AFA Memorandum' on the Record,'' dated January 27, 2022.

[8] *See* Petitioner's Letter, ''Aluminum Extrusions from the People's Republic of China: Comments on Kingtom AFA Memorandu,'' dated January 31, 2022; *see also* Kingtom's Letter, ''Aluminum Extrusions from the People's Republic of China, Case No. C–570–968: Kingtom Response to Placement of AFA Memorandum on the Record,'' dated February 1, 2022.

[9] *See Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (*Order*).

[10] *See* Memorandum, ''Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: AFA Calculation Memorandum for the Final Results of Review; 2019,'' dated February 2, 2022 (AFA Calculation Memorandum).

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

POR, in accordance with 19 CFR 351.212(c)(1).[12]

## Rate for Non-Selected Companies Under Review

For the companies not selected for individual examination, because we have not calculated rates for any company selected for individual examination, we have no such rates to use as a basis to determine the rate for companies not selected for individual examination in this review. Thus, we applied the above-*de minimis,* non-AFA countervailable subsidy rate from the most recently completed administrative review of the *Order,* in which we calculated a subsidy rate for an individual mandatory respondent, *i.e.,* the 2014 administrative review of this *Order.*[13] For further discussion, *see* the Issues and Decision Memorandum.

## Final Results of Administrative Review

We determine the following final countervailable subsidy rates for the period January 1, 2019, through December 31, 2019:[14]

| Company | *Ad Valorem* rate (percent) |
|---|---|
| CRRC Changzhou Auto Parts Co. Ltd | [15] 16.08 |
| Jiangsu Asia-Pacific Light Alloy Technology Co Ltd | 242.56 |
| Kanal Precision Aluminum Product Co. Ltd | 16.08 |
| Kingtom Aluminio SRL | 242.56 |
| Uniton Investment Ltd | 16.08 |
| Wellste Material Co Ltd | 242.56 |

## Disclosure

In this case, the only calculation to disclose is the calculation of the AFA rate assigned to certain respondents. Therefore, Commerce will disclose to the parties in this proceeding the calculation performed for these final results within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

## Assessment Rates

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates, Commerce intends to issue assessment instructions, including assessment instructions for those companies for which we rescinded the review, to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

## Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties at the rates shown for each of the companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, Commerce will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

## Administrative Protective Order

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

## Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 2, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Rescission of the Administrative Review, In Part
V. Rate for Companies Not Selected for Individual Examination
VI. Use of Facts Available and Application of Adverse Inferences
VII. Subsidy Programs Subject to Countervailable Duties
VIII. Changes Since the Preliminary Results
IX. Analysis of Comment
X. Recommendation

## Appendix II—List of Companies for Which We Are Rescinding This Administrative Review

1. Allpower Display Co., Ltd
2. Amidi Zhuhai
3. Anderson International
4. Asia-Pacific Light Alloy (Nantong) Technology Co., Ltd.
5. Beauty Sky Technology Co. Ltd
6. Changshu Changsheng Aluminum Products Co., Ltd.
7. Chenming Industry and Commerce Shouguang Co., Ltd.
8. China International Freight Co. Ltd
9. China State Decoration Group Co., Ltd.
10. Custom Accessories Asia Ltd.
11. Everfoison Industry Ltd.
12. Foshan City Fangyuan Ceramic
13. Foshan City Nanhai Yongfeng Aluminum
14. Foshan City Top Deal Import and Export Co., Ltd.
15. Foshan Gold Bridge Import and Export Co. Ltd.
16. Foshan Golden Promise Import and Export Co., Ltd.
17. Foshan Guangshou Import and Export Co., Ltd.
18. Foshan Xingtao Aluminum Profile Co., Ltd.
19. Fujian Minfa Aluminum Inc.
20. Fujian Minfa Aluminum Co., Ltd.
21. Fuzhou Ruifuchang Trading Co., Ltd.
22. Fuzhou Sunmodo New Energy Equipment Co., Ltd.
23. Gebruder Weiss
24. Gold Bridge International
25. Grupo Emb
26. Grupo Europeo La Optica
27. Grupo Pe No Mato In
28. Guangdong Gaoming Guangtai Shicai
29. Guangdong Gaoxin Communication Equipment Industrial Co., Ltd.
30. Guangdong Golden China Economy
31. Guangdong Maoming Foreign Trade Enterprise Development Co.
32. Guangdong Taiming Metal Products Co., LTD.
33. Guangdong Victor Aluminum Co., Ltd.

[12] *See Preliminary Results.* In the Preliminary Results, Commerce inadvertently provided an incorrect list of companies on which it intended to rescind the administrative review at Appendix II. Commerce has included the correct list of companies for which it will rescind this administrative review, in accordance with the withdrawal of requests review submitted by the petitioner on October 8, 2020. *See* Petitioner's Letter, ''Aluminum Extrusions from the People's Republic of China: Partial Withdrawal of Request for Administrative Review,'' dated October 8, 2020.

[13] *See Aluminum Extrusions from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014,* 81 FR 92778 (December 20, 2016).

[14] *See Preliminary Results; see also* AFA Calculation Memorandum.

[15] As stated in the *Preliminary Results* under the section titled, ''Preliminary Rate for Non-Selected Companies Under Review,'' this subsidy rate reflects the subsidy rate calculated for a mandatory respondent in the 2014 administrative review of this countervailing duty order.

34. Guangzhou Jintao Trade Company
35. Hangzhou Evernew Machinery & Equipment Co., Ltd.
36. Hangzhou Tonny Electric and Tools Co., Ltd.
37. Hefei Sylux Imp. & Exp. Co., Ltd.
38. Hong Kong Dayo Company, Ltd.
39. Huazhijie Plastic Products
40. Huiqiao International Shanghai
41. Ilshim Almax
42. Jer Education Technology
43. Jiangsu Weatherford Hongda Petroleum Equipment Co., Ltd.
44. Jiangsu Yizheng Haitian Aluminum Industrial
45. Jiang Yin Ming Ding Aluminum & Plastic Products Co. Ltd
46. Jilin Qixing Aluminum Industries Co., Ltd.
47. Jin Lingfeng Plastic Electrical Appliance
48. Larkcop International Co Ltd
49. Ledluz Co Ltd
50. Liansu Group Co. Ltd
51. Links Relocations Beijing
52. Marshell International
53. Modular Assembly Technology
54. Ningbo Deye Inverter Technology
55. Ningbo Hightech Development
56. Ningbo Winjoy International Trading
57. Orient Express Container
58. Ou Chuang Plastic Building Material (Zhejiang) Co., Ltd.
59. Pentagon Freight Service
60. Pro Fixture Hong Kong
61. Qingdao Sea Nova Building
62. Qingdao Yahe Imports and Exports
63. Rollease Acmeda Pty
64. Sewon
65. Shandong Huajian Aluminum Industry
66. Shanghai EverSkill M&E Co., Ltd.
67. Shanghai Jingxin Logistics
68. Shanghai Ouma Crafts Co, Ltd.
69. Shanghai Phidix Trading
70. Sinogar Aluminum
71. Sunvast Trade Shanghai
72. Suzhou Mingde Aluminum
73. Tai-Ao Aluminum (Taishan) Co., Ltd.
74. Taizhou Puan Lighting Technology
75. Transwell Logistics Co., Ltd.
76. United Aluminum
77. Wanhui Industrial China
78. Wenzhou Yongtai Electric Co., Ltd.
79. Winstar Power Technology Limited
80. Wisechain Trading Ltd.
81. Wuxi Lotus Essence
82. Wuxi Rapid Scaffolding Engineering
83. Wuxi Zontai Int'l Corporation Ltd.
84. Xuancheng Huilv Aluminum Industry Co., Ltd.
85. Yekalon Industry Inc
86. Yonn Yuu Enterprise Co., Ltd.
87. Yuyao Royal Industrial
88. Zhejiang Guoyao Aluminum Co., Ltd.
89. Zhejiang Shiner Import and Export
90. Zhongshan Broad Windows and Doors and Curtain
91. ZL Trade Shanghai

[FR Doc. 2022–02650 Filed 2–8–22; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Notice of Scope Rulings

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

**DATES:** Applicable February 9, 2022.

**SUMMARY:** The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anti-circumvention determinations made during the period October 1, 2021–December 31, 2021. We intend to publish future lists after the close of the next calendar quarter.

**FOR FURTHER INFORMATION CONTACT:** Marcia E. Short, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–1560.

**SUPPLEMENTARY INFORMATION:**

#### Background

Commerce regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on December 8, 2021.[2] This current notice covers all scope rulings and anti-circumvention determinations made by Enforcement and Compliance between October 1, 2021–December 31, 2021.

*Scope Rulings Made October 1, 2021, Through December 31, 2021*

Korea

A–580–809: Certain Circular Welded Non-Alloy Steel Pipe From Korea

*Requestor:* Mando America Corporation. Twenty-one base shells are not covered by the scope of the antidumping duty order on certain circular welded non-alloy steel pipe from Korea because they are mechanical tubing or are cold drawn; November 19, 2021.

Mexico

A–201–805: Certain Circular Welded Non-Alloy Steel Pipe From Mexico

*Requestor:* Mando America Corporation. Twenty-one base shells are not covered by the scope of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico because they are mechanical tubing or are cold drawn; November 19, 2021.

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 86 FR 69619 (December 8, 2021).

People's Republic of China (China)

A–570–909: Certain Steel Nails From China

*Requestor:* Roy G. Evans Co., Inc., dba EVCO. The stock keeping unit (SKU) number NP100S steel mobile home skirting spikes and the steel mobile home skirting spikes found within the SKU KNP100S mobile home skirting kit are covered by the scope of the antidumping duty order on certain steel nails from China because the physical characteristics of the products in question fell under the description listed in the scope language; November 5, 2021.

A–570–890: Wooden Bedroom Furniture From China

*Requester:* Jimco Lamp & Manufacturing Co. Six chests are not covered by the scope of the antidumping duty order on wooden bedroom furniture from China because they are accent furniture rather than wooden bedroom furniture; December 3, 2021.

A–570–117 and C–570–118: Wood Mouldings and Millwork Products From China

*Requestor:* Boise Cascade Company. Solid sawn wood planking imported by Boise Cascade is not covered by the scopes of the antidumping and countervailing duty orders on wood mouldings and millwork products from because the product is an exterior siding product which is not laminated veneer lumber (LVL) or finger-jointed; December 14, 2021.

A–570–117 and C–570–118: Wood Mouldings and Millwork Products From China

*Requestor:* Global Product Sourcing LLC. Exterior siding products/solid sawn wood planks are not covered by the scopes of the antidumping and countervailing duty orders on wood mouldings and millwork products from China because the products are not LVL and are not finger-jointed; December 15, 2021.

A–570–124 and C–570–125: Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof (Small Vertical Engines), From China

*Requestor:* FNA Group, Inc (FNA). FNA's dual-piston engines are not covered by the scope of the antidumping and countervailing duty orders on small vertical engines from China because the plain language of the scope only covers ''single-cylinder'' engines; December 27, 2021.

A–570–073 and C–570–074: Common Alloy Aluminum Sheet From China

*Requestor:* Valeo Group and its affiliates. The T-series aluminum sheet imported by Valeo Group and its affiliates is covered by the scope of the antidumping and countervailing duty orders on common alloy aluminum sheet from China because it is a flat aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, is a multi-alloy, clad aluminum sheet produced from a 3XXX-series core. Commerce found that an unregistered alloy (*i.e.,* a proprietary alloy) is still covered by the scope of the orders if it corresponds to one of the one-digit alloy series identified in the scope language, *i.e.,* series 1XXX, 3XXX, or 5XXX; October 15, 2021.

*Anti-Circumvention Made October 1, 2021, Through December 31, 2021*

Brazil

A–351–842: Certain Uncoated Paper From Brazil

*Requestors:* Domtar Corporation; Packaging Corporation of America; North Pacific Paper Company; Finch Paper LLC; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. Certain uncoated paper rolls that are commonly, but not exclusively, known as ''sheeter rolls'' from Brazil that are further processed in the United States into individual sheets of uncoated paper are subject to the order (*i.e.,* paper that weighs at least 40 grams per square meter but not more than 150 grams per square meter; and that either is a white paper with a GE brightness level of 83 +/−1% or higher or is a colored paper (as defined in the scope of the order)). The uncoated paper rolls covered by the order are converted into sheets of uncoated paper using specialized cutting machinery prior to printing, and are typically, but not exclusively, between 52 and 103 inches wide and 50 inches in diameter. These uncoated paper rolls are classified under HTSUS category 4802.55; December 14, 2021.

China

A–570–943 and C–570–944: Oil Country Tubular Goods From China

*Requestor:* Self-initiated. Imports of welded oil country tubular goods completed in Brunei or the Philippines using inputs manufactured in China are circumventing the antidumping and countervailing duty orders on welded oil country tubular goods from China; November 26, 2021.

A–570–022 and C–570–023: Certain Uncoated Paper From China

*Requestors:* Domtar Corporation; Packaging Corporation of America; North Pacific Paper Company; Finch Paper LLC; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. Certain uncoated paper rolls that are commonly, but not exclusively, known as ''sheeter rolls'' from China that are further processed in the United States into individual sheets of uncoated paper are subject to the order (*i.e.,* paper that weighs at least 40 grams per square meter but not more than 150 grams per square meter; and that either is a white paper with a GE brightness level of 83 +/−1% or higher or is a colored paper (as defined in the scope of the order)). The uncoated paper rolls covered by the order are converted into sheets of uncoated paper using specialized cutting machinery prior to printing, and are typically, but not exclusively, between 52 and 103 inches wide and 50 inches in diameter. These uncoated paper rolls are classified under HTSUS category 4802.55; December 14, 2021.

Indonesia

A–560–828 and C–560–829: Certain Uncoated Paper From Indonesia

*Requestors:* Domtar Corporation; Packaging Corporation of America; North Pacific Paper Company; Finch Paper LLC; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. Certain uncoated paper rolls that are commonly, but not exclusively, known as ''sheeter rolls'' from Indonesia that are further processed in the United States into individual sheets of uncoated paper are subject to the order (*i.e.,* paper that weighs at least 40 grams per square meter but not more than 150 grams per square meter; and that either is a white paper with a GE brightness level of 83 +/−1% or higher or is a colored paper (as defined in the scope of the order)). The uncoated paper rolls covered by the order are converted into sheets of uncoated paper using specialized cutting machinery prior to printing, and are typically, but not exclusively, between 52 and 103 inches wide and 50 inches in diameter. These uncoated paper rolls are classified under HTSUS category 4802.55; December 14, 2021.

**Notification to Interested Parties**

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and anti-circumvention determinations made during the period October 1, 2021 through December 31, 2021. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice is published in accordance with 19 CFR 351.225(o).

Dated: February 3, 2022.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2022–02651 Filed 2–8–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–602–807; A–351–842; A–570–022; A–560–828; A–471–807; C–570–023; C–560–829]**

### Certain Uncoated Paper From Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Continuation of Antidumping Duty and Countervailing Duty Orders

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

**SUMMARY:** As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on certain uncoated paper (uncoated paper) from Australia, Brazil, the People's Republic of China (China), Indonesia, and Portugal, and the countervailing duty (CVD) orders on uncoated paper from China and Indonesia, would likely lead to a continuation or recurrence of dumping, net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

**DATES:** Applicable February 9, 2022.

**FOR FURTHER INFORMATION CONTACT:** Patrick Barton, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0012.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 3, 2016, Commerce published AD orders on uncoated paper from Australia, Brazil, China, Indonesia, and Portugal, and CVD orders on uncoated paper from China and

Indonesia.[1] On February 1, 2021, Commerce initiated the first five-year (sunset) reviews of the *Orders* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its reviews, Commerce determined that revocation of the *AD Orders* would likely lead to a continuation or recurrence of dumping and that revocation of the *CVD Orders* would likely lead to the continuation or recurrence of countervailable subsidies. Therefore, Commerce notified the ITC of the magnitude of the margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked.[3] On February 3, 2022, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

**Scope of the Orders**

The scope of the *Orders* includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level 3 of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes: (a) Uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are: (1) Paper printed with final content of printed text or graphics; and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered ''printed with final content'' where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

On December 14, 2021, Commerce determined that imports of certain uncoated paper rolls that are commonly, but not exclusively, known as ''sheeter rolls'' from Brazil, China, and Indonesia that are further processed in the United States into individual sheets of uncoated paper that would be subject to the *Orders* (*i.e.,* paper that weighs at least 40 grams per square meter but not more than 150 grams per square meter; and that either is a white paper with a GE brightness level of 83 +/−1% or higher or is a colored paper (as defined above)). The uncoated paper rolls covered by the scope of these *Orders* are converted into sheets of uncoated paper using specialized cutting machinery prior to printing, and are typically, but not exclusively, between 52 and 103 inches wide and 50 inches in diameter. For clarity, we herein refer to ''subject-paper rolls'' when referencing the certain uncoated paper rolls that may be converted into subject merchandise. Subject-paper rolls are classified under HTSUS category 4802.55.

Certain importers of the subject-paper rolls that are not converted into subject merchandise may certify that the rolls will not be further processed into subject merchandise covered by the scope of these *Orders.* Failure to comply with the requisite certification requirement may result in the merchandise being found subject to AD and CVD duties.[5]

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.55.1000, 4802.55.2000, 4802.55.3000, 4802.55.4000, 4802.55.6000, 4802.55.7020, 4802.55.7040, 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

**Continuation of the Orders**

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the AD orders on uncoated paper from Australia, Brazil, China, Indonesia, and Portugal, and the continuation of the CVD orders on uncoated paper from China and Indonesia. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

**Administrative Protective Order**

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

**Notification to Interested Parties**

These five-year (sunset) reviews and this notice are in accordance with

[1] *See Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders,* 81 FR 11174 (March 3, 2016) (*AD Orders*); *see also Certain Uncoated Paper from Indonesia and the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (Indonesia) and Countervailing Duty Order (People's Republic of China),* 81 FR 11187 (March 3, 2016) (*CVD Orders*) (collectively, *Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 7709 (February 1, 2021).

[3] *See Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders,* 86 FR 29248 (June 1, 2021), and accompanying Issues and Decision Memorandum (IDM); *Certain Uncoated Paper from Indonesia: Final Results of the Expedited Five-Year Sunset Review of the Countervailing Duty Order;* 86 FR 29243 (June 1, 2021), and accompanying IDM; and *Certain Uncoated Paper from the People's Republic of China: Final Results of the Expedited Five-Year Sunset Review of the Countervailing Duty Order;* 86 FR 30260 (June 7, 2021), and accompanying IDM.

[4] *See Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal,* 87 FR 6203 (February 3, 2022); *see also Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal* (Inv. Nos. 701–TA–528–529 and 731–TA–1264–1268 (Review), USITC Publication 5275, January 2022).

[5] *See Certain Uncoated Paper from Brazil, the People's Republic of China, and Indonesia: Affirmative Final Determinations of Circumvention of the Antidumping Duty Orders and Countervailing Duty Orders for Certain Uncoated Paper Rolls,* 86 FR 71025 (December 14, 2021).

section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: February 3, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–02686 Filed 2–8–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–896]**

### Magnesium Metal From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

**SUMMARY:** The Department of Commerce (Commerce) continues to find that Tianjin Magnesium International, Co., Ltd. (TMI) and Tianjin Magnesium Metal, Co., Ltd. (TMM) had no shipments of subject merchandise covered by the antidumping duty order on magnesium metal from the People's Republic of China (China) for the period of review (POR) April 1, 2020, through March 31, 2021.

**DATES:** Applicable February 9, 2022.

**FOR FURTHER INFORMATION CONTACT:** Deborah Cohen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4521.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 13, 2021, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register**.[1] No interested party submitted comments concerning the *Preliminary Results* or requested a hearing in this administrative review. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### Scope of the Order[2]

The product covered by the *Order* is magnesium metal from China, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the *Order* includes blends of primary and secondary magnesium. The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy''[3] and are thus outside the scope of the existing antidumping orders on magnesium from China (generally referred to as ''alloy'' magnesium).

The scope of the *Order* excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy;''[4] (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[5] The merchandise subject to this *Order* is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

### Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined TMI and TMM had no shipments of subject merchandise to the United States during the POR.[6] As noted in the *Preliminary Results,* we received no-shipment statements from TMI and TMM,[7] and the statements were consistent with the information we received from U.S. Customs and Border Protection (CBP).[8] Because Commerce did not receive any comments on its preliminary finding, Commerce continues to find that TMI and TMM did not have any shipments of subject merchandise during the POR.

### Assessment Rates

Based on record evidence, we have determined that TMI and TMM had no shipments of subject merchandise during the POR, and, therefore, pursuant to Commerce's assessment practice, any suspended entries entered under their case numbers will be liquidated at the China-wide entity rate.[9]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of

[1] *See Magnesium Metal from the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2020–2021,* 86 FR 56892 (October 13, 2021) (*Preliminary Results*).

[2] *See Notice of Antidumping Duty Order: Magnesium Metal from the People's Republic of China,* 70 FR 19928 (April 15, 2005) (*Order*).

[3] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[4] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[5] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 49345 (September 27, 2001); *see also Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel,* 66 FR 49349 (September 27, 2001); and *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

[6] *See Preliminary Results,* 86 FR at 56892.

[7] *Id.,* 86 FR at 56893.

[8] *See* Memorandum, ''Antidumping Duty Administrative Review of Magnesium Metal from the People's Republic of China, 04/01/2020–03/31/2021: Entry Data and No Shipment Inquiry,'' dated July 14, 2021. On June 23, 2021, Commerce issued a no shipment inquiry to U.S. Customs and Border Protection (CBP) with respect to TMI and TMM. On July 6, 2021, CBP responded that it had no evidence of shipments of magnesium metal from China exported by TMI and TMM during the POR.

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, including TMI, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, including TMM, the cash deposit rate will be the China-wide rate of 141.49 percent; [10] and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

**Notification Regarding Administrative Protection Order**

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

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 751(a) and 777(i) of the Act, and 19 CFR 351.213(h).

Dated: February 3, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–02685 Filed 2–8–22; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See Order.*

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Application for Appointment in the NOAA Commissioned Officer Corps

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), 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 April 11, 2022.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0047 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 LCDR Pawlishen, Chief, NOAA Corps Recruiting Branch, (800) 299–6622, or *chief.noaacorps.recruiting@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This is a request for extension of an existing information collection.

The NOAA Commissioned Officer Corps is the uniformed service of the National Oceanic and Atmospheric Administration (NOAA), a bureau of the United States Department of Commerce. Officers serve under Senate-confirmed appointments and Presidential commissions (33 U.S.C. chapter 17, subchapter 1, sections 853 and 854). The NOAA Corps provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines who serve their country by supporting NOAA's mission of surveying the Earth's oceans, coasts, and atmosphere to ensure the economic and physical well-being of the Nation.

NOAA Corps officers operate vessels and aircraft engaged in scientific missions and serve in leadership positions throughout NOAA. Persons wishing to apply for an appointment in the NOAA Commissioned Officer Corps must complete an application package, including NOAA Form 56–42, at least three letters of recommendation, and official transcripts. A personal interview must also be conducted. Eligibility requirements include a bachelor's degree with at least 48 credit hours of science, engineering, or other disciplines related to NOAA's mission, excellent health, and normal color vision with uncorrected visual acuity no worse than 20/400 in each eye (correctable to 20/20).

**II. Method of Collection**

Applicants must utilize the E-recruit electronic application process and then submit paper forms via mail. An in-person interview is also required.

**III. Data**

*OMB Control Number:* 0648–0047.

*Form Number(s):* NOAA 56–42 and NOAA 56–42A.

*Type of Review:* Regular submission [extension of an existing information collection].

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 300.

*Estimated Time per Response:* Written applications, 2 hours; interviews, 5 hours; references, 15 minutes.

*Estimated Total Annual Burden Hours:* 2,475.

*Estimated Total Annual Cost to Public:* $21,750.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*Legal Authority:* 33 U.S.C. chapter 17, subchapter 1, sections 853 and 854.

**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. 2022–02674 Filed 2–8–22; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Madrid Protocol

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

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0051 (Madrid Protocol). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

**DATES:** To ensure consideration, comments regarding this information collection must be received on or before April 11, 2022.

**ADDRESSES:** Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0051 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Catherine Cain, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8946; or by email at *Catherine.Cain@uspto.gov* with ''0651–0051 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This collection of information is required by the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.,* which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) is an international treaty that allows a trademark owner to seek registration in any of the participating countries by filing a single international application. The International Bureau (IB) of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland, administers the international registration system. The Madrid Protocol Implementation Act of 2002 amended the Trademark Act to provide that: (1) The owner of a U.S. application or registration may seek protection of its mark in any of the participating countries by submitting a single international application through the USPTO and (2) the holder of an international registration may request an extension of protection of the international registration to the United States. The Madrid Protocol came into effect in the United States on November 2, 2003, and is implemented under 15 U.S.C. 1141 *et seq.* and 37 CFR part 2 and Part 7. Individuals and businesses that use or intend to use such marks in commerce may file an application to register the marks with the USPTO. Both the register and the information provided in pending applications for registration can be accessed by the public in order to determine the availability of a mark and lessen the likelihood of initiating the use of a mark previously adopted by another.

**II. Method of Collection**

Items in this information collection must be submitted via online electronic submissions through the Trademark Electronic Application System (TEAS). In limited circumstances, applicants may also be permitted to submit the information in paper form by mail or hand delivery.

**III. Data**

*OMB Control Number:* 0651–0051.
*Forms:*

- PTO/1663 (Declaration of Continued Use/Excusable Nonuse of Mark in Commerce Under Section 71)
- PTO/1683 (Combined Declaration of Continued Use/Excusable Nonuse and Incontestability Under Sections 71 and 15)
- PTO/2131 (Application for International Registration)
- PTO/2132 (Application for Subsequent Designation)
- PTO/2133 (Response to Notice of Irregularity)
- PTO/2314 (Replacement Request)
- PTO/2315 (Transformation Request)
- PTO/2316 (Petition to Director to Review Denial of Certification of International Application)
- PTO/2317 (Petition to Director for an International Application/Registration)

*Type of Review:* Extension and revision of a currently approved information collection.

*Affected Public:* Private sector; individuals and households.

*Respondent's Obligation:* Required to obtain or retain benefits.

*Estimated Number of Annual Respondents:* 54,082 respondents.

*Estimated Number of Annual Responses:* 54,082 responses.

*Estimated Time per Response:* The USPTO estimates that the responses in

this information collection will take the public approximately between 40 minutes (0.66 hours) to 75 minutes (1.25 hours) to complete. This includes the time to gather the necessary information, prepare the forms or documents, and submit the completed request to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 48,671 hours.

*Estimated Total Annual Respondent Hourly Cost Burden:* $21,171,885.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

| Item No. | Item | Estimated annual respondents (a) | Responses per respondent (b) | Estimated annual responses (a) × (b) = (c) | Estimated time for response (hours) (d) | Estimated burden (hour/year) (c) × (d) = (e) | Rate [1] ($/hour) (f) | Estimated annual respondent cost burden (e) × (f) = (g) |
|---|---|---|---|---|---|---|---|---|
| 1 | Application for International Registration; PTO–2131. | 7,778 | 1 | 7,778 | .66 (40 minutes) | 5,133 | $435 | $2,232,855 |
| 2 | Request for Extension of Protection of International Registration to the United States (WIPO). | 34,960 | 1 | 34,960 | 1 | 34,960 | 435 | 15,207,600 |
| 3 | Response to Notice of Irregularity; PTO–2133. | 812 | 1 | 812 | .66 (40 minutes) | 536 | 435 | 233,160 |
| 4 | Replacement Request; PTO–2314 | 10 | 1 | 10 | .75 (45 minutes) | 8 | 435 | 3,480 |
| 5 | Transformation Request; PTO–2315. | 2 | 1 | 2 | .66 (40 minutes) | 1 | 435 | 435 |
| 6 | Petition to Director to Review Denial of Certification of International Application; PTO–2316. | 3 | 1 | 3 | 1.25 (75 minutes) | 4 | 435 | 1,740 |
| 7 | Application for Subsequent Designation; PTO–2132. | 740 | 1 | 740 | 1.25 (75 minutes) | 925 | 435 | 402,375 |
| 8 | Declaration of Continued Use/Excusable Nonuse of Mark in Commerce Under Section 71; PTO–1663. | 4,703 | 1 | 4,703 | .66 (40 minutes) | 3,104 | 435 | 1,350,240 |
| 9 | Combined Declaration of Continued Use/Excusable Nonuse and Incontestability Under Sections 71 and 15; PTO–1683. | 2,317 | 1 | 2,317 | .66 (40 minutes) | 1,529 | 435 | 665,115 |
| 10 | Petition to Director for an International Application/Registration; PTO–2317. | 50 | 1 | 50 | .66 (40 minutes) | 33 | 435 | 14,355 |
| | Total | 51,375 | | 51,375 | | 46,233 | | 20,111,355 |

[1] 2021 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg F–27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is $435 per hour. (*https://www.aipla.org/home/news-publications/economic-survey*).

TABLE 2—TOTAL BURDEN HOURS AND HOURLY COSTS TO INDIVIDUALS AND HOUSEHOLDS RESPONDENTS

| Item No. | Item | Estimated annual respondents (a) | Responses per respondent (b) | Estimated annual responses (a) × (b) = (c) | Estimated time for response (hours) (d) | Estimated burden (hour/year) (c) × (d) = (e) | Rate [2] ($/hour) (f) | Estimated annual respondent cost burden (e) × (f) = (g) |
|---|---|---|---|---|---|---|---|---|
| 1 | Application for International Registration; PTO–2131. | 409 | 1 | 409 | .66 (40 minutes) | 270 | $435 | $117,450 |
| 2 | Request for Extension of Protection of International Registration to the United States (WIPO). | 1,840 | 1 | 1,840 | 1 | 1,840 | 435 | 800,400 |
| 3 | Response to Notice of Irregularity; PTO–2133. | 43 | 1 | 43 | .66 (40 minutes) | 28 | 435 | 12,180 |
| 4 | Replacement Request; PTO–2314 | 1 | 1 | 1 | .75 (45 minutes) | 1 | 435 | 435 |
| 5 | Transformation Request; PTO–2315. | 1 | 1 | 1 | .66 (40 minutes) | 1 | 435 | 435 |
| 6 | Petition to Director to Review Denial of Certification of International Application; PTO–2316. | 2 | 1 | 2 | 1.25 (75 minutes) | 3 | 435 | 1,305 |
| 7 | Application for Subsequent Designation; PTO–2132. | 39 | 1 | 39 | 1.25 (75 minutes) | 49 | 435 | 21,315 |
| 8 | Declaration of Continued Use/Excusable Nonuse of Mark in Commerce Under Section 71; PTO–1663. | 248 | 1 | 248 | .66 (40 minutes) | 164 | 435 | 71,340 |
| 9 | Combined Declaration of Continued Use/Excusable Nonuse and Incontestability Under Sections 71 and 15; PTO–1683. | 122 | 1 | 122 | .66 (40 minutes) | 81 | 435 | 35,235 |
| 10 | Petition to Director for an International Application/Registration; PTO–2317. | 2 | 1 | 2 | .66 (40 minutes) | 1 | 435 | 435 |
| | Totals | 2,707 | | 2,707 | | 2,438 | | 1,060,530 |

[2] Ibid.

*Estimated Total Annual Respondent Non-hourly Cost Burden:* $21,516,380. This information collection has no capital start-up, maintenance costs, or recordkeeping costs. However, this information collection does have annual costs in the form of filing fees and postage costs.

*Filing Fees:* Filing fees are charged per class of goods or services and can vary depending on the number of classes. The filing fees shown here are based on the minimum fee of one class per document associated with this information collection.

TABLE 3—ESTIMATED TOTAL ANNUAL RESPONDENT FILING FEE COST BURDEN

| Item No. | Item | Estimated annual responses (a) | Filing fee ($) (b) | Total non-hour cost burden (yr) (a) × (b) = (c) |
|---|---|---|---|---|
| 1 | Application for International Registration (for certifying an international application based on a single basic application or registration, per international class) (TEAS). | 6,959 | $100 | $695,900 |
| 1 | Application for International Registration (for certifying an international application based on a single basic application or registration, per international class) (paper). | 1 | 200 | 200 |
| 1 | Application for International Registration (for certifying an international application based on more than one basic application or registration, per international class) (TEAS). | 1,228 | 150 | 184,200 |
| 1 | Application for International Registration (for certifying an international application based on more than one basic application or registration, per international class) (paper). | 1 | 250 | 250 |
| 2 | Request for Extension of Protection of International Registration to the United States (WIPO). | 36,800 | 500 | 18,400,000 |
| 3 | Transmitting a Subsequent Designation under Section 7.21 (TEAS) | 779 | 100 | 77,900 |
| 3 | Transmitting a Subsequent Designation under Section 7.21 (paper) | 1 | 200 | 200 |
| 4 | Notice of Replacement under Section 7.28 (per international class) (TEAS) | 10 | 100 | 1,000 |
| 4 | Notice of Replacement under Section 7.28 (per international class) (paper) | 1 | 200 | 200 |
| 6 | Transformation Request (per international class (TEAS) | 2 | 350 | 700 |
| 6 | Transformation Request (per international class) (paper) | 1 | 750 | 750 |
| 7 | Petition to Director to Review Denial of Certification of International Application (TEAS). | 5 | 250 | 1,250 |
| 7 | Petition to Director to Review Denial of Certification of International Application (paper). | 1 | 350 | 350 |
| 8 | Declaration of Continued Use/Excusable Nonuse of Mark in Commerce Under Section 71 (per international class) (TEAS). | 4,951 | 225 | 1,113,975 |
| 8 | Declaration of Continued Use/Excusable Nonuse of Mark in Commerce Under Section 71 (per international class) (paper). | 1 | 325 | 325 |
| 9 | Combined Declaration of Continued Use/Excusable Nonuse and Incontestability Under Sections 71 and 15 (per international class) (TEAS). | 2,439 | 425 | 1,036,575 |
| 9 | Combined Declaration of Continued Use/Excusable Nonuse and Incontestability Under Sections 71 and 15 (per international class) (paper). | 1 | 625 | 625 |
| 10 | Petition to Director for an International Application/Registration (TEAS) | 2 | 250 | 500 |
| 10 | Petition to Director for an International Application/Registration (paper) | 1 | 350 | 350 |
| 10 | Request to Record an Assignment or Restriction, or Release of a Restriction, under Sections 7.23 and 7.24 (TEAS). | 8 | 100 | 800 |
| 10 | Request to Record an Assignment or Restriction, or Release of a Restriction, under Section 7.23 and 7.24 (paper). | 1 | 200 | 200 |
| | Total | 53,193 | | 21,516,250 |

*Postage Costs:*

Although the USPTO requires that the items in this information collection be submitted electronically, the items may, in limited situations, be submitted by mail through the United States Postal Service (USPS). Approximately 14 submissions per year are estimated to be mailed to the USPTO. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail flat rate legal envelope will be $9.25. Therefore, the USPTO estimates $130 in postage costs associated with this information collection.

## IV. Request for Comments

The USPTO is soliciting public comments to:

(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 Agency's 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; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII)

in a comment, be aware that the entire comment— including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

**Kimberly Hardy,**

*Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.*

[FR Doc. 2022–02641 Filed 2–8–22; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Charter Amendment of Department of Defense Federal Advisory Committees—U.S. Air Force Scientific Advisory Board

**AGENCY:** Department of Defense (DoD).

**ACTION:** Charter amendment and name change of Federal Advisory Committee.

**SUMMARY:** DoD is publishing this notice to announce that it is amending the charter for the U.S. Air Force Scientific Advisory Board and changing its name to the Department of the Air Force Scientific Advisory Board (DAF SAB).

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The U.S. Air Force Scientific Advisory Board will now be known as the DAF SAB, and its charter is being amended in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.50(d). The charter and contact information for the DAF SAB's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The DAF SAB provides the Secretary of Defense and Deputy Secretary of Defense with independent advice and recommendations on matters supporting the Department of the Air Force's (DAF) scientific and technical enterprise and specifically on matters pertaining to (a) conducting studies on topics deemed critical by the Secretary of the Air Force; (b) recommending applications of technology to improve DAF capabilities; and (c) providing independent reviews of the quality and relevance of the DAF science and technology (S&T) programs. The DAF SAB is composed of no more than 20 members who are eminent authorities in the fields of defense and/or S&T. These members come from varied backgrounds such as science, technology, manufacturing, acquisition, logistics, public or private sector business management, Federally Funded Research and Development Centers, National Laboratories, and academia (universities and colleges).

Individual members are appointed according to DoD policy and procedures, and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the DAF SAB. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the DAF SAB, or serve on more than two DoD Federal advisory committees at one time.

DAF SAB members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. DAF SAB members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services are appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All DAF SAB members are appointed to provide advice based on their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official DAF SAB-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements about the DAF SAB's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DAF SAB. All written statements shall be submitted to the DFO for the DAF SAB, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: February 4, 2022.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2022–02735 Filed 2–8–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities Program—Educational Materials in Accessible Formats for Eligible Children and Students With Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for Educational Materials in Accessible Formats for Eligible Children and Students with Disabilities, Assistance Listing Number 84.327D. This notice relates to the approved information collection under OMB control number 1820–0028.

**DATES:**

*Applications Available:* February 9, 2022.

*Deadline for Transmittal of Applications:* April 11, 2022.

*Deadline for Intergovernmental Review:* June 9, 2022.

*Pre-Application Webinar Information:* No later than 5 DAYS AFTER DATE OF PUBLICATION IN THE **Federal Register**, the Office of Special Education and Rehabilitative Services (OSERS) will post details on pre-recorded informational webinars designed to provide technical assistance to interested applicants. Links to the webinars may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Carlene Reid, U.S. Department of

Education, 400 Maryland Avenue SW, Room 5083A, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6139. Email: *carlene.reid@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Full Text of Announcement

## I. Funding Opportunity Description

*Purpose of Program:* The purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities (ETechM2) Program are to improve results for children with disabilities by (1) promoting the development, demonstration, and use of technology; (2) supporting educational activities designed to be of educational value in the classroom; (3) providing support for captioning and video description that is appropriate for use in the classroom; and (4) providing accessible educational materials (AEM) to children with disabilities in a timely manner.[1]

*Priority:* This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674(c)(1)(D) and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1474(c)(1)(D) and 1481(d)).

*Absolute Priority:* For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Educational Technology, Media, and Materials for Individuals with Disabilities—Educational Materials in Accessible Formats for Eligible Children and Students with Disabilities.*

*Background:*

IDEA requires State educational agencies (SEAs) and local educational agencies (LEAs) to provide free educational materials, including textbooks and instructional materials, in accessible formats[2] to eligible early intervention, preschool, elementary, and secondary children and students in a timely manner (IDEA Part B, section 612(a)(23)(B) and section 613(a)(6)(B)).

Further, under section 504 of the Rehabilitation Act of 1973, as amended, recipients of Federal financial assistance that are institutions of higher education (IHEs), SEAs, and LEAs must provide educational materials in accessible formats as a means to accommodate students with disabilities, including those who are blind, have a visual impairment or perceptual or reading disability, or have a physical disability. The accessible formats are needed to provide these students with an equal educational opportunity. 34 CFR 104.4.

Title II of the Americans with Disabilities Act (ADA) of 1990 is also applicable and requires, among other things, that public entities, including LEAs, SEAs, and public IHEs, ensure that students with disabilities have an equal opportunity to participate in a school's services, programs, or activities and ensure that communication with students with disabilities is as effective as communication with students without disabilities, through the provision, in a timely manner, of auxiliary aids and services. 28 CFR 35.130, 35.160.

To help ensure the free distribution of educational materials in accessible formats, Congress has granted exceptions to copyright holders' exclusive rights to replication and distribution through 17 U.S.C. 121 (the Chafee Amendment), which authorizes entities to reproduce or distribute copies of previously published works in accessible formats exclusively for use by eligible persons.[3]

In the 2019–2020 school year, States reported that there were 28,132 enrolled students, ages 3 through 21, receiving services through IDEA whose primary disability eligibility category was deaf-blindness or visual impairment including blindness and 2,381,411 students had a specific learning disability, many of whom would typically qualify as having a reading or perceptual disability that inhibits access to printed educational materials (U.S. Department of Education, 2020). For more than 15 years, previous projects supported by the Department have provided equitable access to materials that enable access to and progress in the general education curriculum for more than 800,000 individuals who have downloaded more than 10,045,000 files. These numbers continue to grow daily (*www.bookshare.org*). In order to provide access to educational content that is otherwise denied to individuals with disabilities when content is inaccessible, the provision of AEM is required. The provision of AEM enables those individuals to access content and experience equal opportunity and benefit from their education.

*Priority:*

The purpose of this priority is to fund a cooperative agreement to establish and operate a Center that will provide free educational materials,[4] including textbooks, in fully accessible media for eligible children and students[5] enrolled in early intervention, preschool, elementary, and secondary schools, and eligible students enrolled in postsecondary schools. This Center will provide high-quality AEM to eligible children and students with disabilities, including individuals from racially and ethnically diverse backgrounds, at no cost, in a timely manner including dedicated outreach and collaboration with stakeholders (including those in high needs communities) to increase awareness and use of AEM. As a condition of this grant, the educational materials and textbooks distributed by the Center must be in accessible formats that are of high quality and meet or exceed industry standards for accessibility (*e.g.,* Web Content Accessibility Guidelines (WCAG) 2.1 Level AA Standard; EPUB 3.2 Accessibility Standards) and digital rights management. Processes, strategies, and models used in the production, dissemination, and in digital rights management must be user-friendly, efficient, and cost effective. The AEM distributed by the Center must exemplify accessibility features required to receive third-party certification for accessibility. The Center will improve access to text, images, charts, graphics,

[1] Applicants should note that other laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, *et seq.;* 28 CFR part 35) and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794; 34 CFR part 104), may require that State educational agencies (SEAs) and local educational agencies (LEAs) provide captioning, video description, and other accessible educational materials to students with disabilities when these materials are necessary to provide equally integrated and equally effective access to the benefits of the educational program or activity, or as part of a ''free appropriate public education'' as defined in 34 CFR 104.33.

[2] For the purposes of this priority, ''accessible format(s)'' has the meaning given in 17 U.S.C. 121(d)(1).

[3] For the purposes of this priority, ''eligible person'' means an individual who meets the eligible person definition in 17 U.S.C. 121(d)(3) regardless of any other disability—(A) is blind; (B) has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or (C) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading. Eligibility must be certified in accordance with 36 CFR 701.6(b)(2).

[4] For the purposes of this priority, we are using the term ''educational materials'' as it is used in section 674(c)(1)(D) of IDEA.

[5] For the purposes of this priority, ''eligible children and students'' are eligible persons as defined in 17 U.S.C. 121.

equations, and other expressions, notations, or numerical content included in educational materials. To facilitate continuous improvement and promote equity in access to free, high-quality products and services, the Center will collect and analyze relevant data on the needs of its' users [6] and barriers encountered by children and students eligible to use, but not currently using AEM.

The Center must achieve, at a minimum, the following expected outcomes:

(a) Improved access to text, images, charts, graphics, equations, and other expressions, notations, or numerical content disseminated in AEM;

(b) An increase in the number of children and students accessing high-quality AEM, including those in underserved communities (*e.g.,* urban, rural, and high-poverty areas);

(c) An increase in the number of early intervention providers, LEAs, and postsecondary schools enrolling eligible children or students and accessing AEM on behalf of eligible children and students;

(d) An increase in the number of eligible children and students enrolling and accessing AEM directly from the Center;

(e) An increase in the number of publishers and producers who create and disseminate student-ready accessible files to the Center and provide eligible children and students direct access to student-ready accessible files;

(f) An increase in the number and quality of science, technology, engineering, and mathematics (STEM) textbooks and educational materials, including STEM images, graphics, descriptions, charts, equations, and other expressions, notations, or numerical content distributed to eligible children and students;

(g) Improved implementation of a model or models for producing and disseminating educational materials in accessible formats for children served under Part C of IDEA and section 619 of IDEA;

(h) Expanded or enhanced models for postsecondary schools to produce and disseminate accessible educational materials and textbooks that align with the key recommendations from the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities (2011); [7] and

(i) Increased provision of educational materials in accessible formats, including any specialized software needed to use the materials, at no cost to SEAs, LEAs, families, schools for use by students who are eligible to receive accessible materials through the National Instructional Materials Access Center (NIMAC).[8]

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Acquire materials from publishers or authorized entities and make those materials accessible and available as high-quality, user-friendly AEM, including digital text, braille-ready files, and audio formats at no cost to eligible children and students;

(2) Ensure equal access and treatment for eligible children and students from groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Apply knowledge of diverse populations, inclusive with regard to race, ethnicity, culture, language, and disability status, to determine preferences and respond to unmet needs of eligible children and students in selecting the materials and services made available by the Center;

(ii) Use criteria to develop and implement processes for selecting, producing, and adding high-quality products and services to meet the needs of eligible children and students; and

(iii) Increase engagement in high-need communities to ensure educators in these communities are accessing professional development and learning to support the effective use of AEM in their instructional practice.

(3) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) A plan to implement the services and provide the products described in paragraph one of this section including the provision of no cost, compatible software for use with a variety of electronic devices and operating systems (*e.g.,* e-readers, computers, smart phones, and tablets);

(iii) A plan that focuses on improving the quality, timeliness, ease of use, and access to AEM for eligible children and students, including anticipating and responding to future needs and technologies across the five years of the project;

(iv) A plan to ensure that eligible children and students will continue to be able to access at no cost the educational materials, including textbooks, in accessible formats, when the Center is no longer federally funded;

(v) A plan to ensure that resources developed by the Center are, to the maximum extent allowable under the law, openly licensed [9] through an open licensing authority;

(vi) A detailed digital rights management plan that will be implemented during the project and will protect the interests of rights holders while maintaining ease of access to AEM for eligible children and students;

(vii) A plan to consult with publishers, software developers, other manufacturers of AEM for eligible children and students, and the NIMAC, to ensure that the project uses the most efficient, cost-effective technology available to provide timely access to AEM. This plan should also address strategies to provide consistent features across all interfaces and media formats;

(viii) A plan to encourage and support the inclusion of accessibility features that are embedded during the development and production of the AEM by publishers and producers, where possible;

(ix) A plan for how the project will proactively coordinate across authorized entities to include IHEs, SEAs, and LEAs to reduce costs of production and duplication of materials, and to improve the timeliness of distribution;

(x) Information on how the project will collaborate with the National Library Service (NLS), Described and Captioned Media Program (DCMP), NIMAC, the National AEM Center, and other projects supporting accessibility to ensure awareness of work, share developed products to improve the quality of AEM, and minimize duplicative efforts;

(xi) Information on how the project will collaborate with the National AEM

[6] For the purposes of this priority, ''users'' includes eligible children and students, families, schools, SEAs, LEAs, postsecondary schools, and vocational rehabilitation agencies requesting AEM on behalf of eligible children or students.

[7] For the recommendations from this report, please see: *https://aem.cast.org/get-started/resources/2011/postsecondary-advisory-commission-report*

[8] For more information regarding the NIMAC, please see: *www.nimac.us.*

[9] Openly licensed educational resources are teaching, learning, and research resources that reside in the public domain or have been released under a license that permits their use, modification, and sharing with others.

Center and other projects supporting accessibility to implement a plan for improving IHE, SEA, and LEA systems for providing educational material in accessible formats to eligible children and students; and

(xii) A description of how the project will ensure that project activities are conducted in compliance with 17 U.S.C. 121. (*www.copyright.gov/title17/92chap1.html#121*).

(4) Provide direct support to eligible children and students to address any technical assistance (TA) needs;

(5) Implement outreach activities to systematically distribute information, products, and services to varied audiences, including underserved individuals and their families (*e.g.,* individuals from racially, ethnically, linguistically diverse backgrounds and individuals living in poverty or experiencing homelessness), using a variety of engagement strategies, to promote awareness and use of the Center's products and services; and

(6) Develop a professional learning plan to increase awareness of AEM, develop educator capacity, and create support systems for current and future educators. The plan must include strategies to engage faculty from teacher preparation programs responsible for preparing future educators as well as outreach to and engagement with current educators to support the effective use of AEM in their instructional practice.

(b) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[10] The evaluation plan must—

(1) Include the logic model [11] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals and how they will be measured, activities, outputs, and intended outcomes of the proposed project;

(2) Describe a formative and summative evaluation plan, including important process and outcome evaluation questions. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring quality of products and services. This plan should be related to the project's proposed logic model required in paragraph (b)(1) of the application and administrative requirements in this priority;

(3) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments to be used so that the project can better meet the needs of current users and identify the needs of eligible, non-users. Identify and justify the sources for data appropriate to the evaluation questions. Include information regarding procedures for establishing reliability and validity of measures and data quality, where appropriate. Data sources must include, at a minimum—

(i) Information on the numbers of free educational materials requested by, produced for, available to, distributed to, and accessed by eligible children and students;

(ii) Information on the characteristics of the free educational materials (*e.g.,* descriptive metadata, file types, types of literary work, source of materials), requested by, produced for, available to, distributed to, and accessed by eligible children and students;

(iii) Information on the characteristics of the current users (*e.g.,* qualifying disability type (visual, learning, physical), individualized education program status, 504 plan status, age, grade level, member type, National Center for Education Statistics District ID or Institution) who request and access the free educational materials;

(4) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve product development and service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(5) Include cost and efficiency measures, or a plan for cost and efficiency measures, for the production of AEM and using information from those measures to incorporate the most efficient, cost-effective technology available to provide timely access to AEM that can be used across alternative media formats;

(6) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR) and at the end of Year 2 for the review process described under the heading, *Fourth and Fifth Years of the Project;*

(7) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(c) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(d) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of eligible children or students, families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

[10] A third-party evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

[11] Logic model (34 CFR 77.1) (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

(5) The proposed project will establish and maintain an advisory committee consisting of representatives from an SEA and an LEA; representatives from community colleges and four-year IHEs; representatives from vocational rehabilitation agencies; eligible children and students, and/or parents or family members of eligible children or students; and representatives of schools or other institutions where AEM are used. The purpose of this advisory committee is to provide the project with input and ongoing advice on the project's goals, objectives, products, and services. The project must submit the proposed membership of the advisory committee to the Office of Special Education Programs (OSEP) for approval within eight weeks after receipt of the award;

(6) The project will communicate and collaborate on an ongoing basis with OSEP-funded projects (see *www.osepideasthatwork.org/find-center-or-grant/find-a-center*), including NIMAS-related projects. Activities could include jointly developing products, training sessions, and materials; and improving the AEM delivery system to ensure timely and easy access; and

(7) The project will maintain ongoing communication with the OSEP project officer through phone conferences, email communication, and face-to-face meetings, as appropriate.

(e) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

*Note:* The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(3) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

*Note:* Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period;

(iii) Two annual two-day trips, or virtually, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, or virtually, during the last half of the second year of the project period;

(4) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(5) Maintain a high-quality website, with an easy-to-navigate design, that meets or exceeds government or industry-recognized standards for accessibility;

(6) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(7) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to eligible children and students during the transition to this new award period and at the end of this award period, as appropriate.

*Fourth and Fifth Years of the Project:*

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts who have experience and knowledge in providing educational materials in accessible formats for eligible children and students with disabilities. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

*References:*

Advisory Commission on Accessible Instructional Materials in Postsecondary Education. (December 6, 2011). Report of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities. Advisory Commission on AIM in Postsecondary Education. *http://aem.cast.org/about/publications/2011/postsecondary-advisory-commission-report.html*

U.S. Department of Education. 2020. IDEA section 618 data products: Static tables (2019–2020). *http://www2.ed.gov/programs/osepidea/618-data/static-tables/index.html#partb-cc.*

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

*Program Authority:* 20 U.S.C. 1474 and 1481.

*Note:* Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

*Note:* The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

*Note:* The regulations in 34 CFR part 86 apply to IHEs only.

## II. Award Information

*Type of Award:* Cooperative agreement.

*Estimated Available Funds:* The Administration has requested $29,547,000 for the Educational Technology, Media, and Materials for Individuals with Disabilities program for FY 2022, of which we intend to use an estimated $8,500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2023 from the list of unfunded applications from this competition.

*Maximum Award:* We will not make an award exceeding $8,500,000 for a single budget period of 12 months.

*Estimated Number of Awards:* 1.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* SEAs; State lead agencies under Part C of IDEA; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:*

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021–27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) *Quality of project services (30 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(v) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(b) *Quality of the project evaluation (30 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(v) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

(c) *Adequacy of resources and quality of project personnel (20 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(v) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(vi) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(vii) The extent to which the budget is adequate to support the proposed project.

(viii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(d) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually.

Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115—232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the ETechM2 Program. These measures are:

- *Program Performance Measure #1:* The percentage of ETechM2 Program products and services judged to be of high quality by an independent review panel of experts qualified to review the substantial content of the products and services.
- *Program Performance Measure #2:* The percentage of ETechM2 Program products and services judged to be of high relevance to improving outcomes for infants, toddlers, children, and youth with disabilities.
- *Program Performance Measure #3:* The percentage of ETechM2 Program products and services judged to be useful in improving results for infants, toddlers, children, and youth with disabilities.
- *Program Performance Measure #4.1:* The Federal cost per unit of accessible educational materials funded by the ETechM2 Program.
- *Program Performance Measure #4.2:* The Federal cost per unit of accessible educational materials from the National Instructional Materials Access Center funded by the ETechM2 Program.
- *Program Performance Measure #4.3:* The Federal cost per unit of video description funded by the ETechM2 Program.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590 and 75.591).

The Department will also closely monitor the extent to which the products and services provided by the Center meet needs identified by stakeholders and may require the Center to report on such alignment in their quarterly, annual, and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Katherine Neas,**

*Deputy Assistant Secretary, delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2022–02688 Filed 2–8–22; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project 2879–000]**

### Green Mountain Power Corporation; Notice of Authorization for Continued Project Operation

On January 30, 2020, Green Mountain Power Corporation, licensee for the Bolton Falls Hydroelectric Project No. 2879, filed an Application for a New Major License for Bolton Falls Hydroelectric Project pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Bolton Falls Hydroelectric Project is located on the Winooski River in Washington County, Vermont.

The license for Project No. 2879 was issued for a period ending January 31, 2022. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2879 is issued to Green Mountain Power Corporation, for a period effective February 1, 2022 through January 30, 2023 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Green Mountain Power Corporation, is authorized to continue operation of the Bolton Falls Hydroelectric Project, until such time as the Commission acts on its application for a new major license.

Dated: February 3, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–02704 Filed 2–8–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 15230–001]**

### Pike Island Hydropower Corporation; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 15230–001.

c. *Date Filed:* August 2, 2021.

d. *Submitted By*: Pike Island Hydropower Corporation.

e. *Name of Project:* Pike Island Locks and Dam Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) Pike Island Locks and Dam on the Ohio River near the Village of Yorkville in Belmont and Jefferson Counties, Ohio, and Ohio County, West Virginia. The project would occupy federal land administered by the Corps.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact(s):* Mr. Joel Herm, P.O. Box 224, Rhinebeck, 12572–0224; (917) 224–3607; *joel@currenthydro.com.*

i. *FERC Contact:* Jay Summers at (202) 502–8764; or at *jay.summers@ferc.gov.*

j. Pike Island Hydropower Corporation filed its request to use the Traditional Licensing Process on August 2, 2021, and provided public notice of its request on August 2, 2021 and August 9, 2021. In a letter dated February 3, 2022, the Director of the Division of Hydropower Licensing approved Pike Island Hydropower Corporation's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Ohio and West Virginia State Historic Preservation Officers, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Pike Island Hydropower Corporation as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Pike Island Hydropower Corporation filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 3, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–02702 Filed 2–8–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project 3409–000]**

### Boyne USA, Inc.; Notice of Authorization for Continued Project Operation

On January 31, 2020, Boyne USA, Inc, licensee for the Boyne River Hydroelectric Project No. 3409, filed an Application for a Subsequent Minor License for Boyne River Hydroelectric Project pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Boyne River Hydroelectric Project is located on the Boyne River in Boyne Valley Township, Charlevoix County, Michigan.

The license for Project No. 3409 was issued for a period ending January 31, 2022. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 3409 is issued to Boyne USA, Inc, for a period effective February 1, 2022 through January 30, 2023 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Boyne USA, Inc, is authorized to continue operation of the Boyne River Hydroelectric Project, until such time as the Commission acts on its application for a subsequent minor license.

Dated: February 3, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–02703 Filed 2–8–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project 2426–000]**

### California Department of Water Resources and Los Angeles Department of Water and Power; Notice of Authorization for Continued Project Operation

On January 30, 2020, the California Department of Water Resources and Los Angeles Department of Water and Power, licensees for the South SWP Hydroelectric Project No. 2426, filed an Application for a New Major License for the South SWP Hydroelectric Project pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The South SWP Hydroelectric Project is located along the West Branch of the California Aqueduct, and along Piru Creek and Castaic Creek, tributaries to the Santa Clara River, in Los Angeles County, California.

The license for Project No. 2426 was issued for a period ending January 31, 2022. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2426 is issued to the California Department of Water Resources and Los Angeles Department of Water and Power, for a period effective February 1, 2022 through January 30, 2023 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before January 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the California Department of Water Resources and Los Angeles Department of Water and Power, is authorized to continue operation of the South SWP Hydroelectric Project, until such time as the Commission acts on its application for a subsequent minor license.

Dated: February 3, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–02699 Filed 2–8–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* PR22–23–000.
*Applicants:* Columbia Gas of Maryland, Inc.
*Description:* Submits tariff filing per 284.123(b),(e)/: CMD SOC Rates effective Jan 1 2022 to be effective 1/1/2022.
*Filed Date:* 2/1/2022.
*Accession Number:* 20220201–5177.
*Comments/Protests Due:* 5 p.m. ET 2/22/2022.

*Docket Numbers:* PR22–20–001.
*Applicants:* Columbia Gas of Maryland, Inc.
*Description:* Submits tariff filing per 284.123(b),(e)/: CMD Amended SOC filing Effective Dec 3 2021 to be effective 12/3/2021.
*Filed Date:* 2/1/2022.
*Accession Number:* 20220201–5165.
*Comments/Protests Due:* 5 p.m. ET 2/22/2022.

*Docket Numbers:* RP22–534–000.
*Applicants:* Viking Gas Transmission Company.
*Description:* § 4(d) Rate Filing: Negotiated Rate PAL—World Fuel Services, Inc. to be effective 2/3/2022.
*Filed Date:* 2/2/22.
*Accession Number:* 20220202–5140.
*Comment Date:* 5 p.m. ET 2/14/22.

*Docket Numbers:* RP22–535–000.
*Applicants:* Guardian Pipeline, L.L.C.
*Description:* § 4(d) Rate Filing: Negotiated Rate PAL Agreements—Koch and Mercuria to be effective 2/2/2022.
*Filed Date:* 2/2/22.
*Accession Number:* 20220202–5172.
*Comment Date:* 5 p.m. ET 2/14/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP21–1001–003.
*Applicants:* Texas Eastern.
*Description:* Texas Eastern Transmission, LP submits tariff filing per 154.203: TETLP Rate Case Compliance Filing RP21–1001–000 to be effective 2/1/2022.
*Filed Date:* 01/31/2022.
*Accession Number:* 20220131–5058.
*Comment Date:* 5 p.m. ET 2/14/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–02698 Filed 2–8–22; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER22–350–001.
*Applicants:* PacifiCorp.
*Description:* Tariff Amendment: Idaho Falls Power JOOA Deficiency Filing to be effective 4/4/2022.
*Filed Date:* 2/3/22.
*Accession Number:* 20220203–5001.
*Comment Date:* 5 p.m. ET 2/24/22.

*Docket Numbers:* ER22–988–000.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Dallas County Solar LGIA Filing to be effective 1/20/2022.
*Filed Date:* 2/3/22.
*Accession Number:* 20220203–5085.
*Comment Date:* 5 p.m. ET 2/24/22.

*Docket Numbers:* ER22–989–000.
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.
*Description:* § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Talladega Solar LGIA Filing to be effective 1/20/2022.
*Filed Date:* 2/3/22.
*Accession Number:* 20220203–5086.
*Comment Date:* 5 p.m. ET 2/24/22.

*Docket Numbers:* ER22–990–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5819; Queue No. AF2–043 to be effective 9/29/2020.
*Filed Date:* 2/3/22.
*Accession Number:* 20220203–5095.
*Comment Date:* 5 p.m. ET 2/24/22.

*Docket Numbers:* ER22–991–000.
*Applicants:* PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: PPL Electric Utilities Corporation submits tariff filing per 35.13(a)(2)(iii: PPL submits revisions to OATT to add a new Attachment M–2 to be effective 4/4/2022.
*Filed Date:* 2/3/22.
*Accession Number:* 20220203–5096.
*Comment Date:* 5 p.m. ET 2/24/22.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

*Docket Numbers:* QM22–7–000.
*Applicants:* ALLETE, Inc.
*Description:* Application of ALLETE, Inc. to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.
*Filed Date:* 2/3/22.
*Accession Number:* 20220203–5091.
*Comment Date:* 5 p.m. ET 3/3/22.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RD22–2–000.
*Applicants:* North American Electric Reliability Corporation.
*Description:* Petition of the North American Electric Reliability Corporation for approval of Proposed Reliability Standards Related to Establishing and Communicating System Operating Limits.
*Filed Date:* 6/28/21.
*Accession Number:* 20210628–5188.
*Comment Date:* 5 p.m. ET 2/24/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–02697 Filed 2–8–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP21–498–000]**

### Columbia Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Virginia Electrification Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Virginia Electrification Project (Project) involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia) in Louisa County, Virginia; Goochland County, Virginia; and Prince George County, Virginia. The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and the EIS* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on March 3, 2022. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Columbia provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

#### Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–498–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

#### Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

Columbia proposes modifications and a certificated horsepower increase to Columbia's existing Boswells Tavern Compressor Station and expansion of the existing Boswells Tavern point of receipt in Louisa County, Virginia; modifications and a certificated horsepower increase to Columbia's existing Goochland Compressor Station in Goochland County, Virginia; and a certificated horsepower increase at Columbia's existing Petersburg Compressor Station in Prince George County, Virginia. The Project would provide about 35,000 dekatherms per day of incremental mainline capacity on Columbia's pipeline system. According to Columbia, its Project would address a request from Columbia Gas of Virginia, an unaffiliated local distribution

company, for firm transportation service to meet growing energy demand in the southeast Virginia market area off of Columbia's existing VM–107, VM–108, and VM–109 pipelines. Columbia states the Project would reduce greenhouse gas emissions on Columbia's pipeline system through the modification and optimization of existing infrastructure.

The Project would consist of the following facilities all located in Virginia:

- Installation of one zero emission electric motor compressor unit at the Boswell Tavern Compressor Station located in Louisa County;
- facility modifications to the Boswells Tavern point of receipt located in Louisa County to increase capacity;
- replacement of all five existing gas-powered compressor units at the Goochland Compressor Station, located in Goochland County, with new units that will run exclusively on electric motors, but will have the ability to run on gas in order to ensure reliability; and
- status change of an existing compressor unit from backup mode to active mode and increase the site-rated station horsepower to 5,500 horsepower at the Petersburg Compressor Station located in Prince George County.

The general location of the Project facilities is shown in appendix 1.[1]

Based on the environmental information provided by Columbia, the proposed Project would result in new temporary and permanent impacts at the Boswells Tavern and Goochland Compressor Station sites. Work associated with the Boswells Tavern point of receipt would occur within the temporary and permanent workspaces used for the Boswells Tavern Compressor Station. No workspace would be required at the Petersburg Compressor Station, as no construction or ground-disturbing activities are proposed at this site. A total of 15.8 acres would be temporarily disturbed for construction activities. Following construction, Columbia would retain a total of 5.8 acres of land for operations, of which 1.3 acres will be new permanent easement. All land affected by the Project is either currently owned or leased by Columbia.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

**The NEPA Process and the EIS**

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics and environmental justice;
- air quality and noise;
- climate change; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

**Alternatives Under Consideration**

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[3] Alternatives currently under consideration include:

- The no-action alternative, meaning the Project is not implemented;
- the systems alternative, which would consist of pipeline looping or an alternative configuration of the compressor stations.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] 40 CFR 1508.1(z).

**Consultation Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[4] The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Schedule for Environmental Review**

On October 5, 2021 the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in August 2022

Issuance of Notice of Availability of the final EIS: December 16, 2022

90-day Federal Authorization Decision Deadline:[5] March 16, 2023

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

**Permits and Authorizations**

The table below lists the anticipated permits and authorizations for the Project required under federal law. This

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[5] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

| Agency | Permit |
|---|---|
| Federal Energy Regulatory Commission | Certificate of Public Convenience and Necessity under Section 7(c) of the Natural Gas Act. |
| U.S. Fish and Wildlife Service, Virginia Ecological Field Services Office | Consultation under Section 7 of the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Gold Eagle Protection Act. |
| Virginia Department of Environmental Quality—Air Division | Minor New Source Review (NSR) Permit Modifications for Compressor Stations. |
| Virginia Department of Environmental Quality—Water Division | Virginia Water Protection Permit. |
| Virginia Department of Environmental Quality—Water Division | Water Quality Certification under Section 401 of the Clean Water Act. |
| Virginia Department of Environmental Quality—Coastal Zone Management Program. | Consistency Determination under the Virginia Coastal Zone Management Program. |
| Virginia Department of Historical Resources | Consultation under Section 106 of the National Historic Preservation Act. |

**Environmental Mailing List**

This notice is being sent to the Commission's current environmental mailing list for the Project which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP21–498–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

**Additional Information**

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP21–498). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: February 3, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–02700 Filed 2–8–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP14–120–000;CP14–119–000]**

### Lake Charles LNG Company, LLC; Trunkline Gas Company, LLC; Notice of Request for Extension of Time

Take notice that on January 31, 2022, Lake Charles LNG Company, LLC (Lake Charles LNG); Lakes Charles LNG Export Company, LLC (Lake Charles LNG Export); and Trunkline Gas Company, LLC (Trunkline; collectively, the Applicants), requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until December 16, 2028, to complete construction of the Liquefaction Project and the Pipeline Modifications Project (collectively, the Project) and make the Project available for service as authorized in the December 17, 2015 Order Granting Section 3 and Section 7 Authorizations and Approving Abandonment (Order).[1]

The Liquefaction Project is an export project, consisting of three liquefaction trains, with a total design production capacity of 16.45 metric tons per annum of liquefied natural gas (LNG) and appurtenances, to be located adjacent to Lake Charles LNG's existing LNG terminal in Calcasieu Parish, Louisiana (Terminal); and modifications and installation of certain facilities at the Terminal. The Pipeline Modifications Project consist of the (1) construction of approximately 17.9 miles of pipeline; (2) construction of a new compressor station; (3) installation of additional compression at the Longville

[1] *Lake Charles LNG Company, LLC, et al.,* 153 FERC ¶ 61,300 (2015), *reh'g denied,* 155 FERC ¶ 61,328 (2016) (Order).

Compressor Station; (4) construction of five new meter stations; (5) piping modifications at four compressor stations; and (6) construction/modifications of various appurtenances, all located in Arkansas, Mississippi, and Louisiana.

The Order required Trunkline to complete construction of the Pipeline Modifications Project and make it available for service within four years of the date of the Order; the Order further required Lake Charles LNG and Lake Charles LNG Export to complete construction of the Liquefaction Project and make it available for service within five years of the date of the Order.[2] On December 5, 2019, the Applicants were granted their request for an extension for both projects, until December 16, 2025, to complete construction and place the Project into service.[3] The Applicants state that global market conditions have impacted its ability to reach a final investment decision and secure long-term offtake contracts, thus they now request an additional three years, until December 16, 2028, to complete construction of the Project and place it into service.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on the Applicants' 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).

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,[4] the Commission will aim to issue an order acting on the request within 45 days.[5] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[6] 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.[7] 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.[8] 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, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

*Comment Date:* 5:00 p.m. Eastern Time on February 18, 2022.

Dated: February 3, 2022.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2022–02701 Filed 2–8–22; 8:45 am]

**BILLING CODE 6717–01–P**

[2] Order, 153 FERC ¶ 61,300 at Ordering Paragraphs (B)(1) and (L), respectively.

[3] Letter Order to Trunkline Gas Company, LLC; Lake Charles LNG Company, LLC; and Lake Charles LNG Export Company, LLC; Docket Nos. CP14–119–000, CP14–120–000, and CP14–122–000 (issued December 5, 2019) (Letter Order).

[4] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[6] *Id.* at P 40.

[7] 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.

[8] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL –9415–01–OA]**

## Notification of a Closed Meeting of the Science Advisory Board 2021 Scientific and Technological Achievement Awards Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a two-day meeting of the Scientific and Technological Achievement Awards (STAA) Panel. The purpose of the meeting is to review the 2021 STAA nominations and to make recommendations for awards. The meeting is closed to the public.

**DATES:** The meeting of the SAB STAA Panel will be held on Monday, March 14, 2022, from 11:00 a.m. to 6:00 p.m. (Eastern Time) and Tuesday, March 15, 2022 from 11:00 a.m. to 6:00 p.m. (Eastern Time). The meeting will be conducted virtually.

**FOR FURTHER INFORMATION CONTACT:** Members of the public who wish to obtain further information concerning this notice may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), via telephone (202) 564–2073, or via email at *stallworth.holly@epa.gov.* General information about the SAB as well as any updates concerning the meetings announced in this notice can be found on the SAB website at *https://sab.epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board Scientific and Technological Achievement Awards (STAA) Panel, will hold a closed meeting to review the 2021 STAA nominations and to make recommendations for awards and recommendations for improvement of the Agency's STAA program.

The STAA awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. In conducting its review, the SAB considers each nomination in relation to the following four award levels:

• Level I awards are for those who have accomplished an exceptionally high-quality research or technological effort. The awards recognize the creation or general revision of a scientific or technological principle or procedure, or a highly significant improvement in the value of a device, activity, program, or service to the public. Awarded research is of national significance or has high impact on a broad area of science/technology. The research has far reaching consequences and is recognizable as a major scientific/technological achievement within its discipline or field of study.

• Level II awards are for those who have accomplished a notably excellent research or technological effort that has qualities and values similar to, but to a lesser degree, than those described under Level I. Awarded research has timely consequences and contributes as an important scientific/technological achievement within its discipline or field of study.

• Level III awards are for those who have accomplished an unusually notable research or technological effort. The awards are for a substantial revision or modification of a scientific/technological principle or procedure, or an important improvement to the value of a device, activity, program, or service to the public. Awarded research relates to a mission or organizational component of the EPA, or significantly affects a relevant area of science/technology.

• Honorable Mention awards acknowledge research efforts that are noteworthy but do not warrant a Level I, II or III award. Honorable Mention applies to research that: (1) May not quite reach the level described for a Level III award; (2) show a promising area of research that the STAA Panel wants to encourage; or (3) show an area of research that the STAA Panel feels is too preliminary to warrant an award recommendation at this time.

The SAB reviews the STAA nomination packages according to the following five evaluation factors:

• The extent to which the work reported in the nominated publication(s) resulted in either new or significantly revised knowledge. The accomplishment is expected to represent an important advancement of scientific knowledge or technology relevant to environmental issues and EPA's mission.

• The extent to which environmental protection has been strengthened or improved, whether of local, national, or international importance.

• The degree to which the research is a product of the originality, creativeness, initiative, and problem-solving ability of the researchers, as well as the level of effort required to produce the results.

• The extent of the beneficial impact of the research and the degree to which the research has been favorably recognized from outside EPA.

• The nature and extent of peer review, including stature and quality of the peer-reviewed journal or the publisher of a book for a review chapter published therein.

I have determined that the meetings of the STAA Panel and Chartered SAB will be closed to the public because they are concerned with selecting employees deserving of awards. In making these recommendations, the Agency requires full and frank advice from the SAB. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel matters involve the discussion of information that is of a personal nature and the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, are protected from disclosure by section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and sections (c)(2) and (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). Minutes of the meetings of the STAA Panel and the Chartered SAB will be kept and certified by the chair of those meetings.

**Michael S. Regan,**

*Administrator.*

[FR Doc. 2022–02706 Filed 2–8–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2021–0112; FRL–9557–01–OMS]**

## Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Printing, Coating and Dyeing of Fabrics and Other Textiles (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Printing, Coating and Dyeing of Fabrics and Other Textiles (EPA ICR Number 2071.10, OMB Control Number 2060–0522), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before March 11, 2022.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0112, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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:** Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents, which explain

in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Printing, Coating and Dyeing of Fabrics and Other Textiles apply to each existing, new, or reconstructed source involved in printing, coating, slashing, dyeing or finishing of fabric and other textiles. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart OOOO.

*Form Numbers:* 5900–530.

*Respondents/affected entities:* Printing, coating, slashing, dyeing, or finishing of fabric and other textiles facilities.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart OOOO).

*Estimated number of respondents:* 44 (total).

*Frequency of response:* Initially and semiannually.

*Total estimated burden:* 7,080 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $960,000 (per year), which includes $123,000 in annualized capital/startup and/or operation & maintenance costs.

*Changes in the estimates:* There is an increase in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to three considerations. This ICR incorporates the incremental burden from the 2019 RTR amendment (ICR No. 2071.09) into the total cost of the rule. The regulations were revised in the 2019 RTR amendment adding a requirement to periodically test add-on control devices, resulting in an increase in capital/startup costs for this testing, as well as for increased labor burden for conducting the tests, submitting reports, and keeping records. An additional facility that is subject to this subpart was identified in a search of EPA's ECHO database. This facility became subject to this subpart after the 2019 RTR; therefore, the respondent counts in this ICR renewal are updated to include this facility.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2022–02658 Filed 2–8–22; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[CERCLA–02–2021–2033; FRL–9475–01–R2]**

## Proposed CERCLA Settlement Agreement for the Pierson's Creek Superfund Site, City of Newark, Essex County, New Jersey

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed bona fide prospective purchaser agreement (''Agreement'') with 429 Delancy Associates, L.L.C. (''429 Delancy'') for the Pierson's Creek Superfund Site (''Site''), located in the City of Newark, Essex County, New Jersey. Under the proposed Agreement, 429 Delancy agrees to perform a non-time critical removal action to remove mercury-contaminated sediments on 429 Delancy's property adjacent to Pierson's Creek, which flows through its property, and to reimburse EPA for costs incurred in overseeing this work. The property is located at 429 Delancy Street, City of Newark, Essex County, New Jersey, designated as Block 5042, Lot 02 within the Pierson's Creek Superfund Site.

**DATES:** Comments must be submitted on or before March 11, 2022.

**ADDRESSES:** Comments can be sent via email to Amelia Wagner at *wagner.amelia@epa.gov.* Comments should reference the Pierson's Creek Superfund Site, CERCLA Settlement Agreement, Index No. CERCLA–02–2021–2033. The proposed settlement is available for public inspection at this website: *https://semspub.epa.gov/src/document/02/638500.*

**FOR FURTHER INFORMATION CONTACT:** Amelia Wagner, Attorney, Office of Regional Counsel, U.S. Environmental Protection Agency. Email: *wagner.amelia@epa.gov.* Telephone: 212–637–3141.

**SUPPLEMENTARY INFORMATION:** For thirty (30) days following the date of publication of this document, EPA will receive written comments relating to the proposed Agreement. EPA will consider all comments received and may modify or withdraw its consent to the proposed Agreement if comments received disclose facts or considerations that indicate that the proposed Agreement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection online and/or at EPA Region 2, 290 Broadway, New York, New York 10007–1866.

**Pasquale Evangelista,**

*Director, Superfund & Emergency Management Division, Environmental Protection Agency, Region 2.*

[FR Doc. 2022–02679 Filed 2–8–22; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

## Agency Information Collection Activities: Proposed Collection Renewal; Comment Request; OMB No. 3064–0093; –0111; –0136

**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. 3064–0093; –0111 and—0136).

**DATES:** Comments must be submitted on or before March 11, 2022.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: 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:* Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks).

*OMB Number:* 3064–0093.

*Form Number:* G–FIN; G–FINW; G– FIN4 & G–FIN5.

*Affected Public:* Insured state nonmember banks acting as government securities brokers and dealers.

*Burden Estimate:*

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0093]

| Information collection description | Type of burden (obligation to respond) | Frequency of response | Number of respondents | Number of responses per respondent | Hours per response | Annual burden (hours) |
|---|---|---|---|---|---|---|
| Notice by Financial Institutions of Government Securities Broker or Government Securities Dealer Activities (G–FIN). | Reporting (Mandatory). | On Occasion ..... | 1 | 1 | 1 | 1 |
| Notice by Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer (G–FINW). | Reporting (Mandatory). | On Occasion ..... | 1 | 1 | 2 | 2 |
| Disclosure Form for Person Associated with a Financial Institution Securities Broker or Dealer (G–FIN–4). | Reporting (Mandatory). | On Occasion ..... | 1 | 5 | 2 | 10 |
| Uniform Termination Notice for Persons Associated with a Financial Institution Government Securities Broker or Dealer (G–FIN–5). | Reporting (Mandatory). | On Occasion ..... | 1 | 5 | 0.25 | 1.25 |
| Total Annual Burden (Hours) ... | ..... | ..... | ..... | ..... | ..... | 14.25 |

Source: FDIC.

*General Description of Collection:* The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their Federal regulatory agencies of their broker dealer activities, unless exempted from the notice requirements by Treasury Department regulation. The Form G–FIN and Form G–FINW are used by insured State nonmember banks that are government securities brokers or dealers to notify the FDIC of their status or that they have ceased to function as a government securities broker or dealer. The Form G–FIN–4 is used by associated persons of insured State nonmember banks that are government securities brokers or dealers to provide certain information to the bank and to the FDIC concerning employment, residence, and statutory disqualification. The Form G–FIN–5 is used by insured State nonmember banks that are government securities brokers or dealers to notify the FDIC that an associated person is no longer associated with the government securities broker or dealer function of the bank.

There is no change in the method or substance of the collection. The overall increase in burden hours is the result of economic fluctuation. In particular, the estimated number of submissions of form G–FIN–4 has increased by four, the hours per response increased by one and frequency of responses have remained the same.

2. *Title:* Activities and Investments of Insured State Banks.

*OMB Number:* 3064–0111.

*Form Numbers:* None.

*Affected Public:* Insured state nonmember banks and insured state savings associations.

*Burden Estimate:*

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0111]

| Information collection description | Type of burden (obligation to respond) | Frequency of response | Number of respondents | Number of responses per respondent | Hours per response | Annual burden (hours) |
|---|---|---|---|---|---|---|
| Application or Notice to engage in certain activities [1]. | Reporting (Required) .. | On occasion ..... | 29 | 1.1 | 8 | 256 |

SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued

[OMB No. 3064–0111]

| Information collection description | Type of burden (obligation to respond) | Frequency of response | Number of respondents | Number of responses per respondent | Hours per response | Annual burden (hours) |
|---|---|---|---|---|---|---|
| Total Annual Burden (Hours). | ..... | ..... | ..... | ..... | ..... | 256 |

Source: FDIC.

[1] There is no official form used to submit an application or notice. Institutions write a letter with supporting documentation to FDIC to file a response.

*General Description of Collection:* Section 24 of the Federal Deposit Insurance (FDI Act), 12 U.S.C. 1831a, limits investments and other activities in which state banks may engage, as principal, to those permissible for national banks and those approved by the FDIC under procedures set forth in part 362 of the FDIC's Rules and Regulations, 12 CFR part 362. With certain exceptions, section 24 of the FDI Act limits the activities and investments of state banks to those activities and investments that are permissible for national banks. In addition, the statute prohibits a state bank from directly engaging, as a principal, in any activity or investment that is not permissible for a national bank, or indirectly through a subsidiary in an activity or investment that is not permissible for a subsidiary of a national bank, unless such bank meets its minimum capital requirements and the FDIC determines that the activity or investment does not pose a significant risk to the Deposit Insurance Fund (DIF). The FDIC can make such a determination for exception by regulation or by order. Section 28(a), 12 U.S.C. 1831e, similarly limits the investments and activities of state savings associations and their service corporations to those permitted by federal savings associations and their service corporations, absent FDIC approval. Part 362 details the activities that state banks or their subsidiaries may engage in, under certain criteria and conditions and identifies the information that state banks must furnish to the FDIC in order to obtain the FDIC's approval or non-objection. Part 362 also applies to the activities and investments of state savings associations and their subsidiaries.

There is no change in the method or substance of the collection. The increase in burden hours is the result of economic fluctuation. In particular, the number of respondents has increased while the hours per response and frequency of responses have remained the same.

3. *Title:* Privacy of Consumer Financial Information.

*OMB Number:* 3064–0136.

*Form Number:* None.

*Affected Public:* Insured state nonmember banks and consumers.

*Burden Estimate:*

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0136]

| Information collection description | Type of burden (obligation to respond) | Frequency of response | Number of respondents | Number of responses per respondent | Hours per response | Annual burden (hours) |
|---|---|---|---|---|---|---|
| Initial Notice to Consumers. | Third Party Disclosure (Mandatory). | On Occasion ..... | 94 | 1.4 | 60 | 7,896 |
| Opt-out Notice ..... | Third Party Disclosure (Mandatory). | On Occasion ..... | 314 | 1 | 8 | 2,512 |
| Annual Notice and Change in Terms. | Third Party Disclosure (Mandatory). | Annual ..... | 534 | 1 | 8 | 4,272 |
| Consumer Opt-out ..... | Third Party Disclosure (Voluntary). | On Occasion ..... | 435,225 | 1 | 0.25 | 108,806.25 |
| Total Annual Burden (Hours): | ..... | ..... | ..... | ..... | ..... | 123,486.25 |

Source: FDIC.

*General Description of Collection:* The elements of this collection are required under sections 503 and 504 of the Gramm-Leach-Bliley Act, 15 U.S.C. 6803, 6804. The collection mandates notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

There is no change in the method or substance of the collection. The overall decrease in burden hours is the result of economic fluctuation. In particular, the estimated number of respondents to the Consumer Opt-out component increased, the number of respondents to the other components decreased and the hours per response and frequency of responses have remained the same.

**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.

Dated at Washington, DC, this 4th day of February 2022.

Federal Deposit Insurance Corporation.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2022–02691 Filed 2–8–22; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

**[OMB No. 3064–0152; –0190]**

## Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0152; and—0190).

**DATES:** Comments must be submitted on or before April 11, 2022.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: 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.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**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:* ID Theft Red Flags.

*OMB Number:* 3064–0152.

*Form Number:* None.

*Affected Public:* Insured state nonmember banks.

*Burden Estimate:*

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0152]

| Information collection description | Type of burden (obligation to respond) | Frequency of response | Number of respondents | Number of responses per respondent | Hours per response | Annual burden (hours) |
|---|---|---|---|---|---|---|
| **FACT Act Section 114: Identity Theft Prevention** | | | | | | |
| Program Establishment 12 CFR 334.90(d); 12 CFR 334.91(c). | Recordkeeping (Mandatory) | Annual | 8 | 1 | 40 | 320 |
| Program Operations 12 CFR 334.90(c),(e); 12 CFR 334.91(c). | Recordkeeping (Mandatory) | Annual | 3,171 | 1 | 16 | 50,832 |
| Section 114 Hours Subtotal | | | | | | 51,152 |
| **FACT Act Section 315: Address Discrepancy Program** | | | | | | |
| Program Establishment 12 CFR 334.82(c),(d). | Recordkeeping (Mandatory) | Annual | 8 | 1 | 40 | 320 |
| Program Operations 12 CFR 334.82(c),(d) | Recordkeeping (Mandatory) | Annual | 3,111 | 1 | 4 | 12,444 |
| Specific Incident Responses 12 CFR 334.82(d)(1–3). | Disclosures (Mandatory) | On occasion | 3,111 | 17.1 | 0.1667 | 8,868 |
| Section 315 Hours Subtotal | | | | | | 21,632 |
| Total Annual Burden (Hours) | | | | | | 72,784 |

Source: FDIC.

*General Description of Collection:* The regulation containing this information collection requirement is 12 CFR part 334, which implements sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159 (2003). FACT Act Section 114: Section 114 requires the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the FDIC (the Agencies) to jointly propose guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. In addition, each financial institution and creditor is required to establish reasonable policies and procedures to address the risk of identity theft that incorporate the guidelines. Credit card and debit card issuers must develop policies and procedures to assess the validity of a request for a change of address under certain circumstances. The information collections pursuant to section 114 require each financial institution and creditor to create an Identity Theft Prevention Program and report to the board of directors, a committee thereof, or senior management at least annually on compliance with the proposed regulations. In addition, staff must be trained to carry out the program. Each credit and debit card issuer is required to establish policies and procedures to assess the validity of a change of address request. The card issuer must notify the cardholder or use another means to assess the validity of the change of address. FACT Act Section 315: Section 315 requires the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when such a user receives a notice of address discrepancy from a consumer reporting agencies. Part 334 provides such guidance. Each user of consumer reports must develop

reasonable policies and procedures that it will follow when it receives a notice of address discrepancy from a consumer reporting agency. A user of consumer reports must furnish an address that the user has reasonably confirmed to be accurate to the consumer reporting agency from which it receives a notice of address discrepancy.

There is no change in the method or substance of the information collection. The total estimated annual burden hours have increased due to the inclusion of estimated program establishment costs for de novo institutions and the introduction of the costs of responses to specific address discrepancy incidents for newly established consumer accounts.

2. *Title:* Interagency Appraisal Complaint Form.

*OMB Number:* 3064–0190.

*Form Numbers:* None.

*Affected Public:* Individuals, financial institutions and other private sector entities.

*Burden Estimate:*

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0190]

| Information collection description | Type of burden (obligation to respond) | Frequency of response | Number of respondents | Number of responses per respondent | Hours per response | Annual burden (hours) |
|---|---|---|---|---|---|---|
| Interagency Appraisal Complaint Form | Reporting (Voluntary) | On Occasion | 116 | 1 | 0.5 | 58 |

Source: FDIC.

*General Description of Collection:* As provided in section 1473(p) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), on January 12, 2011, the Appraisal Subcommittee (''ASC''), of the Federal Financial Institutions Examination Council (FFIEC) determined that no national hotline existed to receive complaints of noncompliance with appraisal standards. A notice of that determination was published in the **Federal Register** on January 28, 2011 (76 FR 5161). As required by the Dodd-Frank Act, the ASC established a hotline to refer complaints to appropriate state and Federal regulators. For those instances where the ASC determines the FDIC, OCC, FRB, or NCUA is the appropriate regulator, the agencies developed the Interagency Appraisal Complaint Form as a means to efficiently collect necessary information. The Interagency Appraisal Complaint Form is designed to collect information necessary for one or more agencies to take further action on a complaint from an appraiser, other individual, financial institution, or other entities. The FDIC will use the information to take further action on the complaint to the extent it relates to an issue within its jurisdiction.

There is no change in the method or substance of the collection. The overall increase in burden hours (from 20 hours to 58 hours) is the result of a change in the agency's estimate of the number of annual responses based on a review of the actual number of complaints received over the last five years. In particular, the estimated number of respondents has increased from 40 to 116 while the estimated time per response and the frequency of response have remained the same.

**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.

Dated at Washington, DC, on February 4, 2022.

Federal Deposit Insurance Corporation.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2022–02692 Filed 2–8–22; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Tuesday, February 15, 2022 at 10:00 a.m. and its continuation at the conclusion of the open meeting on February 17, 2022.

**PLACE:** 1050 First Street NE, Washington, DC. (This meeting will be a virtual meeting).

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Authority:** Government in the Sunshine Act, 5 U.S.C. 552b.

**Vicktoria J. Allen,**

*Acting Deputy Secretary of the Commission.*

[FR Doc. 2022–02836 Filed 2–7–22; 11:15 am]

BILLING CODE 6715–01–P

## FEDERAL MARITIME COMMISSION

### Correction to 60-Day Notice Requesting Extension of a Currently Approved Information Collection for Negotiated Rate Arrangements

**AGENCY:** Federal Maritime Commission.

**ACTION:** Correction; extension of comment period.

**SUMMARY:** The Federal Maritime Commission (The Commission) is issuing a correction to the 60-day Public Comment Request notice to extend Information Collection Request (ICR) 3072–0071 published in the **Federal Register** on December 7, 2021. The notice contains an incorrect annual burden estimate for the Information Collection. Because this correction and extension notice updates the annual respondents and the total annual burden hours in the previously published 60-day notice, the Commission is extending the previous comment period for ICR 3072–0071 for an additional 30 days. The Commission is also extending the

comment period for an additional 30 days for ICR 3072–0070, though there are no errors with that previously published 60-day notice.

**DATES:** Comments are due by March 11, 2022.

**ADDRESSES:** Submit comments for the proposed information collection requests to Lucille L. Marvin, Managing Director at email: *omd@fmc.gov.* Please refer to the assigned OMB control number on any correspondence submitted. The FMC will summarize any comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Copies of the information collections and instructions, or copies of any comments received, may be obtained by contacting Lucille Marvin, Managing Director, at *omd@fmc.gov* or 202–523–5800.

**SUPPLEMENTARY INFORMATION:** The Commission published the required 60-day notice for ICR 3072–0071 in the **Federal Register** on December 7, 2021, which provided the incorrect number of annual respondents and the incorrect total annual burden for this notice. *See* 86 FR 69254 (December 7, 2021). The number of annual respondents was reported to be 194, and the total annual burden was reported to be 247 hours. The correct number of annual respondents is 2,129 and the correct total annual burden is 2,402 hours. Additionally, since publication of the 60-day notice on December 7, 2021, the legal authority to conduct this collection was extended through 30 days after this publication.

**William Cody,**

*Secretary.*

[FR Doc. 2022–02656 Filed 2–8–22; 8:45 am]

**BILLING CODE 6730–02–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 201349–002.

*Agreement Name:* World Shipping Council Agreement.

*Parties:* COSCO SHIPPING Lines Co., Ltd., Orient Overseas Container Line Ltd., and OOCL (Europe) Limited (acting as a single party); CMA CGM S.A., APL Co. Pte. Ltd., American President Lines, LLC and ANL Singapore Pte. Ltd. (acting as a single party); Crowley Caribbean Services, LLC and Crowley Latin America Services, LLC (acting as a single party); Evergreen Marine Corporation (Taiwan) Ltd.; Hapag-Lloyd AG; HMM Company Limited; Independent Container Line, Ltd.; Kawasaki Kisen Kaisha Ltd.; Maersk A/S and Hamburg Sud (acting as a single party); MSC Mediterranean Shipping Company SA; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha; Ocean Network Express Pte. Ltd.; Wallenius Wilhelmsen Ocean AS; Wan Hai Lines Ltd. and Wan Hai Lines (Singapore) Pte. Ltd. (acting as a single party); Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.; Matson Navigation Company, Inc.; and Swire Shipping Pte. Ltd.

*Filing Party:* Robert Magovern; Cozen O'Connor.

*Synopsis:* The amendment adds Swire Shipping Pte. Ltd. as a party to the Agreement.

*Proposed Effective Date:* 3/19/2022.

*Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/34503.*

Dated: February 4, 2022.

**William Cody,**

*Secretary.*

[FR Doc. 2022–02742 Filed 2–8–22; 8:45 am]

**BILLING CODE 6730–02–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''TeamSTEPPS® Stakeholder Surveys for AHRQ's ACTION III Diagnostic Safety Capacity Building Contract Task.''

**DATES:** Comments on this notice must be received by April 11, 2022.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.* Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Proposed Project

### TeamSTEPPS® Stakeholder Surveys for AHRQ's ACTION III Diagnostic Safety Capacity Building Contract Task 3

AHRQ awarded a contract to the MedStar Health Research Institute (MHRI) in 2019 and received OMB fast track clearance (OMB control number 0935–0179, expiration date of 11/30/23), to provide program support and expertise related to improving diagnostic safety and quality across five distinct contract tasks. Task 3 of the contract is to develop, pilot test and promote a TeamSTEPPS® Course to improve communication among providers related to diagnosis. TeamSTEPPS® to Improve Diagnosis provides communication strategies, including methods to improve intra-professional communication and communication during the referral process and to practice mutual support and situation monitoring during the diagnostic process. TeamSTEPPS® to Improve Diagnosis includes an educational module for leaders on strategies to facilitate improved communication with and among providers related to diagnosis. This module also includes a Team Assessment Tool for Improving Diagnosis (the ''Team Assessment Tool'').

The Team Assessment Tool is an instrument developed as a method of self-assessment, with the goal of helping teams reflect on their current diagnostic and teamwork practices. In addition, it orients them to the repertoire of tools available within the TeamSTEPPS for Improving Diagnosis course that are

available to support improvement efforts. The Team Assessment Tool asks participants to complete self-assessment ratings as a mechanism to identify strengths and opportunities for improvement in unit-based teamwork. The unit level aggregate results of the assessments help unit leaders identify priorities for training via use of course modules and specific interventions with their diagnostic improvement teams.

AHRQ would like to further develop this Team Assessment Tool into a measurement instrument, expanding on its intended use as an educational activity and formative assessment. The opportunity to provide evidence (via publication in peer reviewed journals) that the tool is both valid and reliable will strengthen its acceptance in the care delivery community and provide a scientifically sound method for teams to assess changes in performance overtime. The Team Assessment Tool requires psychometric testing in order to ensure validity and reliability.

Psychometrics is the construction and validation of measurement instruments and assessing if these instruments are reliable (have consistency in measurement) and valid (have accuracy in measurement). Reliability and validity indicate how well a method, technique, test, or instrument is truly measuring what it intends to measure.

The contractor has conducted precursor psychometric testing on the Team Assessment Tool, which included the following: (1) Item wording and scale refinement, (2) Project Team Subject Matter Expert content review, (3) Non-Project Team Subject Matter Expert review, (4) End-user feedback, and (5) Instrument refinement. This work puts the reliability and validity of the indicators of the instrument at an optimal starting point for full psychometric testing.

Full psychometric testing of this instrument means the scaling must be evaluated extensively, which will require a sample of at least 359 individual care team members (physicians, nurses, ancillary staff, etc.,) from diverse clinical settings to participate in a 15-minute, anonymous, online survey distributed via a shared electronic survey link. Individual care team members will be recruited from across 9 health systems or care settings. The survey will ask participants to read through and complete the questions; participants will not be privy to the results of the survey.

The contractor will examine this sample of results via analyses to determine the stability of the instrument and its indicators, ensuring parallel measurements, homogeneity among indicators, concurrent, convergent, and discriminant validity, latent constructs of the tool, the extent to which measures of the same concept correlate and diverge, and the degree of that correlation in evaluating the instrument's ability to discriminate between different groups with various levels and familiarity with safety culture. It is important to note the responses on the surveys are not being evaluated, but rather the consistency with which the questions are answered is being evaluated (*i.e.,* determining whether the questions are being interpreted the same by all the users), despite diverse healthcare settings and varying levels of experience and familiarity with TeamSTEPPS. The combination of these psychometric methods will allow for internal and external validity and reliability to be assessed, to create a psychometrically sound instrument vetted for potential widespread adoption.

The Team Assessment Tool instrument will undergo remote usability testing of a survey to refine questions. To execute this task, the contractor has assembled an interprofessional team to execute any or all of the following methods for generating reliability and validity evidence that would be applicable to this specific tool: (1) Parallel forms reliability, (2) internal consistency reliability, (3) inter-rater reliability, (4) content validity, and (5) construct validity, using a multitrait-multimethod matrix and/or known groups testing.

This information collection has the following goal:

1. To determine the stability of the Team Assessment Tool instrument and its indicators in improving communication to reduce diagnostic errors, by quantitatively examining the correlation among responses of each indicator.

This study is being conducted by AHRQ through its contractor, MedStar Health Research Institute, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and vale of healthcare services and with respect to quality measurement and improvement. 42 U.S.C 299a(a)(1) and (2).

**Method of Collection**

To achieve the goal of this project the following information collection instruments will be completed using individual surveys:

(1) Setting Demographics Survey: Prior to testing of the instrument, each health system will take a brief survey to describe the characteristics of the sites engaged in pilot testing (*e.g.,* size, diagnostic team member role diversity, and familiarity with patient safety and quality improvement activities).

(2) TeamSTEPPS® Team Assessment Tool for Improving Diagnosis: This is collected from individual survey respondents, who are diverse staff members in a diagnostic team. The consistency with which the questions are interpreted and answered among respondents will be evaluated to determine the stability among indicators on the instrument.

AHRQ will use the information collected through this Information Collection Request to assess and enhance the feasibility of adopting a course to improve communication among providers related to diagnosis. AHRQs' ability to publicly share a Team Assessment Tool that has been scientifically validated is expected to be of great interest to the health care community and important in helping organizations prioritize improvement efforts.

**Estimated Annual Respondent Burden**

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Setting Demographics Survey | 9 | 1 | 0.25 | 2.25 |
| TeamSTEPPS® Team Assessment Tool for Improving Diagnosis | 350 | 1 | 0.25 | 87.5 |
| Total | 359 | | | 89.75 |

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of respondents | Total burden hours | Average hourly wage rate | Total cost burden |
|---|---|---|---|---|
| Setting Demographics Survey | 9 | 2.25 | [a] $57.12 | $128.52 |
| TeamSTEPPS® Team Assessment Tool for Improving Diagnosis | 265 | 66.25 | [b] 103.06 | 6,827.73 |
| TeamSTEPPS® Team Assessment Tool for Improving Diagnosis | 85 | 21.25 | [c] 15.50 | 329.38 |
| Total | 359 | 89.75 | | $7,285.63 |

[a] Based on the mean wages for *Medical and Health Services Managers (Code 11–9111).*
[b] Based on the mean wages for *Family Medicine Physicians (Code 29–1215).*
[c] Based on the mean wages for *HC Support Occupations (Code 31–0000).*
Occupational Employment Statistics, May 2020 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. *https://www.bls.gov/oes/current/oes_nat.htm#b29-0000.*

**Request for Comments**

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 4, 2022.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2022–02734 Filed 2–8–22; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP22–002, Electronic Health Record Study to Examine Factors and Diagnostic Pathways that Facilitate Early Ovarian Cancer Diagnoses.

*Date:* April 27, 2022.

*Time:* 11:00 a.m.–6:00 p.m., EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Jaya Raman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–B, Atlanta, Georgia 30341, Telephone: (770) 488–6511, Email: *JRaman@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2022–02647 Filed 2–8–22; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP22–003, Improving and evaluating measures to identify tics and tic disorders including Tourette syndrome in children in epidemiologic studies and clinical settings.

*Date:* April 28, 2022.

*Time:* 11:00 a.m.–6:00 p.m., EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

*For Further Information Contact:* Jaya Raman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–B, Atlanta, Georgia 30341, Telephone: (770) 488–6511, Email: *JRaman@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other

committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2022–02648 Filed 2–8–22; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–10545 and CMS–10520]**

### 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 April 11, 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 *https://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.*

**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–10545 Outcome and Assessment Information Set OASIS–E

CMS–10520 Marketplace Quality Standards

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:* Revision of a currently approved collection; *Title of Information Collection:* Outcome and Assessment Information Set OASIS–E; *Use:* This request is for OMB approval to modify the Outcome and Assessment Information Set (OASIS) that home health agencies (HHAs) are required to collect in order to participate in the Medicare program. The current version of the OASIS, OASIS–D (0938–1279) data item set was approved by the Office of Management and Budget (OMB) on December 6, 2018 and implemented on January 1, 2019. We are seeking OMB approval for the proposed revised OASIS item set, referred to hereafter as OASIS–E, scheduled for implementation on January 1, 2023. The OASIS–E includes changes pursuant to the Improving Medicare Post-Acute Care Transformation Act of 2014 (the IMPACT Act); and, to accommodate data element removals to reduce burden; and improve formatting throughout the document. *Form Number:* CMS–10545 (OMB control number: 0938–1279); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 11,354; *Total Annual Responses:* 18,030,766; *Total Annual Hours:* 13,139,904. (For policy questions regarding this collection contact Joan Proctor at 410–786–0949).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Marketplace Quality Standards; *Use:* The Patient Protection and Affordable Care Act establishes requirements to support the delivery of quality health care coverage for health insurance issuers offering Qualified Health Plans (QHPs) in Exchanges. Section 1311(c)(3) of the Patient Protection and Affordable Care Act directs the Secretary to develop a system to rate QHPs on the basis of quality and price and requires Exchanges to display this quality rating information on their respective websites. Section 1311(c)(4) of the Patient Protection and Affordable Care Act requires the Secretary to develop an enrollee satisfaction survey system to assess enrollee experience with each QHP (with more than 500 enrollees in the previous year) offered through an Exchange. Section 1311(h) requires QHPs to contract with certain hospitals that meet specific patient safety and health care quality standards.

This collection of information is necessary to provide adequate and timely health care quality information for consumers, regulators, and Exchanges as well as to collect information to appropriately monitor and provide a process for a survey vendor to appeal HHS' decision to not approve a QHP Enrollee Survey vendor application. *Form Number:* CMS–10520

(OMB control number: 0938–1249); *Frequency:* Annually; *Affected Public:* Public sector (Individuals and Households); Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 314; *Total Annual Responses:* 314; *Total Annual Hours:* 384,014. For policy questions regarding this collection contact Nidhi Singh Shah at 301–492–5110.

Dated: February 4, 2022.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2022–02738 Filed 2–8–22; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–9133–N]**

## Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—October through December 2021

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from July through September 2021, relating to the Medicare and Medicaid programs and other programs administered by CMS.

**FOR FURTHER INFORMATION CONTACT:** It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

| Addenda | Contact | Phone No. |
|---|---|---|
| I CMS Manual Instructions | Ismael Torres | (410) 786–1864 |
| II Regulation Documents Published in the **Federal Register**. | Terri Plumb | (410) 786–4481 |
| III CMS Rulings | Tiffany Lafferty | (410)786–7548 |
| IV Medicare National Coverage Determinations. | Wanda Belle, MPA | (410) 786–7491 |
| V FDA-Approved Category B IDEs | John Manlove | (410) 786–6877 |
| VI Collections of Information | William Parham | (410) 786–4669 |
| VII Medicare –Approved Carotid Stent Facilities. | Sarah Fulton, MHS | (410) 786–2749 |
| VIII American College of Cardiology-National Cardiovascular Data Registry Sites. | Sarah Fulton, MHS | (410) 786–2749 |
| IX Medicare's Active Coverage-Related Guidance Documents. | JoAnna Baldwin, MS | (410) 786–7205 |
| X One-time Notices Regarding National Coverage Provisions. | JoAnna Baldwin, MS | (410) 786–7205 |
| XI National Oncologic Positron Emission Tomography Registry Sites. | David Dolan, MBA | (410) 786–3365 |
| XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities. | David Dolan, MBA | (410) 786–3365 |
| XIII Medicare-Approved Lung Volume Reduction Surgery Facilities. | Sarah Fulton, MHS | (410) 786–2749 |
| XIV Medicare-Approved Bariatric Surgery Facilities. | Sarah Fulton, MHS | (410) 786–2749 |
| XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials. | David Dolan, MBA | (410) 786–3365 |
| All Other Information | Annette Brewer | (410) 786–6580 |

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

## II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers

for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

## III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

The Director of the Office of Strategic Operations and Regulatory Affairs of the Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

**Trenesha Fultz-Mimms,**

*Federal Register Liaison, Department of Health and Human Services.*

**BILLING CODE 4120–01–C**

**Publication Dates for the Previous Four Quarterly Notices**

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: March 17, 2021 (86 FR 14629), May 3, 2021 (86 FR 23373), August 17, 2021 (86 FR 45986) and November 18, 2021 (86 FR 64492). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

**Addendum I: Medicare and Medicaid Manual Instructions (October through December 2021)**

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Update to Medicare Deductible, Coinsurance and Premium Rates for Calendar Year (CY) 2022, use (CMS-Pub. 100-01) Transmittal No. 11136.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual.

Fee-For Service Transmittal Numbers

Please Note: Beginning Friday, March 20, 2020, there will be the following change regarding the Advance Notice of Instructions due to a CMS internal process change. Fee-For Service Transmittal Numbers will no longer be determined by Publication. The Transmittal numbers will be issued by a single numerical sequence beginning with Transmittal Number 10000.

For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

| Transmittal Number | Manual/Subject/Publication Number |
|---|---|
| | **Medicare General Information (CMS-Pub. 100-01)** |
| 11136 | Update to Medicare Deductible, Coinsurance and Premium Rates for Calendar Year (CY) 2022 |
| | **Medicare Benefit Policy (CMS-Pub. 100-02)** |
| | None |
| | **Medicare National Coverage Determination (CMS-Pub. 100-03)** |
| 11119 | National Coverage Determination (NCD) 270.3 Blood-Derived Products for Chronic, Non-Healing Wounds |
| | **Medicare Claims Processing (CMS-Pub. 100-04)** |
| 12376 | Revisions to Chapters 13, 18 And 32 To Update Coding<br>Coverage for PET Scans for Dementia and Neurodegenerative Diseases<br>Screening Pap Smears: Diagnoses Codes<br>MSN Messages<br>Remittance Advice Codes<br>Screening Pelvic Examinations From January 1, 1998, Through June 30 2001<br>Diagnoses Codes<br>MSN Messages |

| | |
|---|---|
| | Diagnosis Coding<br>Remittance Advice Notices<br>Counseling to Prevent Tobacco Use<br>Healthcare Common Procedure Coding System [HCPCS] and Diagnosis Coding<br>A/B MACs [B] Billing Requirements<br>A/B MAC [A] and [HHH] Billing Requirements<br>Claims Adjustment Reason Codes [CARCs], Remittance Advice Remark Codes [RARCs], Group Codes, and Medicare Summary Notices [MSNs]<br>Common Working File [CWF]<br>Diagnosis Code Reporting<br>Billing Requirements<br>Claim Adjustment Reason Codes [CARCs], Remittance Advice Remark Codes [RARCs], Group Codes, and Medicare Summary Notice [MSN] Messages<br>Common Working File [CWF] Edits<br>Ambulatory Blood Pressure Monitoring [ABPM] Billing Requirements<br>Billing Requirements for HBO Therapy for the Treatment of Diabetic Wounds of the Lower Extremities<br>Bill Types<br>Allowable Covered Diagnosis Codes<br>Allowable Covered Procedure Codes<br>Healthcare Common Procedure Coding System [HCPCS]<br>Coverage for PET Scans for Dementia and Neurodegenerative Diseases<br>Special Billing and Payment Requirements for A/B MACs [A]<br>A/B MACs [B] Billing Requirements<br>A/B MAC [A] and [HHH] Billing Requirements<br>Claims Adjustment Reason Codes [CARCs], Remittance Advice Remark Codes [RARCs], Group Codes, and Medicare Summary Notices [MSNs]<br>Common Working File [CWF]<br>Diagnosis Code Reporting<br>Billing Requirements<br>Claim Adjustment Reason Codes [CARCs], Remittance Advice Remark Codes [RARCs], Group Codes, and Medicare Summary Notice [MSN] Messages<br>Common Working File [CWF] Edits<br>Ambulatory Blood Pressure Monitoring [ABPM] Billing Requirements<br>Billing Requirements for HBO Therapy for the Treatment of Diabetic Wounds of the Lower Extremities<br>Bill Types<br>Allowable Covered Diagnosis Codes<br>Allowable Covered Procedure Codes<br>Healthcare Common Procedure Coding System [HCPCS]<br>Coverage for PET Scans for Dementia and Neurodegenerative Diseases<br>Special Billing and Payment Requirements for A/B MACs [A]<br>Diagnosis Codes<br>Editing Instructions for A/B MACs [A<br>Correct Place of Service [POS] Code for PR Services on Professional Claims<br>Requirements for PR Services on Institutional Claims<br>Edits for PR Services Exceeding 72 Sessions<br>ICD Procedure Codes for Bariatric Surgery for Treatment of Co- Morbid Conditions Related to Morbid Obesity [A/MACs only<br>ICD Diagnosis Codes for Bariatric Surgery<br>ICD Diagnosis Codes for BMI □35<br>ICD Codes for Type II Diabetes Mellitus Complication<br>Claims Guidance for Payment<br>Medicare Summary Notices [MSNs] and Claim Adjustment Reason Codes |

| | |
|---|---|
| | Carotid Artery Stenting [CAS] for Post-Approval Studies<br>510k Post-Approval Extension Studies using 510k-Cleared Embolic Protection Devices during Carotid Artery Stenting [CAS] Procedures<br>Intracranial Percutaneous Transluminal Angioplasty [PTA] With Stenting<br>Billing Requirements<br>Payment Requirements<br>Hospital Billing Instructions<br>Practitioner Billing Instructions<br>Claims Processing System Editing<br>Claims Processing Requirements for OPT with Verteporfin Services on Professional Claims and Outpatient Facility Claims<br>Claims Processing Requirements for OPT with Verteporfin Services on Inpatient Facility Claims<br>Coding and Claims Processing for MTWA |
| 11022 | Quarterly Update for the Durable Medical Equipment (DME), Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) - January 2022 |
| 11023 | Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction |
| 11024 | Instructions for Downloading the Medicare ZIP Code File for January 2022 |
| 11035 | Revisions to Chapters 3, 18, and 32 to Update Coding |
| 11036 | Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction |
| 11937 | Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction |
| 11038 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11039 | Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS) Updates for Fiscal Year (FY) 2022<br>Annual Update<br>Cost-of-Living |
| 11042 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11043 | Calendar Year (CY) 2022 Participation Enrollment and Medicare Participating Physicians and Suppliers Directory (MEDPARD) Procedures |
| 11044 | Ambulance Inflation Factor (AIF) for Calendar Year (CY) 2022 and Productivity Adjustment |
| 11046 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11048 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11049 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11052 | 2022 Annual Update of Healthcare Common Procedure Coding System (HCPCS) Codes for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Update |
| 11057 | Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction |
| 11059 | April 2022 Update to the Java Medicare Code Editor (MCE) for New Edit 20-Unspecified Code Edit Medicare Code Editor (MCE) |
| 11061 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11062 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11063 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |

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|---|---|
| 11066 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11072 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11074 | Calendar Year (CY) 2022 Participation Enrollment and Medicare Participating Physicians and Suppliers Directory (MEDPARD) Procedures |
| 11075 | Revision to Chapter 3 to Update Instructions for Handling Inpatient Rehabilitation Facility (IRF) Claims<br>Shared Systems and CWF Edits Actions When a Claim Does Not Match the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF-PAI) |
| 11077 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11079 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11080 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11082 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11084 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11085 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11089 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11090 | File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions |
| 11092 | Claims Processing Instructions for the New Pneumococcal 20-valent Conjugate Vaccine Code 90677 |
| 11093 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11095 | Implementation of the GV Modifier for Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs) for Billing Hospice Attending Physician Services |
| 11107 | 2022 Annual Update of Per-Beneficiary Threshold Amounts |
| 11109 | Skilled Nursing Facility (SNF) Claims Processing Updates |
| 11111 | Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update |
| 11113 | Update to the Internet Only Manual (IOM) Publication (Pub.) 100-04, Chapter 3, Sections 90.1.2, 90.3, 90.3.1, and Addendum A Provider Specific File<br>Provider Specific File<br>Billing for Kidney Transplant and Acquisition Services<br>Stem Cell Transplantation<br>Allogeneic for Stem Cell Transplantation |
| 11114 | Instructions for Retrieving the January 2022 Medicare Physician Fee Schedule Database (MPFSDB) Files Through the CMS Mainframe Telecommunications System |
| 11115 | Summary of Policies in the Calendar Year (CY) 2022 Medicare Physician Fee Schedule (MPFS) Final Rule, Telehealth Originating Site Facility Fee Payment Amount and Telehealth Services List, CT Modifier Reduction List, and Preventive Services List |
| 11116 | April 2022 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update Reminder |
| 11117 | Shared System Support Hours for Application Programming Interfaces (APIs) |
| 11118 | 2022 Annual Update to the Therapy Code List |
| 11119 | National Coverage Determination (NCD) 270.3 Blood-Derived Products for Chronic, Non-Healing Wounds<br>Autologous Platelet-Rich Plasma (PRP) for Chronic Non-Healing Wounds Policy<br>Healthcare Common Procedure Coding System (HCPCS) Codes, Diagnosis Coding and Frequency Requirements<br>Types of Bill (TOB)<br>Payment Method<br>Place of Service (POS) for Professional Claims |
| 11121 | Combined Common Edits/Enhancements Modules (CCEM) Code Set Update |
| 11122 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11122 | Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction |
| 11129 | Reduced Payment for Physical Therapy and Occupational Therapy Services Furnished In Whole or In Part by a Physical Therapist Assistant (PTA) or Occupational Therapy Assistant (OTA) Discipline Specific Outpatient Rehabilitation Modifiers - All Claims |
| 11130 | Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction |
| 11131 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11138 | Quarterly Update to Home Health (HH) Grouper |
| 11140 | Update to the Internet Only Manual (IOM) Publication 100-04, Chapters 3 and 17 |
| 11146 | Summary of Policies in the Calendar Year (CY) 2022 Medicare Physician Fee Schedule (MPFS) Final Rule, Telehealth Originating Site Facility Fee Payment Amount and Telehealth Services List, CT Modifier Reduction List, and Preventive Services List |
| 11147 | Implement Operating Rules - Phase III Electronic Remittance Advice (ERA) Electronic Funds Transfer (EFT): Committee on Operating Rules for Information Exchange (CORE) 360 Uniform Use of Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Claim Adjustment Group Code (CAGC) Rule - Update from Council for Affordable Quality Healthcare (CAQH) CORE |
| 11149 | January 2022 Integrated Outpatient Code Editor (I/OCE) Specifications Version 23.0 |
| 11150 | January 2022 Update of the Hospital Outpatient Prospective Payment System (OPPS)<br>General Coding and Billing Instructions and Explanations<br>Explanations of Terms<br>Complete List of Device Pass-through Category Codes<br>Explanations of Certain Terms/Definitions Related to Device Pass-Through Category Codes<br>Billing for Allogeneic Stem Cell Transplants |
| **Medicare Secondary Payer (CMS-Pub. 100-05)** | |
| 11069 | ECRS Updates to the Prescription Drug Assistance Request (PDAR) Fields; Medicare Secondary Payer Future Date Fields; Electronic File Transfer Naming Convention; Updated ICD-10 Diagnosis Codes for No-Fault Plan Insurance Type D and the Addition of Reason Code 94<br>Attachment 1 - ECRS Web User Guide, Software Version 6.7<br>Attachment 2 - ECRS Web Quick Reference Card, Version 2021/1 October |
| 11070 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11073 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| **Medicare Financial Management (CMS-Pub. 100-06)** | |

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| 11051 | Notice of New Interest Rate for Medicare Overpayments and Underpayments -1st Qtr Notification for FY 2022 |
| 11097 | The Fiscal Intermediary Shared System (FISS) Submission of Copybook Files to the Provider and Statistical Reimbursement (PS&R) System |
| 11112 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11124 | Updates to Medicare Financial Management Manual Chapter 3, Section 140.1 Bankruptcy Forms |
| 11133 | Fiscal Year 2022 Updates for the CMS Internet Only Manual (IOM) Publication (Pub.) 100-06, Medicare Financial Management Manual, Chapter 7 - Internal Control Requirements |
| **Medicare State Operations Manual (CMS-Pub. 100-07)** | |
| | None |
| **Medicare Program Integrity (CMS-Pub. 100-08)** | |
| 11014 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11020 | Restructuring of Section 10.4 in Chapter 10 of Publication (Pub.) 100-08<br>10.2.3/Individual Practitioners Who Enroll Via the Form CMS-855I<br>Medicare Enrollment - Contractor Processing Duties and Related Polic<br>General Processing Functions<br>Overview of the Process<br>Receipt of Application<br>Review of Application<br>Initial Steps of Review of Application<br>Data Verification<br>Requesting Missing/Clarifying Data/Documentation (Development)<br>Receiving Missing/Clarifying Data/Documentation (Response to Development<br>Provider/Supplier Fails to Submit Requested Data/Documentation<br>Application Disposition<br>Approval<br>Returns<br>Rejections<br>Denial<br>Denials – General Principles<br>Denial Reasons<br>Additional Denial Policies<br>Voluntary and Involuntary Terminations<br>Changes of Information<br>Revalidations<br>Revalidation Solicitations<br>Non-Responses to Revalidation and Extension Requests<br>Receipt and Processing of Revalidation Applications<br>Reactivations<br>Revocations<br>Revocations – Background and General Requirements<br>Revocation Effective Dates<br>Revocation Reasons<br>Reenrollment Bar<br>Additional Revocation Policies<br>Deactivations<br>Deactivation Rebuttals |
| 11031 | Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction |
| 11032 | Updates to Chapters 1, 3, 4, 5, 8 and 9 of Publication (Pub.) 100-08<br>Quality of Care Issues and Potential Fraud Issues |
| | Provider Self Audits<br>Signature Requirements<br>Introduction<br>Definitions<br>Medicare Program Integrity<br>Program Integrity Contractors<br>Unified Program Integrity Contractor<br>Investigations Medicare Drug Integrity Contractor<br>Organizational Requirements<br>Training for Law Enforcement Organizations<br>Liability of Program Integrity Contractor Employees<br>Anti-Fraud Training<br>Training for Law Enforcement Organizations<br>Procedural Requirements<br>Maintain Controlled Filing System and Documentation |
| 11040 | Revisions to Certified Provider/Supplier Model Letters and Instructions for Processing Initial Skilled Nursing Facility (SNF) Enrollment Applications |
| 11050 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11064 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11065 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11086 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11087 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11088 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11091 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11094 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11125 | Update to Enrollment Processing Requirements for Certified Provider/Supplier Change of Ownership (CHOW) and Change of Information (COI) Application |
| 11126 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11135 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11139 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11142 | Incorporation of Recent Provider Enrollment Regulatory Changes into Chapter 10 of CMS Publication (Pub.) 100-08<br>Definitions<br>Federally Qualified Health Centers (FQHCs)<br>Home Health Agencies (HHAs)<br>Independent Diagnostic Testing Facilities (IDTFs<br>Physician Assistants<br>Returns<br>Rejections<br>Denial Reasons<br>Additional Denial Policies<br>Reactivations<br>Revocation Reasons<br>Reenrollment Bar |

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|---|---|
| | Deactivations<br>Deactivation Rebuttals<br>Establishing Effective Dates<br>Opting-Out of Medicare<br>Application Fees |
| 11153 | Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions |
| 11154 | Incorporation of Recent Provider Enrollment Regulatory Changes into Chapter 10 of CMS Publication (Pub.) 100-08 |
| **Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)** | |
| 11127 | The Supplemental Security Income (SSI)/Medicare Beneficiary Data for Fiscal Year (FY) 2019 for Inpatient Prospective Payment System (IPPS) Hospitals, Inpatient Rehabilitation Facilities (IRFs), and Long-Term Care Hospitals (LTCHs) |
| **Medicare Quality Improvement Organization (CMS- Pub. 100-10)** | |
| | None |
| **Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)** | |
| | None |
| **Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)** | |
| | None |
| **Medicare Managed Care (CMS-Pub. 100-16)** | |
| | None |
| **Medicare Business Partners Systems Security (CMS-Pub. 100-17)** | |
| | None |
| **Medicare Prescription Drug Benefit (CMS-Pub. 100-18)** | |
| | None |
| **Demonstrations (CMS-Pub. 100-19)** | |
| 11030 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| 11053 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| 11067 | Intravenous Immune Globulin (IVIG) Demonstration Update for a New Drug Code J1554 ASCENIV |
| 11071 | Modifications/Improvements to Value-Based Insurance Design (VBID) Model – Implementation |
| 11108 | Managing Clinician PPA and KCF PBA Implementation |
| 11128 | ESRD Treatment Choices (ETC) Model Performance Payment Adjustment (PPA) - Facility Component (Implementation CR) |
| 11143 | Intravenous Immune Globulin (IVIG) Demonstration: Payment Update for 2022 |
| 11145 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| **One Time Notification (CMS-Pub. 100-20)** | |
| 11010 | Mobile Personal Identity Verification (PIV) Station Installation |
| 11025 | International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)--January 2022 |
| 11033 | Implementation of the Award for the Jurisdiction L (J-L) Part A and Part B Medicare Administrative Contractor (JL A/B MAC) |
| 11047 | Correct Processing of Home Health Claims if the Request for Anticipated Payment (RAP) or Notice of Admission (NOA) Was More Than 30 Days Late and Correct Identification Critical Access Hospital Sub-Unit Discharges as Institutional Periods of Care |
| 11054 | Electronic Funds Transfer (EFT) Information from Provider Enrollment Chain and Ownership System (PECOS) to ViPS Medicare System (VMS): Implementation CR |
| 11055 | National Coverage Determination (NCD) 90.2, Next Generation Sequencing (NGS) |
| 11060 | Skilled Nursing Facility (SNF) Claims Processing Update to Fiscal Year End (FYE) Edits |
| 11068 | International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs) -- April 2022 (CR 1 of 2) |
| 11076 | User Change Request (UCR): Fiscal Intermediary Shared System (FISS) – Workload Reports to Capture Optical Character Reader (OCR) and Paper Claim Counts Correctly |
| 11078 | User Change Request (UCR) - Fiscal Intermediary Shared System (FISS) – Implement New Search Functionality for Reason Codes, Expert Claims Processing System (ECPS) and Medical Policy Parameters (MPP) |
| 11083 | International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs) -- April 2022 (CR 2 of 2 for April 2022) |
| 11096 | Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions |
| 11098 | MAC Customer Experience (MCE) Provider Enrollment Survey Link |
| 11100 | User CR: Multi-Carrier System (MCS) - Beneficiary Age Data Element |
| 11103 | Clarifying Instructions for Billing and Processing and Payment of Claims Based on Locality of the Home Infusion Therapy (HIT) Service Visit |
| 11104 | User CR: Multi-Carrier System (MCS) - PSUP Query System Lookup |
| 11110 | Phase two: Undeliverable Medicare Summary Notices (UMSNs) – Beneficiary Do Not Forward Process |
| 11123 | Send Electronic Funds Transfer (EFT) Information from Provider Enrollment Chain and Ownership System (PECOS) to Fiscal Intermediary Shared System (FISS) - Implementation CR, Consolidation of January 2022 and April 2022 Releases. |
| 11132 | Medicare Diabetes Prevention Program (MDPP) Service Period Change from 2 Years to 1 Year |
| 11134 | Medicare Administrative Contractor (MAC) Educational Requirements for the Expansion of the Repetitive, Scheduled Non-Emergent Ambulance Transport (RSNAT) Prior Authorization (PA) Model |
| 11141 | User Change Request (UCR) - Fiscal Intermediary Shared System (FISS) Implement New Search Functionality for Reason Codes, Expert Claims Processing System (ECPS) and Medical Policy Parameters (MPP) |
| 11144 | Implementation of Medicare Administrative Contractor (MAC) Appeals Upload Process Changes for the Recovery Audit Contractor (RAC) Data Warehouse (RACDW) and Addition of Disposition Category "U" to RACDW Appeals Layout File |
| 11155 | Correct Processing of Home Health Claims if the Request for Anticipated Payment (RAP) or Notice of Admission (NOA) Was More Than 30 Days Late and Correct Identification Critical Access Hospital Sub-Unit Discharges as Institutional Periods of Care |
| 11156 | Addition of the QW modifier to Healthcare Common Procedure Coding System (HCPCS) Code 86328 |
| **Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)** | |
| | None |
| **State Payment of Medicare Premiums (CMS-Pub.100-24)** | |
| | None |
| **Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)** | |
| | None |

## Addendum II: Regulation Documents Published in the Federal Register (October through December 2021)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: https://www.cms.gov/files/document/regs4q21qpu.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

## Addendum III: CMS Rulings (October through December 2021)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

## Addendum IV: Medicare National Coverage Determinations (October through December 2021)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

| Title | NCDM Section | Transmittal Number | Issue Date | Effective Date |
|---|---|---|---|---|
| Transvenous Pulmonary Embolectomy (TPE) 240.6 | NCD 240.6 | IU9875 | 12/16/2021 | 10/28/2021 |
| National Coverage Determination (NCD) 220.6.19, Positron Emission Tomography NaF-18 (NaF-18 PET) to Identify Bone Metastasis of Cancer-Manual Update Only | NCD 220.6.19 | 11158 | 12/17/2021 | 01/19/2021 |

## Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (October through December 2021)

(Inclusion of this addenda is under discussion internally.)

## Addendum VI: Approval Numbers for Collections of Information (October through December 2021)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

## Addendum VII: Medicare-Approved Carotid Stent Facilities (October through December 2021)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for

facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

| Facility | Provider Number | Date Approved | State |
|---|---|---|---|
| **The following facilities are new listings for this quarter.** | | | |
| Berkeley Medical Center<br>2500 Hospital Drive<br>Martinsburg, WV 25401 | 510008 | 10/12/2021 | WV |
| CGH Medical Center<br>100 E LeFevre Road<br>Sterling, IL 61081 | 140043 | 10/12/2021 | IL |
| Lee's Summit Medical Center<br>2100 SE Blue Parkway<br>Lee's Summit, MO 64043 | 260190 | 09/27/2021 | MO |
| McKenzie Willamette Medical Center<br>1460 G Street Provider<br>Springfield, OR 97477 | 380020 | 10/15/2021 | OR |
| Raleigh General Hospital<br>1710 Harper Road<br>Beckley, WV 25801 | 510070 | 12/07/2021 | WV |
| Faith Regional Health Services<br>2700 W. Norfolk Avenue<br>Norfolk, NE 68701 | 280125 | 12/14/2021 | NE |
| **The following facilities have editorial changes (in bold).** | | | |
| **FROM: St. Joseph Hospital**<br>**TO: PeaceHealth St. Joseph Medical Center**<br>2901 Squalicum Parkway<br>Bellingham, WA 98264 | 500030 | 09/28/2005 | WA |
| **FROM: Sacred Heart Medical Center at RiverBend**<br>**TO: PeaceHealth Sacred Heart Riverbend Medical Center**<br>3311 RiverBend Drive<br>Springfield, OR 97477 | 380102 | 02/19/2009 | OR |
| **FROM: Western Baptist Hospital**<br>**TO: Baptist Health Paducah**<br>2501 Kentucky Avenue<br>Paducah, KY 42003 | 180104 | 05/05/2005 | KY |
| **FROM: St. John Hospital and Medical Center**<br>**TO: Ascension St. John Hospital**<br>22101 Moross Road<br>Detroit MI 48236 | 230165 | 04/27/2005 | MI |
| **FROM: Huntsville Health System – Marshall, LLC**<br>**TO: HH Health System – Marshall, LLC**<br>2505 431 Highway<br>North Boaz, AL 35957 | 010005 | 09/21/2021 | AL |
| **FROM: North Hills**<br>**TO: Medical City North Hills**<br>4401 Booth Calloway Road<br>North Richland Hills, TX 76180 | 450087 | 01/24/2006 | TX |
| **FROM: Carilion Roanoke Memorial Hospital**<br>**TO: Roanoke Memorial Hospital**<br>1906 Belleview Avenue<br>Roanoke, VA 24014 | 490024 | 09/06/2005 | VA |

## Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (October through December 2021)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

## Addendum IX: Active CMS Coverage-Related Guidance Documents (October through December 2021)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

## Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (October through December 2021)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at http://www.cms.gov . For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

**Addendum XI: National Oncologic PET Registry (NOPR) (October through December 2021)**

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

**Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (October through December 2021)**

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA, (410-786-3365).

| Facility | Provider Number | Date of Initial Certification | Date of Re-certification | State |
|---|---|---|---|---|
| **The following are new facilities.** | | | | |
| Summa Health<br>525 E. Market Street<br>Akron, OH 44309<br><br>Other information:<br>DNV Certificate #:<br>10000496174-MSC-DNV-USA<br><br>Previous Re-certification Dates: n/a | 360020 | 11/16/2021 | | OH |
| **The following facilities have editorial changes (in bold).** | | | | |
| Abbott Northwestern Hospital<br>800 East 28th Street<br>Minneapolis, MN 55407<br><br>Other information:<br>Joint Commission ID # 8149<br><br>Previous Re-certification Dates:<br>11/16/2010; 11/29/2012; 11/18/2014; 12/06/2016; 2/13/2019 | 240057 | 11/16/2010 | **07/28/2021** | MN |
| Bon Secours St. Mary's Hospital<br>5801 Bremo Road<br>Richmond, VA 23226<br><br>Joint Commission ID # 6387<br><br>Previous Re-certification Dates:<br>12/15/2011; 12/17/2013; 01/26/2016; 02/21/2018 | 490059 | 12/15/2011 | **06/11/2021** | VA |
| Presbyterian Medical Center of the UPHS<br>51 North 39th Street<br>Philadelphia, PA 19104<br><br>Other information:<br>Joint Commission ID # 6145<br><br>Previous Re-certification Dates:<br>07/22/2010; 07/20/2012; 06/17/2014; 07/19/2016 | 390223 | 10/05/2010 | **07/29/2021** | PA |
| The George Washington University Hospital<br>900 23rd Street, NW | 090001 | 09/12/2018 | **07/10/2021** | DC |

| Facility | Provider Number | Date of Initial Certification | Date of Re-certification | State |
|---|---|---|---|---|
| Washington, DC 20037<br><br>Other information:<br>Joint Commission ID # 6310<br><br>Previous Re-certification Dates:<br>9/12/2018 | | | | |
| Robert Wood Johnson University Hospital<br>One Robert Wood Johnson Place<br>New Brunswick, NJ 08903-2601<br><br>Joint Commission ID # 5969<br><br>Previous Re-certification Dates:<br>07/22/2010; 07/20/2012; 06/17/2014; 07/19/2016 | 310038 | 07/22/2010 | **07/08/2021** | NJ |
| TriStar Centennial Medical Center<br>2300 Patterson Street<br>Nashville, TN 37203<br><br>Joint Commission ID # 7888<br><br>Previous Re-certification Dates: 12/12/2018 | 440161 | 12/12/2018 | **08/19/2021** | TN |
| University of Maryland Medical Center<br>22 South Greene Street<br>Baltimore, MD 21201-1595<br><br>Other information:<br>Joint Commission ID # 6264<br><br>Previous Re-certification Dates:<br>09/16/2008; 08/25/2010; 08/15/2012; 08/19/2014; 09/20/2016; 9/26/2018 | 210002 | 09/16/2008 | **07/03/2021** | MD |
| NorthShore University Health System<br>1301 Central Street, Suite 300<br>Evanston, IL 60201<br><br>Other information:<br>Joint Commission ID # 7343<br><br>Previous Re-certification Dates: 10/25/2016;11/15/2018 | 140010 | 10/25/2016 | **08/06/2021** | IL |
| Ohio State University Hospitals<br>410 West Tenth Avenue, DN 168<br>Columbus, OH 43210<br><br>Joint Commission ID # 7029<br><br>Previous Re-certification Dates:<br>04/14/2006; 11/18/2008; 10/22/2010; 10/23/2012; 10/03/2014; 10/28/2016; 10/24/2018 | 360085 | 11/12/2003 | **08/04/2021** | OH |
| Cleveland Clinic<br>9500 Euclid Avenue NA-4<br>Cleveland, OH 44195<br><br>Other information:<br>Joint Commission ID # 7001<br><br>Previous Re-certification Dates:<br>10/28/2008; 11/23/2010; 12/11/2012; 12/02/2014; 11/08/2016; 12/12/2018 | 360180 | 12/03/2003 | **08/05/2021** | OH |
| Virginia Commonwealth University Health System<br>1250 East Marshall Street<br>Richmond, VA 23298-0510<br><br>Other information:<br>Joint Commission ID # 6381<br><br>Previous Re-certification Dates:<br>11/04/2008; 12/14/2010; 12/21/2012; 12/16/2014; 02/14/2017; 4/10/2019 | 490032 | 04/08/2004 | **08/07/2021** | VA |
| Strong Memorial Hospital<br>601 Elmwood Avenue<br>Rochester, NY 14642<br><br>Other information:<br>Joint Commission ID # 5856<br><br>Previous Re-certification Dates:<br>10/29/2003; 06/17/2008; 07/02/2010; 06/06/2012; 05/13/2014; 07/26/2016; 7/25/2018 | 330285 | 10/29/2003 | **07/21/2021** | NY |
| Jersey Shore University Medical Center<br>1945 Route 33<br>Neptune City, NJ 07753 | 310073 | 10/16/2018 | **10/14/2021** | NJ |

| Facility | Provider Number | Date of Initial Certification | Date of Re-certification | State |
|---|---|---|---|---|
| Other information:<br>DNV GL Certificate #<br>10000502976-MSC-DNV-USA | | | | |
| Advocate Christ Medical Center<br>4440 W. 95th Street<br>Oak Lawn, IL **60453**<br><br>Other information:<br>DNV GL Certificate #<br>10000504196-MSC-DNV-USA<br><br>Previous re-certification dates:<br>10/01/2018 | 140208 | 09/08/2015 | **10/21/2021** | IL |
| Bryan Medical Center<br>1600 South 48th Street<br>Lincoln, NE 68506<br><br>Other information:<br>Joint Commission ID # 244330<br><br>Previous Re-certification Dates:<br>03/05/2013; 02/12/2015; 04/18/2017; 07/17/2019 | 280003 | 03/05/2013 | **09/22/2021** | NE |
| Beth Israel Deaconess Medical Center<br>330 Brookline Avenue<br>Boston, MA 02215<br><br>Other information:<br>Joint Commission ID # 5501<br><br>Previous Re-certification Dates:<br>04/25/2017; 05/22/2019 | 220086 | 04/25/2017 | **11/04/2021** | MA |
| **FROM: Kaiser Sunnyside Medical Center**<br>**TO: Kaiser Foundation Hospital - Sunnyside**<br>10180 SE Sunnyside Road<br>Clackamas, OR 97015-9303<br><br>Other information:<br>Joint Commission ID # 4858<br><br>Previous Re-certification Dates:<br>09/13/2016; 09/19/2018 | 380091 | 09/13/2016 | **10/27/2021** | OR |
| Maimonides Medical Center<br>4802 Tenth Avenue<br>Brooklyn, NY 11219-2916<br><br>Other information:<br>Joint Commission ID # 5734<br><br>Previous Re-certification Dates:<br>08/23/2012; 07/29/2014; 09/13/2016; 10/11/2018 | 330194 | 08/23/2012 | **10/27/2021** | NY |
| University of Alabama at Birmingham<br>619 19th S. South<br>Birmingham, AL 35249-1900<br><br>Other information:<br>Joint Commission ID # 2814<br><br>Previous Re-certification Dates:<br>12/09/2008; 04/22/2011; 04/09/2013; 04/07/2015; 05/16/2017; 7/3/2019 | 010033 | 12/09/2008 | **08/21/2021** | AL |
| Dignity Health<br>350 West Thomas Road<br>Phoenix, AZ 85013<br><br>Other information:<br>Joint Commission ID # 9494<br><br>Previous Re-certification Dates:<br>5/8/2019 | 030024 | 05/08/2019 | **08/19/2021** | AZ |
| Fresno Community Hospital and Medical Center<br>2823 Fresno St.<br>Fresno, CA 93721<br><br>Other information:<br>Joint Commission ID # 9832<br><br>Previous Re-certification Dates:<br>11/04/2014; 12/13/2016; 2/13/2019 | 050060 | 11/04/2014 | **08/11/2021** | CA |
| **FROM: Henry Ford Hospital**<br>**TO: Henry Ford Health System**<br>2799 West Grand Boulevard<br>Detroit, MI 48202<br><br>Other information:<br>Joint Commission ID # 7485 | 230053 | 10/30/2008 | **07/29/2021** | MI |

| Facility | Provider Number | Date of Initial Certification | Date of Re-certification | State |
|---|---|---|---|---|
| Previous Re-certification Dates: 10/30/2008; 10/21/2010; 11/06/2012; 10/28/2014; 12/20/2016; 3/13/2019 | | | | |
| The General Hospital Corporation<br>55 Fruit Street<br>Boston, MA 02114<br><br>Other information:<br>Joint Commission ID # 5513<br><br>Previous Re-certification Dates: 12/02/2008; 01/19/2011; 02/13/2013; 01/06/2015; 02/28/2017; 5/22/2019 | 220071 | 12/02/2008 | **10/14/2021** | MA |
| Rochester General Hospital<br>1425 Portland Ave<br>Rochester, NY 14621<br><br>Other information:<br>DNV certificate #: 10000504804-MSC-DNV-USA<br><br>Previous Re-certification Dates: 10/29/2018 | 330125 | 10/29/2018 | **10/28/2021** | NY |
| University Hospital (Stony Brook)<br>Health Sciences Center Stony Brook<br>Stony Brook, NY 11794-8503<br><br>Other information:<br>Joint Commission ID # 5188<br><br>Previous Re-certification Dates: 01/30/2013; 01/15/2015; 03/14/2017; 05/08/2019 | 330393 | 03/02/2011 | **09/17/2021** | NY |
| **FROM: Duke University Hospital**<br>**TO: Duke University Health System, Inc**<br>2301 Erwin Road<br>Durham, NC 27710<br><br>Other information:<br>Joint Commission ID # 6490<br><br>Previous Re-certification Dates: 01/16/2009; 06/30/2011; 06/04/2013; 05/05/2015; 06/13/2017; 08/21/2019 | 340030 | 10/31/2003 | **09/22/2021** | NC |
| Nebraska Medical Center<br>4350 Dewey Avenue<br>Omaha, NE 68198-7400<br><br>Other information:<br>Joint Commission ID # 186313<br><br>Previous Re-certification Dates: 01/20/2011; 01/29/2013; 02/24/2015; 02/14/2017; 4/17/2019 | 280013 | 01/20/2011 | **09/09/2021** | NE |
| **FROM: Palmetto Health**<br>**TO: Prisma Health Richland**<br>5 Richland Medical Park Drive<br>Columbia, SC 29203<br><br>Other information:<br>Joint Commission ID # 6588<br><br>Previous Re-certification Dates: 03/06/2013; 04/21/2015; 06/06/2017; 6/28/2019 | 420018 | 03/06/2013 | **10/08/2021** | SC |

## Addendum XIII: Lung Volume Reduction Surgery (LVRS) (October through December 2021)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no updates to the listing of facilities for lung volume reduction surgery published in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

**Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (October through December 2021)**

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

**Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (October through December 2021)**

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

[FR Doc. 2022–02677 Filed 2–8–22; 8:45 am]

BILLING CODE 4120–01–C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1774–PN]**

### Medicare Program; Announcement of Request for an Exception to the Prohibition on Expansion of Facility Capacity Under the Hospital Ownership and Rural Provider Exceptions to the Physician Self-Referral Prohibition

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice with request for comment.

**SUMMARY:** The Social Security Act prohibits a physician-owned hospital from expanding its facility capacity unless the Secretary of the Department of Health and Human Services grants the hospital's request for an exception to that prohibition after considering input on the request from individuals and entities in the community where the hospital is located. The Centers for Medicare & Medicaid Services has received a request from a physician-owned hospital for an exception to the prohibition on expansion of facility capacity. This notice solicits comments on the request from individuals and entities in the community in which the hospital is located. Community input may inform our determination regarding whether the requesting hospital qualifies for an exception to the prohibition on expansion of facility capacity.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, by March 11, 2022.

**ADDRESSES:** In commenting, refer to file code CMS–1774–PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1774–PN, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1774–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** *POH-ExceptionRequests@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique

commenters even if the content is identical or nearly identical to other comments.

## I. Background

Section 1877 of the Social Security Act (the Act), also known as the physician self-referral law: (1) Prohibits a physician from making referrals for certain designated health services payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship unless the requirements of an applicable exception are satisfied; and (2) prohibits the entity from filing claims with Medicare (or billing another individual, entity, or third party payer) for any improperly referred designated health services. A financial relationship may be an ownership or investment interest in the entity or a compensation arrangement with the entity. The statute establishes a number of specific exceptions and grants the Secretary of the Department of Health and Human Services (the Secretary) the authority to create regulatory exceptions for financial relationships that do not pose a risk of program or patient abuse.

Section 1877(d) of the Act sets forth exceptions related to ownership or investment interests held by a physician (or an immediate family member of a physician) in an entity that furnishes designated health services. Section 1877(d)(2) of the Act provides an exception for ownership or investment interests in rural providers (the ''rural provider exception''). In order to qualify for the rural provider exception, the designated health services must be furnished in a rural area (as defined in section 1886(d)(2) of the Act) and substantially all the designated health services furnished by the entity must be furnished to individuals residing in a rural area, and, in the case where the entity is a hospital, the hospital must meet the requirements of section 1877(i)(1) of the Act no later than September 23, 2011. Section 1877(d)(3) of the Act provides an exception for ownership or investment interests in a hospital located outside of Puerto Rico (the ''whole hospital exception''). In order to qualify for the whole hospital exception, the referring physician must be authorized to perform services at the hospital, the ownership or investment interest must be in the hospital itself (and not merely in a subdivision of the hospital), and the hospital must meet the requirements of section 1877(i)(1) of the Act no later than September 23, 2011.

## II. Prohibition on Facility Expansion

Section 6001(a)(3) of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148) amended the rural provider and whole hospital exceptions to provide that a hospital may not increase the number of operating rooms, procedure rooms, and beds beyond that for which the hospital was licensed on March 23, 2010 (or, in the case of a hospital that did not have a provider agreement in effect as of this date, but did have a provider agreement in effect on December 31, 2010, the effective date of such provider agreement) (the hospital's ''baseline number of operating rooms, procedure rooms, and beds''). Thus, since March 23, 2010, a physician-owned hospital that seeks to avail itself of either exception is prohibited from expanding the number of operating rooms, procedure rooms, and beds (''facility capacity'') unless it qualifies as an ''applicable hospital'' or ''high Medicaid facility'' (as defined in sections 1877(i)(3)(E), (F) of the Act and 42 CFR 411.362(c)(2), (3) of our regulations) and has been granted an exception to the prohibition by the Secretary.

Section 6001(a)(3) of the Affordable Care Act added new section 1877(i)(3)(A)(i) of the Act, which required the Secretary to establish and implement an exception process to the prohibition on expansion of facility capacity for hospitals that qualify as an ''applicable hospital.'' Section 1106 of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) amended section 1877(i)(3)(A)(i) of the Act to require the Secretary to establish and implement an exception process to the prohibition on expansion of facility capacity for hospitals that qualify as either an ''applicable hospital'' or a ''high Medicaid facility.'' These terms are defined at sections 1877(i)(3)(E) and 1877(i)(3)(F) of the Act. The process for requesting an exception to the prohibition on expansion of facility capacity is discussed in section III of this notice.

The requirements for qualifying as an applicable hospital are set forth at § 411.362(c)(2), and the requirements for qualifying as a high Medicaid facility are set forth at § 411.362(c)(3). An applicable hospital means a hospital: (1) That is located in a county in which the percentage increase in the population during the most recent 5-year period (as of the date that the hospital submits its request for an exception to the prohibition on expansion of facility capacity) is at least 150 percent of the percentage increase in the population growth of the State in which the hospital is located during that period, as estimated by the Bureau of the Census; (2) whose annual percent of total inpatient admissions under Medicaid is equal to or greater than the average percent with respect to such admissions for all hospitals in the county in which the hospital is located during the most recent 12-month period for which data are available (as of the date that the hospital submits its request for an exception to the prohibition on expansion of facility capacity); (3) that does not discriminate against beneficiaries of Federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries; (4) that is located in a State in which the average bed capacity in the State is less than the national average bed capacity; and (5) that has an average bed occupancy rate that is greater than the average bed occupancy rate in the State in which the hospital is located. The regulations at § 411.362(c)(2)(ii), (iv), and (v) specify acceptable data sources for determining whether a hospital qualifies as an applicable hospital. A ''high Medicaid facility'' means a hospital that: (1) Is not the sole hospital in a county; (2) with respect to each of the three most recent 12-month periods for which data are available, has an annual percent of total inpatient admissions under Medicaid that is estimated to be greater than such percent with respect to such admissions for any other hospital located in the county in which the hospital is located; and (3) does not discriminate against beneficiaries of Federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries. The regulation at § 411.362(c)(3)(ii) specifies the acceptable data sources for determining whether a hospital qualifies as a high Medicaid facility.

## III. Exception Request Process

In the Calendar Year (CY) 2012 Outpatient Prospective Payment System/Ambulatory Surgical Centers (OPPS/ASC) final rule (76 FR 74121), we published regulations establishing the process for a hospital to request an exception from the prohibition on facility expansion (the ''exception process'') at § 411.362(c)(4), community input related to a hospital's request at § 411.362(c)(5), and related definitions at § 411.362(a). In the CY 2021 OPPS/ASC final rule (85 FR 85866), we revised the regulations that set forth the exception process with respect to high Medicaid facilities to remove certain regulatory restrictions that are not included in the Act. As of January 1,

2021, a high Medicaid facility may request an exception to the prohibition on expansion of facility capacity more frequently than once every 2 years; may request to expand its facility capacity beyond 200 percent of the hospital's baseline number of operating rooms, procedure rooms, and beds; and is not restricted to locating approved expansion capacity on the hospital's main campus.

Section 1877(i)(3)(A)(ii) of the Act and our regulations at § 411.362(c)(5) provide that individuals and entities in the community in which the provider requesting the exception is located must have an opportunity to provide input with respect to the provider's application for the exception. For further information, we refer readers to the CMS website at: *http://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals.html.* As stated in our regulations, we will solicit community input on the request for an exception by publishing a notice of the request in the **Federal Register**. Individuals and entities in the hospital's community will have 30 days to submit comments on the request. Community input must take the form of written comments and may include documentation demonstrating that the physician-owned hospital requesting the exception does or does not qualify as an ''applicable hospital'' or ''high Medicaid facility,'' as such terms are defined in § 411.362(c)(2) and (3). In the CY 2012 OPPS/ASC final rule, we gave examples of community input, such as documentation demonstrating that the hospital does not satisfy one or more of the data criteria or that the hospital discriminates against beneficiaries of Federal health programs; however, we noted that these were examples only and that we will not restrict the type of community input that may be submitted (76 FR 74522). If we receive timely comments from the community, we will notify the hospital, and the hospital will have 30 days after such notice to submit a rebuttal statement (§ 411.362(c)(5)).

A request for an exception to the facility expansion prohibition is considered complete as follows:

- If the request, any written comments, and any rebuttal statement include only filed Medicare hospital cost report data (Healthcare Cost Report Information System (''HCRIS'') data): (1) The end of the 30-day comment period if CMS receives no written comments from the community; or (2) the end of the 30-day rebuttal period if CMS receives written comments from the community, regardless of whether the hospital submitting the request submits a rebuttal statement (§ 411.362(c)(5)(i)).
- If the request, any written comments, or any rebuttal statement include data from an external data source, no later than: (1) 180 days after the end of the 30-day comment period if CMS receives no written comments from the community; and (2) 180 days after the end of the 30-day rebuttal period if CMS receives written comments from the community, regardless of whether the hospital submitting the request submits a rebuttal statement (§ 411.362(c)(5)(ii)).

The CMS decision to grant or deny a hospital's request for an exception to the prohibition on expansion of facility capacity must be published in the **Federal Register** in accordance with our regulations at § 411.362(c)(7).

## IV. Hospital Exception Request

As permitted by section 1877(i)(3) of the Act and our regulations at § 411.362(c), the following physician-owned hospital has requested an exception to the prohibition on expansion of facility capacity:

*Name of Facility:* Doctors Hospital at Renaissance, Ltd.
*Location:* 5501 South McColl Road, Edinburg, Texas 78539
*Basis for this Exception Request:* High Medicaid Facility

We seek comments on this request from individuals and entities in the community in which the hospital is located. We encourage interested parties to review the hospital's request, which is posted on the CMS website at: *http://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals.html.* We especially welcome comments regarding whether the hospital qualifies as a high Medicaid facility.

Individuals and entities wishing to submit comments on the hospital's request should state whether or not they are in the community in which the hospital is located. We suggest that parties review the **DATES** and **ADDRESSES** sections above to ensure timely submission of their comments.

## V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## VI. Response to Comments

We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: February 4, 2022.

**Lynette Wilson,**

*Federal Register Liaison, Centers for Medicare & Medicaid Services.*

[FR Doc. 2022–02739 Filed 2–8–22; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–3404]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Drug User Fee Program

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by March 11, 2022.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0727. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD

20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Generic Drug User Fee Program**

*OMB Control Number 0910–0727—Revision*

This information collection supports implementation of FDA's Generic Drug User Fee program. The Generic Drug User Fee Amendments (GDUFA) (Pub. L. 112–144, Title 111) were enacted to speed the delivery of safe and effective generic drugs to the public and reduce costs to industry. GDUFA authorizes FDA to assess user fees to fund critical and measurable enhancements to the performance of FDA's generic drugs program, bringing greater predictability and timeliness to the review of generic drug applications. GDUFA is currently authorized through September 30, 2022, with reauthorization activities currently underway. For more information regarding GDUFA and ongoing implementation, we invite you to visit our website at *https://www.fda.gov/industry/fda-user-fee-programs/generic-drug-user-fee-amendments.*

GDUFA is based on an agreement negotiated by FDA and representatives of the generic drug industry intended to address continuing regulatory challenges. GDUFA reflects input received during an open process that includes regular public meetings, posting of meeting minutes, and consideration of comments from a public docket. We are revising the information collection to include the current GDUFA agreement, or ''goals letter,'' as reflected in the document ''GDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2018–2022,'' available for download from our website at *https://www.fda.gov/media/101052/download.* The performance goals and program enhancements specified in the goals letter apply to aspects of the generic drug review program that are important for facilitating timely access to quality, affordable generic medicines. FDA is committed to meeting the performance goals specified in the goals letter and to continuous improvement of its performance.

Included among the performance goals is the issuance of topic-specific guidance documents. We maintain a searchable guidance database on our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* In publishing the respective notices of availability for each guidance document, we include an analysis under the PRA and invite public comment on the associated information collection recommendations. In addition, all Agency guidance documents are issued in accordance with our Good Guidance Practice regulations in 21 CFR 10.115, which provide for public comment at any time.

We have developed Form FDA 3794, the Generic Drug User Fee Cover Sheet, available at *https://www.fda.gov/industry/fda-user-fee-programs* which requests the minimum necessary information from generic drug applicants to account for and track user fees and to determine the amount of the fee required. Applicants complete and submit the cover sheets to accompany payments. While applicants may submit payment through multiple means, all cover sheets are prepared using FDA's web-based electronic User Fee System. Upon submitting the completed cover sheet, the User Fee System generates a user fee identification number, which is provided to applicants at the bottom of the cover sheet. It also notes the correct fiscal year user fee assessment that is due for the submission or program. FDA requests that applicants submit a copy of this completed cover sheet along with the abbreviated new drug application, as well as other additional GDUFA fees, so FDA can verify that the applicant has paid the correct user fee and their account is current.

Respondents to the information collection are potential or actual generic drug application holders or related active pharmaceutical ingredient and finished dosage form manufacturers. Companies with multiple user fee obligations may submit a cover sheet for each user fee obligation.

In the **Federal Register** of November 19, 2021 (86 FR 64945), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Form FDA 3794 | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Generic Drug User Fee Cover Sheet ..... | 500 | 7.616 | 3,808 | 0.5(30 minutes) ..... | 1,904 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection, we have retained the currently approved burden estimate.

Dated: February 3, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–02689 Filed 2–8–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID New Innovators Awards (DP2 Clinical Trial Not Allowed).

*Date:* March 10–11, 2022.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41B, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Brenda Lange-Gustafson, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41B, Rockville, MD 20852, (240) 669–5047, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 3, 2022.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–02660 Filed 2–8–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases, Special Emphasis Panel; NIAID, Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required) and NIAID Clinical Trial Planning Grants (R34 Clinical Trial Not Allowed).

*Date:* March 4, 2022.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Anuja Mathew, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20852, 301–761–6911, *anuja.mathew@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: February 3, 2022.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022–02661 Filed 2–8–22; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2022–0050]**

### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0005

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-Day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0005, Application and Permit to Handle Hazardous Materials; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before April 11, 2022.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2022–0050] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0050], and must be received by April 11, 2022.

### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email

alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

**Information Collection Request**

*Title:* Application and Permit to Handle Hazardous Materials.

*OMB Control Number:* 1625–0005.

*Summary:* The information is used to ensure the safe handling of explosives and other hazardous materials around ports and aboard vessels.

*Need:* 46 U.S.C. 70011 (formerly 33 U.S.C. 1225) and 70034 (formerly 1231) authorize the Coast Guard to establish standards for the handling, storage, and movement of hazardous materials on a vessel and waterfront facility. Regulations in 33 CFR 126.17, 49 CFR 176.100, and 176.415 prescribe the rules for facilities and vessels.

*Forms:* CG–4260, Application and Permit to Handle Hazardous Materials.

*Respondents:* Shipping agents and terminal operators that handle hazardous materials.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 308 hours to 484 hours a year, due to an increase in the estimated number of responses.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: February 4, 2022.

**Kathleen Claffie,**

*Chief, Office of Privacy Management, U.S. Coast Guard.*

[FR Doc. 2022–02740 Filed 2–8–22; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2022–0102]**

### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0023

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-Day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0023, Barge Fleeting Facility Records; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before April 11, 2022.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2022–0102] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0102], and must be received by April 11, 2022.

**Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

**Information Collection Request**

*Title:* Barge Fleeting Facility Records.

*OMB Control Number:* 1625–0023.

*Summary:* The regulations in 33 CFR 165.803 require the person in charge of certain barge fleeting facilities to keep records of twice daily inspections of barge moorings and movements of barges and hazardous cargo in and out of a facility.

*Need:* 33 CFR 165.803 requirements are intended to prevent barges from breaking away from a fleeting facility and drifting downstream out of control in the congested Lower Mississippi River waterway system.

*Forms:* None.

*Respondents:* Operators of barge fleeting facilities.

*Frequency:* Daily.

*Hour Burden Estimate:* The estimated burden has increased from 7,542 hours to 7,777 hours a year, due to an increase in the estimated annual number of responses.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: February 4, 2022.

**Kathleen Claffie,**

*Chief, Office of Privacy Management, U.S. Coast Guard.*

[FR Doc. 2022–02741 Filed 2–8–22; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2210]**

### 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 May 10, 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–2210, 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 |
|---|---|
| **Wheatland County, Montana and Incorporated Areas**<br>**Project: 15–08–1413S Preliminary Date: May 15, 2018 and March 26, 2021** | |
| City of Harlowton | City Hall, 17 South Central Avenue, Harlowton, MT 59036. |
| Unincorporated Areas of Wheatland County | Wheatland County Court Clerk, 201 A Avenue Northwest, Harlowton, MT 59036. |

[FR Doc. 2022–02728 Filed 2–8–22; 8:45 am]
**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2207]**

### 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 May 10, 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–2207, 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 |
|---|---|
| **Brooks County, Georgia and Incorporated Areas**<br>**Project: 18–04–0005S Preliminary Date: February 19, 2021** | |
| City of Morven | City Hall, 178 2nd Street, Morven, GA 31638. |
| City of Quitman | City Hall, 100 West Screven Street, Quitman, GA 31643. |
| Unincorporated Areas of Brooks County | Brooks County Office Building, 610 South Highland Road, Quitman, GA 31643. |
| **Thomas County, Georgia and Incorporated Areas** | |
| **Project: 18–04–0005S Preliminary Date: February 19, 2021** | |
| City of Barwick | City Hall, 2090 Cedar Street, Barwick, GA 31720. |

| Community | Community map repository address |
|---|---|
| Unincorporated Areas of Thomas County | Thomas County Elijah Hill Jr. Services Center, 227 West Jefferson Street, Thomasville, GA 31799. |
| **Lincoln County, Oklahoma and Incorporated Areas Project: 21–06–0043S Preliminary Date: September 2, 2021** | |
| City of Stroud | City Hall, 220 West 2nd Street, Stroud, OK 74079. |
| Unincorporated Areas of Lincoln County | Lincoln County Courthouse, 811 Manvel Avenue, Chandler, OK 74834. |
| **Somervell County, Texas and Incorporated Areas Project: 20–06–0058S Preliminary Date: October 25, 2021** | |
| City of Glen Rose | City Hall, Planning and Building Department, 201 Northeast Vernon Street, Glen Rose, TX 76043. |
| Unincorporated Areas of Somervell County | Somervell County Offices Building, 107 Northeast Vernon Street, Glen Rose, TX 76043. |

[FR Doc. 2022–02730 Filed 2–8–22; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency; Department of Homeland Security.

**ACTION:** Notice; correction.

**SUMMARY:** On November 9, 2021, FEMA published in the **Federal Register** a changes in flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table to be used in lieu of the erroneous information. The table provided here represents the changes in flood hazard determinations and communities affected for City of Glendale and City of Phoenix, Maricopa County, Arizona.

**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.

**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.

### Correction

In the changes in flood hazard determination notice published at 86 FR 62192 in the November 9, 2021, issue of the **Federal Register**, FEMA published a table with erroneous information. This table contained inaccurate information for Cities of Glendale and Phoenix, Maricopa County, Arizona, Case No. 20–09–1036P as featured in the table. In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(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. |
|---|---|---|---|---|---|---|
| Alaska: Fairbanks North Star County (FEMA Docket No.: B–2123). | Fairbanks North Star Borough (20–10–0898P). | The Honorable Bryce Ward, Mayor, Fairbanks North Star Borough, P.O. Box 71267, Fairbanks, AK 99709. | Community Planning Department, Juanita Helms Administration Center, 907 Terminal Street, Fairbanks, AK 99701. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 6, 2021 ..... | 025009 |
| Arizona: | | | | | | |
| Apache (FEMA Docket No.: B–2140). | Town of Eagar (21–09–0424P). | The Honorable Bryce Hamblin, Mayor, Town of Eagar, 22 West 2nd Street, Eagar, AZ 85925. | Public Works Department, 1162 South Water Canyon Road, Eagar, AZ 85925. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 21, 2021 ..... | 040103 |
| Maricopa (FEMA Docket No.: B–2132). | City of Peoria (20–09–1050P). | The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345. | City Hall, 8401 West Monroe Street, Peoria, AZ 85345. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 16, 2021 ..... | 040050 |
| Maricopa (FEMA Docket No.: B–2140). | City of Peoria (20–09–2036P). | The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345. | City Hall, 8401 West Monroe Street, Peoria, AZ 85345. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 3, 2021 ..... | 040050 |
| Maricopa (FEMA Docket No.: B–2140). | City of Peoria (20–09–2066P). | The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345. | City Hall, 8401 West Monroe Street, Peoria, AZ 85345. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 20, 2021 .... | 040050 |
| Maricopa (FEMA Docket No.: B–2140). | City of Surprise (20–09–2202P). | The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374. | Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 6, 2021 ..... | 040053 |
| Maricopa (FEMA Docket No.: B–2140). | Unincorporated Areas of Maricopa County (20–09–2036P). | The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003. | Flood Control District Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 3, 2021 ..... | 040037 |
| Maricopa (FEMA Docket No.: B–2140). | Unincorporated Areas of Maricopa County (20–09–2202P). | The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003. | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 6, 2021 ..... | 040037 |
| Maricopa (FEMA Docket No.: B–2123). | Unincorporated Areas of Maricopa County (21–09–0221P). | The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003. | Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 18, 2021 ..... | 040037 |
| Mohave (FEMA Docket No.: B–2123). | City of Bullhead City (20–09–1910P). | The Honorable Tom Brady, Mayor, City of Bullhead City, 2355 Trane Road, Bullhead City, AZ 86442. | Public Works Department, 2355 Trane Road, Bullhead City, AZ 86442. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 9, 2021 ..... | 040125 |
| Pinal (FEMA Docket No.: B–2132). | City of Maricopa (20–09–0399P). | The Honorable Christian Price, Mayor, City of Maricopa, 39700 West Civic Center Plaza, Maricopa, AZ 85138. | City Hall, 39700 West Civic Center Plaza, Maricopa, AZ 85138. | *https://msc.fema.gov/portal/advanceSearch.* | May 21, 2021 ..... | 040052 |
| Pinal (FEMA Docket No.: B–2132). | Town of Florence (20–09–1409P). | The Honorable Tara Walter, Mayor, Town of Florence, P.O. Box 2670, Florence, AZ 85132. | Public Works Department, 224 West 20th Street, Florence, AZ 85132. | *https://msc.fema.gov/portal/advanceSearch.* | May 28, 2021 ..... | 040084 |
| Pinal (FEMA Docket No.: B–2140). | Town of Superior (20–09–1494P). | The Honorable Mila Besich-Lira, Mayor, Town of Superior, 199 North Lobb Avenue, Superior, AZ 85173. | Town Hall, 199 North Lobb Avenue, Superior, AZ 85173. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 5, 2021 ..... | 040119 |
| Pinal (FEMA Docket No.: B–2132). | Unincorporated Areas of Pinal County (20–09–0399P). | The Honorable Stephen Q. Miller, Chairman, Board of Supervisors, Pinal County, P.O. Box 827, Florence, AZ 85132. | Pinal County Engineering Division, 31 North Pinal Street Building F, Florence, AZ 85132. | *https://msc.fema.gov/portal/advanceSearch.* | May 21, 2021 ..... | 040077 |

| 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. |
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| Pinal (FEMA Docket No.: B–2140). | Unincorporated Areas of Pinal County (20–09–1494P). | The Honorable Stephen Q. Miller, Chairman, Board of Supervisors, Pinal County, P.O. Box 827, Florence, AZ 85132. | Pinal County Engineering Division, 31 North Pinal Street Building F, Florence, AZ 85132. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 5, 2021 ..... | 040077 |
| Pima (FEMA Docket No.: B–2123). | Town of Oro Valley (20–09–1981P). | The Honorable Joe Winfield, Mayor, Town of Oro Valley, Town Hall, 11000 North La Cañada Drive, Oro Valley, AZ 85737. | Planning and Zoning Department, 11000 North La Cañada Drive, Oro Valley, AZ 85737. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 23, 2021 ..... | 040109 |
| Pima (FEMA Docket No.: B–2123). | Unincorporated Areas of Pima County (20–09–1981P). | The Honorable Sharon Bronson, Chairman, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701. | Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 23, 2021 ..... | 040073 |
| Santa Cruz (FEMA Docket No.: B–2123). | Unincorporated Areas of Santa Cruz County (20–09–0530P). | The Honorable Manuel Ruiz, Chairman, Board of Supervisors, Santa Cruz County, 2150 North Congress Drive #119, Nogales, AZ 85621. | Santa Cruz County Flood Control District, Gabilondo-Zehentner Building, 275 Rio Rico Drive, Rio Rico, AZ 85648. | *https://msc.fema.gov/portal/advanceSearch.* | May 5, 2021 ..... | 040090 |
| Santa Cruz (FEMA Docket No.: B–2123). | Unincorporated Areas of Santa Cruz County (20–09–0547P). | The Honorable Manuel Ruiz, Chairman, Board of Supervisors, Santa Cruz County, 2150 North Congress Drive #119, Nogales, AZ 85621. | Santa Cruz County Flood Control District, Gabilondo-Zehentner Building, 275 Rio Rico Drive, Rio Rico, AZ 85648. | *https://msc.fema.gov/portal/advanceSearch.* | May 5, 2021 ..... | 040090 |
| California: | | | | | | |
| Fresno (FEMA Docket No.: B–2123). | City of Clovis (20–09–2182P). | The Honorable Drew Bessinger, Mayor, City of Clovis, 1033 5th Street, Clovis, CA 93612. | City Clerk's Office, Civic Center, 1033 5th Street, Clovis, CA 93612. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 21, 2021 ..... | 060044 |
| Kern (FEMA Docket No.: B–2132). | City of Delano (21–09–0119P). | The Honorable Bryan Osorio, Mayor, City of Delano, 1015 11th Avenue, Delano, CA 93215. | Community Development, 1015 11th Avenue, Delano, CA 93215. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 1, 2021 ..... | 060078 |
| Kern (FEMA Docket No.: B–2132). | Unincorporated Areas of Kern County (21–09–0119P). | The Honorable Phillip Peters, Chairman, Board of Supervisors, Kern County, 115 Truxtun Avenue, 5th Floor, Bakersfield, CA 93301. | Kern County Planning Department, 2700 M Street, Suite 100, Bakersfield, CA 93301. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 1, 2021 ..... | 060075 |
| Nevada (FEMA Docket No.: B–2123). | City of Grass Valley (20–09–0976P). | The Honorable Ben Aguilar, Mayor, City of Grass Valley, 125 East Main Street, Grass Valley, CA 95945. | Public Works Department, 125 East Main Street, Grass Valley, CA 95945. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 30, 2021 ..... | 060211 |
| Riverside (FEMA Docket No.: B–2123). | City of Banning (20–09–2180P). | The Honorable Colleen Wallace, Mayor, City of Banning, 99 East Ramsey Street, Banning, CA 92220. | Public Works Department, 99 East Ramsey Street, Banning, CA 92220. | *https://msc.fema.gov/portal/advanceSearch.* | May 28, 2021 ..... | 060246 |
| Riverside (FEMA Docket No.: B–2140). | City of Corona (20–09–0482P). | The Honorable Jacque Casillas, Mayor, City of Corona, 400 South Vicentia Avenue, Corona, CA 92882. | City Hall, 400 South Vicentia Avenue, Corona, CA 92882. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 14, 2021 .... | 060250 |
| San Diego (FEMA Docket No.: B–2123). | City of San Diego (20–09–1465P). | The Honorable Todd Gloria, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101. | Development Services Department, 1222 1st Avenue, MS 301, San Diego, CA 92101. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 1, 2021 ..... | 060295 |
| San Diego (FEMA Docket No.: B–2132). | Unincorporated Areas of San Diego County (20–09–2083P). | The Honorable Nathan Fletcher, Chairman, Board of Supervisors, San Diego County, 1600 Pacific Highway Room 335, San Diego, CA 92101. | San Diego County Flood Control District, Department of Public Works, 5510 Overland Avenue, Suite 410, San Diego, CA 92123. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 19, 2021 ..... | 060284 |

| 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. |
|---|---|---|---|---|---|---|
| Santa Barbara (FEMA Docket No.: B–2132). | City of Goleta (21–09–0037P). | The Honorable Paula Perotte, Mayor, City of Goleta, 130 Cremona Drive, Suite B, Goleta, CA 93117. | City Hall, Planning and Environmental Review Department, 130 Cremona Drive, Suite B, Goleta, CA 93117. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 3, 2021 ..... | 060771 |
| Santa Barbara (FEMA Docket No.: B–2132). | City of Santa, Barbara (20–09–0769P). | The Honorable Cathy Murillo, Mayor, City of Santa Barbara, City Hall, 735 Anacapa Street, Santa Barbara, CA 93101. | Community Development Department, Building and Safety Division, 630 Garden Street, Santa Barbara, CA 93101. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 20, 2021 ..... | 060335 |
| Santa Barbara (FEMA Docket No.: B–2132). | City of Santa, Barbara (21–09–0037P). | The Honorable Cathy Murillo, Mayor, City of Santa Barbara, City Hall, 735 Anacapa Street, Santa Barbara, CA 93101. | Community Development Department, Building and Safety Division, 630 Garden Street, Santa Barbara, CA 93101. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 3, 2021 ..... | 060335 |
| Idaho: | | | | | | |
| Ada (FEMA Docket No.: B–2132). | City of Kuna (20–10–0884P). | The Honorable Joe Stear, Mayor, City of Kuna, City Hall, 751 West 4th Street, Kuna, ID 83634. | City Hall, 329 West 3rd Street, Kuna, ID 83642. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 22, 2021 ..... | 160174 |
| Ada (FEMA Docket No.: B–2132). | City of Meridian (20–10–1391P). | The Honorable Robert Simison, Mayor, City of Meridian, Meridian City Hall, 33 East Broadway Avenue, Suite 300, Meridian, ID 83642. | Public Works Department, 33 East Broadway Avenue, Suite 200, Meridian, ID 83642. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 26, 2021 ..... | 160180 |
| Ada (FEMA Docket No.: B–2132). | Unincorporated Areas of Ada County (20–10–0884P). | Mr. Rod Beck, Chairman, Ada County Board of County Commissioners, Ada County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702. | Ada County Courthouse, 200 West Front Street, Boise, ID 83702. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 22, 2021 ..... | 160001 |
| Ada (FEMA Docket No.: B–2132). | Unincorporated Areas of Ada County (20–10–1391P). | Mr. Rod Beck, Chairman, Ada County Board of County Commissioners, Ada County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702. | Ada County Courthouse, 200 West Front Street, Boise, ID 83702. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 26, 2021 ..... | 160001 |
| Blaine (FEMA Docket No.: B–2140). | City of Ketchum (20–10–0739P). | The Honorable Neil Bradshaw, Mayor, City of Ketchum, P.O. Box 2315, Ketchum, ID 83340. | City Hall, 480 East Avenue North, Ketchum, ID 83340. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 2, 2021 ..... | 160023 |
| Blaine (FEMA Docket No.: B–2140). | Unincorporated Areas of Blaine County (20–10–0739P). | Ms. Angenie McCleary, Vice Chair, Blaine County Commissioners, 206 1st Avenue South, Suite 300, Hailey, ID 83333. | Blaine County Planning & Zoning, 219 1st Avenue, South, Suite 208, Hailey, ID 83333. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 2, 2021 ..... | 165167 |
| Blaine (FEMA Docket No.: B–2132). | Unincorporated Areas of Blaine County (20–10–1303P). | Mr. Jacob Greenberg, Chairman, Board of County Commissioners, Blaine County, 206 South, 1st Avenue Suite 300, Hailey, ID 83333. | Blaine County Planning & Zoning, 219 South 1st Avenue, Suite 208, Hailey, ID 83333. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 29, 2021 ..... | 165167 |
| Bonneville (FEMA Docket No.: B–2123). | City of Ammon (20–10–0225P). | The Honorable Sean Coletti, Mayor, City of Ammon, City Hall, 2135 South Ammon Road, Ammon, ID 83406. | City Hall, 2135 South Ammon Road, Ammon, ID 83406. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 9, 2021 ..... | 160028 |
| Bonneville (FEMA Docket No.: B–2123). | Unincorporated Areas of Bonneville County (20–10–0225P). | The Honorable Roger Christensen, Chairman, Bonneville County, 605 North Capital Avenue, Idaho Falls, ID 83402. | Bonneville County Courthouse, 605 North Capital Avenue, Idaho Falls, ID 83402. | *https://msc.fema.gov/portal/advanceSearch.* | Oct. 9, 2021 ..... | 160027 |
| Illinois: | | | | | | |
| Kane (FEMA Docket No.: B–2147). | Unincorporated Areas of Kane County (21–05–0452P). | The Honorable Corinne Pierog, Chairman, Kane County Board, Kane County Government Center, 719 South Batavia Avenue, Building A, Geneva, IL 60134. | Kane County Government Center, Water Resources Department, 719 South Batavia Avenue, Building A, Geneva, IL 60134. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 10, 2021 .... | 170896 |

| 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. |
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| Kane (FEMA Docket No.: B–2140). | Village of Montgomery (21-05-0213P). | The Honorable Matthew Brolley, Village President, Village of Montgomery, 200 North River Street, Montgomery, IL 60538. | Village Hall, 200 North River Street, Montgomery, IL 60538. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 10, 2021 .... | 170328 |
| Kane (FEMA Docket No.: B–2147). | Village of Pingree Grove (21–05–0452P). | The Honorable Steve Wiedmeyer, Village President, Village of Pingree Grove, 555 Reinking Road, Pingree Grove, IL 60140. | Village Hall, 555 Reinking Road, Pingree Grove, IL 60140. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 10, 2021 .... | 171078 |
| Indiana: | | | | | | |
| Lake (FEMA Docket No.: B–2132). | City of Crown Point (20–05–3995P). | The Honorable David Uran, Mayor, City of Crown Point, 101 North East Street, Crown Point, IN 46307. | City Hall, 101 North East Street, Crown Point, IN 46307. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 23, 2021 ..... | 180128 |
| Noble (FEMA Docket No.: B–2132). | Unincorporated Areas of Noble County (21–05–0893P). | The Honorable Gary Leatherman, President, Noble County Board of Commissioners, Noble County Courthouse, 101 North Orange Street, Albion, IN 46701. | Noble County South Complex, 2090 North State Road 9, Suite 2, Albion, IN 46701. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 23, 2021 ..... | 180183 |
| Iowa: Polk (FEMA Docket No.: B–2132). | City of Urbandale (21–07–0009P). | The Honorable Bob Andeweg, Mayor, City of Urbandale, City Hall, 3600 86th Street, Urbandale, IA 50322. | City Hall, 3600 86th Street, Urbandale, IA 50322. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 26, 2021 ..... | 190230 |
| Kansas: | | | | | | |
| Johnson (FEMA Docket No.: B–2123). | City of Olathe (20–07–1546P). | The Honorable John Bacon, Mayor, City of Olathe, P.O. Box 768, Olathe, KS 66051. | City Hall, Olathe Planning Office, 100 West Santa Fe Drive, Olathe, KS 66061. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 17, 2021 ..... | 200173 |
| Johnson (FEMA Docket No.: B–2140). | City of Shawnee (20–07–0627P). | The Honorable Michelle Distler, Mayor, City of Shawnee, City Hall, 11110 Johnson Drive, Shawnee, KS 66203. | City Hall, 11110 Johnson Drive, Shawnee, KS 66203. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 1, 2021 ..... | 200177 |
| Sedgwick (FEMA Docket No.: B–2123). | City of Wichita (19–07–1328P). | The Honorable Brandon Whipple, Mayor, City of Wichita, City Hall, 455 North Main Street, 1st Floor, Wichita, KS 672021. | Office of Storm Water Management, 455 North Main Street, 8th Floor, Wichita, KS 672021. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 24, 2021 ..... | 200328 |
| Sedgwick (FEMA Docket No.: B–2123). | Unincorporated Areas of Sedgwick County (19–07–1328P). | Mr. Pete Meitzner, Chairman, 1st District Commissioner, Sedgwick County, 525 North Main Street, Suite 320, Wichita, KS 67203. | Sedgwick County Metropolitan Area Building and Construction Department, 1144 South Seneca Street, Wichita, KS 67213. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 24, 2021 ..... | 200321 |
| Minnesota: Anoka (FEMA Docket No.: B–2123). | City of Blaine (20–05–3678P). | The Honorable Tim Sanders, Mayor, City of Blaine, City Hall, 10801 Town Square Drive Northeast, Blaine, MN 55449. | City Hall, 10801 Town Square Drive Northeast, Blaine, MN 55449. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 21, 2021 ..... | 270007 |
| Nebraska: Lancaster (FEMA Docket No.: B–2123). | City of Lincoln (20–07–1451P). | The Honorable Leirion Gaylor Baird, Mayor, City of Lincoln, 555 South 10th Street, Lincoln, NE 68508. | Building & Safety Department, 555 South 10th Street, Lincoln, NE 68508. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 5, 2021 ..... | 315273 |
| Nevada: | | | | | | |
| Clark (FEMA Docket No.: B–2132). | City of Henderson (20–09–1687P). | The Honorable Debra March, Mayor, City of Henderson, 240 South Water Street, Henderson, NV 89015. | Public Works Department, 240 South Water Street, Henderson, NV 89015. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 29, 2021 ..... | 320005 |
| Elko (FEMA Docket No.: B–2140). | City of Elko (20–09–1987P). | The Honorable Reece Keener, Mayor, City of Elko, 1751 College Avenue, Elko, NV 89801. | City Hall, 1751 College Avenue, Elko, NV 89801. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 5, 2021 ..... | 320010 |
| Washoe (FEMA Docket No.: B–2140). | City of Reno (21–09–0352P). | The Honorable Hillary Schieve, Mayor, City of Reno, 1 East 1st Street, Reno, NV 89501. | City Hall, 1 East 1st Street, Reno, NV 89501. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 10, 2021 .... | 320020 |

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| Washoe (FEMA Docket No.: B–2140). | Unincorporated Areas of Washoe County (21–09–0352P). | The Honorable Bob Lucey, Chairman, Board of Commissioners, Washoe County, 1001 East 9th Street, Reno, NV 89512. | Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 10, 2021 .... | 320019 |
| New Jersey: Morris (FEMA Docket No.: B–2123). | Borough of Lincoln Park (21–02–0107P). | The Honorable David A. Runfeldt, Mayor, Borough of Lincoln Park, 34 Chapel Hill Road, Lincoln Park, NJ 07035. | Borough Building Department, 34 Chapell Hill Road, Lincoln Park, NJ 07035. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 29, 2021 ..... | 345300 |
| New York: | | | | | | |
| Westchester (FEMA Docket No.: B–2132). | City of Rye (20–02–1384P). | The Honorable Josh Cohn, Mayor, City of Rye, City Hall, 1051 Boston Post Road, Rye, NY 10580. | City Hall, 1051 Boston Post Road, Rye, NY 10580. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 24, 2021 .... | 360931 |
| Westchester (FEMA Docket No.: B–2123). | Village of Mamaroneck (20–02–1481P). | The Honorable Thomas A. Murphy, Mayor, Village of Mamaroneck, 123 Mamaroneck Avenue, Mamaroneck, NY 10543. | Building Inspector, The Regatta Building, 123 Mamaroneck Avenue, Mamaroneck, NY 10543. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 24, 2021 .... | 360916 |
| Ohio: | | | | | | |
| Fairfield (FEMA Docket No.: B–2140). | City of Lancaster (21–05–0317P). | The Honorable David L. Scheffler, Mayor, City of Lancaster, 104 East Main Street, Room 101, Lancaster, OH 43130. | City Building Department, 121 East Chestnut Street, Lancaster, OH 43130. | *https://msc.fema.gov/portal/advanceSearch.* | Sep 8, 2021 ..... | 390161 |
| Fairfield (FEMA Docket No.: B–2140). | Unincorporated Areas of Fairfield County (21–05–0317P). | Mr. Dave Levacy, Commissioner, Fairfield County Commissioners, 210 East Main Street, Room 301, Lancaster, OH 43130. | Fairfield County Regional Planning Commission, 210 East Main Street, Room 104, Lancaster, OH 43130. | *https://msc.fema.gov/portal/advanceSearch.* | Sep 8, 2021 ..... | 390158 |
| Oregon: | | | | | | |
| Lane (FEMA Docket No.: B–2123). | City of Cottage Grove (20–10–0681P). | The Honorable Jeff Gowing, Mayor, City of Cottage Grove, 337 North 9th Street, Cottage Grove, OR 97424. | City Hall, 400 East Main Street, Cottage Grove, OR 97424. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 25, 2021 ..... | 410120 |
| Lane (FEMA Docket No.: B–2140). | City of Eugene (20–10–1089P). | The Honorable Lucy Vinis, Mayor, City of Eugene, 101 West 10th Avenue 2nd Floor, Eugene, OR 97401. | Planning Department, 99 West 10th Avenue, Eugene, OR 97401. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 18, 2021 .... | 410122 |
| Lane (FEMA Docket No.: B–2140). | Unincorporated Areas of Lane County (20–10–1089P). | Ms. Heather Buch, Commissioner, Board of County Commissioners, Lane County, Public Service Building, 125 East 8th Avenue, Eugene, OR 97401. | Lane County, Customer Service Center, 3050 North Delta Highway, Eugene, OR 97408. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 18, 2021 .... | 415591 |
| Texas: | | | | | | |
| Dallas (FEMA Docket No.: B–2123). | City of Grand Prairie (20–06–2268P). | The Honorable Ron Jensen, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 75053. | Community Development Center, 206 West Church Street, Grand Prairie, TX 75050. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 21, 2021 ..... | 485472 |
| Dallas (FEMA Docket No.: B–2123). | City of Irving (20–06–2268P). | The Honorable Rick Stopfer, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060. | Capital Improvement Development Program, 825 West Irving Boulevard, Irving, TX 75060. | *https://msc.fema.gov/portal/advanceSearch.* | Jun. 21, 2021 ..... | 480180 |
| Hunt (FEMA Docket No.: B–2132). | City of Greenville (20–06–2492P). | The Honorable David Dreiling, Mayor, City of Greenville, 2821 Washington Street, Greenville, TX 75401. | City Hall, 2821 Washington Street, Greenville, TX 75401. | *https://msc.fema.gov/portal/advanceSearch.* | Jul. 14, 2021 ..... | 485473 |
| Washington: | | | | | | |
| King (FEMA Docket No.: B–2140). | City of Kent (21–10–0511P). | The Honorable Dana Ralph, Mayor, City of Kent, 220 4th Avenue South, Kent, WA 98032. | City Hall, 220 4th Avenue South, Kent, WA 98032. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 27, 2021 .... | 530080 |
| Yakima (FEMA Docket No.: B–2140). | City of Yakima (20–10–1163P). | The Honorable Patricia Byers, Mayor, City of Yakima, 129 North 2nd Street, Yakima, WA 98901. | City Hall, 129 North 2nd Street, Yakima, WA 98901. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 7, 2021 ..... | 530311 |

| 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. |
|---|---|---|---|---|---|---|
| Yakima (FEMA Docket No.: B–2140). | Unincorporated Areas of Yakima County (20–10–1163P). | Mr. Ron Anderson, District 2 Commissioner Yakima County, 128 North 2nd Street, Room 232, Yakima, WA 98901. | Yakima County Public Services, 128 North 2nd Street, Yakima, WA 98901. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 7, 2021 ..... | 530217 |
| Wisconsin: | | | | | | |
| Brown (FEMA Docket No.: B–2132). | Unincorporated Areas of Brown County (20–05–2406P). | Mr. Troy Streckenbach, County Executive, Brown County, P.O. Box 23600, Green Bay, WI 54305. | Zoning Office, 305 East Walnut Street, Green Bay, WI 54301. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 2, 2021 ..... | 550020 |
| Brown (FEMA Docket No.: B–2140). | Village of Hobart (21–05–0115P). | Mr. Rich Heidel, President, Village of Hobart, 2990 South Pine Tree Road, Hobart, WI 54155. | Village Hall, 2456 Glendale Avenue, Green Bay, WI 54313. | *https://msc.fema.gov/portal/advanceSearch.* | Sep. 6, 2021 ..... | 550626 |
| Brown (FEMA Docket No.: B–2132). | Village of Pulaski (20–05–2406P). | The Honorable Reed A. Woodward, Mayor, Village of Pulaski, P.O. Box 320, Pulaski, WI 54162. | Village Hall, 421 South St. Augustine Street, Pulaski, WI 54162. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 2, 2021 ..... | 550024 |
| La Crosse (FEMA Docket No.: B–2132). | Unincorporated Areas of La Crosse County (21–05–0431P). | Ms. Monica Kruse, Chair, La Crosse County Board, Administrative Center, 212 6th Street North, La Crosse, WI 54601. | La Crosse County Administration Center, 400 4th Street North, Room 3260, La Crosse, WI 54601. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 5, 2021 ..... | 550217 |
| Ozaukee (FEMA Docket No.: B–2140). | City of Cedarburg (19–05–5425P). | The Honorable Mike O'Keefe, Mayor, City of Cedarburg, W63 N645 Washington Avenue, Cedarburg, WI 53012. | City Hall, W63 N645 Washington Avenue, Cedarburg, WI 53012. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 25, 2021 .... | 550312 |
| Ozaukee (FEMA Docket No.: B–2140). | Unincorporated Areas of Ozaukee County (19–05–5425P). | Mr. Lee Schlenvogt, Chairperson, Ozaukee County Board, 121 West Main Street, Port Washington, WI 53074. | Ozaukee County Administration Center, 121 West Main Street, Port Washington, WI 53074. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 25, 2021 .... | 550310 |
| Ozaukee (FEMA Docket No.: B–2140). | Village of Grafton (19–05–5425P). | Mr. James A. Brunnquell, Village President, Village of Grafton, 860 Badger Circle, Grafton, WI 53024. | Village Hall, 1971 Washington Street, Grafton, WI 53024. | *https://msc.fema.gov/portal/advanceSearch.* | Aug. 25, 2021 .... | 550314 |
| Waukesha (FEMA Docket No.: B–2123). | Village of Sussex (20–05–1875P). | Mr. Anthony LeDonne, Village President, Village of Sussex, Sussex Civic Center, N64 W23760 Main Street, Sussex, WI 53089. | Village Hall, N64 W23760 Main Street, Sussex, WI 53089. | *https://msc.fema.gov/portal/advanceSearch.* | Mar. 18, 2021 .... | 550490 |

[FR Doc. 2022–02732 Filed 2–8–22; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2209]**

### 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. |
|---|---|---|---|---|---|---|
| Arizona: Mohave | Unincorporated areas of Mohave County (21–09–1303P). | The Honorable Buster D. Johnson, Chairman, Mohave County Board of Supervisors, P.O. Box 7000, Kingman, AZ 86402. | Mohave County Development Services Department, 3250 East Kino Avenue, Kingman, AZ 86402. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 21, 2022 | 480058 |
| Florida: | | | | | | |
| Charlotte | Unincorporated areas of Charlotte County (21–04–3081P). | The Honorable Mr. Bill Truex, Chairman, Charlotte County, Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948. | Charlotte County Community, Development Department, 18400 Murdock Circle, Port Charlotte, FL 33948. | *https://msc.fema.gov/portal/advanceSearch.* | May. 11, 2022 | 120061 |
| Collier | City of Marco Island (21–04–4573P). | Mr. Mike McNees, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145. | Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 12, 2022 | 120426 |
| Collier | City of Naples (21–04–4309P). | 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.* | Apr. 12, 2022 | 125130 |
| Collier | City of Naples (21–04–4737P). | 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.* | Apr. 28, 2022 | 125130 |
| Lee | City of Sanibel (21–04–4886P). | The Honorable Holly D. Smith, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957. | Community Services Department, 800 Dunlop Road, Sanibel, FL 33957. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 22, 2022 | 120402 |
| Leon | City of Tallahassee (20–04–5259P). | The Honorable John E. Dailey, Mayor, City of Tallahassee, 300 South Adams Street, Tallahassee, FL 32301. | Growth Management Department, 435 North Macomb Street, Tallahassee, FL 32301. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 22, 2022 | 120144 |
| Leon | Unincorporated areas of Leon County (20–04–5259P). | Mr. Vincent S. Long, Leon County Administrator, 301 South Monroe Street, Tallahassee, FL 32301. | Leon County Emergency Management Department, 911 Easterwood Drive, Tallahassee, FL 32311. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 22, 2022 | 120143 |
| Monroe | City of Marathon, (21–04–5079P). | The Honorable John Bartus, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050. | Planning Department, 9805 Overseas Highway, Marathon, FL 33050. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 25, 2022 | 120681 |

| 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. |
|---|---|---|---|---|---|---|
| Monroe | Unincorporated areas of Monroe County (21–04–4717P). | The Honorable Michelle Coldiron, Commissioner, 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.* | Apr. 18, 2022 | 125129 |
| Monroe | Unincorporated areas of Monroe County (21–04–5803P). | The Honorable Michelle Coldiron, Commissioner, 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.* | Apr. 21, 2022 | 125129 |
| Orange | City of Ocoee (21–04–4171P). | The Honorable Rusty Johnson, Mayor, City of Ocoee, 150 North Lakeshore Drive, Ocoee, FL 34761. | City Hall, 150 North Lakeshore Drive, Ocoee, FL 34761. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 20, 2022 | 120185 |
| Polk | Unincorporated areas of Polk County (21–04–1105P). | Mr. Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33831. | Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 21, 2022 | 120261 |
| Polk | Unincorporated areas of Polk County (21–04–1193P). | Mr. Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33831. | Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 28, 2022 | 120261 |
| Sarasota | Unincorporated areas of Sarasota County (21–04–4033P). | 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. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 20, 2022 | 125144 |
| Sarasota | Unincorporated areas of Sarasota County (22–04–1074P). | 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. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 27, 2022 | 125144 |
| Maryland: | | | | | | |
| Howard | Unincorporated areas of Howard County (22–03–0019P). | The Honorable Calvin Ball, Howard County Executive, 3430 Court House Drive, Ellicott City, MD 21043. | Howard County Department of Public Works, Bureau of Environmental Services, 9801 Broken Land Parkway, Columbia, MD 21046. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 15, 2022 | 240044 |
| Wicomico | Unincorporated areas of Wicomico County (21–03–1512P). | Mr. John D. Psota, Acting Executive, Wicomico County, P.O. Box 870, Salisbury, MD 21803. | Wicomico County Department of Planning and Zoning, 125 North Division Street, Room 201, Salisbury, MD 21801. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 29, 2022 | 240078 |
| Montana: | | | | | | |
| Gallatin | City of Belgrade (21–08–0464P). | Mr. Neil Cardwell, Manager, City of Belgrade, 91 East Central Avenue, Belgrade, MT 59714. | Planning Department, 91 East Central Avenue, Belgrade, MT 59714. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 11, 2022 | 300105 |
| Gallatin | Unincorporated areas of Gallatin County (21–08–0464P). | The Honorable Scott MacFarlane, Chairman, Gallatin County Commission, 311 West Main Street, Room 306, Bozeman, MT 59715 | Gallatin County Department of Planning and Community Development, 311 West Main Street, Room 108, Bozeman, MT 59715. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 11, 2022 | 300027 |
| North Dakota: Morton. | City of Mandan (21–08–1142P). | The Honorable Tim Helbling, Mayor, City of Mandan, 205 2nd Avenue, Northwest, Mandan, ND 58554. | Building Inspections Department, 205 2nd Avenue Northwest, Mandan, ND 58554. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 25, 2022 | 380072 |
| Texas: | | | | | | |
| Collin | City of McKinney (21–06–2216P). | The Honorable George Fuller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070. | Engineering Department, 221 North Tennessee Street, McKinney, TX 75069. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 11, 2022 | 480135 |
| Collin | City of Plano (21–06–2054P). | The Honorable John B. Muns, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074. | Engineering Department, 1520 K Avenue, Plano, TX 75074. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 11, 2022 | 480140 |
| Potter | City of Amarillo (20–06–3803P). | The Honorable Ginger Nelson, Mayor, City of Amarillo, P.O. Box 1971, Amarillo, TX 79105. | City Hall, 808 South Buchanan Street, Amarillo, TX 79105. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 15, 2022 | 480529 |

| 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. |
|---|---|---|---|---|---|---|
| Tarrant ..... | City of Fort Worth (21–06–1704P). | The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102. | Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 22, 2022 ..... | 480596 |
| Williamson ..... | City of Round Rock (21–06–1842P) | The Honorable Craig Morgan, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664. | Department of Utilities and Environmental Services, 3400 Sunrise Road, Round Rock, TX 78665. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 25, 2022 ..... | 481048 |
| Williamson ..... | Unincorporated areas of Williamson County (21–06–1842P). | The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626. | Williamson County Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 25, 2022 ..... | 481079 |
| Virginia: Mathews ... | Unincorporated areas of Mathews County (22–03–0021P). | Mr. Sanford B. Wanner, Interim Administrator, Mathews County, P.O. Box 839, Mathews, VA 23109. | Mathews County Building Department, 50 Brickbat Road, Mathews, VA 23109. | *https://msc.fema.gov/portal/advanceSearch.* | Apr. 29, 2022 ..... | 510096 |

[FR Doc. 2022–02731 Filed 2–8–22; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2208]**

## 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 May 10, 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–2208, 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 |
|---|---|
| **Anderson County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021** | |
| Unincorporated Areas of Anderson County | Anderson County Zoning Administration Office, 139 South Main Street, Lawrenceburg, KY 40342. |
| **Boyle County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021 and July 16, 2021** | |
| City of Perryville | City Hall, 314 East 2nd Street, Perryville, KY 40468. |
| Unincorporated Areas of Boyle County | Boyle County Courthouse, 321 West Main Street, Danville, KY 40422. |
| **Bullitt County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021** | |
| City of Lebanon Junction | City Hall, 271 Main Street, Lebanon Junction, KY 40150. |
| Unincorporated Areas of Bullitt County | Bullitt County, Nina Mooney Courthouse Annex Building, 149 North Walnut Street, 3rd Floor, Shepherdsville, KY 40165. |
| **Casey County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021** | |
| Unincorporated Areas of Casey County | Casey County Court Clerk Office, 625 Campbellsville Street, Liberty, KY 42539. |
| **Hardin County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021** | |
| Unincorporated Areas of Hardin County | Hardin County Planning and Development Commission, 150 North Provident Way, Suite 225, Elizabethtown, KY 42701. |
| **LaRue County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021** | |
| Unincorporated Areas of LaRue County | LaRue County Courthouse, 209 West High Street, Hodgenville, KY 42748. |
| **Marion County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021** | |
| City of Bradfordsville | City Hall, 202 West Main Street, Bradfordsville, KY 40009. |
| City of Lebanon | City Hall, 240 West Main Street, Lebanon, KY 40033. |
| City of Raywick | Marion County, Dave Ross Hourigan Government Center Building, 223 North Spalding Avenue, Suite 201, Lebanon, KY 40033. |
| Unincorporated Areas of Marion County | Marion County, Dave Ross Hourigan Government Center Building, 223 North Spalding Avenue, Suite 201, Lebanon, KY 40033. |
| **Mercer County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021** | |
| Unincorporated Areas of Mercer County | The Greater Harrodsburg/Mercer County Planning and Zoning Commission, 109 Short Street, Number 1, Harrodsburg, KY 40330. |
| **Nelson County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021 and September 10, 2021** | |
| City of Bardstown | Nelson County Old Courthouse, 1 Court Square, Bardstown, KY 40004. |
| City of New Haven | Nelson County Old Courthouse, 1 Court Square, Bardstown, KY 40004. |
| Unincorporated Areas of Nelson County | Nelson County Old Courthouse, 1 Court Square, Bardstown, KY 40004. |

| Community | Community map repository address |
|---|---|
| **Washington County, Kentucky and Incorporated Areas Project: 18–04–0018S Preliminary Date: April 23, 2021** | |
| City of Springfield | City Hall, 127 West Main Street, Springfield, KY 40069. |
| Unincorporated Areas of Washington County | Washington County Emergency Management, 126 Armory Hill, Springfield, KY 40069. |
| **Lafourche Parish, Louisiana and Incorporated Areas Project: 20–06–0105S Preliminary Date: June 16, 2021** | |
| City of Thibodaux | Public Works Department, 1219 Henry S. Thibodeaux Street, Thibodaux, LA 70302. |
| Town of Golden Meadow | Town Hall, 107 Jervis Drive, Golden Meadow, LA 70357. |
| Town of Lockport | Town Hall, 710 Church Street, Lockport, LA 70374. |
| Unincorporated Areas of Lafourche Parish | Lafourche Parish, Mathews Government Complex, 4876 Highway 1, Mathews, LA 70375. |
| **Georgetown County, South Carolina and Incorporated Areas Project: 06–04–C558S Preliminary Date: November 12, 2021** | |
| City of Georgetown | City Hall, 1134 North Fraser Street, Georgetown, SC 29440. |
| Town of Andrews | City Hall, 101 North Morgan Avenue, Andrews, SC 29510. |
| Unincorporated Areas of Georgetown County | Georgetown County Courthouse, Building Division and Permits, 129 Screven Street, Room 249, Georgetown, SC 29442. |

[FR Doc. 2022–02729 Filed 2–8–22; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Extension of Agency Information Collection Activity Under OMB Review: Federal Flight Deck Officer Program

**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 1652–0011, 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 requires interested volunteers to fill out an application to determine their suitability for participating in the Federal Flight Deck Officer (FFDO) Program, and deputized FFDOs to submit written reports of certain prescribed incidents.

**DATES:** Send your comments by March 11, 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 November 22, 2021, 86 FR 66330.

### 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:* Federal Flight Deck Officer Program.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 1652–0011.

*Forms(s):* N/A.

*Affected Public:* Volunteer pilots, flight engineers, and navigators.

*Abstract:* The FFDO Program enables TSA to screen, select, train, deputize, and supervise qualified volunteer pilots, flight engineers, and navigators to defend the flight decks of commercial passenger and all-cargo airliners against acts of criminal violence or air piracy. Information collected as the result of this proposal is used to assess the eligibility and suitability of prospective and current FFDOs, to ensure the readiness of every FFDO, to administer the program, and for security purposes. The program also includes the requirement for FFDOs to report prescribed incidents to TSA. These reportable incidents include, but are not limited to, the discharge or drawing of a weapon, any attacks or attempted attacks on the flight deck, and the loss or damage of any weapon/ammunition.

*Number of Respondents:* 1,796.

*Estimated Annual Burden Hours:* An estimated 2,095 hours annually.

Dated: February 4, 2022.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Information Technology.*

[FR Doc. 2022–02690 Filed 2–8–22; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–R3–ES–2021–0160; FXES11140300000–223]**

### Draft Environmental Assessment and Proposed Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit, Headwaters II Wind Farm, Randolph County, Indiana

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comment and information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from Headwaters II Wind Farm LLC (applicant) a subsidiary of EDP Renewables North America LLC, for an incidental take permit (ITP) under the Endangered Species Act, for its Headwaters II Wind Farm (project). If approved, the ITP would be for a 30-year period and would authorize the incidental take of an endangered species, the Indiana bat, and a threatened species, the northern long-eared bat. The applicant has prepared a habitat conservation plan that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the Indiana bat and northern long-eared bat. We also announce the availability of a draft environmental assessment, which has been prepared in response to the permit application in accordance with the requirements of the National Environmental Policy Act. We request public comment on the application and associated documents.

**DATES:** We will accept comments received or postmarked on or before March 11, 2022.

**ADDRESSES:**

*Document availability:* Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS–R3–ES–2021–0160 at *http://www.regulations.gov.*

*Comment submission:* Please specify whether your comment addresses the proposed HCP, draft EA, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Online: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R3–ES–2021–0160.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2021–0160; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:** Scott Pruitt, Field Supervisor, Indiana Ecological Services Field Office by email at *scott_pruitt@fws.gov,* or telephone at 812–334–4261, extension 214; or Andrew Horton, Regional HCP Coordinator, Interior Region 3 by email at *andrew_horton@fws.gov* or telephone at 612–713–5337.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 9 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. ''Take'' is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

#### Applicant's Proposed Project

The applicant requests a 30-year ITP to take the federally endangered Indiana bat (*Myotis sodalis*) and threatened northern long-eared bat (*Myotis septentrionalis*). The applicant determined that take is reasonably certain to occur incidental to operation of 49 wind turbines that have a total generating capacity of 198 megawatts and cover approximately 10,435 acres of private land. The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of the covered activity on the covered species. The biological goals and objectives are to minimize potential take of Indiana bats and northern long-eared bats through on-site minimization measures and to provide habitat conservation measures for Indiana bats and northern long-eared bats to offset any impacts from operations of the project. The HCP provides on-site avoidance and minimization measures, which include turbine operational adjustments. The authorized level of take from the project is 359 Indiana bats and 93 northern long-eared bats over the 30-year project duration. To offset the impacts of the taking of Indiana bats and northern long-eared bats, the applicant proposes to protect known maternity colony habitat and staging/swarming habitat.

#### National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA. We prepared a draft EA that analyzes the environmental impacts on the human environment resulting from three alternatives: A no-action alternative, the proposed action, and a more restrictive alternative consisting of feathering at a rate of wind speed that results in less impacts to bats.

#### Next Steps

The Service will evaluate the permit application and the comments received to determine whether the application meets the requirements of section 10(a) of the ESA. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

#### Request for Public Comments

The Service invites comments and suggestions from all interested parties during a 30-day public comment period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. The environmental effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed;
3. Any threats to the Indiana bat and the northern long-eared bat that may influence their populations over the life of the ITP that are not addressed in the proposed HCP or EA; and

4. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

**Availability of Public Comments**

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on *http://regulations.gov* all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Authority**

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

**Lori Nordstrom,**

*Assistant Regional Director, Ecological Services.*

[FR Doc. 2022–02649 Filed 2–8–22; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2021–N196; FXES11160200000–223–FF02ENEH00]**

## Draft Environmental Assessment for Amendments to the Candidate Conservation Agreement/Candidate Conservation Agreement With Assurances for the Lesser Prairie-Chicken (Tympanuchus pallidicinctus) and Dunes Sagebrush Lizard (Sceloporus arenicolus) in New Mexico

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of documents; request for public comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft environmental assessment (EA), under the National Environmental Policy Act, that evaluates the impacts of proposed amendments to the *Candidate Conservation Agreement/Candidate Conservation Agreement with Assurances for the Lesser Prairie-chicken (Tympanuchus pallidicinctus) and Dunes Sagebrush Lizard (Sceloporus arenicolus) in New Mexico* (CCA/CCAA). We invite comments on the draft EA and related documents from the public and Federal, Tribal, State, and local governments.

**DATES:** *Comments:* To ensure consideration, written comments must be received or postmarked on or before March 11, 2022. Any comments we receive after the closing date or not postmarked by the closing date may not be considered in the final decision on this action.

**ADDRESSES:**

*Obtaining documents:* You may obtain copies of the draft EA, proposed amendments, or other related documents on the internet at *https://www.fws.gov/southwest/es/NewMexico/.*

*Submitting comments:* You may submit written comments by email to *nmesfo@fws.gov.* Please note that your comment is in reference to the above-referenced CCA/CCAA. For more information, see Public Availability of Comments.

**FOR FURTHER INFORMATION CONTACT:** Shawn Sartorius, Field Supervisor, U.S. Fish and Wildlife Service, Albuquerque, New Mexico, Ecological Services Office; telephone 505–761–4781. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY service.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft environmental assessment (EA), under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), that evaluates the impacts of proposed amendments to the *Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA) for the Lesser Prairie-chicken (LPC) and Dunes Sagebrush Lizard (DSL) in New Mexico.*

This notice advises the public that we have gathered the information necessary to determine impacts of the proposed amendments on the CCA/CCAA and the associated enhancement of survival permit (permit) under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). We are accepting comments on the proposed amendments and the draft EA.

**Background**

The CCA/CCAA were signed by Federal and State authorities in 2008 for 20 years (2008–2028). The CCA/CCAA are voluntary candidate conservation agreements, administered by the Center of Excellence (CEHMM), that allow for implementation of conservation measures to benefit the LPC and DSL in a landscape-level approach on both Federal and non-Federal lands. The CCA allows for enrollment by Federal lessees and permittees, including ranchers and industry lessees, giving them a high degree of certainty that no additional conservation measures will be required of participants if either species were to be listed. In the event that either species is listed, incidental take coverage will be provided by an ESA section 7 biological opinion for conservation actions undertaken on Federal lands. Under the CCAA, conservation of the LPC and DSL will be implemented on non-Federal lands by enrolled participants. Through the CCAA, enrolled landowners or cooperators receive assurance that they will not incur additional land use restrictions on enrolled lands in the event either species is listed.

**Proposed Action**

The Service is proposing to amend the CCA/CCAA to remove barriers to increased participation in the CCA/CCAA. The amendments will: Add an enrollment option to cover all activities for participants in the covered area, reclassify habitat categories based on LPC habitat and lek locations, add certificates of participation and/or inclusion (CP/CI) tailored to companies that develop linear infrastructure (*e.g.,* midstream, transmission, and utility), reduce enrollment fees for new parcel-by-parcel enrollments, and add an annual inflation adjustment for all habitat conservation fees. Conservation measures and covered activities will not change from the original CCA/CCAA.

The CCA/CCAA covers all lands currently occupied or potentially occupied by the LPC or DSL in New Mexico. This includes approximately 2,200 square miles in the southeastern section of the State, within portions of Lea, Eddy, DeBaca, Curry, Roosevelt, Quay, and Chaves Counties. The Service has assessed the potential impacts of the proposed amendments on the CCA/CCAA and the associated permit that was issued with the original CCA/CCAA in 2008, as well as the original EA from 2008. There are no proposed changes to the federally listed species, or the area

covered by the CCA/CCAA and permit. In addition, the amendments are not expected to result in impacts beyond those identified in the original EA.

The proposed CCA/CCAA amendments are not expected to significantly affect industry or ranching activities but would help support these activities by streamlining ESA compliance, while continuing conservation efforts for the LPC and DSL. These amendments are expected to trigger no new environmental consequences; no new impacts to local economies or cultural resources; and no changes to direct, indirect, and cumulative effects. The amendments would not authorize any additional activities or incidental take. The same types and quantities of activities previously described in the original EA are expected to occur with the proposed amendments.

**Next Steps**

We will evaluate the draft amendments, draft EA, and comments we receive during the comment period to determine whether the proposed amendment meets the requirements of ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the proposed amendment to the CCA/CCAA. We will not make our final decision until after the 30-day comment period ends and we have fully considered all comments received during the public comment period.

**Public Availability of Comments**

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Authority**

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

**Amy Lueders,**

*Regional Director, Southwest Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2022–02878 Filed 2–8–22; 8:45 am]

BILLING CODE 4333–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[223A2100DD/AAKC001030/A0A501010.999900]**

### San Pasqual Band of Mission Indians; Amended Tribal Liquor Control Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the amended Liquor Control Ordinance of San Pasqual Band of Mission Indians. The San Pasqual Band of Mission Indians amended Liquor Control Ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of California.

**DATES:** This ordinance shall become effective March 11, 2022.

**FOR FURTHER INFORMATION CONTACT:** Mr. Felix Kitto, Deputy Regional Director, Indian Services, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Room W–2820, Sacramento, California 95825, Telephone (916) 978–6000, Fax: (916) 978–6099.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. The San Pasqual Band of Mission Indians adopted the amended Tribal Liquor Control Ordinance on October 1, 2020.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the General Council of the San Pasqual Band of Mission Indians duly adopted the amended Tribal Liquor Control Ordinance on October 1, 2020.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

San Pasqual Band of Mission Indians' amended Tribal Liquor Control Ordinance shall read as follows:

**SAN PASQUAL BAND OF MISSION INDIANS**

**AMENDED TRIBAL LIQUOR CONTROL ORDINANCE**

**San Pasqual Band of Mission Indians**

**Amended Tribal Liquor Control Ordinance**

**I. Sale and Consumption of Alcoholic Beverages**

The General Council of the San Pasqual Band of Mission Indians (hereinafter ''General Council''), governing body of the San Pasqual Band (hereinafter ''Tribe''), hereby enacts this Ordinance to govern the sale and consumption of alcoholic beverages on Reservation and other tribal trust lands.

**II. Preamble**

1. Title 18, United States Code, Section 1161, provides Indian tribes with authority to enact ordinances governing the consumption and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior, published in the **Federal Register** and such activities are in conformity with state law.

2. Pursuant to Article IV, Section 1 and Article VIII, Section 1(d) of the Constitution and By-Laws of the San Pasqual Band, the General Council is the governing body of the Tribe, with the power to enact ordinances to promote the general welfare and economic advancement of the Tribe and its members and has the powers and responsibilities to establish rules or procedures for the conduct of its affairs.

3. The Tribe is the owner and operator of a gaming facility located on the Reservation known as the Valley View Casino & Hotel (hereinafter ''Casino''), at which Class II and Class III Gaming is conducted pursuant to the Tribe's Gaming Ordinance and a Compact executed with the State of California in August 2018, ratified by the California Legislature, which Compact was deemed to have been approved by operation of law on December 13, 2018, and published in the **Federal Register** on December 27, 2018.

4. The Casino, located on trust land, is an integral and indispensable part of the Tribe's economy, and is intended to provide income to the Tribe and

training and employment to its members.

5. The General Council has determined that it is in the best interest of the Tribe to offer alcoholic beverages for sale and consumption in the Casino.

6. The Tribe has leased a nine-acre parcel of tribal trust land to a tribally-owned enterprise for the purpose of developing and operating, among other things, a convenience store.

7. The General Council has determined that it is in the best interest of the Tribe to allow the sale of alcoholic beverages at the convenience store for off-premises consumption.

8. It is the purpose of this Ordinance to set out the terms and conditions under which the sale and consumption of said alcoholic beverages may take place.

**III. General Terms**

1. The sale and consumption of alcoholic beverages within the Casino, for on-premises consumption only, is hereby authorized.

2. For the purpose of this Ordinance, the term Casino shall mean the Valley View Casino & Hotel, as currently existing or as expanded in the future, or any other casino facility owned by the Tribe and located on the San Pasqual Indian Reservation.

3. The sale of alcoholic beverages at the convenience store, for off-premises consumption only, is hereby authorized.

4. For the purposes of this Ordinance, the term ''convenience store'' shall mean the convenience store located on an approximately nine-acre parcel of tribal trust land at the intersection of Lake Wohlford and Valley Center Roads leased by the Tribe to the San Pasqual Economic Development Corporation.

5. The sale of said alcoholic beverages authorized by this Ordinance shall be subject to federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco & Firearms, and in conformity with all applicable laws of the State of California and applicable federal laws. This includes but is not limited to the following:

a. No person under the age of 21 years shall consume, acquire or have in his or her possession any alcoholic beverage.

b. No person shall sell any alcoholic beverages to any person under the age of 21.

c. No person shall sell alcoholic beverages to a person apparently under the influence of alcohol.

6. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present anyone of the following types of identification which shows his or her correct age and bears his or her signature and photograph: (1) Driver's license or identification card issued by any state Department of Motor Vehicles; (2) United States Active-Duty Military card; or (3) passport.

7. All liquor sales authorized under this Ordinance shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the use of major credit or debit cards.

**IV. Posting**

This Ordinance shall be conspicuously posted within the Casino and the convenience store at all times they are open to the public.

**V. Enforcement**

a. The San Pasqual Gaming Commission may enforce this Ordinance as against the Casino by implementation of monetary fines not to exceed $500 per violation. Prior to any enforcement action, the Gaming Commission shall provide the alleged offender of this Ordinance with at least three (3) days notice of an opportunity to be heard during a specially called meeting. The decision of the Gaming Commission shall be final.

b. The San Pasqual Business Committee may enforce this Ordinance as against the convenience store by implementation of monetary fines not to exceed $500 per violation. Prior to any enforcement action, the Business Committee shall provide the alleged offender of this Ordinance with at least three (3) days notice of an opportunity to be heard during a specially called meeting. The decision of the Business Committee shall be final.

**VI. Severability**

If any provision or application of this Ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

**VII. Amendment**

This Ordinance may only be amended by a majority vote of the General Council.

**VIII. Sovereign Immunity**

Nothing in this Ordinance in any way limits, alters, restricts or waives the Tribe's sovereign immunity from unconsented suit or action.

**IX. Effective Date**

This Ordinance shall become effective following its adoption by the General Council, certification by the Secretary of the Interior and publication in the **Federal Register**.

[FR Doc. 2022–02696 Filed 2–8–22; 8:45 am]

BILLING CODE 4337–15–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[18X LLWO600000.L18200000.XP0000]**

## National Call for Nominations for Site-Specific Advisory Committees

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of call for nominations.

**SUMMARY:** The purpose of this notice is to request public nominations for the Bureau of Land Management's (BLM) Bears Ears and Grand Staircase-Escalante National Monument Advisory Committees (MACs). The MACs provide advice and recommendations to the BLM on the development and implementation of management plans in accordance with the statutes under which the monuments were established.

**DATES:** All nominations must be received no later than March 11, 2022.

**ADDRESSES:** Applications for the Bears Ears MAC should be sent to Rachel Wootton, BLM Canyon Country District Office, 82 Dogwood Ave., Moab, UT 84532; email: *rwootton@blm.gov,* Phone: (385) 235–4364.

Applications for the Grand Staircase-Escalante MAC should be sent to David Hercher, BLM Paria River District Office, 669 South Highway 89A, Kanab, UT 84741; email: *dhercher@blm.gov,* Phone: (435) 644–1209.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schnee, Public Affairs Specialist, 440 West 200 South, Suite 500, Salt Lake City, UT 84101; email: *mschnee@blm.gov;* phone: (801) 539–4089. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact the BLM during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. Replies are provided during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and in addressing issues related to management of lands administered by the BLM through the establishment of 10- to 15-member citizen-based advisory councils that are

managed in accordance with the Federal Advisory Committee Act.

The Bears Ears MAC consists of 15 members including an elected official from San Juan County representing the County; a representative of State government; a representative with paleontological expertise; a representative with archaeological or historic expertise; a representative of the conservation community; a representative of livestock grazing permittees within the Monument; two representatives of Tribal interests; two representatives of developed outdoor recreation, off-highway vehicle users, or commercial recreation activities; a representative of dispersed recreational activities; a representative of private landowners; a representative of local business owners; and two representatives of the public at large.

The Grand Staircase-Escalante MAC consists of 15 members including an elected official from Garfield County representing the County; an elected official from Kane County representing the County; a representative of State government; a representative of Tribal government with ancestral interest in the Monument; a representative of the educational community; a representative of the conservation community; a representative of developed outdoor recreation, off-highway vehicle users, or commercial recreation activities; a representative of dispersed recreation; a livestock grazing permittee operating within the Monument to represent grazing permittees; a representative of private landowners; a representative of local business owners; and a representative of the public at large. Additionally, three representatives are appointed as special Government employees, one for each of the following areas of expertise: A representative with expertise in systems ecology; a representative with expertise in paleontology; and a representative with expertise in archaeology or history.

The rules governing advisory councils are found at 43 CFR subpart 1784.

The following must accompany all nominations:

—A completed MAC application which can be found at: *https://www.blm.gov/sites/blm.gov/files/1120-019_0.pdf*
—Letter(s) of reference that describe the nominee's experience and qualifications; and
—Any other information that addresses the nominee's qualifications.

Individuals may nominate themselves or others. Nominees should note the interest area(s) they are applying to represent on their application. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the advisory committee. Nominees should demonstrate a commitment to consensus building and collaborative decision-making. Simultaneous with this notice, the BLM Utah State Office will issue a press release providing additional information for submitting nominations

*Authority:* 43 CFR 1784.4–1.

**Gregory Sheehan,**

*State Director.*

[FR Doc. 2022–02673 Filed 2–8–22; 8:45 am]

**BILLING CODE 4310–DQ–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRNHL–DTS#-33362; PPWOCRADI0, PCU00RP14.R50000]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting electronic comments on the significance of properties nominated before January 29, 2022, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted electronically by February 24, 2022.

**ADDRESSES:** Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 29, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

**ARIZONA**

**Maricopa County**

Casa Del Northern (North Central Phoenix Farmhouses and Rural Estate Homes, 1895–1959), 300 East Northern Ave., Phoenix, MP100007472

**CALIFORNIA**

**Kern County**

Woman's Club of Bakersfield, 1806 D St. (also known as 2030 18th St.), Bakersfield, SG100007480

**Los Angeles County**

Carthay Neighborhoods Historic District, Roughly bounded by South Fairfax Ave., Wilshire, West Pico, and La Cienega Blvds., Los Angeles, SG100007486

Kight, Morris, House, 1822 West 4th St., Los Angeles, SG100007487

**Orange County**

Santiago Orange Growers Association Packing House, 350 North Cypress St., Orange, SG100007485

**San Francisco County**

Glide Memorial Church, 330, 302 Ellis St., San Francisco, SG100007488

**Santa Barbara County**

Royal Theater, (Asian Americans and Pacific Islanders in California, 1850–1970 MPS), 848 Guadalupe St., Guadalupe, MP100007474

**Sonoma County**

Freestone Store, 500 Bohemian Hwy., Freestone, SG100007484

**COLORADO**

**Chaffee County**

Buena Vista Ranger Station, 410 East Main St., Buena Vista, SG100007489

McFadden Barn, 18840 Mountain View Dr., Buena Vista vicinity, SG100007490

**FLORIDA**

**Orange County**

Baptist Terrace Apartments, 414 East Pine St., Orlando, SG100007476

**Sarasota County**

Markowitz House, (Sarasota School of Architecture MPS), 1189 Center Pl., Sarasota, MP100007477

**GEORGIA**

**Chatham County**

Springfield Terrace School, 707 Hastings St., Savannah, SG100007479

**IOWA**

**Winneshiek County**

Broadway-Phelps Park Historic District (Boundary Increase), 202 Winnebago St., 307 West Main St., Decorah, BC100007492

**MONTANA**

**Yellowstone County**

Montana National Bank, 201 North Broadway, Billings, SG100007494

**OHIO**

**Marion County**

Marion Downtown Historic District, Roughly bounded by Center, Vine, Pleasant, and Orchard Sts., Marion, SG100007469

Additional documentation has been received for the following resource:

**CALIFORNIA**

**Orange County**

Fullerton Union High School Auditorium (Additional Documentation), 201 East Chapman Ave., Fullerton, AD93001019

*Authority:* Section 60.13 of 36 CFR part 60.

Dated: February 1, 2022.

**Sherry A. Frear,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

[FR Doc. 2022–02678 Filed 2–8–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000 221S180110; S2D2S SS08011000 SX064A000 22XS501520; OMB Control Number 1029–0115]**

### Agency Information Collection Activities; Requirements for Permits and Permit Processing

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before March 11, 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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0115 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 30, 2021 (86 FR 54236). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* This collection of information is authorized by part 773 which addresses general and specific requirements for applicants to provide information in the permitting process, and for regulatory authorities to review permit applications, determine permit eligibility, and ascribe permit conditions. Part 773 also contains provisions governing provisionally issued permits, improvidently issued permits, and challenges of ownership or control listings and findings. This information collection also authorizes the collection of permit processing fees approved under OSMRE regulations.

*Title of Collection:* Requirements for Permits and Permit Processing.

*OMB Control Number:* 1029–0115.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Businesses, State and Tribal governments.

*Total Estimated Number of Annual Respondents:* 950.

*Total Estimated Number of Annual Responses:* 4,198.

*Estimated Completion Time per Response:* Varies 1 hour to 32 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 46,982.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* One time.

*Total Estimated Annual Nonhour Burden Cost:* $83,400.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Mark J. Gehlhar,**

*Information Collection Clearance Officer, Division of Regulatory Support.*

[FR Doc. 2022–02708 Filed 2–8–22; 8:45 am]

**BILLING CODE 4310–05–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 Electronic Exercise Systems, Stationary Bicycles and Components Thereof and Products Including Same, DN 3602;* 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 iFit Inc. (FKA ICON Health & Fitness, Inc.) on February 3, 2022. 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 electronic exercise systems, stationary bicycles and components thereof and products including same. The complainant names as respondents: Peloton Interactive, Inc. of New York, NY; Peloton Interactive UK Ltd. of England; Tonic Fitness Technology, Inc. of Taiwan; and Rexon Industrial Corp. Ltd. of Taiwan. The complainant requests that the Commission issue a limited 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. 3602'') 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

[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.

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: February 3, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–02646 Filed 2–8–22; 8:45 am]

**BILLING CODE 7020–02–P**

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–539 and 731–TA–1280–1282 (Review)]**

## Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Korea, Mexico, and Turkey; Scheduling of Expedited Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DATES:** November 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jordan Harriman (202–205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On November 5, 2021, the Commission determined that the domestic interested party group response to its notice of institution (86 FR 41511, August 2, 2021) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

*Staff report.*—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on February 11, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before February 18, 2022 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by February 18, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Determination.*—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

*Authority:* These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–02669 Filed 2–8–22; 8:45 am]

**BILLING CODE 7020–02–P**

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the joint response to its notice of institution on behalf of six domestic producers: Atlas Tube, Bull Moose Tube Company, Maruichi American Corporation, Nucor Tubular Products, Inc., Searing Industries, and Vest, Inc., to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–467 and 731–TA–1164–1165 (Second Review)]**

## Narrow Woven Ribbons With Woven Selvedge From China and Taiwan; Scheduling of Expedited Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of

1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on narrow woven ribbons with woven selvedge from China and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DATES:** November 5, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kristina Lara (202–205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On November 5, 2021, the Commission determined that the domestic interested party group response to its notice of institution (86 FR 41514, August 2, 2021) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

*Staff report.*—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on February 4, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before February 11, 2022 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by February 11, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Determination.*—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

*Authority:* These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–02684 Filed 2–8–22; 8:45 am]

**BILLING CODE 7020–02–P**

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response to its notice of institution filed on behalf of Berwick Offray LLC and its wholly owned subsidiary Lion Ribbon Company, a domestic producer of narrow woven ribbons with woven selvedge, to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1255]**

## Certain Apparatus and Methods of Opening Containers; Commission Determination Not To Review an Initial Determination Granting Complainant's Motion for Summary Determination of Violation of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') granting summary determination of violation of section 337 in the above-captioned investigation. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On March 18, 2021, the Commission instituted this investigation based on a complaint filed by Draft Top, LLC (''Draft Top'') of Long Beach, New Jersey. 86 FR 14765 (Mar.

18, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (''section 337''), based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain apparatus and methods of opening containers by reason of infringement of claim 12 of U.S. Patent No. 10,519,016 (''the '016 patent''). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named nine respondents: KKS Enterprises Co., Ltd. of Hangzhou, China; Kingskong Enterprises Co., Ltd. of Hangzhou, China; Du Zuojun of Shenzhen, Guangdong, China; WN Shipping USA, Inc. of Inwood, New York; Shuje Wei of Pomona, California; Express Cargo Forwarded, Ltd. of Los Angeles, California; Hou Wenzheng of Hebron, Kentucky (collectively, the ''Defaulting Respondents''); Mintiml of Yangzhou, Jiangsu, China; and Tofba International, Inc. (''Tofba'') of Hawthorne, California. *Id.* The Office of Unfair Import Investigations (''OUII'') is also named as a party. *Id.*

On May 27, 2021, the Commission determined to terminate the investigation as to respondent Tofba based on withdrawal of the allegations in the complaint directed to Tofba. Order No. 6 (May 12, 2021), *unreviewed by* Comm'n Notice (May 27, 2021). On July 29, 2021, the Commission determined to find the Defaulting Respondents in default for failing to respond to the complaint and notice of investigation and failing to show cause why they should not be found in default. Order No. 8 (July 12, 2021), *unreviewed by* Comm'n Notice (July 30, 2021). On August 24, 2021, the Commission determined to terminate the investigation as to respondent Mintiml based on withdrawal of the allegations in the complaint directed to Mintiml. Order No. 9 (Aug. 11, 2021), *unreviewed by* Comm'n Notice (Aug. 24, 2021).

On August 20, 2021, Draft Top filed a motion for summary determination of violation of section 337 by the Defaulting Respondents, requesting issuance of a general exclusion order (''GEO'') and setting a 300 percent bond for any importations of infringing goods during the period of Presidential review. On September 17, 2021, Draft Top filed a supplement to its motion. That same day, OUII filed a response supporting Draft Top's motion except on the issue of bonding (OUII submits that a bond of 100 percent, not 300 percent, is appropriate). No Defaulting Respondent filed a response to Draft Top's motion.

On December 20, 2021, the ALJ issued the subject ID granting Draft Top's motion and finding violations of section 337 by the Defaulting Respondents. Specifically, the ID finds that: (i) Draft Top satisfied the importation requirement as to the Defaulting Respondents; (ii) the Commission has subject matter, personal, and in rem jurisdiction in this investigation; (iii) the Defaulting Respondents' accused products practice claim 12 of the '016 patent; (iv) claim 12 of the '016 patent has not been shown invalid; and (v) Draft Top satisfied the technical and economic prongs of the domestic industry requirement as to the '016 patent. The ID also includes the ALJ's recommended determination on remedy and bonding, recommending that, should the Commission determine that violations of section 337 occurred, then the Commission issue a GEO and set a 100 percent bond for any importations of infringing products during the period of Presidential review. No petitions for review of the subject ID were filed.

The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's **Federal Register** notice. 87 FR 238–39 (Jan. 4, 2022).

Having reviewed the record in this investigation, including the subject ID, the Commission has determined not to review the ID's finding of violations of section 337.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) An exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The parties, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In its initial written submission, Draft Stop and OUII are requested to submit proposed remedial orders for the Commission's consideration. Draft Stop is further requested to identify the date the asserted patent expires, to provide the HTSUS subheadings under which the subject articles are imported, and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on February 17, 2022. Reply submissions must be filed no later than the close of business on February 24, 2022. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar.

19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1255) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. 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,[1] solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on February 3, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 3, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022–02670 Filed 2–8–22; 8:45 am]

**BILLING CODE 7020–02–P**

[1] All contract personnel will sign appropriate nondisclosure agreements.

## DEPARTMENT OF LABOR

### Office of Federal Contract Compliance Programs

### Agreement Approval Process for Use of Functional Affirmative Action Programs; Proposed Approval of Information Collection Requirements; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). The program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to obtain approval from the Office of Management and Budget (OMB) to renew the information collection that implements standard procedures for supply and service contractors seeking approval to develop affirmative action programs based on functional or business units. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice or by accessing it at *www.regulations.gov.*

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before April 11, 2022.

**ADDRESSES:** You may submit comments by any of the following methods:

*Electronic comments:* The federal eRulemaking portal at *www.regulations.gov.* Follow the instructions found on that website for submitting comments.

*Mail, Hand Delivery, Courier:* Addressed to Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210.

*Instructions:* Please submit one copy of your comments by only one method. For faster submission, we encourage commenters to transmit their comment electronically via the *www.regulations.gov* website. Comments that are mailed to the address provided above must be postmarked before the close of the comment period. All submissions must include OFCCP's name for identification. Comments submitted in response to the notice, including any personal information provided, become a matter of public record and will be posted on *www.regulations.gov.* Comments will also be summarized and/or included in the request for OMB approval of the information collection request.

**FOR FURTHER INFORMATION CONTACT:** Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW, Washington, DC 20210. Telephone: (202) 693–0103 (voice) (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

**SUPPLEMENTARY INFORMATION:**

*I. Background:* OFCCP administers and enforces the three equal employment opportunity laws listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

These authorities prohibit employment discrimination by covered federal contractors and subcontractors and require that they take affirmative action to provide equal employment opportunities regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, federal contractors and subcontractors are prohibited from discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers.

E.O. 11246 applies to federal contractors and subcontractors and to federally assisted construction contractors holding a government contract in excess of $10,000, or government contracts that have, or can reasonably be expected to have, an aggregate total value exceeding $10,000 in a 12-month period. E.O. 11246 also applies to government bills of lading, depositories of federal funds in any amount, and financial institutions that

are issuing and paying agents for U.S. savings bonds. Section 503 prohibits employment discrimination against applicants and employees because of physical or mental disability and requires contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Section 503 applies to federal contractors and subcontractors with contracts in excess of $15,000.[1] VEVRAA requires contractors to take affirmative action to employ, and advance in employment, qualified protected veterans. VEVRAA applies to federal contractors and subcontractors with contracts of $150,000 or more.[2]

This proposed information collection request outlines the legal authority, procedures, burden, and cost associated with contractors requesting a new FAAP agreement as well as modifying, certifying, and terminating an existing agreement.

*II. Review Focus:* OFCCP is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the compliance assistance functions of the agency that support the agency's compliance mission, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. In particular, OFCCP is seeking comments on whether FAAP documents, such as agreement requests, modification notices, certifications, termination notices, or other information requested during the FAAP approval and certification process, should be submitted through OFCCP's Contractor Portal.[3]

*III. Current Actions:* OFCCP seeks approval of this new information collection in order to carry out and enhance its responsibilities to enforce the nondiscrimination and affirmative action provisions of the three legal authorities it administers.

*Type of Review:* Regular.

*Agency:* Office of Federal Contract Compliance Programs.

*Title:* Agreement Approval Process for Use of Functional Affirmative Action Programs.

*OMB Number:* 1250–0006.

*Agency Number:* None.

*Affected Public:* Business or other for-profit entities.

*Total Respondents:* 86 contractors.

*Total Annual Responses:* 150.6 responses.

*Average Time per Response:* 6.7 hours.

*Estimated Total Burden Hours:* 1,006 hours.

*Frequency:* Annual.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

**Tina T. Williams,**

*Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.*

[FR Doc. 2022–02652 Filed 2–8–22; 8:45 am]

**BILLING CODE 4510–CM–P**

[1] Effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds,* 75 FR 53129 (Aug. 30, 2010).

[2] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds,* 80 FR 38293 (July 2, 2015).

[3] Information on OFCCP's Contractor Portal is available at *https://www.dol.gov/agencies/ofccp/contractorportal* (last accessed January 27, 2022).

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request; Succession Planning

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice and request for comment.

**SUMMARY:** The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following new collection, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments should be received on or before April 11, 2022 to be assured consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

**FOR FURTHER INFORMATION CONTACT:** Address requests for additional information to Dawn Wolfgang at the address above or telephone 703–548–2279.

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* 3133–NEW.

*Title:* Succession Planning, 12 CFR 701.4(e).

*Type of Review:* New collection.

*Abstract:* The NCUA Board (Board) proposes that Federal Credit Union (FCU) boards of directors establish and adhere to processes for succession planning. The succession plans will help to ensure that the credit union has plans to fill key positions, such as officers of the board, management officials, executive committee members, supervisory committee members, and (where provided for in the bylaws) the members of the credit committee to provide continuity of operations. In addition, the proposed rule would require directors to be knowledgeable about the FCU's succession plan. Although the proposed rule would apply only to FCUs, the Board's purpose is to encourage and strengthen succession planning for all credit unions. The proposed rule would provide FCUs with broad discretion in implementing the proposed regulatory requirements to minimize any burden.

Succession planning is recognized as vital to the success of any institution, including credit unions. One of the variables over which a credit union board has control is the hiring of the organization's senior management. A board's failure to plan for the transition of its management could potentially come with high costs, including the potential for the unplanned merger of the credit union upon the departure of key personnel.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated No. of Respondents:* 3,125.

*Estimated No. of Responses per Respondent:* 1.33.

*Estimated Total Annual Responses:* 4,166.

*Estimated Burden Hours per Response:* 0.31.

*Estimated Total Annual Burden Hours:* 1,303.

The NCUA published the proposed rule at 87 FR 6078, on February 3, 2022 (FR Doc. 2022–02038). This proposed

rule would require all federal credit unions (FCUs) to establish a succession plan and to review and update this plan annually. A one-time recordkeeping burden would apply to all FCUs with the promulgation of this rule, with additional information collection burden associated with the maintaining and retaining this record.

*Request for Comments:* The NCUA invites comments on: (a) 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) 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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public records. Interested persons are invited to submit written comments to (1) *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting the Agency under ''Currently under Review'' and to (2) Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email at *PRAComments@ncua.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on February 3, 2022.

Dated: February 4, 2022.

**Dawn D. Wolfgang,**

*NCUA PRA Clearance Officer.*

[FR Doc. 2022–02672 Filed 2–8–22; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings

The National Science Board's Committee on Strategy's Subcommittee on Technology, Innovation and Partnerships hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

**TIME AND DATE:** Friday, February 11, 2022, from 11:00 a.m.–12:00 p.m. EST.

**PLACE:** This meeting will be held by teleconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** The agenda is: Subcommittee Chair's Opening Remarks; Approval of Minutes from November 22, 2021, Meeting; Update on Regional Innovation Engines and TIP Programmatic Plans Beyond the Regional Innovation Engines.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

**Chris Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2022–02776 Filed 2–7–22; 11:15 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2022–0001]**

### Sunshine Act Meetings

**TIME AND DATE:** Week of February 14, 2022.

**PLACE:** Via Teleconference. Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live; via teleconference. Details for joining the teleconference in listen only mode at *https://www.nrc.gov/pmns/mtg.*

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

**Week of February 14, 2022**

*Monday, February 14, 2022*

11:30 a.m. Affirmation Session (Public Meeting) (Tentative) Hearing Requests in Exelon Multiple Indirect License Transfers (Tentative) (Contact: Wesley Held: 301–287–3591)

**CONTACT PERSON FOR MORE INFORMATION:** For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Tyesha.Bush@nrc.gov* or *Betty.Thweatt@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: February 7, 2022.

For the Nuclear Regulatory Commission.

**Wesley W. Held,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2022–02909 Filed 2–7–22; 4:15 pm]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–7513; NRC–2022–0033]**

### Kairos Power, LLC

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Construction permit application; opportunity to request a hearing and petition for leave to intervene; order imposing procedures.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is providing notice that an uncontested hearing will be held on the Kairos Power, LLC (Kairos) construction permit application that proposes the construction of a test reactor, identified as Hermes, in Oak Ridge, Tennessee, at a time and place to be set in the future by the Commission or designated by the Atomic Safety and Licensing Board. This notice provides the public an opportunity to request a hearing and petition for leave to intervene (*i.e.,* contested hearing) with respect to that application. The NRC staff is currently conducting a detailed technical review of the construction permit application. If the NRC issues a construction permit, the applicant, Kairos, would be authorized to

construct its proposed test reactor in accordance with the provisions of the construction permit. Because the application contains sensitive unclassified non-safeguards information (SUNSI), this notice includes an order that imposes procedures to obtain access to SUNSI for contention preparation.

**DATES:** A request for a hearing or petitions for leave to intervene must be filed by April 11, 2022. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by February 22, 2022.

**ADDRESSES:** Please refer to Docket ID NRC–2022–0033 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0033. 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. Eastern Time (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Beasley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2062, email: *Benjamin.Beasley@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

By letters dated September 29, 2021 (ADAMS Package Accession No. ML21272A375), and October 31, 2021 (ADAMS Package Accession No. ML21306A131), Kairos submitted, pursuant to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' a construction permit application that proposed to construct a test reactor (a ''testing facility'' as defined in 10 CFR 50.2). A notice of receipt and availability of the first portion of Kairos's two-part application was published in the **Federal Register** on October 29, 2021 (86 FR 60077). The NRC staff determined that Kairos submitted a two-part application in accordance with 10 CFR 2.101(a)(5), and a notice of the acceptability of docketing of both portions of Kairos's application was published in the **Federal Register** on December 1, 2021 (86 FR 68290). The docket number established for this application is 50–7513.

The NRC is considering issuance of a construction permit to Kairos that would authorize construction of the proposed test reactor, identified as Hermes, to be located in Oak Ridge, Tennessee. Hermes would be a fluoride-salt cooled, high-temperature reactor that uses solid tri-structural isotropic fuel in pebble form.

## II. Hearing

Pursuant to the Atomic Energy Act of 1954, as amended, 10 CFR part 2, ''Agency Rules of Practice and Procedure,'' and part 50, notice is hereby given that an uncontested (*i.e.,* mandatory) hearing will be held, at a time and place to be set in the future by the Commission or designated by the Atomic Safety and Licensing Board (Board).

The hearing on the application for a construction permit filed by Kairos pursuant to 10 CFR part 50 will be conducted by a Board that will be designated by the Chief Judge of the Atomic Safety and Licensing Board Panel or will be conducted by the Commission. If the hearing is conducted by a Board, notice as to the membership of the Board will be published in the **Federal Register** at a later date. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report. The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 50.58, ''Hearings and Report of the Advisory Committee on Reactor Safeguards,'' and the ACRS will report on those portions of the application that concern safety. The NRC staff will also complete an environmental review of the application and will document its findings in an environmental impact statement in accordance with the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

## III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why the intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be issued in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinions that support the contention and on which the petitioner intends to rely at hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must

include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. Each contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 and on the NRC website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory.html* and *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate*.

## IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to: (1) Request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. (ET) on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., (ET), Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law

requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3), the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. *Review of Denials of Access.*

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. *Review of Grants of Access.* A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

for processing and resolving requests under these procedures.

It is so ordered.

Dated: February 4, 2022.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |
| 20 | U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2022–02671 Filed 2–8–22; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from September 1, 2021 to September 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

### Schedule A

No Schedule A Authorities to report during September 2021.

### Schedule B

No Schedule B Authorities to report during September 2021.

### Schedule C

The following Schedule C appointing authorities were approved during September 2021.

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | Office of the Secretary | Senior Advisor | DA210151 | 09/08/2021 |
| | Agricultural Marketing Service | Senior Advisor for Organics and Emerging Markets. | 10150 | 09/16/2021 |
| | Farm Service Agency | State Executive Director—Georgia | DA210143 | 09/16/2021 |
| | | State Executive Director—Michigan | DA210153 | 09/16/2021 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | | State Executive Director—Wisconsin. | DA210158 | 09/30/2021 |
| | | State Executive Director—New Mexico. | DA210144 | 09/16/2021 |
| | | State Executive Director—South Carolina. | DA210145 | 09/16/2021 |
| | | State Executive Director—North Carolina. | DA210139 | 09/16/2021 |
| | Office of the Assistant Secretary for Congressional Relations. | Legislative Analyst | DA210155 | 09/24/2021 |
| | Office of Rural Development | State Director—Alabama | DA210152 | 09/17/2021 |
| | | State Director—Michigan | DA210159 | 09/30/2021 |
| | | State Director—New Mexico | DA210148 | 09/16/2021 |
| | | State Director—North Carolina | DA210146 | 09/16/2021 |
| | | State Director—Pennsylvania | DA210157 | 09/30/2021 |
| | | State Director—South Carolina | DA210140 | 09/16/2021 |
| | | State Director—Georgia | DA210147 | 09/16/2021 |
| DEPARTMENT OF COMMERCE | Office of International Trade Administration. | Director, Office of Legislative Affairs. | DC210188 | 09/10/2021 |
| | Minority Business Development Agency. | Special Assistant | DC210198 | 09/24/2021 |
| | Office of Legislative and Intergovernmental Affairs. | Director of Legislative Affairs | DC210202 | 09/24/2021 |
| | Office of the Assistant Secretary for Economic Development. | Director of Strategic Partnerships | DC210203 | 09/29/2021 |
| | Office of the General Counsel | Counsel (2) | DC210187 | 09/09/2021 |
| | | | DC210194 | 09/26/2021 |
| | Office of Under Secretary | Senior Advisor | DC210199 | 09/24/2021 |
| DEPARTMENT OF DEFENSE | Office of the Assistant Secretary of Defense (Legislative Affairs). | Special Assistant (2) | DD210264 | 09/08/2021 |
| | | | DD210269 | 09/14/2021 |
| | Office of the Assistant to the Secretary of Defense (Public Affairs). | Senior Research Special Assistant | DD210271 | 09/28/2021 |
| | Office of the Secretary of Defense | Protocol Officer | DD210267 | 09/09/2021 |
| DEPARTMENT OF THE ARMY | Office of the Assistant Secretary Army (Acquisition, Logistics and Technology). | Special Assistant | DW210033 | 09/22/2021 |
| DEPARTMENT OF EDUCATION | Office of Career Technical and Adult Education. | Special Assistant | DB210132 | 09/01/2021 |
| | Office of Communications and Outreach. | Special Assistant | DB210142 | 09/28/2021 |
| | Office of Legislation and Congressional Affairs. | Deputy Assistant Secretary | DB210138 | 09/16/2021 |
| | Office of Planning, Evaluation and Policy Development. | Deputy Director, Office of Educational Technology. | DB210139 | 09/16/2021 |
| | Office of the Secretary | Chief of Staff | DB210134 | 09/08/2021 |
| DEPARTMENT OF ENERGY | Office of the Assistant Secretary for Congressional and Intergovernmental Affairs. | Regional Intergovernmental and External Affairs for the Southwest. | DE210182 | 09/20/2021 |
| | | Regional Intergovernmental and External Affairs Specialist for Appalachia. | DE210183 | 09/20/2021 |
| | | Regional Intergovernmental and External Affairs Specialist. | DE210186 | 09/20/2021 |
| | | Regional Intergovernmental and External Affairs for the Northeast. | DE210189 | 09/20/2021 |
| | Office of Management | Director of Scheduling | DE210181 | 09/07/2021 |
| | Office of Public Affairs | Deputy Press Secretary | DE210198 | 09/22/2021 |
| | | Special Assistant | DE210201 | 09/29/2021 |
| | Office of Science | Special Assistant | DE210188 | 09/29/2021 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Assistant Administrator for Mission Support. | Deputy Assistant Administrator for Mission Support. | EP210104 | 09/07/2021 |
| GENERAL SERVICES ADMINISTRATION. | Office of the Administrator | Director of Advance | GS210045 | 09/09/2021 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of Administration for Children and Families. | Director of Communications | DH210243 | 09/28/2021 |
| | Office of Global Affairs | Chief of Staff | DH210237 | 09/07/2021 |
| | Office of Intergovernmental and External Affairs. | Regional Director, Denver, Colorado, Region VIII. | DH210233 | 09/08/2021 |
| | Office of the Assistant Secretary for Legislation. | Special Assistant | DH210251 | 09/28/2021 |
| | Office of the Assistant Secretary for Public Affairs. | Press Secretary (Human Services) | DH210252 | 09/29/2021 |
| | Office of the Secretary | Policy Advisor | DH210239 | 09/07/2021 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF HOMELAND SECURITY. | Cybersecurity and Infrastructure Security Agency. | Special Assistant | DM210377 | 09/14/2021 |
| | Office of Strategy, Policy, and Plans. | Special Advisor | DM210460 | 09/16/2021 |
| | | Counselor to the Under Secretary | DM210468 | 09/21/2021 |
| | | Senior Counselor to the Under Secretary. | DM210472 | 09/28/2021 |
| | | Policy Advisor | DM210471 | 09/30/2021 |
| | Office of the Secretary | Special Assistant to the Deputy Secretary. | DM210467 | 09/21/2021 |
| | United States Customs and Border Protection. | Special Assistant | DM210455 | 09/14/2021 |
| | | Senior Advisor for Strategic Communication. | DM210465 | 09/21/2021 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of Congressional and Intergovernmental Relations. | Special Assistant | DU210105 | 09/16/2021 |
| | Office of Fair Housing and Equal Opportunity. | Special Assistant | DU210103 | 09/08/2021 |
| | Office of Public Affairs | Assistant Press Secretary | DU210101 | 09/02/2021 |
| | | Digital Strategist | DU210104 | 09/08/2021 |
| DEPARTMENT OF THE INTERIOR | Office of the Assistant Secretary—Indian Affairs. | Special Assistant | DI210138 | 09/14/2021 |
| DEPARTMENT OF JUSTICE | Office of Civil Division | Counsel (2) | DJ210166 | 09/01/2021 |
| | | | DJ210169 | 09/08/2021 |
| | Office of Civil Rights Division | Chief of Staff and Senior Counsel | DJ210170 | 09/01/2021 |
| | Office of Legal Policy | Senior Counsel | DJ210165 | 09/01/2021 |
| | Office of the Associate Attorney General. | Deputy Associate Attorney General | DJ210176 | 09/15/2021 |
| | | Counsel | DJ210174 | 09/16/2021 |
| | Office of the Attorney General | Special Assistant | DJ210167 | 09/08/2021 |
| | Office of the Deputy Attorney General. | Senior Counselor | DJ210177 | 09/15/2021 |
| DEPARTMENT OF LABOR | Office of Veterans Employment and Training Service. | Special Advisor | DL210116 | 09/22/2021 |
| | Office of the Secretary | Scheduler | DL210120 | 09/30/2021 |
| | Bureau of International Labor Affairs. | Special Assistant | DL210124 | 09/30/2021 |
| NATIONAL ENDOWMENT FOR THE HUMANITIES. | National Endowment for the Humanities. | Director of Congressional Affairs | NH210006 | 09/20/2021 |
| | | White House Liaison and Senior Advisor to the Chief of Staff. | NH210008 | 09/20/2021 |
| NATIONAL LABOR RELATIONS BOARD. | Office of the Board Members | Congressional Liaison Specialist | NL210012 | 09/20/2021 |
| NATIONAL TRANSPORTATION SAFETY BOARD. | Office of Board Members | Senior Counsel | TB210002 | 09/13/2021 |
| OFFICE OF MANAGEMENT AND BUDGET. | Office of the General Counsel | Associate Deputy General Counsel | BO210078 | 09/01/2021 |
| | Office of E-Government and Information Technology. | Senior Advisor for Delivery (2) | BO210079 | BO210079 |
| | | | BO210080 | BO210080 |
| OFFICE OF SCIENCE AND TECHNOLOGY POLICY. | Office of Science and Technology Policy. | Special Advisor for Directors Initiatives. | TS210008 | 09/17/2021 |
| OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE. | Congressional Affairs | Director for Congressional Affairs | TN210018 | 09/28/2021 |
| DEPARTMENT OF STATE | Bureau of Legislative Affairs | Staff Assistant | DS210276 | 09/10/2021 |
| | Bureau of Oceans and International Environmental and Scientific Affairs. | Senior Advisor | DS210277 | 09/10/2021 |
| | | Special Advisor | DS210289 | 09/24/2021 |
| | | Senior Advisor (2) | DS210278 | 09/15/2021 |
| | | | DS210281 | 09/15/2021 |
| | Office of Policy Planning | Special Advisor (2) | DS210280 | 09/14/2021 |
| | | | DS210288 | 09/22/2021 |
| | | Special Assistant | DS210285 | 09/23/2021 |
| | Office of the Chief of Protocol | Assistant Manager | DS210282 | 09/22/2021 |
| | | Protocol Officer | DS210287 | 09/22/2021 |
| | Office of the Counselor | Senior Advisor | DS210279 | 09/14/2021 |
| DEPARTMENT OF TRANSPORTATION. | Office of Public Affairs | Digital Director | DT210105 | 09/20/2021 |
| | Office of the Assistant Secretary for Administration. | Disability Policy Advisor | DT210107 | 09/20/2021 |
| | Office of the Deputy Secretary | Counselor to the Deputy Secretary | DT210108 | 09/28/2021 |
| | Office of Civil Rights | Special Assistant | DT210110 | 09/28/2021 |
| DEPARTMENT OF THE TREASURY. | Secretary of the Treasury | Special Assistant | DY210119 | 09/09/2021 |
| | Office of the Assistant Secretary (Public Affairs). | Spokesperson | DY210124 | 09/10/2021 |
| | | Press Assistant | DY210123 | 09/30/2021 |
| | Office of the Under Secretary for Domestic Finance. | Senior Advisor | DY210129 | 09/30/2021 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF VETERANS AFFAIRS. | Veterans Benefits Administration ... | Special Assistant to the Under Secretary for Benefits. | DV210112 | 09/29/2021 |

The following Schedule C appointing authorities were revoked during September 2021.

| Agency name | Organization name | Position title | Request No. | Vacate date |
|---|---|---|---|---|
| CONSUMER FINANCIAL PROTECTION BUREAU. | Consumer Financial Protection Bureau. | Executive Secretary and Senior Advisor to the Director. | FP210023 | 09/05/2021 |
| | Office of the Director ..... | Senior Advisor ..... | FP210008 | 09/18/2021 |
| | | Senior Advisor to the Director for Supervision and Enforcement. | FP210009 | 09/18/2021 |
| DEPARTMENT OF JUSTICE ..... | Office of the Associate Attorney General. | Senior Counselor ..... | DJ210050 | 09/16/2021 |
| DEPARTMENT OF STATE ..... | Office of the Secretary ..... | Special Advisor ..... | DS210272 | 09/15/2021 |
| EXPORT–IMPORT BANK ..... | Office of Congressional and Intergovernmental Affairs. | Senior Vice President ..... | EB210004 | 09/11/2021 |
| OFFICE OF MANAGEMENT AND BUDGET. | Office of E-Government and Information Technology. | Senior Advisor for Delivery (United States Digital Service). | BO210033 | 09/19/2021 |
| | | Senior Advisor for Technology and Delivery (United States Digital Service). | BO210050 | 09/23/2021 |
| OFFICE OF THE SECRETARY OF DEFENSE. | Office of the Assistant to the Secretary of Defense (Public Affairs). | Speechwriter ..... | DD210175 | 09/11/2021 |

*Authority:* 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2022–02645 Filed 2–8–22; 8:45 am]

**BILLING CODE 6325–39–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from July 1, 2021 to July 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

### Schedule A

No Schedule A Authorities to report during July 2021.

### Schedule B

No Schedule B Authorities to report during July 2021.

### Schedule C

The following Schedule C appointing authorities were approved during July 2021.

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | Office of the Under Secretary for Food Safety. | Confidential Assistant ..... | DA210125 | 07/08/2021 |
| | Office of the Assistant Secretary for Congressional Relations. | Deputy Director for Intergovernmental Affairs. | DA210129 | 07/08/2021 |
| | Office of the Secretary ..... | Confidential Assistant ..... | DA210131 | 07/22/2021 |
| | Office of the Under Secretary for Trade and Foreign Agricultural Affairs. | Chief of Staff ..... | DA210127 | 07/08/2021 |
| | Rural Utilities Service ..... | Chief of Staff ..... | DA210132 | 07/22/2021 |
| DEPARTMENT OF COMMERCE ... | Office of the Assistant Secretary for Economic Development. | Senior Advisor ..... | DC210163 | 07/16/2021 |
| | National Telecommunications and Information Administration. | Chief of Staff ..... | DC210156 | 07/22/2021 |
| DEPARTMENT OF DEFENSE ..... | Office of the Secretary of Defense | Advance Officer ..... | DD210246 | 07/06/2021 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | Office of the Under Secretary of Defense (Comptroller). | Special Assistant | DD210248 | 07/29/2021 |
| | Office of the Under Secretary of Defense (Personnel and Readiness). | Special Assistant | DD210247 | 07/20/2021 |
| | Office of the Under Secretary of Defense (Policy). | Special Assistant | DD210252 | 07/29/2021 |
| | Office of the Under Secretary of Defense (Research and Engineering). | Special Assistant | DD210245 | 07/06/2021 |
| DEPARTMENT OF THE ARMY | Office of the Secretary | Special Assistant to the Secretary of the Army for Diversity, Equity and Inclusion. | DW210019 | 07/08/2021 |
| DEPARTMENT OF THE NAVY | Office of the Assistant Secretary of Navy (Energy, Installations and Environment). | Senior Advisor to the Secretary of the Navy (Climate). | DN210025 | 07/19/2021 |
| DEPARTMENT OF EDUCATION | Office of Elementary and Secondary Education. | Confidential Assistant | DB210115 | 07/26/2021 |
| | Office of Legislation and Congressional Affairs. | Confidential Assistant | DB210117 | 07/26/2021 |
| | Office of Postsecondary Education | Confidential Assistant | DB210118 | 07/26/2021 |
| | Office of the Secretary | Special Assistant | DB210119 | 07/26/2021 |
| | | Confidential Assistant | DB210116 | 07/31/2021 |
| DEPARTMENT OF ENERGY | Office of the Assistant Secretary for Nuclear Energy. | Special Assistant | DE210158 | 07/02/2021 |
| | Office of Economic Impact and Diversity. | Special Assistant | DE210163 | 07/09/2021 |
| | Office of Management | Special Assistant | DE210166 | 07/09/2021 |
| | Office of Public Affairs | Digital Content Manager | DE210162 | 07/09/2021 |
| | | Deputy Press Secretary | DE210170 | 07/17/2021 |
| | Office of the Deputy Secretary | Chief of Staff | DE210161 | 07/02/2021 |
| EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. | Office of the Chair | Policy Analyst | EE210010 | 07/19/2021 |
| | Equal Employment Opportunity Commission. | Executive Staff Assistant | EE210011 | 07/27/2021 |
| GENERAL SERVICES ADMINISTRATION. | Office of the Administrator | Executive Assistant | GS210037 | 07/12/2021 |
| | Office of Strategic Communication | Deputy Associate Administrator for Media Affairs. | GS210038 | 07/12/2021 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of the Assistant Secretary for Preparedness and Response. | Senior Advisor | DH210212 | 07/13/2021 |
| | Office of the Secretary | Scheduler | DH210222 | 07/22/2021 |
| | Office of the Deputy Secretary | Special Assistant | DH210226 | 07/29/2021 |
| | Office of Intergovernmental and External Affairs. | Special Assistant | DH210227 | 07/29/2021 |
| DEPARTMENT OF HOMELAND SECURITY. | Federal Emergency Management Agency. | Director of Public Affairs | DM210397 | 07/02/2021 |
| | | Director of Legislative Affairs | DM210402 | 07/21/2021 |
| | | Director, Center for Faith-based and Neighborhood Partnerships. | DM210404 | 07/21/2021 |
| | Office of Management Directorate | Advisor | DM210407 | 07/26/2021 |
| | Office of Legislative Affairs | Chief of Staff | DM210399 | 07/12/2021 |
| | Transportation Security Administration. | Senior Counselor | DM210398 | 07/23/2021 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of Housing | Senior Advisor | DU210089 | 07/09/2021 |
| | Office of Policy Development and Research. | Special Assistant | DU210088 | 07/15/2021 |
| | Office of Public Affairs | Deputy Press Secretary | DU210087 | 07/09/2021 |
| | Office of the Secretary | Senior Advisor—Puerto Rico | DU210091 | 07/09/2021 |
| | | Director of Domestic Violence | DU210090 | 07/22/2021 |
| DEPARTMENT OF THE INTERIOR | Secretary's Immediate Office | Deputy White House Liaison | DI210124 | 07/01/2021 |
| | Office of the Assistant Secretary—Water and Science. | Special Assistant | DI210126 | 07/01/2021 |
| DEPARTMENT OF JUSTICE | Office of Civil Rights Division | Special Assistant | DJ210104 | 07/02/2021 |
| | | Counsel | DJ210154 | 07/30/2021 |
| | Office of Public Affairs | Press Assistant | DJ210151 | 07/15/2021 |
| | Office of the Deputy Attorney General. | Counsel | DJ210150 | 07/16/2021 |
| | | Confidential Assistant | DJ210149 | 07/28/2021 |
| | Office of the Legal Counsel | Counsel | DJ210157 | 07/28/2021 |
| DEPARTMENT OF LABOR | Office of Congressional and Intergovernmental Affairs. | Senior Legislative Officer | DL210107 | 07/08/2021 |
| | Office of the Assistant Secretary for Policy. | Policy Advisor | DL210103 | 07/07/2021 |
| | Office of Wage and Hour Division | Policy Advisor (2) | DL210102 | 07/07/2021 |
| | | | DL210106 | 07/22/2021 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | Office of Women's Bureau | Senior Advisor | DL210104 | 07/08/2021 |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. | Office of Legislative and Intergovernmental Affairs. | Special Assistant | NN210049 | 07/12/2021 |
| | Office of Communications | Speechwriter | NN210050 | 07/12/2021 |
| OFFICE OF PERSONNEL MANAGEMENT. | Office of Congressional, Legislative, and Intergovernmental Affairs. | Senior Advisor | PM210065 | 07/01/2021 |
| | Office of Communications | Chief Speechwriter and Senior Advisor for Communications. | PM210067 | 07/16/2021 |
| | Office of the Director | Executive Assistant | PM210061 | 07/21/2021 |
| | Presidents Commission on White House Fellowships. | Special Assistant | PM210063 | 07/16/2021 |
| | | Associate Director | PM210066 | 07/19/2021 |
| | | Deputy Director | PM210069 | 07/23/2021 |
| OFFICE OF SCIENCE AND TECHNOLOGY POLICY. | Office of Science and Technology Policy. | Special Assistant (2) | TS210006 | 07/08/2021 |
| | | | TS210007 | 07/08/2021 |
| SECURITIES AND EXCHANGE COMMISSION. | Office of Commissioner Peirce | Confidential Assistant | SE210010 | 07/21/2021 |
| | Office of the Chairman | Senior Officer | SE210023 | 07/21/2021 |
| | Office of Public Affairs | Communications Specialist | SE210024 | 07/21/2021 |
| | Office of Legislative and Intergovernmental Affairs. | Legislative Affairs Specialist | SE210025 | 07/21/2021 |
| SMALL BUSINESS ADMINISTRATION. | Office of Capital Access | Deputy Associate Administrator for Capital Access (2). | SB210049 | 07/22/2021 |
| | | | SB210051 | 07/29/2021 |
| | Office of Communications and Public Liaison. | Press Secretary | SB210045 | 07/09/2021 |
| | Office of Entrepreneurial Development. | Senior Advisor | SB210047 | 07/16/2021 |
| | Office of the Administrator | Counselor to the Administrator | SB210050 | 07/23/2021 |
| DEPARTMENT OF STATE | Bureau of Educational and Cultural Affairs. | Special Assistant | DS210254 | 07/01/2021 |
| | | Senior Advisor | DS210261 | 07/31/2021 |
| | Office of Global Women's Issues | Staff Assistant | DS210260 | 07/31/2021 |
| | Office of the Chief of Protocol | Senior Protocol Officer (Gifts) | DS210252 | 07/01/2021 |
| | | Senior Protocol Officer (Major Events). | DS210253 | 07/01/2021 |
| | Office of the Secretary | Senior Special Assistant | DS210242 | 07/19/2021 |
| | | Chief of Staff | DS210258 | 07/29/2021 |
| | Office of the United States Global Aids Coordinator. | Senior Advisor | DS210259 | 07/29/2021 |
| | Office of the Under Secretary for Civilian Security, Democracy, and Human Rights. | Senior Advisor | DS210257 | 07/09/2021 |
| DEPARTMENT OF TRANSPORTATION. | Office of the Assistant Secretary for Research and Technology. | Senior Advisor | DT210087 | 07/12/2021 |
| DEPARTMENT OF THE TREASURY. | Office of the Assistant Secretary (Public Affairs). | Press Assistant | DY210089 | 07/14/2021 |
| | | Spokesperson | DY210112 | 07/15/2021 |
| | | Senior Advisor (Community Engagement). | DY210087 | 07/19/2021 |
| | Office of the General Counsel | Policy Advisor | DY210111 | 07/12/2021 |
| | Secretary of the Treasury | Deputy Executive Secretary | DY210110 | 07/15/2021 |
| | | Senior Advisor (2) | DY210091 | 07/19/2021 |
| | | | DY210099 | 07/14/2021 |

The following Schedule C appointing authorities were revoked during July 2021.

| Agency name | Organization name | Position Title | Request No. | Vacate date |
|---|---|---|---|---|
| COMMISSION ON CIVIL RIGHTS | Office of the Commissioner | Special Assistant | CC140003 | 07/30/2021 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of the Secretary | Deputy Chief of Staff, Covid | DH210075 | 07/31/2021 |
| | | Special Assistant (2) | DH210091 | 07/03/2021 |
| | | | DH210092 | 07/03/2021 |
| DEPARTMENT OF STATE | Office of the Secretary | Senior Special Assistant | DS210061 | 07/31/2021 |
| FEDERAL HOUSING FINANCE AGENCY. | Federal Housing Finance Agency | Senior Advisor for Policy and Regulation. | HA210001 | 07/09/2021 |
| | Office of the Director | Assistant Chief of Staff | HA200001 | 07/09/2021 |
| | | Director of External Relations | HA190001 | 07/09/2021 |
| | | Director of Legislative Affairs | HA190004 | 07/09/2021 |
| | | Senior Congressional Affairs Advisor. | HA200003 | 07/09/2021 |
| | | Senior Policy Advisor | HA190002 | 07/09/2021 |

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2022–02643 Filed 2–8–22; 8:45 am]

**BILLING CODE 6325–39–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from June 1, 2021 to June 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

### Schedule A

No Schedule A Authorities to report during June 2021.

### Schedule B

No Schedule B Authorities to report during June 2021.

### Schedule C

The following Schedule C appointing authorities were approved during June 2021.

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | Office of the Under Secretary for Food, Nutrition and Consumer Services. | Confidential Assistant | DA210120 | 06/11/2021 |
| | Office of Communications | Speechwriter | DA210122 | 06/23/2021 |
| | Office of Rural Development | Press Assistant | DA210123 | 06/23/2021 |
| | | Special Assistant | DA210124 | 06/23/2021 |
| APPALACHIAN REGIONAL COMMISSION. | Appalachian Regional Commission | Executive Assistant | AP210001 | 06/30/2021 |
| DEPARTMENT OF COMMERCE | Office of National Telecommunications and Information Administration. | Senior Advisor | DC210145 | 06/03/2021 |
| | Office of Advance, Scheduling and Protocol. | Deputy Director of Advance | DC210146 | 06/11/2021 |
| | Office of Legislative and Intergovernmental Affairs. | Special Assistant | DC210155 | 06/23/2021 |
| | Office of Policy and Strategic Planning. | Senior Policy Advisor | DC210157 | 06/23/2021 |
| DEPARTMENT OF DEFENSE | Office of the Assistant Secretary of Defense (Legislative Affairs). | Special Assistant | DD210236 | 06/08/2021 |
| | Office of the Assistant to the Secretary of Defense (Public Affairs). | Deputy Director of Speechwriting | DD210241 | 06/17/2021 |
| | Office of the Department of Defense Chief Information Officer. | Director, Chief Information Officer Action Group. | DD210239 | 06/08/2021 |
| | Office of the Under Secretary of Defense (Policy). | Chief of Staff for Assistant Secretary of Defense (Special Operations/Low-Intensity Conflict). | DD210237 | 06/08/2021 |
| | | Special Assistant | DD210240 | 06/13/2021 |
| DEPARTMENT OF EDUCATION | Office of Career Technical and Adult Education. | Special Assistant | DB210108 | 06/02/2021 |
| | Office of Communications and Outreach. | Managing Writer | DB210098 | 06/01/2021 |
| | | Chief of Staff | DB210103 | 06/08/2021 |
| | Office of Elementary and Secondary Education. | Special Assistant | DB210104 | 06/07/2021 |
| | Office of Postsecondary Education | Senior Advisor | DB210106 | 06/07/2021 |
| | Office of the General Counsel | Senior Counsel | DB210112 | 06/25/2021 |
| | Office of the Secretary | Senior Advisor | DB210105 | 06/07/2021 |
| | | Senior Advisor | DB210111 | 06/15/2021 |
| DEPARTMENT OF ENERGY | Advanced Research Projects Agency—Energy. | Special Assistant | DE210108 | 06/03/2021 |
| | Office of the Assistant Secretary for Energy Efficiency and Renewable Energy. | Senior Advisor | DE210113 | 06/03/2021 |
| | | Chief of Staff | DE210119 | 06/03/2021 |
| | Office of the Assistant Secretary for Fossil Energy. | Chief of Staff | DE210105 | 06/03/2021 |
| | Office of the General Counsel | Legal Advisor | DE210104 | 06/03/2021 |
| | Office of the Deputy Secretary | Special Assistant | DE210125 | 06/03/2021 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of Public Engagement and Environmental Education. | Deputy Associate Administrator for Public Engagement and Environmental Education. | EP210093 | 06/08/2021 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | Office of the Assistant Administrator for Chemical Safety and Pollution Prevention. | Deputy Assistant Administrator for Pesticide Programs. | EP210091 | 06/07/2021 |
| | Office of the Assistant Administrator for Water. | Senior Advisor | EP210092 | 06/08/2021 |
| | Office of the General Counsel | Attorney-Advisor (General) | EP210094 | 06/08/2021 |
| GENERAL SERVICES ADMINISTRATION. | Office of Strategic Communication | Press Secretary | GS210036 | 06/16/2021 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Centers for Medicare and Medicaid Services. | Policy Advisor | DH210195 | 06/22/2021 |
| | Office for Civil Rights | Executive Director, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders. | DH210193 | 06/22/2021 |
| | | Special Assistant | DH210197 | 06/22/2021 |
| | Office of the Secretary | Senior Policy Advisor | DH210196 | 06/22/2021 |
| DEPARTMENT OF HOMELAND SECURITY. | Office of Partnership and Engagement. | Intergovernmental Affairs Coordinator. | DM210370 | 06/11/2021 |
| | Office of Strategy, Policy, and Plans. | Special Assistant to the Assistant Secretary. | DM210386 | 06/17/2021 |
| | Office of the Secretary | Senior Advance Officer | DM210358 | 06/07/2021 |
| | | Deputy Director of Scheduling and Advance. | DM210385 | 06/25/2021 |
| | Office of United States Customs and Border Protection. | Deputy Chief of Staff (Programs) | DM210357 | 06/03/2021 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of Community Planning and Development. | Special Assistant | DU210080 | 06/03/2021 |
| | Office of Congressional and Intergovernmental Relations. | Congressional Relations Specialist | DU210085 | 06/17/2021 |
| | Office of Public Affairs | Director of Strategic Communications. | DU210082 | 06/03/2021 |
| | | Assistant Press Secretary | DU210084 | 06/22/2021 |
| | Office of the Administration | Special Assistant | DU210081 | 06/03/2021 |
| | Office of the Secretary | Senior Advisor | DU210086 | 06/29/2021 |
| DEPARTMENT OF THE INTERIOR | Secretary's Immediate Office | Deputy Director, Office of Scheduling and Advance. | DI210121 | 06/01/2021 |
| DEPARTMENT OF JUSTICE | National Security Division | Senior Counsel | DJ210126 | 06/03/2021 |
| DEPARTMENT OF LABOR | Occupational Safety and Health Administration. | Special Assistant | DL210093 | 06/03/2021 |
| | Office of Congressional and Intergovernmental Affairs. | Senior Legislative Officer | DL210099 | 06/15/2021 |
| | Office of Labor-Management Standards. | Senior Advisor | DL210101 | 06/23/2021 |
| | Office of the Secretary | Deputy Director of Scheduling and Advance. | DL210097 | 06/17/2021 |
| | | Executive Secretary | DL210096 | 06/23/2021 |
| | Wage and Hour Division | Special Assistant | DL210095 | 06/16/2021 |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. | Office of Communications | Deputy Press Secretary | NN210040 | 06/09/2021 |
| | | Press Secretary | NN210042 | 06/22/2021 |
| | Office of the Administrator | Special Assistant | NN210041 | 06/17/2021 |
| | | Special Assistant for Projects and Initiatives. | NN210043 | 06/29/2021 |
| OFFICE OF MANAGEMENT AND BUDGET. | Office of E-Government and Information Technology. | Confidential Assistant | BO210072 | 06/07/2021 |
| | | Senior Advisor for Delivery (United States Digital Service). | BO210074 | 06/11/2021 |
| SMALL BUSINESS ADMINISTRATION. | Office of Congressional and Legislative Affairs. | Deputy Associate Administrator, (House). | SB210038 | 06/29/2021 |
| | Office of Government Contracting and Business Development. | Senior Advisor | SB210039 | 06/11/2021 |
| | | Special Assistant | SB210044 | 06/30/2021 |
| | Office of Investment and Innovation. | Senior Advisor | SB210043 | 06/25/2021 |
| | | Policy Advisor | SB210033 | 06/03/2021 |
| | Office of the Administrator | Confidential Assistant | SB210040 | 06/23/2021 |
| | | Special Assistant | SB210042 | 06/23/2021 |
| | Office of the General Counsel | Deputy General Counsel | SB210037 | 06/07/2021 |
| DEPARTMENT OF STATE | Bureau of Global Public Affairs | Spokesperson | DS210248 | 06/24/2021 |
| | Bureau of Legislative Affairs | Legislative Management Officer | DS210245 | 06/24/2021 |
| | Office of the Chief of Protocol | Senior Protocol Officer (Visits) | DS210247 | 06/24/2021 |
| | | Senior Protocol Officer (Ceremonials). | DS210249 | 06/24/2021 |
| DEPARTMENT OF TRANSPORTATION. | Office of Civil Rights | Senior Advisor | DT210085 | 06/25/2021 |
| | Federal Motor Carrier Safety Administration. | Director of External Affairs | DT210089 | 06/25/2021 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | Office of Public Affairs | Press Secretary | DT210092 | 06/25/2021 |
| DEPARTMENT OF THE TREASURY. | Secretary of the Treasury | Deputy Executive Secretary | DY210102 | 06/01/2021 |
| | | Deputy Director of Scheduling and Advance. | DY210107 | 06/14/2021 |
| | | Director of Scheduling and Advance. | DY210094 | 06/30/2021 |
| DEPARTMENT OF VETERANS AFFAIRS. | Office of the General Counsel | Special Assistant (Attorney) | DV210066 | 06/04/2021 |

The following Schedule C appointing authorities were revoked during June 2021.

| Agency name | Organization name | Position title | Request No. | Vacate date |
|---|---|---|---|---|
| OFFICE OF MANAGEMENT AND BUDGET. | Office of E-Government and Information Technology. | Senior Advisor for Delivery (United States Digital Service). | BO210035 | 06/12/2021 |

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2022–02642 Filed 2–8–22; 8:45 am]

**BILLING CODE 6325–39–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from August 1, 2021 to August 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

### Schedule A

No Schedule A Authorities to report during August 2021.

### Schedule B

No Schedule B Authorities to report during August 2021.

### Schedule C

The following Schedule C appointing authorities were approved during August 2021.

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | Office of Communications | Press Assistant | DA210133 | 08/26/2021 |
| | Office of the Assistant Secretary for Congressional Relations. | Legislative Advisor | DA210134 | 08/26/2021 |
| | Office of the Secretary | Senior Advisor for Climate | DA210135 | 08/26/2021 |
| | | Confidential Assistant | DA210137 | 08/26/2021 |
| | Rural Business Service | Confidential Assistant | DA210136 | 08/26/2021 |
| DEPARTMENT OF COMMERCE | Office of the Assistant Secretary for Industry and Analysis. | Director, Office of Industry Engagement. | DC210176 | 08/16/2021 |
| | Director General of the United States and Foreign Commercial Service and Assistant Secretary for Global Markets. | Senior Advisor | DC210173 | 08/16/2021 |
| | Office of Advance, Scheduling and Protocol. | Special Assistant | DC210168 | 08/06/2021 |
| | | Chief Protocol Officer and Senior Advisor. | DC210181 | 08/26/2021 |
| | Office of Executive Secretariat | Special Assistant | DC210167 | 08/05/2021 |
| | Office of Public Affairs | Deputy Press Secretary | DC210164 | 08/05/2021 |
| DEPARTMENT OF DEFENSE | Office of the Assistant Secretary of Defense (Legislative Affairs). | Special Assistant | DD210261 | 08/19/2021 |
| | Office of the Secretary of Defense | Advance Officer | DD210258 | 08/05/2021 |
| | Office of the Under Secretary of Defense (Policy). | Director, Homeland Defense and Security. | DD210259 | 08/06/2021 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | Office of the Under Secretary of Defense (Research And Engineering). | Special Assistant | DD210253 | 08/04/2021 |
| DEPARTMENT OF THE ARMY | Office of the Secretary | Confidential Assistant | DW210029 | 08/12/2021 |
| DEPARTMENT OF EDUCATION | Office of Career Technical and Adult Education. | Confidential Assistant | DB210120 | 08/04/2021 |
| | Office of Legislation and Congressional Affairs. | Special Assistant | DB210133 | 08/27/2021 |
| | Office of Postsecondary Education | Confidential Assistant | DB210122 | 08/04/2021 |
| | | Special Assistant | DB210127 | 08/18/2021 |
| | Office of the Secretary | Confidential Assistant | DB210121 | 08/04/2021 |
| | | Director of Advance | DB210129 | 08/18/2021 |
| | | Deputy Director of Advance | DB210131 | 08/19/2021 |
| | Office of the Under Secretary | Advisor for Data Security (2) | DB210130 | 08/16/2021 |
| | | | DB210135 | 08/27/2021 |
| DEPARTMENT OF ENERGY | Office of the Assistant Secretary for Energy Efficiency and Renewable Energy. | Director of External Affairs | DE210169 | 08/02/2021 |
| | Office of the Chief Financial Officer | Special Advisor | DE210173 | 08/04/2021 |
| | National Nuclear Security Administration. | Director of Public Affairs | DE210175 | 08/11/2021 |
| | Office of the Secretary | Special Assistant to the Deputy Chiefs of Staff. | DE210155 | 08/16/2021 |
| | Office of Public Affairs | Deputy Press Secretary | DE210157 | 08/16/2021 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Associate Administrator for Congressional and Intergovernmental Relations. | Special Assistant | EP210097 | 08/02/2021 |
| | | Deputy Associate Administrator for Congressional Affairs (House Relations). | EP210099 | 08/02/2021 |
| | Office of the Administrator | Deputy White House Liaison | EP210100 | 08/17/2021 |
| | Office of Public Affairs | Deputy Associate Administrator for Public Affairs. | EP210103 | 08/18/2021 |
| FEDERAL HOUSING FINANCE AGENCY. | Office of the Director | Director, Office of Congressional Affairs and Communication. | HA210004 | 08/19/2021 |
| GENERAL SERVICES ADMINISTRATION. | Office of the Administrator | Senior Advisor to the Administrator (State, Local, Tribal and Territorial). | GS210041 | 08/12/2021 |
| | Office of Congressional and Intergovernmental Affairs. | Deputy Associate Administrator for Policy. | GS210044 | 08/30/2021 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Center for Medicaid and Chip Services. | Policy Advisor | DH210228 | 08/11/2021 |
| DEPARTMENT OF HOMELAND SECURITY. | United State Immigration and Customs Enforcement. | Legislative Correspondent | DM210409 | 08/17/2021 |
| | Office for Civil Rights and Civil Liberties. | Special Assistant | DM210422 | 08/17/2021 |
| | Office of Partnership and Engagement. | Intergovernmental Affairs Coordinator. | DM210435 | 08/24/2021 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of Public Affairs | Assistant Press Secretary | DU210095 | 08/16/2021 |
| | Office of the Secretary | Senior Advisor | DU210097 | 08/16/2021 |
| | Office of the Administration | Advance Coordinator (2) | DU210094 | 08/18/2021 |
| | | | DU210096 | 08/18/2021 |
| | Office of Policy Development and Research. | Special Policy Advisor | DU210099 | 08/26/2021 |
| DEPARTMENT OF THE INTERIOR | Secretary's Immediate Office | Advisor to the Director of Intergovernmental and External Affairs. | DI210131 | 08/06/2021 |
| | | Advisor | DI210137 | 08/18/2021 |
| | | Senior Advance Representative | DI210136 | 08/19/2021 |
| DEPARTMENT OF LABOR | Mine Safety and Health Administration. | Senior Advisor | DL210112 | 08/12/2021 |
| | Occupational Safety and Health Administration. | Senior Policy Advisor | DL210108 | 08/20/2021 |
| | Office of Public Affairs | Special Assistant | DL210111 | 08/23/2021 |
| | Office of the Secretary | Advance Associate (2) | DL210113 | 08/12/2021 |
| | | | DL210115 | 08/27/2021 |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. | Office of the Administrator | Special Assistant for Engagement | NN210059 | 08/02/2021 |
| | | Special Assistant for Operations | NN210060 | 08/11/2021 |
| | Office of Communications | Special Assistant | NN210066 | 08/30/2021 |
| SECURITIES AND EXCHANGE COMMISSION. | Office of Commissioner Crenshaw | Confidential Assistant | SE210029 | 08/26/2021 |
| SMALL BUSINESS ADMINISTRATION. | Office of Capital Access | Special Advisor | SB210052 | 08/04/2021 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF STATE | Bureau of Economic and Business Affairs. | Senior Advisor | DS210269 | 08/19/2021 |
| | Bureau of Educational and Cultural Affairs. | Deputy Assistant Secretary | DS210250 | 08/04/2021 |
| | Bureau of Global Public Affairs | Deputy Assistant Secretary | DS210274 | 08/26/2021 |
| | Office of the Chief of Protocol | Assistant Chief of Protocol (Visits) | DS210263 | 08/11/2021 |
| | Office of the Under Secretary for Civilian Security, Democracy, and Human Rights. | Senior Advisor | DS210270 | 08/20/2021 |
| | Office of the Under Secretary for Economic Growth, Energy, and the Environment. | Senior Advisor | DS210262 | 08/06/2021 |
| | Office of the Under Secretary for Public Diplomacy and Public Affairs. | Senior Advisor | DS210265 | 08/11/2021 |
| DEPARTMENT OF TRANSPORTATION. | Federal Transit Administration | Senior Advisor | DT210101 | 08/19/2021 |

The following Schedule C appointing authorities were revoked during August 2021.

| Agency name | Organization name | Position title | Request No. | Vacate date |
|---|---|---|---|---|
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of the Assistant Secretary for Public Affairs. | Press Secretary | DH210115 | 08/20/2021 |
| DEPARTMENT OF JUSTICE | Office of Civil Rights Division | Senior Counsel | DJ210070 | 08/31/2021 |
| | Office of Legislative Affairs | Attorney Advisor | DJ210037 | 08/20/2021 |
| DEPARTMENT OF THE TREASURY. | Office of the Assistant Secretary (Public Affairs). | Press Assistant | DY210089 | 08/17/2021 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Associate Administrator for Congressional and Intergovernmental Relations. | Deputy Associate Administrator for Congressional Affairs. | EP210016 | 08/14/2021 |
| SMALL BUSINESS ADMINISTRATION. | Office of Capital Access | Special Assistant | SB210008 | 08/14/2021 |
| | Office of the Administrator | Confidential Assistant | SB210040 | 08/28/2021 |
| SOCIAL SECURITY ADMINISTRATION. | Office of the Commissioner | Special Assistant | SZ200013 | 08/06/2021 |

*Authority:* 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2022–02644 Filed 2–8–22; 8:45 am]

**BILLING CODE 6325–39–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 87 FR 6902, 7 February 2022.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Wednesday, February 9, 2022 at 10:00 a.m.

**CHANGES IN THE MEETING:** The following item will not be considered during the Open Meeting on Wednesday, February 9, 2022:

• The Commission will consider whether to propose amendments to its whistleblower rules.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: February 7, 2022.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2022–02914 Filed 2–7–22; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94141; File No. SR–NYSEArca–2021–68]**

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt New NYSE Arca Rule 6.91P–O

February 3, 2022.

On July 23, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Exchange Rule 6.91P–O to govern the trading of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Electronic Complex Orders on the Exchange's Pillar trading platform and to make conforming amendments to Exchange Rule 6.47A–O. The proposed rule change was published for comment in the **Federal Register** on August 10, 2021.[3] On September 20, 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 approve or disapprove the proposed rule change.[5] On October 29, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission has received no comments regarding the proposed rule change.

Section 19(b)(2) of the Act[7] 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 August 10, 2021.[8] February 6, 2022, is 180 days from that date, and April 7, 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,[9] designates April 7, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2021–68).

[3] Securities Exchange Act Release No. 92563 (August 4, 2021), 86 FR 43704 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93057 (September 20, 2021), 86 FR 53128 (September 24, 2021). The Commission designated November 8, 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] *See* Securities Exchange Act Release No. 93466 (October 29, 2021), 86 FR 60955 (November 4, 2021).

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Notice, *supra* note 3.

[9] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–02664 Filed 2–8–22; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94143; File No. SR–CboeEDGX–2021–052]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rule 25.3, Which Governs the Exchange's Minor Rule Violation Plan, in Connection With Certain Minor Rule Violations and Applicable Fines

February 3, 2022.

On December 6, 2021, Cboe EDGX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 25.3, which governs the Exchange's Minor Rule Violation Plan, in connection with certain minor rule violations and applicable fines. The proposed rule change was published for comment in the **Federal Register** on December 23, 2021.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is February 6, 2022.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates March 23, 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–CboeEDGX–2021–052).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–02666 Filed 2–8–22; 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. 93815 (December 17, 2021), 86 FR 73029.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94142; File No. SR–CboeBZX–2021–083]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rule 25.3, Which Governs the Exchange's Minor Rule Violation Plan, in Connection With Certain Minor Rule Violations and Applicable Fines

February 3, 2022.

On December 6, 2021, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 25.3, which governs the Exchange's Minor Rule Violation Plan, in connection with certain minor rule violations and applicable fines. The proposed rule change was published for comment in the **Federal Register** on December 23, 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 as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93834 (December 20, 2021), 86 FR 73072. Comment received on the proposed rule change is available at: *https://www.sec.gov/comments/sr-cboebzx-2021-083/srcboebzx2021083.htm.*

[4] 15 U.S.C. 78s(b)(2).

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 for this filing is February 6, 2022.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates March 23, 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–CboeBZX–2021–083).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–02668 Filed 2–8–22; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94144; File No. SR–CboeEDGX–2022–004]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Codify Certain Practices and Requirements Related to the Exchange's Port Message Rate Thresholds

February 3, 2022.

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 January 21, 2022, Cboe EDGX Exchange, Inc. (''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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to codify certain practices and requirements related to the Exchange's port message rate thresholds, and to promote transparency and maintain clarity in the rules. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule filing is to codify certain of the Exchange's current practices and requirements related to its port message rate thresholds, which it believes will promote transparency and maintain clarity in its rules. Specifically, the Exchange is proposing to add new Rule 11.23, titled Port Message Rate Threshold, in order to memorialize the Exchange's ability to establish per port message rate limits applicable to its Members. The Exchange has historically provided Members with information regarding the port order rate threshold, as defined below, in its publicly available technical specifications,[3] but to promote transparency, the Exchange is proposing to codify the Exchange's discretion to impose such limits in its rulebook. The System[4] does not have unlimited port capacity to consistently support an unlimited number of messages throughout the trading day. For this reason, the Exchange limits each Member to a maximum number of messages over a set amount of time, per port (hereinafter the ''Port Order Rate Thresholds''). While Members may elect to establish a *lower* Port Order Rate Threshold, each Member is subject to the same *maximum* Port Order Rate Threshold. Like other exchanges,[5] EDGX currently imposes a maximum Port Order Rate Threshold, at its discretion, and notifies its Members of such maximum number through the Exchange's publicly available technical specifications.[6] Consistent with this current functionality, proposed Rule 11.23 would memorialize that all Members shall be subject to a Port Order Rate Threshold, as determined by the Exchange in its discretion.

The Exchange notes that proposed Rule 11.23 is based on substantially similar rules that historically[7] existed in the Cboe Options Exchange (''C1'')

[3] Port Order Rate Threshold is defined as the maximum allowed message rate on a port. *See* Cboe FIX Specifications, available at: *https://cdn.cboe./resources/membership/Cboe_US_Equities_FIX_Specification.pdf. See also* Cboe BOE Specifications, available at: *https://cdn..com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf.*

[4] The term ''System'' shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. *See* Rule 1.5(cc).

[5] *E.g.,* Section 5.7 of the New York Stock Exchange's technical specifications states, ''In order to protect the Trading Engine from an overload of incoming messages, the CGC Gateway employs a session-level throttle mechanism. This is a configurable value currently set to 1000 messages per second on a rolling 1 second basis. In the event this throttle mechanism is activated, the gateway will slow the sending of incoming messages down to the Trading Engine during the throttle period (*i.e.*, messages will be queued) so as to not exceed the defined message threshold. *See https://www.nyse.com///markets//NYSE_CCG_FIX_Specification.pdf.*

[6] *E.g.,* page 73, ''Port Order Rate Threshold'', of the Cboe U.S. Equities FIX Technical Specifications, which denotes the *current* maximum allowed message rate on the port. When the first non-administrative message is received, a one second window begins. During the second no more than 4,999 additional non-administrative messages will be allowed within that window. If the rate is exceeded all new orders in the time window are rejected, modifies are treated as cancels, and cancels are processed. If maximum rate limit of 10,000 is requested, no more than 9,999 additional non-administrative messages will be allowed within that one second window.

[7] In 2016, Cboe Global Markets, Inc. the parent company of C1 and C2, acquired Cboe EDGA Exchange Inc., Cboe EDGX Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe BYX Exchange, Inc. (collectively, the ''Cboe Affiliated Exchanges''). Subsequent to the acquisitions, the Cboe Affiliated Exchanges sought to align their rulebooks, retaining only intended differences between the Cboe Affiliated Exchanges. As part of this process C1 Rule 6.23B and C2 Rule 6.35 were removed from the C1 and C2 rulebooks. *See* SR–CBOE–2019–033 (*https://cdn.cboe.com/resources/regulations/rule_filings/approved/2019/SR-CBOE-2019-033.pdf.*)

and the Cboe C2 Options Exchange (''C2'') rulebooks, as well as MIAX Rule 502 (''Message Packets'') which currently exists in the MIAX Options and MIAX Emerald (collectively, ''MIAX'') rulebooks.[8] Like new Rule 11.23, C1 Rule 6.23B [9] (Bandwidth Packets), C2 Rule 6.35 [10] (Message Packets), and MIAX Rule 502 provide(d) that Trading Permit Holders are entitled to a maximum number of orders and quotes per second as determined by C1/C2 or MIAX.

The Exchange further notes that C1 Rule 6.23B, C2 Rule 6.35, and MIAX Rule 502 provide(d) for certain other messaging restrictions and actions not included in proposed Rule 11.23; namely, the restriction that only a Market-Maker [11] may enter quotes, and language noting the ability of Trading Permit Holders to purchase additional bandwidth packets at the prices set forth in the exchanges' fee schedule. However, these changes are not necessary for the purposes of proposed Rule 11.23 because all Exchange Members, not just Market Makers, may submit messages to the Exchange. Additionally, it is already clear from the Exchange's fee filings [12] that additional ports are available for purchase. Additionally, C1 Rule 6.23B and C2 Rule 6.35, provided those exchanges with the discretion to temporarily increase, upon request, a Member's limits, as well as the discretion to designate time periods when Members shall not be subject to a message limit. This language is not included in this rule filing because the Exchange is not currently proposing to allow Members to request temporary message rate increases or to designate time periods when Members shall not be subject to a message limit.

2. Statutory Basis

The Exchange believes the proposed rule changes are consistent with the requirements of Section 6(b) of the Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that proposed Rule 11.23 does not unfairly discriminate amongst market participants. Under proposed Rule 11.23, Members may elect a lower Port Order Rate Threshold, but all Members are limited to the same maximum Port Order Rate Threshold.

Moreover, by providing the Exchange with the explicit discretion to impose Port Order Rate Thresholds, proposed Rule 11.23 helps to foster a free and open national market system, as well as the Commission's goal of ensuring that critical market infrastructure has ''levels of capacity, integrity, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and order market''.[15]

As noted above the Exchange's Systems do not have unlimited port capacity to consistently support an unlimited number of messages throughout the trading day. As such, it is critical that the Exchange maintain discretion to impose Port Order Rate Thresholds to ensure that Members are not able to submit orders in quantities that degrade the capacity and performance of Members' ports, as well as the Exchange systems through which securities orders of Members are consolidated for ranking, execution and, where applicable, routing away.[16]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change seeks merely to provide Members with additional clarity and transparency regarding Exchange port message rate limits.

Importantly, the Exchange notes that similar to other exchanges, proposed rule 11.23 does not include an explicit number of messages or range of messages, that may be imposed by the Exchange, in its discretion. Accordingly, proposed Rule 11.23 places the Exchange on par with its peer exchanges by preserving the Exchange's ability to adjust the port order rate threshold as needed, to ensure the Exchange's operational resiliency.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposal. No written comments were solicited or received on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

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

[8] *See* MIAX Options and MIAX Emerald Rule 502 (''Message Packets'').

[9] Rule 6.23B and 6.35 provided: Each Trading Permit shall entitle the holder to a maximum number of orders and quotes per second(s) as determined by the Exchange. Only Market-Makers may submit quotes. Trading Permit Holders seeking to exceed that number of messages per second(s) may purchase additional bandwidth packets at prices set forth in the Exchange's Fees Schedule. The Exchange shall, upon request and where good cause is shown, temporarily increase a Trading Permit Holder's order entry bandwidth allowance at no additional cost. All determinations to temporarily expand bandwidth allowance shall be made in a non-discriminatory manner and on a fair and equal basis. No bandwidth limits shall be in effect during pre-opening prior to 8:25 a.m. CT, which shall apply to all Trading Permit Holders. The Exchange may also determine time periods for which there shall temporarily be no bandwidth limits in effect for all Trading Permit Holders. Any such determination shall be made in the interest of maintaining a fair and orderly market. The Exchange shall notify all Trading Permit Holders of any such determination.''

[10] *Id.*

[11] The C1 and C2 Rulebooks defined ''Market-Maker'' as a Trading Permit Holder registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter 5 of the Rules.

[12] *See* EDGX Exchange fees, effective December 1, 2021, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Securities and Exchange Act Release No. 73639 (November 19, 2014) 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

[16] *See* Section 6(b) of the Securities and Exchange Act of 1934 (the ''Act''), 15 U.S.C. 78f (National Securities Exchanges), which requires that exchanges have the capacity to carry out the purposes of an exchange under the Act.

• Send an email to *rule-comments@sec.gov. Please include File Number SR-CboeEDGX–2022–004 on the subject line.*

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–004. 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-CboeEDGX–2022–004 and should be submitted on or before March 2, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–02667 Filed 2–8–22; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94140; File No. SR–LTSE–2021–08]**

## Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on 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

February 3, 2022.

On December 2, 2021, Long-Term Stock Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule to modify and expand the package of products and services provided to Companies and clarify existing practice under Exchange Rule 14.602 with respect to providing Company-specific web pages on the Exchange's website in connection with listing on the Exchange. The proposed rule change was published for comment in the **Federal Register** on December 21, 2021.[3] The Commission has not received any comment letters 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 as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 4, 2022.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates March 21, 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–LTSE–2021–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–02665 Filed 2–8–22; 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. 93787 (December 15, 2021), 86 FR 72296 (December 21, 2021).

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94145; File No. SR–NASDAQ–2021–099]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on 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

February 3, 2022.

On December 10, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 5815 regarding the use of a Hearings Panel Monitor following a compliance determination by a Nasdaq Listings Qualification Hearings Panel. The proposed rule change was published for comment in the **Federal Register** on December 21, 2021.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93789 (December 15, 2021), 86 FR 72293.

[4] 15 U.S.C. 78s(b)(2).

proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 4, 2022. The Commission is extending this 45-day time period.

The Commission finds it 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. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 21, 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–NASDAQ–2021–099).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–02663 Filed 2–8–22; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

## SURFACE TRANSPORTATION BOARD

### Release of Waybill Data

The Surface Transportation Board has received a request from University of California, Berkeley (WB22–14—1/31/22) for permission to use data from the Board's 1984–2019 Unmasked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB22–14.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Alexander Dusenberry, (202) 245–0319.

**Regena Smith-Bernard,**

*Clearance Clerk.*

[FR Doc. 2022–02695 Filed 2–8–22; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Advanced Aviation Advisory Committee (AAAC); Notice of Public Meeting

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

**ACTION:** Notice of Advanced Aviation Advisory Committee (AAAC) meeting.

**SUMMARY:** This notice announces a meeting of the AAAC.

**DATES:** The meeting will be held on February 23, 2022, from 12:00 p.m. to 2:30 p.m. Eastern Time. Requests for reasonable accommodations must be received by February 16, 2022. Requests to submit written materials to be reviewed during the meeting must be received no later than February 16, 2022.

**ADDRESSES:** The meeting will be held virtually. Members of the public who wish to observe the virtual meeting can access the livestream on the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* For copies of meeting minutes along with all other information, please visit the AAAC internet website at *https://www.faa.gov/uas/programs_partnerships/advanced_aviation_advisory_committee/.*

**FOR FURTHER INFORMATION CONTACT:** Gary Kolb, Advanced Aviation Advisory Committee Manager, Federal Aviation Administration, U.S. Department of Transportation, at *gary.kolb@faa.gov* or 202–267–4441. Any committee-related request or request for reasonable accommodations should be sent to the person listed in this section.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The AAAC was created under the Federal Advisory Committee Act (FACA) as amended (5 U.S.C. App. 2) to provide the FAA with advice on key drone and advanced air mobility (AAM) integration issues by helping to identify challenges and prioritize improvements.

#### II. Agenda

At the meeting, the agenda will cover the following topics:

- Official Statement of the Designated Federal Officer
- Approval of the Agenda and Previous Meeting Minutes
- Opening Remarks
- FAA Update
- Industry-Led Technical Topics
- New Business/Agenda Topics
- Closing Remarks
- Adjourn

Additional details will be posted on the AAAC internet website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting.

#### III. Public Participation

The meeting will be open to the public and livestreamed. Members of the public who wish to observe the virtual meeting can access the livestream on the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. Written statements submitted by the deadline will be provided to the AAAC members before the meeting. Any member of the public may submit a written statement to the committee at any time.

**Jessica A. Orquina,**

*Acting Manager, Executive Office, AUS–10, Federal Aviation Administration.*

[FR Doc. 2022–02725 Filed 2–8–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2021–0861]**

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Fractional Aircraft Ownership Programs

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. Fractional Ownership is a program that offers increased flexibility in aircraft ownership. Owners purchase shares of an aircraft and agree to share their aircraft with others having an

ownership share in that same aircraft. Owners agree to put their aircraft into a ''pool'' of other shared aircraft and to lease their aircraft to another owner in that pool. This collection is necessary to ensure compliance with relevant safety regulations. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 21, 2021.

**DATES:** Written comments should be submitted by March 11, 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.

**FOR FURTHER INFORMATION CONTACT:** John H. Attebury by email at: *John.H.Attebury@faa.gov;* phone: (281) 443–5862.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

*OMB Control Number:* 2120–0684.

*Title:* Fractional Aircraft Ownership Programs.

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* This is a renewal of an existing information collection.

*Background:* The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 21, 2021 (86 FR 52544). Each fractional ownership program manager and each fractional owner must comply with the requirements of 14 CFR part 91, subpart K. Information is used to determine if these entities are operating in accordance with the minimum safety standards of these regulations. The FAA will use the information it reviews and collects to evaluate the effectiveness of the program and make improvements as needed, and ensure compliance with and adherence to regulations.

*Respondents:* Ten fractional ownership operators, with an estimated 5,570 fractional owners and 774 aircraft.

*Frequency:* On occasion.

*Estimated Average Burden per Response:* 0.9 hours.

*Estimated Total Annual Burden:* 8,869 hours.

Issued in Washington, DC on February 4, 2022.

**Dwayne C. Morris,**

*Project Manager, Flight Standards Service, General Aviation and Commercial Division.*

[FR Doc. 2022–02687 Filed 2–8–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Action

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person that has 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 this person 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 SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

#### Notice of OFAC Action

On February 3, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

#### Entity

1. WORLD HUMAN CARE, Jl. Witanaharja III blok C/137, Pamulang Bara, Pamulang, Tangerang Selatan, Banten, Indonesia; Komp. Setia Bina Sarana Jl. Ciremai Raya Blok AB 3 No. 9 RT 05/RW 07, Kelurahan Harapan Jaya Kecamatan Bekasi Utara, Bekasi 170124, Indonesia; Jln. Siliwangi Raya Blok D3 no. 7, Pamulang Permai 1, Pamulang Barat, Taggerang Selatan 15417, Indonesia; Markaz Syria Today—WHC Iblien Village, Jabalzawiyah, Idlib Province, Syria; website *https://www.whc.or.id;* Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number AHU–09363.50.10.2014 (Indonesia) issued 20 Nov 2014 [SDGT] (Linked To: MAJELIS MUJAHIDIN INDONESIA).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, MAJELIS MUJAHIDIN INDONESIA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: February 3, 2022.

**Andrea M. Gacki**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2022–02659 Filed 2–8–22; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0613]**

### Agency Information Collection Activity Under OMB Review: Record Keeping at Flight Schools

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed Reinstatement of a Previously Approved 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. Refer to ''OMB Control No. 2900–0613.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0613'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* 38 U.S.C. 3690(c); 38 CFR 21.4263(h)(3).

*Title:* Record Keeping at Flight Schools.

*OMB Control Number:* 2900–0613.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The State approving agencies that approve courses for VA training use these records to determine if courses offered by flight schools should be approved. VA representatives use the records to determine the accuracy of payments made to VA students at flight schools.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 8, 2021, Vol. 86, No. 213 at page 61855.

*Affected Public:* Businesses or other for Profit or Not for Profit Schools.

*Estimated Annual Burden:* 557 hours.

*Estimated Average Burden per Respondent:* 20 minutes.

*Frequency of Response:* Annual.

*Actual Number of Respondents:* 1,672.

By direction of the Secretary.

**Dorothy Glasgow,**

*VA PRA Clearance Officer, (Alt), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2022–02693 Filed 2–8–22; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

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Part II

## Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 5 and 7

Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverages; Final Rule

**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Parts 5 and 7**

**[Docket No. TTB–2018–0007; T.D. TTB–176; Ref: T.D. TTB–158 and Notice Nos. 176 and 176A]**

**RIN 1513–AB54**

# Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverages

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) is amending certain of its regulations governing the labeling and advertising of distilled spirits and malt beverages to address comments it received in response to a notice of proposed rulemaking, Notice No. 176, published on November 26, 2018. On April 2, 2020, TTB finalized certain labeling amendments arising out of that proposed rule. This document finalizes the reorganization of, and addresses the remaining issues related to, the labeling of distilled spirits and malt beverages. Reorganizing the wine labeling regulations, and addressing the remaining labeling issues related to wine, as well as reorganizing and finalizing the regulations related to the advertising of wine, distilled spirits, and malt beverages, will be accomplished in future rulemaking. The regulatory amendments in this document will not require industry members to make changes to alcohol beverage labels or advertisements but instead provide additional flexibility to make certain changes going forward.

**DATES:** This final rule is effective March 11, 2022.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Thiemann or Kara T. Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–2265.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. TTB's Statutory Authority*

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and 205(f), set forth standards for the regulation of the labeling and advertising of wine, distilled spirits, and malt beverages (referred to elsewhere in this document as ''alcohol beverages'').

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary of the Treasury (the Secretary) has delegated to the TTB Administrator various functions and duties in the administration and enforcement of this law through Treasury Department Order 120–01. For a more in-depth discussion of TTB's authority under the FAA Act regarding labeling, see Notice No. 176.

### *B. Notice No. 176*

The TTB regulations concerning the labeling and advertising of alcohol beverages are contained in 27 CFR part 4, Labeling and Advertising of Wine; 27 CFR part 5, Labeling and Advertising of Distilled Spirits; and 27 CFR part 7, Labeling and Advertising of Malt Beverages. These 27 CFR parts are hereafter referred to as parts 4, 5, and 7, respectively.

On November 26, 2018, TTB published in the **Federal Register** Notice No. 176 (83 FR 60562), ''Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages.'' The principal goals of that proposed rule were to:

- Make the regulations governing the labeling of alcohol beverages easier to understand and easier to navigate. This included clarifying requirements, as well as reorganizing the regulations in 27 CFR parts 4, 5, and 7 and consolidating TTB's alcohol beverage advertising regulations in a new part, 27 CFR part 14.
- Incorporate into the regulations TTB guidance documents and current TTB policy, as well as changes in labeling standards that have come about through statutory changes and international agreements.
- Provide notice and the opportunity to comment on potential new labeling policies and standards, and on certain internal policies that had developed through the day-to-day practical application of the regulations to the approximately 200,000 label applications that TTB receives each year.

TTB requested comments from the public and all interested parties on the regulatory proposals contained in Notice No. 176. TTB stated that it was particularly interested in comments that address whether the proposed revisions to the labeling and advertising regulations will continue to protect the consumer by prohibiting false or misleading statements and requiring that labels provide the consumer with adequate information about the identity and quality of the product. Where TTB proposed substantive changes, TTB sought comments on the proposals for further appropriate improvements. With respect to the few proposed changes in Notice No. 176 that might require changes in current labeling or advertising practices, TTB sought comments on the impact that the proposed changes would have on industry members and any suggestions as to how to minimize any negative impact.

TTB also solicited comments from consumers, industry members, and the public on whether such changes would adequately protect consumers. Any regulatory proposals put forward by TTB on this issue would, of course, have to be consistent with the statutory requirements of the FAA Act.

The comment period for Notice No. 176 originally closed on March 26, 2019, but was reopened and extended at the request of commenters (see Notice No. 176A, 84 FR 9990). The extended comment period ended on June 26, 2019. TTB received and posted 1,143 comments in response to Notice No. 176. Commenters included trade associations, consumer and public interest groups, foreign entities, a Federally-recognized American Indian tribe, State legislators and members of Congress, industry members and related companies, and members of the public. The vast majority of comments addressed proposals relating to distilled spirits, with nearly 700 comments addressing the proposed amendment on the size and shape of oak barrels used to age distilled spirits.

TTB is also taking into consideration for purposes of this rulemaking earlier comments that were submitted to the Department of the Treasury in response to a Request for Information (RFI) published in the **Federal Register** on June 14, 2017 (82 FR 27212). The RFI invited members of the public to submit views and recommendations for Treasury Department regulations that could be eliminated, modified, or streamlined to reduce burdens. The comment period for the RFI closed on October 31, 2017.

Eight comments on the FAA Act labeling regulations, which included 28 specific recommendations, were submitted in response to the RFI. For ease of reference, TTB has posted these comments in the docket for this rulemaking. TTB is considering all of the relevant recommendations submitted in response to the RFI either as comments to Notice No. 176 or as suggestions for separate agency action, as appropriate.

*C. T.D. TTB–158*

On April 2, 2020, TTB published T.D. TTB–158 in the **Federal Register** (85 FR 18704), which finalized certain proposals from Notice No. 176, and announced its decision not to move forward with certain other proposals. Generally, the amendments that TTB adopted in T.D. TTB–158 were well-supported by commenters, could be implemented relatively quickly, and would either give more flexibility to industry members or help industry members understand existing requirements, while not requiring any current labels or advertisements to be changed. TTB did not incorporate the proposed reorganization of the regulations in T.D. TTB–158. Instead, amendments to the TTB regulations were made within the framework of the existing regulations.

*D. Scope of This Final Rule*

In this rulemaking, TTB is finalizing the reorganization proposed in Notice No. 176 for parts 5 and 7. This includes breaking up large existing sections into smaller sections to improve clarity and readability, resulting in a larger number of overall sections but not a larger number of regulatory requirements. TTB is also adopting many proposals that incorporate current policy into the regulations, providing improved transparency for industry and facilitating overall compliance. This final rule also addresses comments that TTB received on the proposed regulatory provisions for all of parts 5 and 7 by incorporating changes in the regulations; announcing that TTB will not move forward with some proposed changes; and identifying proposals or issues raised that will be considered for future rulemaking.

The document also includes liberalizing changes for distilled spirits or malt beverages that are either unique to a single commodity (such as the keg collar amendments, which are specific to malt beverages), or which largely bring the distilled spirits and malt beverage regulations into conformity with current policy already adopted for wine labeling (such as the liberalizing changes that allow information previously required to appear on a ''brand label'' to appear anywhere on the container, as long as certain elements of mandatory information appear in the same field of vision).

As previously indicated, this document does not contain any amendments that will require changes to distilled spirits or malt beverage labels or advertisements.

TTB is also adopting clarifying and liberalizing changes that will remove certain outdated regulatory restrictions on labeling and otherwise allow additional flexibility in labeling requirements that were proposed in Notice No. 176. Examples include providing additional flexibility in allowing the labeling of kegs with ''keg collars'' and ''tap covers'' that are not firmly affixed to the keg under certain circumstances to facilitate the reuse of kegs by different brewers; and removing some outdated restrictions on the use of ''disparaging'' statements on labels if such statements are truthful and non-misleading.

In this final rule, TTB is not amending the labeling or advertising regulations in part 4, which relate to wine. The comments on the proposed amendments to part 4 raised several issues that are unique to wine and require further analysis. Accordingly, TTB plans to address these issues in a future rulemaking, which will reorganize part 4 in a manner similar to the way in which parts 5 and 7 are being reorganized. The future rulemaking on part 4 will also address the substantive issues raised by the commenters on the labeling and advertising of wine. At that time, TTB will also pursue the reorganization of the advertising regulations pertaining to wine, distilled spirits, and malt beverages in a new part 14, as proposed in Notice No. 176. In the interim, existing policies will continue for wines.

*E. Issues That Are Outside of the Scope of This Final Rule*

TTB received some comments that either asked TTB to take action with regard to separate rulemaking projects or petitioned for rulemaking on specific issues. These comments are considered to be outside of the scope of this rulemaking but will be evaluated as suggestions for future rulemaking by TTB.

1. Separate Rulemaking Initiatives

In Notice 176, TTB identified several ongoing rulemaking initiatives related to the labeling and advertising of alcohol beverages that would be handled separately from the proposed rule, stating as follows:

> There are a number of ongoing rulemaking initiatives related to labeling and advertising of alcohol beverages that will be handled separately from this proposed rule due to their complexity. For example, this document does not deal with ''Serving Facts'' statements, an issue that was the subject of a 2007 notice of proposed rulemaking (see Notice No. 73, 72 FR 41860, July 31, 2007) and TTB Ruling 2013–2. Nor does TTB address its current policy requiring statements of average analysis on labels that include nutrient content claims. Industry members should continue to rely on TTB's published rulings and other guidance documents on these issues. TTB's policy on gluten content statements is still an interim one; therefore, that issue is not addressed in the proposed rule (see TTB Ruling 2014–2). Substantive changes to allergen labeling requirements are not addressed in this document. Standards of fill requirements are not addressed in this document but TTB plans to address them in a separate rulemaking document.

Subsequent to the publication of Notice No. 176, TTB published Ruling 2020–2, which put into place updated policy on gluten content statements. Accordingly, comments that TTB received on these issues will either be treated as suggestions for future rulemaking or as comments on other current rulemaking initiatives.

a. Serving Facts and Allergen Labeling

The Center for Science in the Public Interest (CSPI), the Consumer Federation of America, and the National Consumers League submitted a joint comment to the Secretary of the Treasury, which referenced prior rulemaking initiatives relating to ''Serving Facts'' and allergen labeling. The comment asked the Secretary to instruct TTB:

> to withdraw the proposed rule and to issue a new proposal providing a mandatory, standardized declaration covering alcohol content by percentage and amount, serving size, calories, ingredients, allergen information, and other information relevant to consumers. This rule could be based on the prior regulatory dockets already underway and would provide much-needed closure to those considerable efforts.

TTB received many other comments urging the adoption of mandatory allergen labeling, mandatory ingredient labeling, and mandatory nutrient labeling.

As noted above, TTB specifically identified these issues as being outside the scope of Notice No. 176. Accordingly, TTB will consider these comments as a suggestion for future rulemaking.

b. Standards of Fill

In Notice No. 176, TTB identified standard of fill requirements as being outside of the scope of this rulemaking, and explained that TTB planned to address standards of fill in a separate rulemaking document. However, Notice No. 176 included a proposal to address ''aggregate'' standards of fill in a manner that is based on current policy. In 1988, TTB's predecessor agency started permitting bottlers and importers of wine and distilled spirits products to use containers that did not meet a standard of fill provided that the non-standard of fill containers were banded or wrapped together and sold as a single wine or distilled spirits product that, in total, met an approved standard of fill. For example, a wine or distilled spirits product sold in a package of thirty 25 mL containers to meet an authorized standard of fill of 750 mL would be an aggregate package under this policy. While this type of aggregate packaging has been permitted for some time, TTB's policy (which includes several conditions that must be met to qualify for treatment as an aggregate standard of fill) has not yet been codified in the regulations. In Notice No. 176, TTB proposed to codify the policy in the regulations, with certain revisions.

In response to Notice No. 176, TTB received 79 comments regarding standards of fill. Only a few of these comments addressed aggregate standards of fill. Instead, the comments generally focused on whether standards of fill should be eliminated entirely, and if not, what new standards of fill should be added to the wine and distilled spirits regulations. Accordingly, TTB included these comments in the rulemaking docket for its separate rulemaking project that focused on standards of fill.

On July 1, 2019, TTB published two notices of proposed rulemaking on standards of fill in the **Federal Register**. See Notice No. 182 (84 FR 31257) and Notice No. 183 (84 FR 31264). On December 29, 2020, after reviewing the comments received in response to these notices, as well as the 79 comments concerning standards of fill that were submitted in response to Notice No. 176, TTB published in the **Federal Register** T.D. TTB–165 (85 FR 85514), which amended the regulations in parts 4 and 5 to add seven new standards of fill for wine and distilled spirits. TTB also stated that it will conduct rulemaking to propose the addition of several new standards of fill for wine, including the 180, 300, 360, 550, 720 milliliters, and 1.8 L sizes.

TTB believes it would be premature to adopt final regulations on aggregate standards of fill before TTB, the industry, and the public have the opportunity to evaluate whether the expansion of the number of standards of fill available to industry members affects the merits of codifying in the regulations its aggregate standard of fill policy. Accordingly, while TTB will continue to enforce its current policy on aggregate standards of fill, it is not adopting regulations on this issue at this time, but will instead evaluate the need for further rulemaking on this question.

c. Petition on Agency Guidance

In response to Notice No. 176, TTB also received a petition from the New Civil Liberties Alliance requesting that the Treasury Department initiate a rulemaking process to promulgate regulations prohibiting any departmental component from issuing, relying on, or defending improper agency guidance. This petition is outside of the scope of Notice No. 176.

d. Comments and Petitions on Standards of Identity for New Classes of Distilled Spirits Products

TTB received several comments requesting the creation of new standards of identity for various distilled spirits products that TTB did not propose in Notice No. 176. For example, Privateer International asked that the regulations be amended to create a standard of identity for ''Straight rum.'' The comment stated that if TTB determined that the proposal was not within the scope of Notice No. 176, it should be considered as a petition under 27 CFR 70.701(c). Other commenters requesting new standards of identity for various distilled spirits products included E&J Gallo Winery (for Superior Grape Brandy), Desert Door (for Sotol), the Irish Spirits Association (for Irish Cream Liqueur), and Domeloz Spirits (for Somel).

After carefully reviewing these requests, TTB has determined that it would not be appropriate to move forward on any of these issues without first soliciting public comment on the proposed standards of identity. Accordingly, TTB will treat these comments as a request for further rulemaking and will evaluate them separately from this rulemaking.

TTB also received comments in support of petitions that had previously been filed with TTB but were not incorporated into the proposed amendments in the notice. For example, the American Single Malt Whiskey Commission submitted a comment in which it renewed its petition to include ''Single malt whiskey'' as a standard of identity in 27 CFR part 5. TTB received over 250 comments in support of this petition. Similarly, Singani63 submitted comments in support of a petition to establish a standard of identity for ''Singani,'' and SpiritsNL submitted comments in support of a petition to establish standards of identity for ''Genever.'' Because these issues were not specifically put forward for comment in Notice No. 176, the public and the industry were not given an opportunity to comment on the standards of identity suggested by the petitioners. TTB has determined that actions on these petitions would be premature without seeking public comment on the petitioned-for standards of identity. Accordingly, TTB will consider these comments for future rulemaking.

2. Other Issues Outside of the Scope

TTB also received comments on other topics that relate to regulatory provisions that are not in parts 4, 5, or 7 (such as Internal Revenue Code reporting requirements) or issues that were not aired for comment (such as regulations on private labels). TTB will treat these comments as suggestions for future rulemaking.

3. Label Approval Requirements

TTB also sought comments on whether more significant changes to the label approval process, such as expanding the categories of optional information that may be revised without TTB approval or limiting the scope of TTB's prior review of labels to certain mandatory information, should be considered. As noted earlier in this document, the FAA Act generally requires the submission of applications for label approval before bottlers or importers introduce their products into interstate commerce. As part of its label review process, TTB reviews both optional and mandatory information on labels. With regard to optional information, TTB's main goal is to ensure that such information does not mislead consumers.

While TTB received some comments with regard to the larger issue of ways to streamline the label approval process, TTB has determined that adoption of

any regulatory amendments in response to these comments is premature, without providing industry members and the general public with the opportunity to directly comment on such proposals.

*F. Proposals Not Being Adopted*

Some changes proposed in Notice No. 176 were opposed by commenters who provided substantive comments suggesting that the proposed policies required changes to existing labels, required industry members to incur costs, or did not have the intended result within the purpose of the FAA Act. As a result, TTB is not finalizing the following proposals:

- An amendment that proposed to clarify and somewhat expand existing requirements with regard to placing certain label information on closed ''packaging'' of wine, distilled spirits, and malt beverage containers.
- An amendment that proposed to clarify and expand current requirements that certain whisky products distilled in the United States must include the State of distillation on the label, by providing that a bottling address within the State does not suffice unless it includes a representation as to distillation.

While the proposed amendments would have provided additional information to consumers, some comments suggested that each of these proposals might also impose regulatory burdens or costs on industry members. TTB has concluded that the rulemaking record before it does not provide an adequate basis for evaluating the costs and benefits of the proposed revisions. Accordingly, TTB is not moving forward with these proposals in this rulemaking but will instead clarify current requirements with regard to labeling requirements for products in sealed, opaque cartons and the labeling of certain whiskies with information regarding the State of distillation. TTB will consider amendments to current policies for future rulemaking.

There were also some proposed clarifying changes that industry members interpreted as imposing new requirements, even where that was not the intent of the amendment. In several cases, TTB decided it was not necessary to adopt regulations on these issues. The failure to codify these policies does not represent a change in policy, but does reflect a determination by TTB that codification of these policies in the manner proposed by Notice No. 176 could be confusing to the industry and the public.

## II. Discussion of Specific Comments Received and TTB Responses

For ease of navigation, TTB is setting forth the issues and comments it is addressing in this document in the following order: Issues affecting multiple commodities; amendments specific to 27 CFR part 5 (distilled spirits); amendments specific to 27 CFR part 7 (malt beverages); and amendments to the advertising regulations. Within each discussion, the order reflects generally the order the sections appear in the finalized regulations, which will aid readers in comparing the explanations in the preamble with the subsequent section setting forth the regulatory text.

The proposed changes from Notice No. 176 that were not addressed in T.D. TTB–158, and that are not addressed specifically in this preamble, are adopted without change in this final rule, and will not be discussed in this section. See Notice No. 176 for further information on those proposals.

*A. Issues Affecting Multiple Commodities*

1. Comments on the Need for Modernization and Reorganization

TTB received numerous comments from industry members and trade associations supporting its overall goal to reorganize and recodify the labeling regulations to simplify and clarify regulatory standards; incorporate industry circulars, rulings, and current policy into the regulations; and reduce the regulatory burden on industry members where possible. A few industry members expressed support for the overall modernization of the current regulations. For example, a comment from Big Cypress Distillery called the proposed regulations ''a most welcome and modernized improvement over the current regulations.'' A comment from Altitude Spirits stated, ''I think your updates and effort to modernize the regulations surrounding wine, beer, and spirits are a great idea and current regulations are in many cases in need of an update.'' Roulasion Distilling Company commented that the proposed changes were generally ''a great stride towards transparency and an improvement for many of my fellow producers.''

Several trade associations also praised the overall modernization of the regulations. The comment from the Texas Whiskey Association, which 117 other comments supported, stated that:

> In general, we are very supportive of the proposed changes. We think it clears up perceived ambiguities. We support a code for producers that results in more transparency and truthfulness for consumers.

The Brewers Association (BA) noted that the incorporation of existing industry circulars, rulings, and policy ''is important to achieve greater understanding and compliance among members of the BA and the broader alcohol beverage industry.'' The National Association of Beverage Importers (NABI) expressed its appreciation for the ''structure and parallelism of the three parts.'' Finally, Senator Charles Schumer expressed support for the ''streamlining'' of the regulations and urged TTB to finalize them.

Heaven Hill Brands commended TTB for taking on this project, but also asked that TTB avoid taking a ''piecemeal approach to modernization'' by finalizing the proposed rule ''in numerous'' documents. BA urged TTB ''to sustain the momentum and complete the process initiated in Notice 176.'' Finally, some commenters, including the Distilled Spirits Council of the United States (DISCUS) and Senator John Kennedy, were more critical of the overall impact of the proposed rule as well as the wording of certain clarifying language, but supported certain regulatory amendments.

TTB Response

TTB agrees with the commenters who suggested that incorporating industry circulars and rulings into the regulations promotes transparency and consistency, and believes that transparency benefits both industry members and consumers. TTB also plans to move forward with the proposed reorganization and parallelism of the parts. TTB continues to believe that proposed reorganization of the regulations will make it easier for the public and industry members to find relevant regulations and to compare regulations in the three parts.

TTB understands the concern that commenters expressed with regard to an approach that would result in numerous final rules. Nonetheless, for the reasons described earlier in this document, this final rule will reorganize only the labeling provisions in parts 5 (distilled spirits) and 7 (malt beverages). TTB believes it is important to resolve all of the outstanding labeling issues relating to distilled spirits and malt beverages in this document, while continuing to work on the some of the complex issues that pertain specifically to wine. The reorganization of the wine labeling regulations (in part 4) and the advertising regulations for wine, distilled spirits, and malt beverages (in

a new part 14) will not be addressed in this document, but will be addressed in the future.

Accordingly, TTB plans to address the reorganization of the wine labeling regulations in a future rulemaking, which will reorganize part 4 in a manner similar to the way in which TTB is reorganizing parts 5 and 7, and which also will address the substantive issues raised by the commenters on the labeling and advertising of wine. At that time, TTB will also pursue the reorganization of the advertising regulations pertaining to wine, distilled spirits, and malt beverages in a new part 14, as proposed in Notice No. 176.

2. Subpart A—General Provisions

a. Definitions

In Notice No. 176, TTB proposed definitions for ''certificate holder,'' ''container,'' ''distinctive or fanciful name,'' and ''person'' for consistency across the regulations for wine, distilled spirits, and malt beverages.

*Certificate holder:* TTB proposed to add the definition of ''certificate holder'' to parts 4, 5, and 7 to read as follows: ''The permittee or brewer whose name, address, and basic permit number, plant registry number, or brewer's notice number appears on an approved TTB Form 5100.31.'' TTB received one comment on this proposal, from DISCUS, which expressed support for the addition of this definition to the part 5 regulations, but suggested the elimination of the use of the term ''brewer'' because ''such references should be to a specific alcohol beverage category in its corresponding part.''

TTB Response

TTB believes that maintaining a single definition in the labeling regulations for all of the alcohol beverage commodities aids in understanding, particularly for the many industry members who engage in business in several alcohol beverage commodities. TTB also notes that the definitions of the term ''certificate of label approval'' in parts 4, 5 and 7, as amended by T.D. TTB–158, as well as the definition in part 13, which was not amended by T.D. TTB–158, currently refer to wine, distilled spirits, and malt beverages. Accordingly, TTB is finalizing the term ''certificate holder'' as proposed in parts 5 and 7.

*Container:* TTB proposed to amend the definition of the term ''container'' in parts 4 and 7 and to add the definition to part 5 to replace the definition of the term ''bottle.'' The proposed rule defined ''container'' in parts 4 and 7 as any can, bottle, box with an internal bladder, cask, keg, barrel, or other closed receptacle, in any size or material, that is for use in the sale of wine or malt beverages, respectively, at retail. Aside from editorial changes, this differs from the current definitions in that it specifically incorporates a box with an internal bladder, sometimes referred to as a ''bag in a box.''

Because of the restrictions on the size of distilled spirits containers, the proposed definition in part 5 did not include references to barrels. Furthermore, because there are prescribed standards of fill for both wine and distilled spirits, the proposed definitions in parts 4 and 5 included a cross reference to those standard of fill regulations, to clarify that containers must be in certain sizes.

TTB received one comment on these proposed amendments. DISCUS stated that while it recognized ''that a definition including a broader range of packages is necessary and generally agree[d] with the proposed definition of ''container[,]'' it urged that the definition include a cross-reference to proposed § 5.62 in order to clarify that a ''closed receptacle'' should ''not be construed as including secondary and tertiary packaging.''

TTB Response

TTB is finalizing the definition of ''container'' as proposed in parts 5 and 7. Because of changes that are being made to the proposed amendment regarding closed packaging, which will be discussed in further detail in this document, TTB does not find it necessary to include the cross reference suggested by DISCUS. TTB is also making a minor change to the definition, by deleting the reference to internal bladders, so that the definition covers all boxes, regardless of whether they include a bladder. TTB notes that some boxes in use today do not include bladders.

*Distinctive or fanciful name:* Under current regulations, the term ''distinctive or fanciful name'' refers to a name that must be used on a distilled spirits label, when a statement of composition is required. A distinctive or fanciful name is optional on other distilled spirits or malt beverage products. A distinctive or fanciful name is also optional for wine, whether or not it bears a statement of composition. Current regulations use but do not define the term.

Consistent with current policy and use of the term elsewhere in the regulations, TTB proposed to add a definition of ''distinctive or fanciful name'' to the definitions section of parts 4, 5, and 7 for the first time to mean a descriptive name or phrase chosen to identify a product on the label. The proposed definition clarifies that the term does not include a brand name, class or type designation, statement of composition, or, in part 7 only, a designation known to the trade or consumers.

Beverly Brewery Consultants supported the inclusion of the definition of ''distinctive or fanciful'' name in the regulations. However, the Brewers Association opposed the proposed definition of ''distinctive or fanciful name,'' stating that the definition, like other proposed changes to the class and type regulations, was ''based on longstanding concepts used in distilled spirits labeling and advertising regulations. These concepts are not generally understood by brewers and would necessitate many changes in existing labels and advertisements.'' Instead, the Brewers Association requested that ''TTB utilize the language currently found in § 7.24 to address class and type. If TTB sees the need to modify the current class and type regulations for beer, those issues should be address[ed] in a separate rulemaking.''

TTB Response

The Brewers Association commented that the proposed definition of the term ''distinctive or fanciful name'' would require changes to labels. However, the proposed definition simply codifies current policy with regard to the meaning of this term, and thus would not require changes to approved labels. Furthermore, as previously noted, the requirement for a distinctive or fanciful name for certain malt beverages and distilled spirits is in current regulations, and the Brewers Association comment does not appear to object to the requirement that such a name appear on labels for certain malt beverages. See current §§ 7.24(a), 7.29(a)(7)(iii), and 7.54(a)(8)(iii).

With regard to the suggestion from the Brewers Association that TTB should not modify the current class and type regulations for beer, this comment will be discussed in further detail below in Section II.C.6.a.

*Person:* TTB proposed to amend the definition of the term ''person'' in parts 4, 5, and 7 by adding ''limited liability company'' to specifically reflect TTB's current position that limited liability companies fall under the definition of a ''person.'' TTB also removed the language pertaining to ''trade buyer'' that read ''and the term 'trade buyer' means any person who is a wholesaler or retailer'' from the definition of ''person'' that was in part 5. The current definition of a ''person'' in part 7 did

not include the definition of a ''trade buyer.''

DISCUS commented that it supported the proposed definition of a ''person'' but urged that the definition of ''trade buyer'' (as any person who is a wholesaler or retailer) from the existing definition be retained in some manner in the labeling and advertising regulations, and that some definition of the term ''retailer'' be added. The DISCUS comment included a suggested mark-up of the proposed regulations in part 5, but it did not include regulatory language for this comment.

TTB Response

TTB removed the language pertaining to ''trade buyer'' from the definition of ''person'' in part 5 because the term ''trade buyer'' does not appear anywhere else in the part 5 regulations. The purpose of the ''Definitions'' section in each part is to define terms used elsewhere in that part. Accordingly, TTB is not adopting this suggestion from DISCUS.

3. Subpart B—Certificates of Label Approval (for Distilled Spirits and Malt Beverages) and Certificates of Exemption From Label Approval (for Distilled Spirits)

Notice No. 176 proposed a subpart B in parts 4, 5, and 7, which contained TTB's regulations implementing the statutory requirement for COLAs (for wine, distilled spirits and malt beverages) and certificates of exemption (for wine and distilled spirits). Proposed subpart B also contained three sections grouped under the heading of ''Administrative Rules,'' which set forth requirements for: (1) Presenting COLAs to Government officials; (2) submitting formulas, samples, and other documentation related to obtaining or using COLAs; and (3) applying for and obtaining permission to use personalized labels. TTB described these proposals in more detail in Notice No. 176, Section II.B.2.

a. Explanation of What a Certificate of Label Approval (COLA) Authorizes

In Notice No. 176, TTB proposed to reorganize for clarity the regulations implementing the statutory requirement for certificates of label approval (COLAs). TTB proposed to establish new §§ 4.22, 4.25, 5.22, 5.25, 7.22, and 7.25 to set out these requirements. In these sections, TTB also proposed to set forth what a COLA does and does not authorize. This information does not appear in the current regulations.

Specifically, the proposed regulations stated that a COLA, on an approved TTB Form 5100.31, authorizes the bottling of wine, distilled spirits, or malt beverages, or the importation of bottled wine, distilled spirits, or malt beverages, with labels identical to labels on the COLA or with changes authorized on the COLA or otherwise authorized by TTB. See proposed §§ 4.22(a), 4.25(a), 5.22(a), 5.25(a), 7.22(a), and 7.25(a). The proposed regulations in paragraph (b) of each of the aforementioned sections provided that, among other things, a COLA does not: (1) Confer trademark protection; (2) relieve the certificate holder from its responsibility to ensure that all ingredients used in the production of wine, distilled spirits, or malt beverages comply with applicable requirements of the U.S. Food and Drug Administration (FDA) with regard to ingredient safety; or (3) relieve the certificate holder from liability for violations of the Federal Alcohol Administration Act (FAA Act), the Alcoholic Beverage Labeling Act (ABLA), the Internal Revenue Code (IRC), or related regulations and rulings. Proposed paragraphs (c) and (d) of the aforementioned sections discuss when a COLA must be obtained and how to apply for a COLA.

The proposed revisions reflected the longstanding policy of TTB and its predecessor agencies. Furthermore, the COLA form (TTB Form 5100.31, Application for and Certification/Exemption of Label/Bottle Approval), currently specifically provides that the issuance of a COLA does not confer trademark protection and does not relieve the applicant from liability for violations of the FAA Act, the ABLA, the IRC, or related regulations and rulings. TTB believed that adding this information to the regulations would clarify this position for the public and industry members.

TTB received several comments in response to the proposed revisions. Some commenters, including WineAmerica and the United States Association of Cider Makers (USACM), supported the proposed language clarifying that the issuance of a COLA does not confer trademark protection or relieve the certificate holder from its responsibility to ensure that all of the ingredients used in the production of the alcohol beverage comply with applicable requirements of the FDA with regard to ingredient safety. Two commenters suggested revisions that would require more information on the COLA application regarding compliance with State law for appellations of origin. As previously indicated, however, some comments raised concerns about whether TTB was interpreting FDA regulations. TTB addressed these issues in T.D.TTB–158.

However, TTB also received many comments in opposition to the language relating to liability under the FAA Act, ABLA, and the IRC. The Wine Institute made the following comment:

> Wine Institute is concerned about the language found in § 4.22(b)(3) and § 4.25(b)(3), both of which indicate that a Certificate of Label Approval (COLA) does not relieve the certificate holder from liability for violations of the FAA Act, the Alcohol Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings. Wine Institute members rely on the COLA review process to confirm that they have placed information onto wine labels in compliance with the FAA Act, the Alcohol Beverage Labeling Act, the Internal Revenue Code, and related federal regulations and rulings. Wine Institute members understand it is their responsibility to ensure they have adequate substantiation to support the accuracy of information and claims made on labels. However, Wine Institute is concerned that § 4.22(b)(3), for wine bottled in the United States, and § 4.25(b)(3), for wine imported in containers, could be used as the basis for a permit enforcement action against a winery even when a label may have been approved in error by TTB. Wine Institute would like to better understand the implications for Wine Institute members with regard to this provision.

DISCUS also urged TTB not to finalize proposed §§ 5.22(b) and 5.25(b), arguing that it is unnecessary to repeat the statement on the COLA form that the COLA did not convey trademark protection and making the following statement:

> We urge the Bureau to expressly state that the issuance of a COLA is confirmation of compliance with TTB's labeling requirements. If TTB approves a label, misleading statements or representations should not be present on that label. TTB labeling specialists have reviewed the material and assessed it against the labeling regulations and decided whether or not to approve, as well as if any information needed to be changed. Suppliers need to be able to rely on TTB approval in this regard.

The Vermont Hard Cider Company (VCC) urged TTB ''not to render the Congressionally-mandated COLA process purely advisory and oppos[ed] any changes that undermine the legal certainty of an approved COLA.'' Several commenters, including the American Distilled Spirits Association (ADSA) and an attorney representing the USACM, suggested that the revisions propose ''to utterly destroy the certainty provided by [the] COLA, upending a system that has served both the public and the industry well and rendering the entire process advisory.'' These comments suggested that it would violate due process to punish industry members for activity that was approved through the COLA process, and that the

appropriate remedy in such a situation would be to follow the label revocation procedures contained in part 13 of the TTB regulations. The comments acknowledged, however, that a COLA would not protect an industry member who put a product in a container that did not conform to the product described on the label.

TTB Response

TTB is finalizing §§ 5.22(a) and 7.22(a) as proposed, with the clarifying changes that TTB has already adopted in T.D. TTB–158. These changes provide that an approved TTB Form 5100.31 authorizes the bottling of distilled spirits covered by the COLA, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by TTB on the COLA or otherwise (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

The proposed regulatory amendments in §§ 5.22(b) and 7.22(b) were intended to clarify current policy, not change the effect of obtaining TTB approval of a COLA. TTB agrees that, subject to the conditions set forth on the COLA form itself, TTB's approval of a COLA represents a decision by the Bureau that the approved label complies, on its face, with the requirements of the FAA Act, and industry members are entitled to rely upon that approval unless and until TTB takes appropriate action, under the provisions of 27 CFR part 13, to revoke the approval. TTB also agrees that such reliance would not be a willful violation of the FAA Act.

As previously noted, the language in the proposed sections simply repeats language from the COLA form that explicitly sets forth the conditions of a COLA. Some commenters agreed that a COLA does not convey trademark protection, relieve the industry member from FDA requirements regarding ingredient safety, or relieve the industry member from liability for violations under the FAA Act arising from a situation in which the approved COLA's language does not accurately describe the product in the container.

Sections I and II of the COLA form expressly set out these limitations, advising that the form does not constitute trademark protection, and that the applicant must ensure that all of the information on the application is ''true and correct.'' With regard to mandatory type size requirements under the regulations implementing both the FAA Act and ABLA, Section II of the COLA form also advises that TTB:

> does not routinely review submitted labels for compliance with applicable requirements for mandatory label information regarding type size, characters per inch or contrasting background. You must ensure that the mandatory information on the actual labels is legible and displayed in the correct type size, number of characters per inch, and on a contrasting background in accordance with the TTB labeling regulations, 27 CFR parts 4, 5, 7, and 16, as applicable. TTB does reserve the right to review applications for compliance with these requirements and to return non-compliant applications.

Thus, the COLA form itself expressly advises applicants that it is their responsibility to ensure that the type size of mandatory information complies with the regulatory requirements.

Furthermore, Section V of the COLA form sets out certain ''allowable revisions'' that may be made to approved labels without obtaining a new COLA, subject to the condition that the new label ''must be in compliance with the applicable regulations in 27 CFR parts 4, 5, 7, and 16, and any other applicable provision of law or regulation, including, but not limited to, the conditions set forth in the 'Comments' below.'' TTB does not approve those revisions on an individual basis, and the industry member is responsible for ensuring compliance with the regulations and the conditions set forth in Section V.

Finally, as explained in T.D. TTB–158, it is TTB's position that if FDA advises TTB that it has determined that distilled spirits, wines, or malt beverages are adulterated under the Federal Food, Drug and Cosmetic Act (FD&C Act), then those beverages are also mislabeled within the meaning of the FAA Act, even if the bottler or importer of the product in question has obtained a COLA or an approved formula for the product in question. See Industry Circular 2010–8, dated November 23, 2010, entitled ''Alcohol Beverages Containing Added Caffeine.'' In such a situation, it is the responsibility of industry members to take appropriate action after TTB has notified them that their products are mislabeled as a result of a determination by FDA that the products are adulterated under the FD&C Act. Nonetheless, after carefully evaluating the comments, TTB has concluded that it will not move forward with the proposed §§ 5.22(b), 5.25(b), 7.22(b), and 7.25(b). In the final regulatory text below, these paragraphs are removed and paragraphs (c) and (d) of each section as proposed are finalized as paragraphs (b) and (c). While TTB intended the proposed revisions to be clarifying, the revisions instead caused confusion among the commenters. Thus, TTB will evaluate all of the comments on this issue as suggestions for further action to more clearly address these issues on the COLA form itself or in the regulations in 27 CFR part 13.

TTB's decision not to move forward with the proposed amendments does not represent any change in TTB's current policy on this issue, and the limitations and conditions referenced above will continue to appear on the COLA form.

b. COLA Requirements for Alcohol Beverages Imported in Containers

In Notice No. 176, TTB proposed, consistent with current regulations, that wine, distilled spirits, and malt beverages, imported in containers, are not eligible for release from customs custody for consumption unless the person removing the products has obtained and is in possession of a COLA. The regulations allow importers, when filing TTB data electronically, to file with U.S. Customs and Border Protection (CBP) the COLA identification number(s) applicable to each such product in lieu of filing a copy of each COLA with CBP. See §§ 4.24(c), 5.24(c), and 7.24(c). Proposed §§ 4.25, 5.25, and 7.25, in addition to the provisions described above, state that importers must obtain a COLA before removing alcohol beverages in containers from customs custody for consumption.

Beverly Brewery Consultants commented that proposed § 7.24, relating to COLA requirements for malt beverages imported in containers, was poorly organized and should be separated into two sections.

TTB Response

After reviewing the editorial suggestions from Beverly Brewery Consultants, TTB has decided that the proposed §§ 5.24 and 7.24 clearly communicate requirements relating to distilled spirits and malt beverages imported in containers, and there is no need to separate each section into two sections. Accordingly, these sections are finalized, but with minor changes to certain paragraphs discussed below.

c. Transfer of COLAs

Consistent with the FAA Act and current regulations, proposed §§ 4.24, 5.24, and 7.24 provide that wine, distilled spirits, and malt beverages, imported in containers, are not eligible for release from customs custody for consumption unless the person removing the wine, distilled spirits, or malt beverages has obtained a COLA. The current regulations, as amended by the final rule facilitating the use of the International Trade Data System (ITDS)

(T.D. TTB–145, 81 FR 94186, December 22, 2016), provide importers with two options for showing compliance with this requirement—they may file with CBP the identification number assigned to the approved COLA, or they may provide a copy of the COLA to CBP at the time of entry, as was the case prior to the ITDS amendments.

As a general rule, only the importer to whom TTB issued a COLA may use that COLA to withdraw bottled alcohol beverages from customs custody for consumption. Other importers who intend to import the same distilled spirits, wine, or malt beverages are responsible for obtaining their own COLAs for such products, as approved labels bear the name and address of the importer who obtained the COLA for the product and who is responsible for compliance with the Federal labeling regulations as part of the mandatory information. An exception to this general rule is set forth in ATF Ruling 84–3 (which modified ATF Ruling 83–6), which describes circumstances in which an importer may use a COLA issued to another importer. In general, an importer may use a COLA issued to another importer if: (1) The importer to which the COLA was issued has authorized such use, (2) each bottle or individual container bears the name (or trade name) and address of the importer to which the COLA was issued, and (3) the importer to which the COLA was issued maintains records of the companies it has authorized to use its certificate.

When TTB amended §§ 4.40, 5.51, and 7.31 in T.D. TTB–145, it incorporated text to reflect the provisions of ATF Ruling 84–3 and provide that bottled wine, distilled spirits, or malt beverages may be released to an importer who is authorized by a COLA holder to import products covered by the COLA. Importers must provide proof of such authorization if specifically requested. TTB noted in T.D. TTB–145 that it did not supersede ATF Ruling 84–3 or its holding that the COLA holder, who is the importer identified on the COLA, remains responsible for the imported product and its distribution in the United States.

Readers should note that these requirements apply only in situations in which a second importer wishes to use a COLA that was issued to the first importer, to obtain the release of products bearing labels that include the name of that first importer from customs custody. TTB regulations do not prohibit several different importers from obtaining a COLA for the same foreign wine, distilled spirits product, or malt beverage, as long as the name of the responsible importer appears on each label.

Comments from Wine Institute and DISCUS questioned why the proposed regulations did not incorporate the language in our current regulations and the ATF Rulings about COLA holders authorizing other importers to remove from customs custody products covered by a COLA. Wine Institute noted that this principle seemed to be partially addressed, and suggested that the regulations be amended to refer to importations with the COLA holder's authorization. DISCUS urged TTB to incorporate all of the provisions of ATF Ruling 84–3 into the regulations, stating that these provisions are critical to the proposed regulation.

TTB Response

As indicated by the comments from Wine Institute and DISCUS, TTB failed to fully incorporate the regulations finalized by T.D. TTB–145 into Notice No. 176. Accordingly, TTB is adopting the comments from Wine Institute and DISCUS to the extent that they reflect current provisions that TTB added to the regulations in 2016 by T.D. TTB–145 regarding the use by one importer of another importer's COLA under certain circumstances. It was not TTB's intent to modify this policy. Accordingly, in this final rule, TTB is reinstating the language that allows an importer to use another importer's COLA under certain circumstances. This final rule does not supersede ATF Ruling 84–3 or its holding that the COLA holder remains responsible for the imported product and its distribution in the United States.

TTB is not adopting DISCUS's suggestion that TTB amend the regulations to incorporate all of the requirements set forth in ATF Ruling 84–3. TTB did not air that specific issue for comment in Notice No. 176, and TTB believes it would be beneficial to solicit public comments on the recordkeeping and other requirements associated with adopting such regulatory amendments. TTB will evaluate whether it should update the ruling in the future, and will treat the DISCUS comment as a suggestion for future rulemaking.

d. COLA Requirements for Imported Alcohol Beverages Released ''for Consumption''

Subject to certain exceptions, the FAA Act makes it unlawful for anyone to remove ''from customs custody, in bottles, *for sale or any other commercial purpose,* distilled spirits, wine, or malt beverages, respectively'' unless the person has obtained and possesses ''a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Secretary in such manner and form as he shall by regulations prescribe.'' [Emphasis added.] See 27 U.S.C. 205(e). That same law also provides that the substantive labeling requirements of the FAA Act apply to importers who ''remove from customs custody *for consumption,* any distilled spirits, wine, or malt beverages in bottles . . .'' [Emphasis added.] The FAA Act defines the term ''bottle'' to mean ''any container, irrespective of the material from which made, for use for the sale of distilled spirits, wine, or malt beverages at retail.'' See 27 U.S.C. 211(a)(8). TTB and its predecessors have consistently interpreted these statutory provisions to mean that (1) a COLA is required for imported alcohol beverages in bottles only if they are released from customs custody for consumption in the United States, and (2) that for such consumption entries, a COLA is not required if the beverage is being imported for a purpose other than for sale or any other commercial purpose.

NABI commented that the regulations in proposed §§ 4.24 and 4.25, 5.24 and 5.25, and 7.24 and 7.25, should be revised to eliminate references to requiring COLAs before wine, distilled spirits, or malt beverages, respectively, are removed in containers from customs custody ''for consumption,'' and to instead include only a reference to removals for ''sale or any other commercial purpose.'' NABI stated that this revision would be consistent with the statutory language in 27 U.S.C. 205(e), and that the language about removals for consumption was overly broad.

TTB Response

The final rule adopts the language of the proposed regulations on this issue. As explained above, TTB views the statutory requirements of the FAA Act, as implemented in the regulations since 1936, as imposing two levels of inquiry. Initially, the substantive labeling requirements of the FAA Act, as well as the COLA requirements for alcohol beverages released from customs custody in containers, apply only to products released ''for consumption'' from customs custody. Within the category of products released for consumption, there is a subcategory of products that are exempt from the COLA requirement because they are being imported for a purpose other than sale or any other commercial purpose.

Current TTB regulations at 27 CFR 4.40(a), 5.51(a), and 7.31(a), as amended by T.D. TTB–145 (the final rule facilitating the use of ITDS) include this

structure, and the final rule also includes this regulatory text in §§ 4.24(d), 5.24(d), and 7.24(d). Thus, the exemption from the COLA requirement for products imported for a purpose other than sale or any other commercial purpose is in addition to, not instead of, the provision that applies the COLA requirements only to alcohol beverages removed ''for consumption'' in containers from customs custody.

e. Electronic Filing of the COLA Identification Numbers

The proposed and current regulations allow importers, when filing TTB data electronically with CBP along with the customs entry, to file the identification number of the valid COLA applicable to each such product in lieu of filing a copy of each COLA with CBP. See §§ 4.24(c), 5.24(c), and 7.24(c).

NABI requested that TTB require only that approved COLAs be on file for CBP or TTB inspection, citing the time burden of entering each identification number for shipments that contain products covered by numerous COLAs. NABI stated that its recommendation is consistent with proposed regulations at 27 CFR 4.27, 5.27, and 7.27, which require the importer to present a copy of the approved COLA upon request.

TTB Response

With regard to the electronic filing of the COLA identification numbers, in 2016, TTB amended its regulations to provide for electronic filing of an entry with CBP, so that an importer files an identification number of the approved COLA when filing electronically, rather than submitting the COLA to customs. See T.D. TTB–145, 81 FR 94186, December 22, 2016. The importer must provide a copy of the COLA (either electronically or on paper) upon request. As stated in T.D. TTB–145, these requirements ensure compliance with the FAA Act at 27 U.S.C. 205(e), which requires, with respect to imports, that no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, without having obtained and being in possession of a COLA covering the products. This rule finalizes this aspect of §§ 5.24 and 7.24 in a manner consistent with current regulations.

TTB believes that submitting the identification numbers corresponding to COLAs that cover the products intended for removal from customs custody, represents the minimum requirement necessary to support compliance with label requirements and a level playing field for industry members. This approach also minimizes the number of importers TTB and/or CBP potentially would need to contact directly to identify the appropriate COLA intended to be used by the importer, which supports compliance without unnecessarily impeding the importation process.

f. Formula Requirements—Cross-cutting 27 CFR 5.28 and 7.28

Specific formula requirements for certain types of beer and wine are found in TTB's regulations under the IRC. See 27 CFR part 24 for wine and part 25 for beer. For distilled spirits, the specific formula regulations are found in both the IRC regulations (part 19) and the FAA Act regulations (part 5). However, when reviewing applications for label approval, TTB often finds it necessary to obtain formulation information about certain products (including imported alcohol beverages) that are not otherwise subject to the specific formula requirements in the regulations. TTB requires industry members to obtain formula approval for certain unusual products to enable appropriate classification of the product and ensure that producers do not use prohibited ingredients in the product.

Accordingly, current regulations in §§ 4.38(h), 5.33(g), and 7.31(d) authorize TTB to request more information about the contents of a wine, distilled spirits product, or malt beverage, but the language in part 7 is different from the language in parts 4 and 5. Sections 4.38(h) and 5.33(g) provide that, upon request of the appropriate TTB officer, a complete and accurate statement of the contents of any container to which labels are to be or have been affixed shall be submitted. The regulations in § 7.31(d) state that the appropriate TTB officer may require an importer to submit a formula for a malt beverage, or a sample of any malt beverage or ingredients used in producing a malt beverage, prior to or in conjunction with the filing of an application for a COLA.

The type of product evaluation required for a particular product prior to issuance of a COLA depends on that product's formulation and origin. TTB periodically updates its public guidance to include a list of the domestic and imported products for which TTB currently requires formulas or laboratory analysis prior to issuing a COLA.

In Notice No. 176, TTB proposed to standardize the regulatory language in parts 4, 5, and 7 on this issue. Accordingly, proposed §§ 4.28(a), 5.28(a), and 7.28(a) provided that the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing, and samples of the product or ingredients used in the final product, prior to or in conjunction with the review of an application for label approval. The proposed regulations also provided that TTB may request such information after the issuance of a COLA, or in connection with any product that is required to be covered by a COLA. Proposed §§ 4.28(b), 5.28(b), and 7.28(b) provided that, upon request of the appropriate TTB officer, a bottler or importer must submit a full and accurate statement of the contents of any container to which labels are to be or have been affixed, as well as any other documentation on any issue pertaining to whether the wine, distilled spirits, or malt beverage is labeled in accordance with the TTB regulations.

Current TTB regulations and industry practice involve the submission of alcohol beverage formulas in varying forms and formats depending on the type of alcohol beverage and whether the product is domestically produced or imported. TTB believes that this multiplicity of procedures is unnecessarily complicated and burdensome for both the regulated industries and TTB. Accordingly, TTB proposed in Notice No. 176 to amend the TTB regulations in parts 4, 5 and 7 to provide that industry members may file a formula electronically by using Formulas Online or submitted on paper on TTB Form 5100.51, ''Formula and Process for Domestic and Imported Alcohol Beverages.'' TTB notes that the vast majority of industry members now use Formulas Online to submit formulas, and encourages all industry members to consider the advantages of online filing.

WineAmerica and the New York Farm Bureau commented in support of ''formula standardization for ease of submission and approval.'' A law student commented in favor of requiring more formulas to safeguard the health of consumers. However, some commenters raised concerns that the proposed regulations were too broad. For example, Wine Institute commented that proposed § 4.28(b), as drafted, attempted to expand TTB's authority to demand information from wineries outside of a formal investigation, and also noted that bottlers of wine may not always have complete information about the ingredients in formula wine produced by other wineries.

Some commenters focused on differences in laboratory analysis requirements for imported alcohol beverages. The Mexican Chamber of the Tequila Industry and DISCUS both noted that under current TTB policy (which is not addressed in the current

or proposed regulations), formulas for domestic products have no expiration date, while formulas for imported products expire after 10 years. They both urged TTB to eliminate the expiration date for imported products and to relieve formula requirements regarding samples. They also disagreed with granting authority to request formulas, laboratory testing, or samples for products that are not specifically required to submit formulas, noting that the formulation of alcohol beverages is often a closely guarded trade secret. Similarly, Federation des Exportateurs de Vins & Spiritueux de France (FEVS) commented in support of all the efforts made by TTB to simplify and streamline the pre-COLA evaluation process, especially for imported products, and stated that it understood the need for TTB officers sometimes to get more information on a specific product on a case-by-case basis. However, FEVS encouraged TTB to consider the economic costs and administrative burdens involved with formula and other pre-COLA analysis, and asked TTB to not define stricter ''Pre-COLA Evaluation modalities for imported products than those required for domestic products of the same category.'' As an example, FEVS questioned why a laboratory analysis is still required for imported flavored distilled spirits while domestic producers only have to obtain the approval of their formulas. FEVS stated that this situation creates extra costs and complexity for European Union (EU) exporters, and that these burdens were not justified because these products are also well regulated under the EU framework.

TTB Response

TTB is moving forward with its proposal to standardize in parts 5 and 7 the regulatory language regarding TTB's authority to require the submission of formulas, laboratory testing results, or samples as part of the label approval process. This is consistent with current policy and reflects the need to sometimes request, on a case-by-case basis, more information about a particular product prior to approval of a label. The final rule also standardizes the language found in the current distilled spirits regulations, which authorize TTB to require a full and accurate statement of the contents of the container. TTB is finalizing the clarifying language from the proposed rule, which provides that this authority applies after the issuance of a COLA, or with regard to any distilled spirits or malt beverages required to be covered by a COLA.

After reviewing the comments on the issue of whether the additional language in proposed §§ 5.28(b) and 7.28(b) reflected an intention by TTB to expand its authority to require information about products, TTB has revised the language to mirror more closely the language found in the current regulations. Thus, to avoid any confusion on this issue, the final rule does not include language about submission of other documentation at the time of formula submission relating to whether the alcohol beverage products comply with labeling regulations, although this change does not reflect a shift in current TTB policy regarding its authority require such information.

Finally, with regard to the commenters who requested that imported and domestic products be subject to the same requirements relating to formulas and laboratory analysis, TTB notes that it did not specially address the issues raised in the current or proposed regulations. As explained in Industry Circular 2020–1, dated February 12, 2020, TTB currently maintains guidance documents on its website, *https://www.ttb.gov,* which set forth current formula and laboratory analysis requirements. TTB periodically updates that list to reflect changes in TTB policy.

TTB will consider the comments on this issue as suggestions for future changes to its policy. However, it has been the position of TTB and its predecessor agencies that because TTB does not have access to the production records of foreign producers, it must rely upon the importer, whose basic permit is conditioned upon compliance with the FAA Act, to provide the necessary information at the time of importation. For this reason, the formula and laboratory analysis requirements for imported products may sometimes differ from those imposed on domestic products of the same class and type. TTB is continually reviewing its formula and laboratory analysis requirements to determine if it can reduce burdens on the regulated industry while fulfilling its statutory mission to protect consumers. The final rule allows TTB the flexibility to liberalize such requirements without engaging in rulemaking each time it removes a formula requirement under the FAA Act.

4. Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

Proposed subpart C of parts 4, 5, and 7 regulates the alteration of labels, relabeling, and the addition of information to wine, distilled spirit, and malt beverage labels for which TTB has already issued a COLA. As stated in Notice No. 176, these regulations are intended to implement the prohibition in section 105(e) of the FAA Act (27 U.S.C. 205(e)) that prohibits any person from altering, obliterating, or removing any mark, brand, or label except as authorized by Federal law or regulations implemented by the Secretary.

As previously noted, the COLA requirements of the FAA Act are intended to prevent the sale or shipment or other introduction in interstate or foreign commerce of distilled spirits, wine, or malt beverages that are not bottled, packaged, or labeled in compliance with the regulations. To ensure that products with proper labels are not altered once such products have been removed from bond, section 105(e) of the FAA Act (27 U.S.C. 205(e)) makes it unlawful for ''any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages'' that are held for sale in interstate or foreign commerce, or are held for sale after shipment in interstate or foreign commerce, unless authorized by Federal law or pursuant to regulations allowing relabeling for purposes of compliance with either the FAA Act or State law.

Regulations that implement these provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in parts 4, 5, and 7, respectively. Current §§ 4.30 and 7.20 provide that someone wanting to relabel must receive prior written permission from the appropriate TTB officer. Current § 5.31 does not require prior written approval for the relabeling of distilled spirits, as long as such relabeling is done in accordance with an approved COLA.

As described in more detail below, proposed subpart C of parts 4, 5, and 7, proposed conforming changes to the regulations that: (1) Implement the statutory prohibition discussed above; (2) set out the provisions allowing for relabeling without TTB authorization; (3) set out the provisions allowing for relabeling only with TTB authorization; and (4) provide for the use of stickers to identify the wholesaler and retailer.

a. Alteration of Labels

Proposed §§ 4.41(a), 5.41(a), and 7.41(a) set forth the statutory prohibition under 27 U.S.C. 205(e) on the alteration of labels. The proposed language provided that the prohibition applies to any persons, including retailers, holding wine, distilled spirits, or malt beverages for sale in (or after

shipment in) interstate or foreign commerce.

Proposed §§ 4.41(b), 5.41(b), and 7.41(b) provided that for purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

Proposed §§ 4.41(c), 5.41(c), and 7.41(c) contained new language that provides that authorization to relabel in no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product; nor does it relieve the person conducting the relabeling operations from any obligation to comply with the regulations in this part and with State or local law, or to obtain permission from the owner of the brand where otherwise required.

TTB received four comments of general support for proposed §§ 4.41, 5.41, and 7.41 from Beer Institute, Heaven Hill Brands, Wine Institute, and DISCUS. However, DISCUS stated that alteration of labels should only be done with the COLA holder's approval.

TTB Response

TTB is finalizing proposed §§ 5.41 and 7.41 without change. These regulatory provisions implement the statutory language in a clearer manner than the current regulations. With regard to the DISCUS comment, TTB notes that §§ 5.41(c) and 7.41(c) explicitly provide that authorization to relabel under this subpart does not authorize the placement of labels on containers that do not accurately reflect the brand, bottler, or other characteristics or the product, nor does it relieve the responsible person from any obligation to comply with the TTB regulations and with State or local law, or to obtain permission from the owner of the brand where required under other laws. TTB believes this provision adequately addresses the concerns raised by the DISCUS comment.

b. Authorized Relabeling Activities Without Prior Authorization From TTB

The current regulations in parts 4 and 7 require persons wishing to relabel to obtain written permission from TTB, with certain exceptions, while the regulations in part 5 require persons wishing to relabel to obtain a COLA from TTB. TTB proposed to update the regulations in parts 4, 5 and 7 for consistency, and to cover all of the situations in which people need to relabel. The current regulations in part 5 allow persons who are eligible to obtain COLAs, such as bottlers and importers, to relabel the covered products even after their removal from bottling premises or customs custody, respectively, without first obtaining written approval from TTB. The proposed rule extended this provision to parts 4 and 7.

Accordingly, the proposed regulations provided that proprietors of bonded wine premises, distilled spirits plant premises, and breweries, may relabel domestically bottled products prior to their removal from, and after their return to bond at, the bottling premises, with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity. See proposed §§ 4.42(a), 5.42(a), and 7.42(a).

The proposed regulations also provided that proprietors of bonded wine premises, distilled spirits plant premises, and breweries, may relabel domestically bottled products after removal from the bottling premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity. This would allow, for example, a brewer to replace damaged labels on containers held at a wholesaler's premises, as long as a COLA covers the labels, without obtaining separate permission from TTB to remove the existing labels and replace them with either identical or different approved labels. See §§ 4.42(b), 5.42(b), and 7.42(b).

The proposed regulations also provided that, under the supervision of U.S. customs officers, imported wine, distilled spirits, and malt beverages, in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a COLA when the products are removed from customs custody for consumption. See §§ 4.42(c) and (d), 5.42(c) and (d), and 7.42(c) and (d).

TTB received several comments of strong support in response to TTB's efforts to bring consistency to the relabeling rules between wine, distilled spirits, and malt beverages from NABI, Heaven Hill Brands, the Beer Institute, ADSA, WineAmerica, and the New York Farm Bureau.

In their comments, WineAmerica and the New York Farm Bureau noted that these proposals would reduce the regulatory burden with regard to wine. Heaven Hill Brands and ADSA expressed support for equal treatment with regard to relabeling activities between wine, distilled spirits, and malt beverages. NABI stated its appreciation for provisions that allow importers to relabel products without separate permission. The Beer Institute recommended ''that TTB allow additional flexibility in the proposed rule so that 'authorized agents' (such as distributors or co-packers) of breweries and importers are also authorized to make such changes without having to obtain approval from TTB.''

TTB Response

TTB is finalizing §§ 5.42, and 7.42 as proposed, with the modification that a domestic proprietor who enjoys these privileges must also be the certificate holder for the COLA (which, in the case of domestically bottled products, would be the bottler).

In response to the comment from Beer Institute, which suggested allowing relabeling by ''authorized agents'' of the COLA holder, TTB notes that nothing in the regulation precludes COLA holders from using either employees or ''authorized agents'' to physically conduct relabeling activities, as long as the relabeling is being done at the direction of the COLA holder. To clarify this point, the regulatory text in sections 7.42(b) and 5.42(b) is revised to provide that proprietors may relabel *(or direct the relabeling of)* domestically bottled products after removal with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity, provided that the proprietor is the certificate holder (and bottler).

c. Relabeling Activities That Require Separate Written Authorization

In Notice No. 176, TTB stated that the language in current parts 4 and 7 allow persons who are not eligible to obtain COLAs, such as retailers, to obtain written permission from TTB to relabel products that are in the marketplace when unusual circumstances exist. The proposed rule extended this provision to part 5. It is rare that someone other than the original bottler or importer will need to relabel the product, but these situations sometimes occur. For example, sometimes bottles packed in a shipping carton break, causing damage to labels of unbroken bottles.

Thus, the proposed regulations allowed persons who are not eligible to obtain a COLA (such as retailers or permittees other than the bottler) to obtain written authorization for relabeling if the request demonstrates that the relabeling was for the purpose of compliance with the requirements of

this part or of State law. The proposed regulations provided that the written application must include copies of the original and proposed new labels; the circumstances of the request, including the reason for relabeling; the number of containers to be relabeled; the location where the relabeling will take place; and the name and address of the person who will be conducting the relabeling operations.

TTB intended that the proposed regulations enable permittees, brewers, and retailers to relabel alcohol beverage containers in the marketplace when there is a permissible reason to do so. TTB sought comments from industry on whether the proposed regulations would protect the integrity of labels in the marketplace without imposing undue burdens on the industry.

WineAmerica, NABI, Heaven Hill Brands, Williams Compliance and Consulting Group (the Williams Group), Wine Institute, and DISCUS expressed general support for these provisions.

In its comment, Heaven Hill Brands expressed support for equal treatment between wine, distilled spirits, and malt beverage regulations. In addition to providing their support for the proposed regulations, Wine Institute and DISCUS suggested that any persons engaged in relabeling who are not eligible to obtain a COLA (retailers, wholesalers, or proprietors other than the bottler) should be required to obtain authorization from the COLA holder in addition to written authorization from TTB. DISCUS commented that its suggested ''revision will provide greater certainty to industry members regarding their brand equity and the power to control what happens to their brand labels once in the marketplace.''

TTB Response

TTB is finalizing proposed §§ 5.43 and 7.43 with the clarification that those who must obtain written authorization to relabel distilled spirits and malt beverages are wholesalers and permittees other than the original bottler, not retailers. In response to DISCUS's concerns about the power of producers to control what happens to their brand labels once in the marketplace, and the comments from Wine Institute and DISCUS requesting that TTB require that persons performing relabeling activities obtain COLA holder approval, TTB is only authorizing permittees (wholesalers and proprietors other than the original bottler) to apply for authorization to relabel; however, TTB is not requiring that the applicant first obtain approval from the COLA holder. Adopting the comments from Wine Institute and DISCUS that TTB should require the person performing the relabeling activities to obtain authorization from the original COLA holder would be more restrictive than current regulations, and was not specifically aired for comment. TTB notes that distillers are also subject to the relabeling regulations under the IRC in 27 CFR part 19, which require proprietors to retain a statement of authorization to relabel products that they did not originally bottle; there is no such requirement for wine under the IRC regulations in 27 CFR part 24.

d. Adding a Label or Other Information to a Container That Identifies the Wholesaler, Retailer, or Consumer

Consistent with current regulations for wine and distilled spirits, and an intention to liberalize regulatory requirements for malt beverages, TTB proposed to allow the addition of a label identifying the wholesaler, retailer, or consumer as long as the label does not reference the characteristics of the product, does not violate the labeling regulations, and does not obscure any existing labels. The proprietor may add information identifying the wholesaler, retailer, or consumer before the wine, distilled spirit, or malt beverage leaves the premises. The wholesaler, retailers, or an agent may make such additions of information prior to the release of a product from customs custody. See proposed §§ 4.44, 5.44, and 7.44.

NABI, Heaven Hill Brands, Wine Institute, and DISCUS expressed support for proposed §§ 4.44, 5.44, and 7.44. In addition to expressing support, Wine Institute requested that any alteration of the label be conducted only with the authorization of the COLA holder and indicates that consumers could be confused about such stickers.

TTB Response

TTB will finalize §§ 5.44 and 7.44 without change. In response to Wine Institute's request that authorization from the COLA holder should be required prior to any alteration of a label, TTB notes that the proposal is consistent with current regulation, and that under this section, only information regarding the wholesaler, retailer, or consumer is being applied to the container (rather than the replacement of an entire label). The adoption of Wine Institute's request would be a significant restriction and would require rulemaking. Also, TTB has not received comments from consumers or consumer groups that stickers identifying the names of wholesalers, retailers, or consumers are confusing.

5. Subpart D—Label Standards

In Notice No. 176, TTB proposed a new subpart D in each of parts 4, 5, and 7, governing legibility of labels, type size, and language requirements for mandatory information on labels. The provisions were predominantly derived from and consistent with current regulations.

a. Affixing Labels

Proposed §§ 4.51, 5.51, and 7.51 provided, consistent with current requirements, that labels must be affixed such that they cannot be removed without the thorough application of water or other solvents. DISCUS expressed support for these provisions, but they suggested amending the regulations so that only mandatory information would be subject to the ''firmly affixed'' requirement, and to allow ''any part of the label without mandatory information to be peeled off.'' NABI recommended that the regulations allow a label to be affixed to a container over another label ''provided both labels are firmly affixed to the container and the overlapping label does not obscure any mandatory information.'' NABI suggested that this amendment would reflect current TTB policy.

TTB Response

With the exception of the keg collar exemption discussed in the part 7-specific discussion below, TTB is finalizing §§ 5.51 and 7.51 as proposed. Adoption of the DISCUS comment, which would allow optional information to be included on a peel-off label, would require broader changes to the definition of a label, which currently includes both optional and mandatory information. TTB will consider this comment as a suggestion for future rulemaking. In response to the NABI comment, TTB notes that, currently, it does not allow a bottler to place one label over another label on a container. Instead, TTB sometimes allows this as a temporary solution in a ''use-up'' situation, where circumstances do not allow another feasible solution. TTB does not believe that it should extend that option beyond temporary ''use-up'' situations, because the practice could be subject to abuse. Accordingly, TTB will not adopt the NABI suggestion at this time, but will consider the comment as a suggestion for further rulemaking on this issue.

b. Legibility and Other Requirements for Mandatory Information on Labels

The regulations in proposed §§ 4.52, 5.52, and 7.52 governing legibility of labels, type size, and language

requirements were largely based on the requirements currently found in §§ 4.38, 5.33, and 7.28. The proposed regulations clarified existing regulations and policy.

TTB set out in proposed §§ 4.52(b), 5.52(b), and 7.52(b) current regulations and existing policy that require mandatory information to be separate and apart from additional information. The proposed rule provided a few exceptions to this general rule. First, brand names are exempt from this requirement. Second, this provision would not preclude the addition of brief optional phrases as part of the class and type designation (such as ''premium malt beverage''), the name and address statement (such as ''Proudly distilled and bottled by ABC Distilling Company, Atlanta, GA, for over 30 years''), or other information required by the regulations, as long as the additional information does not detract from the prominence of the mandatory information.

Beverly Brewery Consultants, Wine Institute, WineAmerica, the New York Farm Bureau, and ADSA supported this proposal. Beverly Brewery Consultants also suggested that TTB should consider adding a requirement that mandatory information be conspicuous in addition to being separate and apart from other information on the label. This comment referred to current requirements in 27 CFR 7.28, which provide that if ''contained among other descriptive or explanatory information, the script, type, or printing of all mandatory information shall be of a size substantially more conspicuous than that of the descriptive or explanatory information.'' Wine Institute stated that it ''supports the ability to include brief optional phrases of additional information in conjunction with mandatory information.'' DISCUS opposed the requirement that mandatory information be separate and apart from additional information, but did not provide its rationale for this position. The Mexican Chamber of the Tequila Industry proposed that TTB establish specific parameters for the meaning of ''separate and apart.''

NABI stated that TTB's proposal to allow additional information to appear with mandatory information provided the ''additional information does not detract from the prominence of the mandatory information'' represented a vague standard. NABI requested that TTB replace this standard with one that prohibits additional information from creating a ''misleading impression inconsistent with the mandatory information.'' NABI stated that, under the ''commercial speech'' doctrine developed by the U.S. Supreme Court, the government may prevent misleading speech, but not ''detracting speech.''

TTB Response

TTB is finalizing in §§ 5.52(b) and 7.52(b) the proposed provisions requiring mandatory information to be separate and apart from additional information with the exceptions set forth in the proposed regulations and as discussed above. However, in response to the comments, we are clarifying that this new standard does not represent a change in TTB's current labeling policy. Accordingly, we are incorporating language in the regulation for greater consistency with existing regulatory standards in §§ 4.38, 5.33, and 7.28. Instead of requiring that the additional information does not ''detract from the prominence of the mandatory information,'' the final rule provides that if contained among other descriptive or explanatory information, the script, type, or printing of all mandatory information shall be substantially more conspicuous than that of the descriptive or explanatory information. While these determinations are made on a case-by-case basis, current TTB policy considers mandatory information (other than aspartame) to be substantially more conspicuous if the type size is at least twice the type size of the surrounding information, or if the mandatory information is otherwise substantially more conspicuous because of, for example, the boldness or color of the font. The final rule provides for distilled spirits labels, and continues to provide for malt beverage labels, that aspartame declarations must be separate and apart from all other information.

In response to the Mexican Chamber of the Tequila Industry, TTB notes that establishing specific parameters for ''separate and apart'' would result in more strict rules than what is currently in place, potentially requiring industry members to change current labels. This would also place a significant administrative burden on TTB without a clear benefit.

In response to NABI, TTB notes that requirements with regard to mandatory statements are issued pursuant to TTB's authority to ensure that labels provide consumers with adequate information about the identity and quality of the product. Requiring that such information be sufficiently conspicuous on the label is well within TTB's statutory authority.

c. Contrasting Background

Consistent with current regulations, proposed §§ 4.52(c), 5.52(c), and 7.52(c) set forth the existing regulation that states the requirement that mandatory information must appear on a ''contrasting background.'' The requirement for a contrasting background ensures that mandatory information is readily legible to consumers; for example, white letters on a white background will typically be difficult for consumers to read. The proposed regulations provided new examples that indicate how this requirement may be satisfied. The proposed regulations specifically state that TTB considers black lettering appearing on a white or cream background, or white or cream lettering appearing on a black background, to be contrasting. The proposed regulations do not restrict industry members to the use of black, cream, or white for use on labels.

Beverly Brewery Consultants and the New York Farm Bureau supported this proposal. DISCUS opposed this requirement, commenting in favor of retaining the current language from which TTB derived this provision. DISCUS suggested that by providing examples of what constitutes a contrasting background, TTB is requiring, for example, black text to appear on a white or cream background. DISCUS also suggested that TTB had determined in 2002 that regulations regarding contrasting background were not necessary. DISCUS pointed to an advance notice of proposed rulemaking to support this claim (Notice No. 917, May 22, 2001, 66 FR 28135).

TTB Response

TTB is finalizing proposed §§ 5.52(c), and 7.52(c) without change. The advance notice of proposed rulemaking that DISCUS refers to pertains to the placement, noticeability, and legibility of the Health Warning Statement under the Alcoholic Beverage Labeling Act, and TTB did not propose further amendments in response to that advance notice. TTB believes that the examples in the final rule are useful points of reference that act as guide rails for industry members. However, the regulations do not require mandatory information to appear in specific colors, nor do they require a contrasting background to be of a specific color. Industry members will remain free to select type colors and backgrounds for their labels other than black, white, or cream as long as the background is contrasting in the judgment of the appropriate TTB officer.

d. Type Size Requirements for Mandatory Information

Proposed §§ 4.53, 5.53, and 7.53 set out the type size requirements for mandatory information under the

regulations and incorporated existing policy, which provides that the minimum type size requirements apply to both capital and lowercase letters. For malt beverages, these requirements were consistent with current § 7.28(b)(3), including the requirement that alcohol content statements not exceed four millimeters on containers larger than forty fluid ounces.

WineAmerica and FEVS expressed support for the incorporation of TTB's current policy that minimum type size requirements apply to capital and lowercase letters. The European Union indicated that it understood the proposed minimum type size requirements for mandatory information to be ''fixed,'' that is, that type size cannot exceed the minimum type sizes set forth in the current and proposed regulations. The European Union stated that such ''requirements may possibly create unnecessary obstacles to international trade'' for wine and distilled spirits.

Beverly Brewery Consultants stated that proposed § 7.53 should clearly state whether it applies to mandatory or optional alcohol content statements, or both. In response to the Treasury Department's Request for Information (RFI), published in the **Federal Register** on June 14, 2017 (82 FR 27212), the Brewers Association requested that TTB remove the maximum type size restriction for alcohol content statements, stating that such statements have been permitted for more than 20 years and that there is no compelling reason to restrict the type size.

TTB Response

TTB is finalizing proposed §§ 5.53, and 7.53 as set forth in Notice No. 176, with a clarifying change to § 7.53, as discussed below.

In response to the European Union's concern, TTB emphasizes that, like the current requirements for type size of mandatory information, the proposed requirements—with the exception of alcohol content statements—are minimum type size requirements. That is, mandatory information may appear in type size that is larger than the minimum type size requirements. Given that these provisions are not new, TTB does not believe that the requirement poses any potential barriers to international trade.

Regarding § 7.53, TTB permits, but does not require, alcohol content statements on malt beverage labels, unless the malt beverage ''contain[s] any alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol,'' in which case an alcohol content statement is required. See §§ 7.63(a)(3) and 7.65(a), as finalized below, and T.D. TTB–21, 70 FR 194, January 3, 2005. Section 7.53(a) provides for minimum type size requirements for mandatory information on malt beverage labels. In response to the comment from Beverly Brewery Consultants, TTB is adding to this section a reference to § 7.63(a)(3) to clarify that these requirements extend to mandatory statements of alcohol content. Consistent with current policy, TTB is also clarifying that the maximum type size limitations in § 7.53(b) apply to all statements of alcohol content.

Regarding the Brewers Association comment requesting that TTB remove the maximum type size restriction for alcohol content statements on malt beverages, which TTB has applied to both mandatory and optional alcohol content labeling statements, TTB believes such a regulatory change should not be adopted without providing more specific notice (and an opportunity to comment) to interested parties. TTB did not propose to remove the maximum type size requirements for alcohol content statements on all alcohol beverages containers in Notice No. 176. TTB therefore declines in this rule to change the maximum type size requirements. TTB may consider changes to this standard in a future rulemaking. This final rule clarifies current policy with regard to maximum type size requirements applying to alcohol content statements.

e. Visibility of Mandatory Information

Proposed §§ 4.54, 5.54, and 7.54 explicitly required that mandatory information on labels must be readily visible and may not be covered or obscured in whole or in part. DISCUS expressed support for this proposal. Beverly Brewery Consultants commented that ''[i]n view of TTB's proposal not to require certain mandatory information to appear on a 'brand label,' I strongly recommend that a 'conspicuous' requirement be added to sec. 7.54 to ensure consumers will be able to distinguish mandatory label information from other information on the label.''

TTB Response

TTB is finalizing §§ 5.54 and 7.54 as proposed. In response to the comment from Beverly Brewery Consultants suggesting that mandatory information must be ''conspicuous,'' current regulations do not impose such a requirement. Instead, both the current regulations and the proposed regulations provide that mandatory information must be ''readily visible'' on distilled spirits and malt beverage labels. TTB does not believe that the commenter supplied an adequate basis for revising this requirement, and any such change might require revisions to existing labels. Accordingly, TTB is not adopting this comment. See Section II.C.4.a below for discussion of the removal of the requirement that mandatory labeling information appear on the ''brand label'' of malt beverages.

f. Language Requirements

Consistent with current regulations, proposed §§ 4.55, 5.55, and 7.55 generally require mandatory information, other than the brand name, to appear in the English language. Also consistent with current malt beverage and distilled spirits requirements, but as a liberalization for wine, the proposed regulations provided that all mandatory information may appear solely in Spanish when products are bottled for sale in the Commonwealth of Puerto Rico. The proposed regulations allowed for additional statements in foreign languages, including translations of mandatory information, and the country of origin, when allowed by CBP regulations. DISCUS expressed support for this proposal.

TTB Response

TTB is finalizing proposed §§ 5.55 and 7.55 as set forth in Notice No. 176.

g. Additional Information (Non-Mandatory Information) on Labels

Proposed §§ 4.56, 5.56, and 7.56, set out current TTB policy on the appearance of additional information on labels (that is, information that is not mandatory information). Specifically, the proposed provisions provided that additional information that is truthful, accurate, and specific, and that does not violate the restricted, prohibited, and prohibited if misleading provisions in subparts F, G, or H of part 4, 5, or 7, for wine, distilled spirits, or malt beverages, respectively, may appear on labels. Such additional information may not conflict with, modify, qualify, or restrict mandatory information in any manner.

NABI noted that proposed §§ 4.56, 5.56, and 7.56 did not specify type size requirements for additional information, but suggested that, in the experience of its members, TTB specialists often require the additional information to appear in uniform type size. NABI stated that the regulations should ''codify clearly the fact that uniformity is not required absent a TTB showing that the lack of uniformity itself results in a statement or representation that misleads the consumer.''

Beverly Brewery Consultants expressed concern about the provisions in proposed § 7.56, suggesting that the proposed regulation would impose a new requirement that additional information be specific, and providing examples of additional information that is not specific, such as ''full of flavor'' and ''we have started a revolution with this beer.''

DISCUS opined that proposed § 5.56 should be struck on the grounds that it is duplicative of proposed § 5.122.

TTB Response

TTB is finalizing proposed §§ 5.56 and 7.56 without change.

In response to the comment from NABI, TTB notes that neither the current regulations nor the regulations adopted in this final rule require that additional information be in a uniform type size. TTB does not have a policy of requiring uniform type size on a general basis but does sometimes evaluate the type size of additional information in determining whether it qualifies mandatory information in a misleading fashion. The prominence and type size of the optional information is one factor in evaluating whether the information creates a misleading impression as to the identity of the product. TTB will continue this policy.

In response to the comment from Beverly Brewery Consultants, which suggested that the proposed regulation would impose a new requirement that additional information be specific, TTB emphasizes that the regulations as finalized do not prohibit the inclusion of puffery (such as ''full of flavor'') that is not specific. The proposed provisions in §§ 4.56, 5.56, and 7.56 authorize the use of additional information that is truthful, accurate, and specific provided that it is used in accordance with subparts F, G, and H. This does not prohibit the use of non-specific ''puffery'' on labels.

In response to DISCUS, TTB does not agree that proposed §§ 5.55 and 5.122 are duplicative. Proposed § 5.55 is explicit in authorizing the use of additional information, whereas proposed § 5.122 sets out some of the parameters for all information on a container, including additional information.

6. Subpart E—Mandatory Label Information

Proposed subpart E in parts 4, 5 and 7 sets forth the information that is required to appear on alcohol beverage labels (otherwise known as ''mandatory information''). This subpart also prescribes where and how mandatory information must appear on such labels.

a. What Constitutes a Label

In §§ 4.61, 5.61, and 7.61 TTB set out its current policy specifying what is considered to be the ''label'' for purposes of mandatory information placement.

DISCUS, WineAmerica, and the New York Farm Bureau expressed support for the proposed provisions. NABI requested that TTB clarify in the regulations whether or not TTB considers QR codes to be labeling or advertising. They also suggested that TTB remove ''plastic film'' from the proposed regulations that read ''[w]hen used in this part for purposes of determining where mandatory information must appear, the term ''label'' includes: (1) Material affixed to the container, whether made of paper, *plastic film,* or other matter'' [emphasis added], and replace it with ''plastic, metal * * *.''

TTB Response

TTB is finalizing §§ 5.61, and 7.61 as proposed with the exception that the finalized regulations will make clear that labels can be made from plastic and/or metal, in addition to paper and ''other matter.'' While a QR code itself is part of a label, TTB evaluates the material it points to under its advertising regulations, as explained in TTB Industry Circular 2013–1, ''Use of Social Media in the Advertising of Alcohol Beverages,'' which provides as follows:

> Industry members may also enable consumers to access content by including a quick response code (or QR Code) on a label or advertisement. Consumers can scan the QR Code with their mobile device to access the additional content. Depending on the type of media that is linked to by the QR Code (such as the industry member's web page, mobile application, or blog), the relevant regulations and TTB public guidance documents will apply. If, for example, the QR code links to a document, such as a drink recipe using an industry member's product, the recipe will be considered an advertisement because it is a written or verbal statement, illustration, or depiction that is in, or calculated to induce sales in interstate or foreign commerce.

TTB believes that TTB Industry Circular 2013–1 covers this matter adequately and there is no need to incorporate this policy into the regulations.

b. Closed Packaging

Current regulations in §§ 4.38a and 5.41 set out rules for the placement of information on bottle cartons, booklets, and leaflets. Briefly, these regulations provide that individual coverings, cartons, or other containers of the bottle used for sale at retail (that is, other than a shipping container), as well as any written, printed, graphic, or other matter accompanying the bottle to the consumer shall not contain any statement, design, device or graphic, pictorial, or emblematic representation prohibited by the labeling regulations.

The current regulations also require the placement of mandatory label information on sealed opaque coverings, cartons, or other containers used for sale at retail (but not shipping containers). Coverings, cartons, or other containers of the bottle used for sale at retail that are designed so that the bottle is easily removable may display any information that is not in conflict with the label on the bottle contained therein. However, labels must display any brand names or designations in their entirety, with any required modifications and/or statements of composition.

Thus, the prohibited practices for labeling set forth in existing §§ 4.39(a) and 5.42(a) apply to bottles, labels on bottles, any individual covering, carton, or other container of such bottles used for sale at retail, and any written, printed, graphic, or other matter accompanying such bottles to the consumer. The current labeling regulations in part 7 do not include regulations similar to current §§ 4.38a and 5.41. However, as set forth at current § 7.29(a) and (h), the prohibited practices in the labeling regulations for malt beverages apply to containers, any labels on such containers, or any cartons, cases, or individual coverings of such containers used for sale at retail, as well as to any written, printed, graphic, or other material accompanying malt beverage containers to the consumer.

In Notice No. 176, TTB stated that the existing regulations create some confusion as to when a case constitutes labeling and when it constitutes advertising. Accordingly, TTB proposed identical regulations in proposed §§ 4.62, 5.62, and 7.62 to address packaging. The proposed regulations provided, consistent with existing regulations in parts 4, 5 and 7, that packaging may not include any statements or representations prohibited by the labeling regulations from appearing on containers or labels. The proposed regulations also provided, consistent with existing regulations in parts 4 and 5 but as a new requirement for part 7, that closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, must include all mandatory information

required to appear on the label. The rationale for requiring mandatory information on sealed opaque coverings is that the consumer is not able to see the label on the container under normal conditions of retail sale. This rationale would not extend to shipping containers that do not accompany the container to the retail shelf.

Furthermore, the proposed regulations provided greater clarity than the current provisions about when packaging is considered closed. Proposed §§ 4.62, 5.62, and 7.62 provide that packaging is considered closed if the consumer must open, rip, untie, unzip, or otherwise manipulate the package to remove the container in order to view any of the mandatory information. Packaging is not considered closed if a consumer could view all of the mandatory information on the container by merely lifting the container up, or if the packaging is transparent or designed in a way that all of the mandatory information can easily be read by the consumer without having to open, rip, untie, unzip, or otherwise manipulate the package. TTB sought comment on whether TTB should require mandatory or dispelling information to appear on open packaging when part of the label is obscured.

TTB solicited comments on whether the proposed rules would require significant change to labels, containers, or packaging materials. TTB also solicited comments on whether the proposed revisions would provide better information to the consumer and make it easier to find mandatory information on labels, containers, and packages.

The comments on this issue were split between those that supported the proposed change and those that stated that the proposed amendments would change TTB policies and impose new costs on industry members. Some commenters, including the Oregon Winegrowers Association and the Willamette Valley Wineries Association, supported the proposed amendments and urged TTB to go even further, by providing that ''any consumer facing information on a label or packaging cannot: (1) Be misleading; and (2) convey any information that is unsupportable by the label claims.''

The Williams Group supported the proposed provisions as providing more information to consumers; however, they also indicated that the amendments might require changes to some packaging.

The Brewers Association specifically expressed support for proposed § 7.62(c), which sets out provisions for closed packaging because ''[c]onsumers should be able to view the mandatory information at the point of purchase.'' The Brewers Association further noted that many brewers already place mandatory information on packaging.

The Beer Institute appeared to support proposed § 7.62, provided that ''TTB clarify the term 'opaque packaging' as packaging through which individual malt beverage bottles/cans (and mandatory information contained thereon) cannot be seen by the consumer.''

However, other commenters, including Heavy Seas Beer, DISCUS, and the Wine Institute, opposed proposed §§ 4.62, 5.62, and 7.62, on the basis that the new requirements would require changes to current packaging and would thus impose financial burdens. Heavy Seas Beer commented as follows:

> [C]hanging all secondary packaging to meet label requirements, meaning can wraps and mother cartons, this would be a significant financial burden for smaller suppliers, as the origin plates would need to be remade. The cost per plate can run from $1,500–$4,000 per package. We estimate that the financial burden for this change would cost our brewery about $75,000, which we simply don't have. If this new section were to be put into place, we would need 2–4 years to implement 100%.

Wine Institute and DISCUS argued, without providing specific data, that the proposal would impose a financial burden. DISCUS argued that the proposed amendments would ''adversely affect packaging such as gift boxes, gift bags, tubes, etc.'' because this type of packaging would be required to bear mandatory information. DISCUS further requested that—if the proposed rule is adopted—TTB use the language ''sealed'' and ''otherwise manipulate'' rather than ''closed.'' Wine Institute suggested that the proposed clarifications to TTB policy on what type of packaging was ''closed'' represented a change in policy, and stated that ''TTB should not change its policy on containers that can be opened and restored to its original condition; in other words, without breaking any type of seal, glue or similar type of permanent closure.''

The New York Farm Bureau, WineAmerica, Heavy Seas Beer, and a member of the public raised concerns about the cost of having to place mandatory information on ''shipping containers'' and ''mother cartons,'' and also discussed the use of this type of packaging for direct-to-consumer sales (such as sales by wine clubs). Beverly Brewery Consultants made the observation that proposed § 7.62 would result in modification or redesign of packaging. Finally, Senator Kennedy commented in opposition to this proposal as one of many that could be confusing for consumers and lead to label resubmission.

TTB Response

After carefully considering the comments, it is TTB's conclusion that the proposed amendment caused confusion on the part of industry members with regard to whether the proposed amendment would apply to shipping cartons; this was not the intent of the proposed revision. However, based on the comments, TTB cannot determine with any certainty the extent to which the proposed new requirements would require industry members (in particular, brewers) to change their packaging materials and incur new costs. TTB does not believe that this can be resolved without undergoing additional notice and comment rulemaking on a more specific proposal regarding this issue.

Accordingly, TTB will consider the new requirements for malt beverages as suggestions for future rulemaking but will not adopt these requirements at this time. Instead, TTB will retain the current regulations with regard to parts 5 and 7, with minor modifications to section 7.62 to clarify that the prohibition against statements or representations that would be prohibited on a label would include misleading brand names and class/type designations. This is consistent with current TTB policy. TTB recognizes that this means the regulations will not require malt beverages to display mandatory information on closed cartons. However, malt beverage cartons, cases, or other coverings of the container used for sale at retail will continue to be subject to the prohibited practices provisions. With regard to clarification of current policy as to what constitutes sealed packaging for industry members, TTB is not changing its current interpretation of the existing regulations.

c. Brand Names and Trademarks

Proposed §§ 4.64, 5.64, and 7.64 set forth requirements for brand names of wine, distilled spirits, and malt beverages, respectively. The proposed regulations simply clarify the current regulations by providing that a brand name is misleading if it creates (by itself or in association with other printed or graphic matter) any erroneous impression or inference as to the age, origin, identity, or other characteristics of the distilled spirits. A brand name that would otherwise be misleading may be qualified with the word ''brand'' or

with some other qualification, if the appropriate TTB officer determines that the qualification dispels any misleading impression that the label might otherwise create.

The Mexican Chamber of the Tequila Industry commented that proposed § 5.64 should be revised to include more specific criteria for determining whether a brand name is misleading, and that legal or administrative instruments should be established to resolve any disagreement in this regard between the TTB official and the brand owner.

TTB Response

TTB is finalizing §§ 5.64 and 7.64 as proposed. TTB is not making the change suggested by the Mexican Chamber of the Tequila Industry regarding the inclusion of more specific criteria, and the notice did not solicit comments on more specific language. TTB will consider this comment as a suggestion for future action. With regard to the process for resolving disagreements between TTB and brand owners, TTB notes that the procedures in part 13 regarding administrative appeals of the denial or revocation of label approval would apply to brand name issues as well as any other labeling issue that an applicant or certificate holder wishes to contest through the administrative process.

d. Name and Address

In the regulations on the name and address of bottlers and producers of domestically bottled wine, distilled spirits, and malt beverages, Notice No. 176 proposed clarifying changes to existing requirements.

The FAA Act provides that wine, distilled spirits, and malt beverage labels must contain certain mandatory information, including the name of the manufacturer, bottler, or importer of the product. See 27 U.S.C. 205(e)(2). Under current regulations, bottlers of distilled spirits and malt beverages may list either the place of bottling, every location at which the same industry member bottles the product, or, under certain circumstances, the principal place of business of the industry member that is bottling the product. Bottlers of distilled spirits or malt beverages that utilize one of the latter two options must mark the labels using a coding system that enables the bottler and TTB to trace the actual place of bottling of each container. This both protects the revenue and allows for the tracing of containers in the event of a product recall.

In Notice No. 176, TTB noted that, with the growing number of craft brewers and craft distillers in the marketplace, there may be more interest among consumers as to where malt beverages are brewed and where distilled spirits are distilled. On the other hand, TTB also wished to provide industry members with flexibility in their labeling statements, to accommodate the growing number of arrangements where products are produced or bottled pursuant to contractual arrangements. One of the major reasons for allowing the use of principal places of business and multiple addresses on labels is to allow industry members to use the same approved label for their products that are bottled or imported at different locations rather than having to seek approval of multiple labels. In Notice No. 176, TTB noted that, under both the existing and proposed regulations, industry members are always free to include optional statements that provide consumers with more information about their production and bottling processes if they wish. Accordingly, TTB sought comments from all interested parties, including industry members and consumers, on whether the proposed labeling requirements provided adequate information to the consumer while avoiding undue burdens on industry members.

With regard to alcohol beverages imported in containers, the name and address inform the consumer of the identity of the importer of the alcohol beverage product and the location of the importer's principal place of business. The current regulations at §§ 4.35(b), 5.36(b), and 7.25(b) provide that, on labels of imported wines, distilled spirits, and malt beverages, respectively, the words ''imported by,'' or a similar appropriate phrase, must be stated, followed immediately by the name of the permittee who is the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person.

Like the current regulations, the proposed regulations in §§ 4.68, 5.68, and 7.68 required the name and address of the importer when the product is imported in containers. The proposed regulations clarified that for purposes of these sections, the importer is the holder of an importer's basic permit making the original customs entry into the United States, or is the person for whom such entry is made, or the holder of an importer's basic permit who is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and who places the order abroad. These provisions mirror the policy set forth in Revenue Ruling 71–535 with regard to the name and address requirements applicable to importers.

Proposed §§ 4.67, 5.67, and 7.67 addressed the labeling of products bottled after importation, in a manner largely consistent with current regulations. If the product is bottled after importation in bulk, by or for the importer thereof, the proposed rules required an ''imported and bottled by'' or ''imported by and bottled for'' statement, as appropriate.

The proposed regulations in §§ 4.67, 5.67, and 7.67 specifically addressed, for the first time, the name and address requirements applicable to wine, distilled spirits, and malt beverages that are imported in bulk and then subject to further production or blending activities in the United States.

In section 1421 of the Taxpayer Relief Act of 1997, Public Law 105–34, Congress enacted a new IRC provision that permits the transfer of beer in bulk containers from customs custody to internal revenue bond at a brewery. After transfer to internal revenue bond at a brewery, imported beer may be bottled or packed without change or with only the addition of water and carbon dioxide, or may be blended with domestic or other imported beer and bottled or packed.

In ATF Procedure 98–1, TTB's predecessor agency provided guidance to brewers and bottlers for the labeling of imported malt beverages bottled in the United States. This guidance was necessary because the existing regulations in part 7 do not address the labeling of imported malt beverages that are bottled in the United States, or the labeling of imported malt beverages that are blended with other imported malt beverages or with domestic malt beverages, and then bottled or packed in the United States.

Similarly, the current regulations in part 5 provide for the labeling of distilled spirits bottled after importation, but do not provide rules concerning the labeling of spirits that were subject to production activities in the United States after importation.

Thus, proposed §§ 4.67, 5.67, and 7.67 provide rules for the labeling of wine, distilled spirits, and malt beverages, respectively, that are imported in bulk and are then blended with wine, distilled spirits, or malt beverages of a different country of origin, or subjected to production activities in the United States that would alter the class or type of the product. The proposed rules provide that such products must be labeled with a ''bottled by'' statement, rather than an ''imported by'' statement.

The proposed regulations also included new provisions on the use of trade names, and the name and address requirements for ''contract bottling'' situations, in which products are produced and/or bottled by a third party pursuant to a contact with the brand owner. While these provisions were new to the regulations, they reflect current TTB policy. Finally, to reflect current TTB policy, TTB proposed new language in the regulations regarding the use of misleading trade names.

In response to the proposed regulations, TTB received comments from various interested parties, including alcohol beverage producers, trade associations, and individual commenters. Some of the commenters addressed wine-specific issues, which TTB is not addressing in this document.

e. Organization and General Comments

Regarding the reorganization of existing 27 CFR 5.36 into three distinct sections, DISCUS stated that it opposed the proposed §§ 5.66, 5.67, and 5.68 because ''[t]here is no reason to divide the existing rule into three separate proposals'' and that the proposed regulations ''are convoluted and inconsistent with the direction of providing essential, understandable information for consumers.'' DISCUS also stated that current § 5.36(a)(6) and current § 5.36(b)(2)(iii) sufficed for purposes of identifying the proprietor and importer, respectively, and their principal place of business.

With regard to proposed 27 CFR 5.66, specifically, DISCUS opposed the proposal on the ground that it ''not only fails to modernize the labeling and advertising rules but also is out of sync with historic industry practices and today's economy. There is no evidence to suggest that consumers are confused with the existing name and address rules and this new proposal only would serve to further confuse consumers.''

The Beer Institute commented that it was ''generally concerned about the changes proposed,'' as TTB did not explain why current regulations are inadequate and that ''speculation that more activity in the malt beverage sector 'may' lead consumers to want more information about where malt beverages are brewed simply isn't enough to justify regulatory change.'' The Beer Institute noted that industry members may choose to provide consumers with more information about their production and bottling process and urged TTB to allow market and consumer demands ''to dictate the level of specificity.''

TTB Response

In response to the DISCUS comment regarding TTB's proposed division of § 5.36 into three distinct sections, TTB notes that the proposed regulations are intended to more clearly distinguish between the regulatory requirements for domestically produced distilled spirits, distilled spirits imported in containers, and distilled spirits bottled after importation by separating the current name and address section into three separate sections. TTB believes that setting out these requirements in separate sections promotes ease of compliance for industry members.

Furthermore, the new regulations offer greater clarity and promote compliance by incorporating previously issued guidance documents. For instance, the proposed regulations clarify what is meant by ''importer'' for purposes of these sections by incorporating Revenue Ruling 71–535 into the regulations. The new regulations offer further clarity by setting out new regulatory requirements for distilled spirits that were bottled after importation and that were subject to further production or blending activities in the United States.

f. Distinguishing Between Imported and Domestic Products

NABI expressed its support for proposed 27 CFR 4.68. 5.68, and 7.68 and stated that the proposed sections are ''helpful'' because they provide ''greater specificity of the parties that may appear on the label [and] names of the importer in the 'imported by' statement than does the current sections 4.25(b)(1), 5.36(b)(1), and 7.25(b).'' Concerning proposed 27 CFR 7.67, Beverly Brewery Consultants expressed its support for the incorporation of TTB Procedure 98–1 in the regulations, as it ''has existed far too long without being incorporated into the CFR.''

However, DISCUS raised objections to the introduction of the term ''wholly made'' when referring to products made in the United States without imported distilled spirits, commenting as follows:

> The existing name and address rule has worked well for industry members and the introduction of the term ''wholly made'' only serves to confuse matters. TTB requests comments regarding whether these proposals provide adequate information to consumers and avoid undue burdens on industry members—we respectfully submit that the existing language better balances these concerns.

With regard to proposed 27 CFR 5.67, alcohol beverage attorney Steven Masket commented as follows:

> Both Section 5.67(a) and Section 5.69 reflect the intention of the TTB to defer to [CBP] with respect to country of origin marking, but the bald enumeration of processes in 5.67(c), results in the possibility that a product of foreign origin will be marked as domestic. I ask that the TTB further clarify that a product that is foreign should be treated and marked as imported and not considered domestic by the sheer action of simply blending or production activities conducted after importation in bulk, unless those activities meet the [CBP] rules related to country of origin marking.

Mr. Masket suggested that TTB revise the regulations to either distinguish between imported products that TTB considers to have undergone a substantial transformation in the United States under CBP rules and those that have not. Or, alternatively, Mr. Masket suggests that, if TTB ''does not believe that the identity of the importer is relevant after any of those certain processing activities enumerated in § 5.67(c) are conducted in the United States, whether substantial transformation [has occurred] or not under CBP regulations,'' that TTB should amend section 5.67(c) to add a reference to the CBP marking requirements.

TTB Response

In response to the DISCUS comment, TTB believes that the proposed regulatory text regarding products that are ''wholly made'' in the United States without imported distilled spirits clearly distinguishes those products from domestic distilled spirits that are blended with imported distilled spirits. TTB addresses the latter category of products in the section pertaining to imported spirits that are blended with domestic spirits after importation.

In response to Mr. Masket's comments on § 5.67(c), TTB does not believe it is necessary to revise the proposed § 5.67(c) to distinguish between products that have undergone a substantial transformation under CBP rules and those that have not. The TTB regulation does not require the use of the term ''imported by'' to describe beverages that have undergone production activities in the United States. This in no way implies that such products may not be considered to have a foreign country of origin under CBP rules, and in fact consistent with current regulations, the regulations at § 5.69 include a cross-reference to CBP regulations regarding country of origin marking requirements at 19 CFR parts 102 and 134. This section reflects TTB's intention to defer to CBP on the determination of whether a country of origin statement is required to appear on distilled spirits bottled after importation that are subject to further production or blending activities in the United States

and, if a statement is required, on determinations of the appropriate country of origin. Accordingly, when CBP requires a country of origin statement to appear on a distilled spirits container, such labeling statements must be consistent with CBP regulations.

As to Mr. Masket's comment on § 5.67(c)'s prohibition on placing an ''imported by'' statement on a label of distilled spirits bottled after importation and subject to certain processes in the United States, it is TTB's position that a ''bottled by'' statement is more appropriate for the labeling of such products in order to adequately distinguish such products from alcohol beverages that are imported in containers.

g. Comments in Favor of Imposing New Requirements With Regard to Names and Addresses on Labels

In addition to comments on the proposed regulations, several comments provided suggestions for further amendments to the regulations. The Brewers Association requested that TTB require labels to disclose whether brewers are part of a controlled group, as defined in 26 U.S.C. 5051(a) if the name of the controlled group is different from the brewery or its trade name as it appears on the label. As a basis for this proposal, the Brewers Association stated that disclosing brewery ownership is fundamental to TTB's responsibilities in implementing the FAA Act and that current regulations allow large companies to hide their ownership and control over multiple brands. NBWA commented in favor of strengthening transparency with regard to the identity of alcohol beverage producers.

TTB Response

In response to comments that advocate for new regulatory requirements within the name and address sections, TTB considers such comments as outside the scope of this rulemaking as Notice No. 176 did not solicit comments from industry or the general public on these specific proposals. For example, the Brewers Association comment in favor of requiring brewers to identify whether they are members of ''controlled groups'' under tax laws would represent a new requirement. Such a requirement would go beyond the longstanding policy of TTB and its predecessor agencies to allow the use of trade names, rather than the actual corporate names of bottlers or importers (much less the status of such companies as members of controlled groups) in the labeling of alcohol beverages. TTB's statutory mandate is to ensure that the labels identify the bottler or importer of the product. Accordingly, TTB is not adopting regulations that would go beyond the identification of the bottler or importer by requiring additional information about producers, bottlers, or importers in the name and address regulations.

h. Misleading Trade Names

The Beer Institute expressed its concern about TTB's proposal to prohibit the use of trade names that would create a misleading impression as to the age, origin, or identify of the product. The Beer Institute stated that TTB did not provide a specific explanation of the need for this proposal and that it ''would be a dramatic change to the long-standing practice for contract production brewers to adopt and use the customer's name/trade name on the labels.'' DISCUS also raised concerns about the provisions regarding the use of trade names, commenting as follows:

> The requirement in subsection (g)(2) regarding trade names is unnecessary. Some trade names have been used for years and could be impacted solely because TTB deems them to be misleading (irrespective of whether consumers are misled). TTB has limited resources and is not equipped to make determinations as to what is and is not misleading in this context and TTB should not make arbitrary changes to longstanding trade names. Separately, requiring changes to brand names could cause immense harm and have untold financial and marketplace impacts for industry members.

TTB Response

TTB intended the provision on misleading trade names to reflect current policy with regard to the misleading use of trade names. However, TTB did not intend to prohibit, for example, the adoption of one industry member's trade name on the basic permit or brewer's notice of another industry member in the context of a contract bottling or production arrangement.

TTB is finalizing the provision that allows for the use of trade names. This is consistent with current regulations in part 5 for distilled spirits and current policy for malt beverages. However, TTB is not adopting the proposed language specifying that trade names may not be used in a misleading manner. However, TTB is maintaining its current policy on this issue, and will view the comments as suggestions for further public guidance on this issue to clarify TTB's policy. TTB notes that the general prohibition on the use of misleading statements on labels suffices to provide TTB with authority to regulate the misleading use of trade names; however, we also stress that TTB does not consider the use of identical trade names by different permittees in a contract bottling or production context misleading, in and of itself.

7. Subparts F, G, and H—Statements That Are Restricted, Prohibited, or Prohibited if Misleading

The current regulations include a single section titled ''Prohibited Practices'' that sets forth a number of prohibited practices, and it also describes certain labeling practices that TTB regulates in various ways. To make regulatory provisions easier to find, and to improve readability, TTB proposed to divide the regulations addressing prohibited practices into three subparts: (1) Subpart F, practices that may be used under certain conditions, (2) subpart G, practices that are always prohibited, and (3) subpart H, practices that are prohibited only if they are used in a misleading manner on labels.

Proposed subparts F, G, and H each contain language to clarify that the prohibitions in these subparts apply to any label, container, or packaging, and define those terms as used in these subparts. Specifically, for purposes of proposed subparts F, G, and H, the term ''label'' includes all labels on alcohol beverage containers on which mandatory information may appear, as set forth in proposed §§ 4.61, 5.61, and 7.61, as well as any other label on the container. These proposed sections also set out the parts of the container on which mandatory information may appear.

The proposed text defines ''packaging'' for purposes of proposed subparts F, G, and H as any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail. It does not include shipping cartons or cases that are not intended to accompany the container to the consumer. The proposed rule also provides that the term ''statement or representation'' as used in those subparts includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. It also includes both explicit and implicit statements and representations. This provision avoids the need to repeat the reference to each type of statement or representation in every section in these subparts.

a. Subpart F—Restricted Labeling Statements in General

Proposed §§ 4.81, 5.81, and 7.81 set out that the labeling practices covered under subpart F (such as organic claims or food allergen labeling) may be used

on labeling only when used in compliance with the provisions set out in subpart F.

DISCUS expressed support for this section. Beverly Brewery Consultants stated that § 7.81(a)(1) was unnecessary and commented that there was no explanation as to why the definition of ''container'' in paragraph (a)(2) differs from the provision in the definitions section.

TTB Response

TTB is finalizing proposed §§ 5.81 and 7.81 as proposed. TTB disagrees with the comment from Beverly Brewery Consultants with regard to each section's paragraph (a)(1), which sets forth the general requirements applicable to restricted labeling statements, and makes the regulations easier to understand. With regard to each section's paragraph (a)(2), its purpose is not to define what a container is, but to clarify that the provisions regarding restricted labeling statements apply to all parts of the container, including those parts of the container on which information would not satisfy mandatory labeling requirements. For example, the regulations in §§ 5.61 and 7.61 provide that information appearing on the bottom surface of a container would not satisfy mandatory labeling requirements. However, pursuant to the language in §§ 5.81(a)(2) and 7.81(a)(2), information appearing on the bottom surface of the container would nonetheless be subject to the provisions on restricted labeling practices. Thus, for example, the regulations would prohibit use of an optional ''organic'' claim on the bottom surface of a container unless the use of the claim met the requirements set forth in the regulations. The final regulations do not include any changes to the language of the proposed regulations.

b. Voluntary Disclosure of Major Food Allergens

TTB received two comments that are specific to the proposed regulations pertaining to voluntary allergen labeling in §§ 4.82, 5.82, and 7.82, which set out the current regulatory provisions without change. DISCUS commented in support of the provisions as proposed. The Brewers Association commented in favor of mandatory allergen labeling, and stated that ''[i]n the event that TTB decides to maintain the existing voluntary allergen disclosure policy, the BA believes that this issue warrants a separate rulemaking in the future.'' In addition, as noted in section I.E.1.a of this document, TTB received several comments from consumers and consumer groups in support of mandatory allergen labeling.

TTB Response

TTB is finalizing §§ 5.82 and 7.82 as proposed. As explained in section I.E.1.a. of this document, comments about mandatory allergen labeling are beyond the scope of this rulemaking. In the preamble to Notice No. 176, TTB specifically stated that there were a number of ongoing rulemaking initiatives related to labeling and advertising of alcohol beverages, including any substantive changes to the allergen labeling requirements, which TTB stated it would handle separately from the proposed rule due to their complexity. TTB will treat comments in favor of mandatory allergen labeling as suggestions for future rulemaking.

c. Environmental, Sustainability, and Similar Statements

In Notice No. 176, TTB proposed a new section in parts 4, 5, and 7 (see proposed §§ 4.85, 5.85, and 7.85) on the use of statements relating to environmental and sustainability practices. The proposed rule allowed statements related to environmental or sustainable agricultural practices, social justice principles, and other similar statements (such as, ''Produced using 100% solar energy'' or ''Carbon Neutral'') to appear on labels as long as the statements are truthful, specific, and not misleading. Similarly, the proposed regulations provided that statements or logos indicating environmental, sustainable agricultural, or social justice certification (such as, ''Biodyvin,'' ''Salmon-Safe,'' or ''Fair Trade Certified'') may appear on labels of products that are actually certified by the appropriate organization.

WineAmerica, the New York Farm Bureau, and Sazerac expressed support for the proposed regulations. However, some commenters, including the Brewers Association, DISCUS, and Comité European des Enterprises Vins opposed the proposed provisions as unnecessary and unduly restrictive, and commented that they would delay the label review process.

TTB Response

TTB has determined that some commenters misunderstood the effect of the proposed regulations, and misconstrued the proposed regulation to require additional steps to the label review process, whereas the proposal simply clarified that the identified claims must be truthful, specific, and non-misleading, and that certification claims must be truthful. Nonetheless, TTB is not finalizing proposed §§ 5.85 and 7.85 because TTB agrees that the general regulations on false or misleading claims adequately cover this issue.

d. Use of the Term ''Organic''

Current TTB labeling regulations do not define the term ''organic,'' but instead provide that the optional use of the term ''organic'' in labeling and advertising must comply with regulations issued by the United States Department of Agriculture's (USDA's) National Organic Program (7 CFR part 205), as the USDA interprets those regulations. Proposed §§ 4.84, 5.84, and 7.84 would clarify current TTB regulations by editing existing language specifically stating that organic claims must conform with USDA regulations concerning the National Organic Program. DISCUS expressed support for the proposed regulation. TTB also received comments with regard to certification requirements that are specific to imported wine, which TTB will address when it finalizes the proposed wine regulations.

TTB Response

TTB is Finalizing §§ 5.84, and 7.84 as Proposed.

e. Prohibited Labeling Practices in General

Subpart G sets forth the prohibited labeling practices. Proposed §§ 4.101, 5.101, and 7.101 provide that the prohibitions set forth in this subpart apply to any label, container, or packaging, and then sets out the definitions of those terms for purposes of this subpart. The prohibited practices include false statements and obscene or indecent depictions. The proposed rule restated and reorganized prohibitions currently found in the TTB regulations.

DISCUS commented that this provision was unnecessary on the basis that it is ''repetitive and addressed elsewhere.''

TTB Response

TTB is finalizing §§ 5.101, and 7.101 as proposed. As previously noted, TTB proposed to divide the regulations addressing prohibited practices into three subparts: (1) Subpart F, practices that may be used under certain conditions, (2) subpart G, practices that are always prohibited, and (3) subpart H, practices that are prohibited only if they are used in a misleading manner on labels. This final rule adopts this organization; accordingly, it is necessary to provide for the substantive prohibitions in each subpart so that the reader does not need to refer to a

different subpart to understand the scope of the regulation. TTB believes this organization makes it easier for industry members to locate and understand necessary information.

f. False or Untrue Statements

Current regulations prohibit labeling statements that are false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression. The FAA Act, 27 U.S.C. 205(e), authorizes the issuance of regulations to prohibit statements that are either false or misleading. As previously noted, TTB's proposed reorganization of the regulations places the prohibitions against false statements and misleading statements in separate subparts. Thus, the regulations on false statements were proposed in §§ 4.102, 5.102, and 7.102 within Subpart G, Prohibited Labeling Practices, while the prohibitions on misleading statements were proposed in Subpart H, Labeling Practices That Are Prohibited If They Are Misleading. The American Craft Spirits Association (ACSA) expressed support for proposed § 5.102. However, DISCUS expressed opposition to the proposed restatement of existing regulations.

TTB Response

TTB is finalizing §§ 5.102 and 7.102 as proposed. TTB believes that the reorganization of the existing prohibition will make the regulations easier to read and understand. The restatement of this statutory prohibition does not change current requirements or policy, but it does conform more closely to how commercial speech is analyzed under the First Amendment, which distinguishes between false commercial speech (which is not protected) and misleading commercial speech (which, if it is only potentially misleading, may be qualified in a manner that dispels the otherwise misleading impression created by the claim). See *Pearson* v. *Shalala,* 164 F.3d 650 (D.C. Cir. 1999).

g. Obscene or Indecent

Consistent with current regulations, proposed §§ 4.103, 5.103, and 7.103 provide that wine, distilled spirits, and malt beverage labels, containers, or packaging may not contain any statement or representation that is obscene or indecent.

The ACSA commented that they are ''neutral'' on this provision. Sazerac commented that TTB was approving labels that, in its view, were ''fairly obviously'' obscene.

Several commenters asserted that there were First Amendment concerns with the regulatory prohibition on ''obscene and indecent'' materials on labels. DISCUS and the Brewers Association urged TTB to amend the regulations to remove the prohibition altogether. DISCUS suggested that the terms are ''subjective concepts'' and questioned ''who will be the judge of what is indecent or obscene in the context of TTB labeling or advertising regulations.'' The Brewers Association included this prohibition along with other regulations that it suggested were ''subject to First Amendment challenges as an agency of the federal government is forced to make subjective decisions approving or disapproving messages that brewers are communicating to consumers.'' The Brewers Association suggested that this type of regulation would be better left to self-enforcement through trade associations. The New Civil Liberties Alliance commented that the proposed regulation provided discretion to TTB that was ''inherently boundless because a licensing official must make his or her own ad hoc subjective determination as to whether the content of the COLA application meets his or her standards for decency.''

The Wine Institute suggested amending the regulations to prohibit only obscene material, noting that indecent speech receives protection under the First Amendment, and suggesting that the relevant case law indicates ''that such regulations are vulnerable to a First Amendment challenge.'' In particular, the Wine Institute pointed to the decisions in two cases involving First Amendment challenges to efforts by States to ban alcohol beverage labels with vulgar or offensive images. See *Bad Frog Brewery, Inc.* v. *N.Y. State Liquor Auth.,* 134 F.3d 87 (2d Cir. 1998), and *Flying Dog Brewery, LLLP* v. *Michigan Liquor Control Com'n,* 597 Fed. Appx. 342 (6th Cir. 2015).

TTB Response

TTB is not adopting the suggestion to eliminate the prohibition on ''obscene'' material on labels or advertisements because the current regulatory prohibition simply incorporates the statutory prohibitions in 27 U.S.C. 205(e)(4). Furthermore, it is well recognized that the First Amendment does not protect ''obscene'' speech or child pornography. See *Sable Communications* v. *FCC,* 492 U.S. 115, 124 (1989). Thus, the statutory and regulatory prohibitions on ''obscene'' labels and advertisements do not violate the First Amendment.

In evaluating whether labels are ''obscene,'' TTB is mindful of the three-pronged test established by the U.S. Supreme Court in *Miller* v. *California,* 413 U.S. 15, 24–25 (1973). TTB recognizes that applying this test in a prior approval context is a difficult challenge.

TTB agrees that the Wine Institute has raised a valid point about whether there is a distinction between ''obscene'' and ''indecent'' speech under the FAA Act. TTB is aware that offensive speech that is not obscene receives protection under the First Amendment, and TTB is mindful of these First Amendment limitations when reviewing labels and advertisements. In *Iancu* v. *Brunetti,* 139 S. Ct. 2294, 2299 (2019), the Supreme Court struck down a provision of the Lanham Act that barred the registration of ''immoral'' or ''scandalous'' trademarks, finding it to be a viewpoint-based ban. The Court also noted that the Justices, in *Matal* v. *Tam,* 137 S. Ct. 1744 (2017), had ''found common ground in a core postulate of free speech law—the government may not discriminate against speech based on the ideas or opinions it conveys.'' However, the FAA Act's restriction on obscene and indecent speech is not a viewpoint-based restriction. TTB does not reject labels on the sole grounds that they might be offensive. Instead, as the Sazerac acknowledges, TTB has approved labels including content that some people may find offensive, including labels that include expletives or nudity in certain contexts, based on the First Amendment protections afforded to such speech under current case law.

Because TTB did not seek specifically comments on this issue in Notice No. 176, TTB believes that it cannot make any substantive changes to the existing standard without engaging in notice and comment rulemaking on the issue. TTB will treat the comments on this issue as suggestions for future rulemaking action, and will retain the statutory prohibition in existing regulations. Nonetheless, in applying that standard, TTB will continue to apply current case law under the First Amendment, and will not reject labels on the sole grounds that they may be offensive. As always, TTB urges industry members to consider that, while their products are intended only for adult consumption, labels on containers may be visible to children on store shelves.

h. Subpart H—Labeling Practices Prohibited as Misleading

Proposed §§ 4.122(a), 5.122(a), and 7.122(a) set out the general prohibition against any statement or representation,

irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the wine, distilled spirits, or malt beverages, or with regard to any other material factor. Proposed §§ 4.122(b), 5.122(b), and 7.122(b) also provided as follows: ''For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.'' This is not a new policy, but the proposed rule sets it out more clearly.

The Wine Institute urged TTB to eliminate the examples in proposed § 4.122 and elsewhere in the Code of Federal Regulations, suggesting that examples are better conveyed to industry via written guidance documents made available on the agency's website. The Wine Institute stated that ''[b]y providing examples of permissible or impermissible label statements in written guidance, TTB will be able to create or change examples and communicate this information to industry members in an expeditious manner as opposed to making further points of clarification or adjustments to the Code of Federal Regulations.''

TTB Response

This final rule adopts proposed §§ 5.122 and 7.122 as proposed. In this case, the example simply illustrates an important principle to facilitate industry understanding of the regulations, rather than a factual situation that might change with other circumstances. Accordingly, the final rule retains this example.

i. General First Amendment Concerns

Subject to certain limited exceptions, the FAA Act specifically requires industry members to obtain a certificate of label approval in order to prevent the introduction into interstate commerce of alcohol beverage containers that are not labeled in accordance with the implementing regulations. See 27 U.S.C. 205(e). Nonetheless, TTB received some comments that raised general First Amendment concerns about the pre-approval of labels to enforce the statutory prohibition on misleading statements on alcohol beverage labels subject to the FAA Act.

NABI commented that while current case law does not protect misleading commercial speech, ''it sets a high bar for the Federal Government in backing up and proving its claim that any one specific representation on a label or in an advertisement is misleading.'' NABI further suggested that ''waiting for consumer complaints about specific labels or advertisements may be the better approach than purely speculating in advance of approving a certificate of label approval (COLA) or pre-clearing a proposed advertisement.''

The New Civil Liberties Alliance (NCLA), which describes itself as ''a nonprofit civil rights organization founded to defend constitutional rights,'' commented on several First Amendment issues. The NCLA stated that the proposed rule reformed ''an overly burdensome regulatory system.'' However, its comment also argues that ''COLAs are unconstitutional prior restraints on liberties guaranteed to all Americans by the First Amendment. To ameliorate the unconstitutional impact of restraints on speech, the Rule should apply the process and post-publication enforcement of the proposed labeling requirements for COLAs related to personalized labels * * * to *all* COLAs.'' [Emphasis in original.]

The NCLA comment questioned the distinction between the treatment of labels (which TTB reviews prior to the introduction of the product in interstate commerce) and advertisements (for which TTB does not require prior review). NCLA suggested that TTB instead amend the regulations to allow the approval of COLAs that include a ''template'' of mandatory information, and stated that this approach would be a logical extension of TTB's current and proposed policies regarding allowable revisions to approved labels and approval of personalized labels.

The Washington Legal Foundation (WLF), a nonprofit, public-interest law firm and policy center, stated that while TTB's proposed rule is in many ways clarifying, it ''inadequately protects commercial-speech rights. TTB is interested in promoting marketplace civility and ensuring that consumers are not misled, but rules promoting these laudable aims must still avoid unduly chilling free speech rights under the First Amendment.''

The Brewers Association (BA) submitted a comprehensive comment on this issue, stating as follows:

> As a basic policy, the BA respectfully suggests that TTB treat all types of label claims and trade dress in a similar manner. If claims, graphics, or other content on a label are misleading on the label as submitted, or if claims obscure or improperly modify mandatory information, TTB should address whatever elements of the label are misleading. Otherwise, the BA believes that TTB should maintain its focus on mandatory information concerning malt beverages. TTB could expressly reserve the right to initiate label revocation proceedings or enforcement action to seek corrections if claims on labels are determined to be false or misleading via competitor complaints or other credible sources, such as the Federal Trade Commission or recognized third party accreditation organizations.
>
> Various proposals in Notice 176 impose content restrictions based on existing TTB regulations that are difficult or impossible for TTB to enforce in an evenhanded manner and may violate commercial speech protections guaranteed by the First Amendment. See, *e.g., Cabo Distributing Co., Inc.* v. *Brady,* 821 F. Supp. 601 (N.D. Cal. 1992); *Bad Frog Brewery* v. *New York State Liquor Authority,* 134 F.3d 87 (1998). The recent *U.S. Supreme Court opinion in Iancu* v. *Brunetti,* decided on June 24, 2019 is also instructive on the topic of regulation of potentially offensive speech.
>
> Specific restrictions proposed § 7.126 (use of flags); § 7.127 (use of certain seals), § 7.124 (disparaging competitors), and § 7.103 (obscene or indecent statements or representations) are all subject to First Amendment challenges as an agency of the federal government is forced to make subjective decisions approving or disapproving messages that brewers are communicating to consumers. The BA recommends that TTB delete these sections from the final regulations.
>
> Hundreds of examples exist of labels approved by TTB that arguably violate existing regulations as well as the proposed regulations. This reality places TTB in an untenable situation. To the extent that any of the restrictions referenced above pose legitimate government concerns, they can be addressed under proposed § 7.122, which lays out a solid approach to making determinations on false and misleading labels. If TTB attempts to enforce §§ 7.126, 7.127, 7.124, and 7.103, a First Amendment challenge is possible, and the archaic restrictions seem unlikely to survive. In the past when confronted by an analogous situation, TTB properly identified health claims as a legitimate policy concern, engaged in rulemaking, and promulgated a comprehensive and defensible regulation that is included in Notice 176 at § 7.129.

TTB Response

After carefully reviewing the comments, TTB has concluded that its proposed regulations comply with First Amendment case law regarding regulation of commercial speech and the statutory requirement to pre-approve labels to prevent misleading claims.

In *Central Hudson Gas* & *Electric Corp.* v. *Public Services Commission,* 447 U.S. 557, 563–566 (1980), the Supreme Court held that in order to regulate commercial speech, the Government must satisfy a four-prong test. First, the First Amendment protects expression only if it concerns lawful activity and is not misleading. Second, the Government must establish a substantial interest. Third, the regulation must directly advance the governmental interest asserted. Finally, the regulation must be no more

extensive than necessary to serve the interest asserted.

In two cases involving alcohol beverages, the Supreme Court struck down bans on *truthful and non-misleading* commercial speech. In *Rubin* v. *Coors Brewing Co.,* 514 U.S. 476, 491 (1995), the Supreme Court applied the *Central Hudson* analysis in striking down the FAA Act's prohibition of statements of alcohol content on malt beverage labels unless required by State law. In *44 Liquormart, Inc.* v. *Rhode Island,* 517 U.S. 484 (1996), the Supreme Court struck down Rhode Island's ban on advertising the price of alcohol beverages on First Amendment grounds. However, these decisions did not address the Government's authority to regulate actually or potentially misleading commercial speech regarding alcohol consumption. TTB also notes that courts have expressed a general First Amendment preference for additional disclosure over bans on potentially misleading commercial speech. See, *e.g., Pearson* v. *Shalala,* 164 F.3d 650, 656 (D.C. Cir. 1999), citing *Bates* v. *State Bar of Arizona,* 433 U.S. 350, 376 (1977) (where attorney advertising was not inherently misleading, ''the preferred remedy is more disclosure, rather than less.'').

To the extent that some comments are suggesting that the FAA Act's COLA requirements are unconstitutional, TTB disagrees. A law acts as a prior restraint when it mandates that a speaker seek government permission before engaging in protected expression; however, the Supreme Court has indicated that the prior-restraint doctrine may not apply to commercial speech. See *Central Hudson Gas & Elec. Corp* v. *Public Serv. Comm'n,* 447 U.S. 557, 571 n. 13 (1990) (stating that ''commercial speech is such a sturdy brand of expression that traditional prior restraint doctrine may not apply to it'').

In a recent case involving a First Amendment challenge to TTB's denial of a petition to allow specific health claims in the labeling and advertising of distilled spirits regarding the alleged DNA-protective properties of an ingredient added to alcohol beverages, the D.C. Circuit declined again to rule on the issue of whether traditional prior restraint doctrine applies to commercial speech. See *Bellion Spirits, LLC* v. *United States,* 7 F.4th 1201, 1213 (D.C. Cir. Aug. 6, 2021) (''We have previously left open whether the prior-restraint doctrine applies in the context of commercial speech * * * and we do so again here. Even assuming the applicability of prior-restraint principles, Bellion fails to demonstrate an unconstitutional prior restraint.'').

With respect to a facial challenge to TTB's COLA system, the court held as follows:

> By imposing sufficiently ''narrow, objective, and definite standards,'' *Shuttlesworth* v. *City of Birmingham,* 394 U.S. 147, 151, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969), the COLA scheme adequately channels TTB's discretion. The COLA regulation provides that TTB ''will approve'' specific health claims ''only if the claim is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks.'' *See* 27 CFR 5.42(b)(8)(ii)(B)(2). Those conditions of approval are ''sufficiently definite to constrain [TTB] within reasonable bounds.'' *See Nutritional Health Alliance* v. *Shalala,* 144 F.3d 220, 228 (2d Cir. 1998).
>
> In addition, the COLA process * * * channels TTB's decisionmaking through adequately strict deadlines. *See Freedman* v. *Maryland,* 380 U.S. 51, 58, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). The regulation states that TTB must respond to an application within 90 days, unless it elects to use one 90-day extension. *See* 27 CFR 13.21(b). Indeed, applicants who do not receive a decision from TTB within the specified time period may file an administrative appeal. *Id.* We find no ''unbridled'' discretion in that scheme. *See City of Lakewood,* 486 U.S. at 757, 108 S.Ct. 2138.

See *Bellion Spirits* at 1213.

Accordingly, it is TTB's position that the COLA regulations do not represent an unconstitutional prior restraint on commercial speech.

j. Guarantees

The FAA Act specifically authorizes the issuance of regulations to prohibit, irrespective of falsity, such statements relating to ''guarantees'' as the Secretary of the Treasury ''finds to be likely to mislead the consumer.'' See 27 U.S.C. 205(e). Proposed §§ 4.123, 5.123 and 7.123 prohibit the use of guarantees that are likely to mislead the consumer. However, TTB does not prohibit money-back guarantees. This is a restatement of existing policy currently found in §§ 4.39(a)(5), 5.42(a)(5), and 7.39(a)(5), with minor modifications for clarity.

In addition to the First Amendment general concerns that commenters raised about this provision and other provisions relating to misleading speech, TTB received two comments in opposition to the proposed provisions on guarantees on the ground that they were unnecessary. ADSA commented that the provisions are from a bygone era, and DISCUS suggested that the proposals were vague and unnecessary.

TTB Response

TTB is finalizing proposed §§ 5.123 and 7.123 without change. TTB agrees that the general provisions on misleading statements might cover this issue; however, the intent of the regulation is to implement the specific statutory language on this issue. Accordingly, TTB believes that these specific regulations still serve a useful purpose.

k. Statements That Are Disparaging of a Competitor's Products

Current regulations mirror the language in the FAA Act, 27 U.S.C. 205(e), which simply prohibits labeling and advertising statements that ''are disparaging of a competitor's products.'' See 27 U.S.C. 205(e) and (f). In proposed §§ 4.124, 5.124, and 7.124, TTB sought to clarify longstanding ATF and TTB policy (as expressed in T.D. ATF–180, 49 FR 31667, August 8, 1984) that a competitor's product is disparaged within the meaning of the statutory prohibition only when statements or claims about the product, or relating to the product, are false or would tend to mislead the consumer. This policy does not preclude additional information such as ''puffery'' statements made about one's own product, nor does it prohibit truthful and nonmisleading comparative statements or claims that place the competitor's product in an unfavorable light. TTB's intention was to clarify the prohibition in a manner that conformed to current case law about protections afforded to truthful and non-misleading commercial speech.

In the proposed regulatory text, TTB also included examples of statements that would, or would not, be prohibited under this provision. For example, TTB would not prohibit a statement of opinion such as ''We think our [product] tastes better than any other [product] on the market.'' However, TTB would consider a truthful statement such as ''We do not add arsenic to our [product]'' to be disparaging because it falsely implies that other producers do add arsenic to their products. Furthermore, the proposed regulations provide that labels may not include statements that disparage their competitor's products by making specific allegations, such as ''Brand X is not aged in oak barrels,'' when such statements are untrue.

In its comment, the Washington Legal Foundation (WLF) suggested that the prohibition on false or misleading ''disparaging'' statements about a competitor's products would ''violate commercial-speech rights under the First Amendment.'' WLF pointed out

that a recent Supreme Court case, *Matal* v. *Tam,* 137 S. Ct. 1744 (2017), struck down the ''disparagement clause'' of the Lanham Act, which prohibited Federal trademark registration for marks that might disparage any persons living or dead. WLF noted that the Court held that the ban ''offends a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend.'' 137 S. Ct. at 1751. WLF noted that the Court emphasized that heightened scrutiny applies when a law or regulation engages in viewpoint discrimination.

The comment from NABI noted that as a general matter, the Supreme Court has rejected ''paternalism'' on the part of the Federal Government in prohibiting commercial speech, and suggested that review by TTB of consumer deception after receipt of consumer complaints might be a better approach than ''purely speculating'' in advance of approving a label. The NABI comment specifically referenced the proposed rule on ''disparaging'' statements. DISCUS commented in favor of removing both the proposed and existing language on disparaging statements, and suggested that proposed ''Section 5.122 should serve as the only regulation governing truthful and misleading labeling claims. In that regard, the instant rulemaking has several proposed rules governing truthful, non-misleading statements regarding distilled spirits labels, containers, and packaging when only one rule is necessary.''

The Brewers Association suggested that the rule on disparaging statements was one of several issues that were better left to self-regulation by the alcohol beverage industries, noting that the Brewers Association and other industry trade associations maintain advertising codes that address obscene, indecent, and disparaging materials. The Association also noted that the ''Federal Trade Commission has repeatedly expressed support for voluntary industry initiatives to regulate offensive alcohol beverage advertising and for advertising of many other consumer products and services. See, *e.g.,* Federal Trade Commission, Self-Regulation in the Alcohol Industry: March 2014, p. 34.''

TTB received a comment in support of the proposed language on disparaging statements from ACSA. Other trade associations suggested amendments to the proposed revision on disparaging statements. Wine Institute commented in support of the proposed amendments, but stated that the codified regulations should not include examples of permissible or impermissible label statements, believing that written guidance on TTB's website better conveys such examples to industry. Accordingly, Wine Institute recommended removing the examples from the proposed regulation.

ADSA questioned the continued need for any specific regulation that prohibits false or misleading statements that are disparaging about competitors, and suggested that such statements would be covered by the general prohibition on false or misleading statements. ADSA was particularly concerned that the second example in the proposed rule, about not adding arsenic to a distilled spirits product, was capable of misinterpretation and ''could be construed as suggesting that any claim about the absence of an ingredient or feature (*e.g.,* 'gluten-free') constitutes a prohibited disparaging claim.'' Accordingly, ADSA stated that ''[a]t a minimum, TTB should delete and not replace the examples in the current proposal.''

TTB Response

TTB notes that it designed the proposed amendment to the prohibition on statements that are ''disparaging'' of a competitor's products to address First Amendment issues and clarify longstanding policy that the prohibition applies only to false or misleading statements.

Unlike the ''disparagement clause'' of the Lanham Act, which applied to marks that might disparage any individuals, living or dead, regardless of whether the information conveyed was truthful and non-misleading, TTB narrowly focused the proposed rule on statements that are false or misleading, and the disparage the products of a competitor. Under the first prong of the *Central Hudson* test, the First Amendment does not protect false or misleading commercial speech. The language of the FAA Act does not specify this important qualification, but, as explained above, this has been the position of TTB and its predecessor agency since the 1980s. Unlike the provision of the Lanham Act that was struck down in *Matal* v. *Tam,* the disparagement prohibition in the proposed rule was thus specifically aimed at commercial speech (relating to the products of a competitor) that is false or misleading, and thus serves the dual purpose under the FAA Act of protecting fair competition and preventing consumer deception.

Based on the comments regarding the examples, TTB agrees that in this particular situation, the proposed examples seemed to confuse people rather than shed light on its position. Accordingly, TTB is removing the examples from the language of the final rule. Instead, the final rule prohibits only false or misleading statements that explicitly or implicitly disparage a competitor's product, and does not prohibit statements of opinion or truthful and non-misleading comparisons between products. This language is entirely consistent with current case law under the First Amendment.

l. Tests or Analyses

Proposed §§ 4.125, 5.125 and 7.125 prohibit statements or representations of, or relating to, analyses, standards, or tests, whether or not truthful, that are likely to mislead the consumer. These proposed provisions incorporate current policy, but also provide new examples of misleading statements or representations under these sections, which TTB intends to illustrate the principle that a truthful statement about a test or standard may nonetheless be misleading as presented.

The ACSA expressed its support for the proposed regulation. Wine Institute suggested the removal of the example of a misleading statement regarding a test or analysis. The Mexican Chamber of the Tequila Industry and the Tequila Regulatory Council supported the inclusion of examples, and requested inclusion of a new example relating specifically to the testing of tequila by anyone other than an authorized conformity assessment body. Furthermore, the Tequila Regulatory Council proposed that ''in the case of tequila, no statements or declaration of test, other than the one provided by the conformity assessment body in the form of a NOM [Norma Oficial Mexicana] mark, be allowed'' and that TTB should require a NOM mark on any label of Tequila bottled in the United States. The comment states that this mark, which includes the four-digit code assigned to the distiller, is a sign of quality and product assurance. Finally, DISCUS and ADSA opposed the inclusion of § 5.125, on the same grounds that they opposed the provisions on guarantees. Among other things, they commented that the general provisions on misleading statements would cover misleading statements relating to analyses, standards, or tests.

TTB Response

TTB is finalizing proposed §§ 5.125 and 7.125 without change. TTB agrees with DISCUS and ADSA that the general provisions on misleading statements might cover this issue; however, the intent of the regulation is to provide guidance that is more specific to

industry members and consumers as to how they may depict statements about standards, analyses, and tests on a label without running afoul of the statute and regulations. Accordingly, TTB believes that these specific regulations, including the example provided, serve a useful purpose.

TTB is not adopting the suggestions made in the comments from the Mexican Chamber of the Tequila Industry and the Tequila Regulatory Council for the inclusion of a new example in the regulation regarding testing by anyone other than an authorized conformity assessment body. Similarly, TTB is not adopting the Tequila Regulatory Council's suggestion that a NOM mark be required on labels of Tequila bottled in the United States, as this would require more mandatory information to appear on Tequila labels. TTB believes that these comments relate specifically to Tequila rather than to the general prohibition on misleading testing claims, and that they fall outside of the scope of the proposals on which TTB solicited comments in Notice No. 176.

m. Depictions of Government Symbols

Under current regulations, TTB prohibits representations relating to the American flag or the U.S. armed forces from appearing on alcohol beverage labels in order to prevent misconceptions that the U.S. government or its armed forces endorse, or otherwise supervised the production of, the alcohol beverage. However, the regulations prohibit the use of flags from other countries only where it would be misleading. The regulations on U.S. and foreign flags are based on the same statutory provision of the FAA Act at 27 U.S.C. 205(e)(5), which prohibits deception of the consumer by use of a name or representation of individuals or organizations when such use creates a misleading impression of endorsement.

Consistent with the statutory prohibition on which TTB bases these regulations, it is TTB's current policy to enforce this regulatory prohibition only where such representations might tend to mislead consumers. Thus, TTB proposed to amend the regulations to remove the blanket prohibition against the use of representations of, or relating to, the American flag, the armed forces of the United States, or other symbols associated with the American flag or armed forces. Therefore, proposed §§ 4.126, 5.126, and 7.126, retain the prohibition against the use of such symbols or images where they create the false or misleading impression that the government entity represented has endorsed or was otherwise affiliated with the labeled product. Furthermore, each of these proposed sections specifically provides that the section does not prohibit the use of a flag as part of a claim of American origin or a claim of another country of origin.

TTB received several comments in support of removing the blanket ban on the use of flags on alcohol beverage labels, including comments from WineAmerica, the New York Farm Bureau, DISCUS, ACSA, and an attorney in the alcohol beverage field. ADSA suggested that as amended, the provision was meaningless. Wine Institute commented that a specific provision on flags was unnecessary and should be covered by a general misleading provision. Comments from the Brewers Association and the New Civil Liberties Alliance raised First Amendment concerns about several regulatory provisions, including this one.

On the other hand, TTB received two comments that favored a blanket ban on the use of the American flag on labels or in advertisements. One of these comments, from the Missouri Craft Distillers, raised concerns about using national symbols for marketing purposes. The other comment, from Sazerac, suggested that TTB's proposal is contrary to the Federal Flag Code.

TTB Response

TTB is finalizing §§ 5.126 and 7.126 as proposed. The regulations on depictions of government symbols are based on the statutory provisions of the FAA Act (27 U.S.C. 205(e)(5)) that prohibit deception of the consumer by use of name or representation of individuals or organizations when such use creates a misleading impression of endorsement or affiliation. As stated in Notice No. 176 and above, the proposed regulations remove the blanket ban on use of flags and other symbols of the United States and Armed Forces. Rather, the proposed regulations set out TTB's current policy prohibiting the use of these symbols only when they create a misleading impression that there was some sort of endorsement by, or affiliation with, the governmental entity represented.

With regard to Sazerac's comment, TTB notes that the Federal Courts have not ruled on the validity of the Flag Code or other criminal provisions with regard to the use of the image of the American flag for marketing purposes. TTB believes that the use of an image of a flag as part of a general message of patriotism may be protected under the First Amendment, even if that message appears on a product label. For more information, see the general discussion in the Congressional Research Service's ''Frequently Asked Questions About Flag Law,'' dated October 7, 2019, which can be found on the website at *https://crsreports.congress.gov/product/pdf/R/R45945.*

In any case, TTB's regulations implementing the FAA Act's ban on the use of images that create a misleading impression that an alcohol beverage is endorsed or otherwise affiliated with any private or public organization does not intersect with or otherwise affect the enforcement of the Flag Code, which governs the handling and display of the United States flag. Thus, TTB does not address the Flag Code in its analysis of this regulation.

n. Depictions Simulating Government Stamps Relating to Supervision

Proposed §§ 4.127, 5.127, and 7.127 retain prohibitions against depictions simulating government stamps or relating to government supervision but provide that these representations are only prohibited if they create the misleading impression that the alcohol beverage is manufactured under government authority. In Notice No. 176, TTB specifically solicited comments on whether there is still a need for regulations on this issue.

DISCUS and the ACSA commented in favor of the proposal. However, several commenters, including Wine Institute, ADSA, and the Williams Group expressed the view that specific provisions on this issue were no longer necessary, as they reflected a ''bygone era'' and it is questionable as to whether such stamps or other symbols retain any meaning for consumers today. The Brewers Association included this provision in its general comment raising First Amendment concerns.

TTB Response

Based on the comments, TTB agrees that there is no longer a need to include specific prohibitions on this issue. TTB will continue to cover misleading representations on this issue via the general prohibition on misleading labeling statements. Accordingly, this final rule does not include proposed §§ 5.127 and 7.127.

o. Health-Related Claims

In proposed §§ 4.129, 5.129, and 7.129, TTB set out current regulations pertaining to health-related statements without change. ACSA expressed support for these provisions as proposed. The Wine Institute and St. George Spirits sought clarification on the use of specific terms used in these provisions, and the Wine Institute suggested that TTB publish guidance

with regard to specific issues that the regulations present.

TTB Response

TTB is finalizing §§ 5.129 and 7.129 as proposed. However, TTB will consider the comments it received regarding the issuance of public guidance on issues pertaining to the regulations on health-related statements.

p. Appearance of Endorsement

Consistent with current regulations, proposed §§ 4.130, 5.130, and 7.130 maintains TTB's prohibition on the use of the name of a living person or existing private or public organization if the use of that name or a representation misleads the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. The difference between the current and proposed regulations is that proposed §§ 4.130, 5.130, and 7.130 made it more clear that actual endorsements are permitted and that TTB may request documentation supporting a claim of endorsement.

DISCUS commented in favor of retaining the existing regulations, without explaining the basis for this comment.

TTB Response

TTB believes the proposed regulations reflect the same policy as the current regulations but are easier to understand. Accordingly, TTB is finalizing §§ 5.130 and 7.130 as proposed, but without the language that TTB may request documentation supporting a claim of endorsement. TTB is removing this language because it is true of any claim.

The final rule also includes language in §§ 5.130 and 7.130 that was inadvertently omitted from the proposed rule, for consistency with the statutory provisions at 27 U.S.C. 205(e)(5). As amended, the regulatory language, like the statutory language, specifically provides that the provisions on implied endorsements do not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman of distilled spirits, wine, or malt beverages. The legislative history of the FAA Act, as reflected in the Report of the House Committee on Ways and Means (H.R. Rep. No. 1542, 74th Cong., 1st Sess., at 13), explains that this ''provision does not extend to cases of conflict within the industry as to proprietary rights in trade or brand names.'' This is consistent with TTB's longstanding position, as stated on the COLA form, that its issuance of a COLA in no way confers trademark protection.

The final rule also includes a ''grandfathering'' provision that is found in the statutory language, regarding names that were in use by the industry member or its predecessors in interest prior to August 29, 1935, the date that the FAA Act was enacted. While TTB believes it is unlikely that such ''grandfathered' names are still being used, we are retaining the statutory language in the final rule out of an abundance of caution.

8. Subpart I—Standards of Identity

a. Geographic Names

In Notice No. 176, TTB proposed to reorganize and amend existing regulations setting out the conditions under which geographic names for distilled spirits and malt beverages may be used on a label as, or as part of, the designation of the product.

For distilled spirits, the proposed regulations at § 5.154 sought to clarify and update the rules currently found in 27 CFR 5.22(k) and (l). These regulations allow ''generic'' names (*i.e.,* names that have lost their geographical significance by usage and common knowledge) to be used to designate products from places other than the geographic areas otherwise indicated by the name. Current regulations provide that ''London dry gin'' and ''Geneva (Hollands) gin'' are examples of generic names. This means, for example, that ''London dry gin'' may be used on the label of a product that is produced somewhere other than London, and no modifier such as ''type'' would be required for such a product.

The proposed regulations provided that geographic names that have not been found to be ''generic'' may not be used on products made outside of the place indicated by the name, unless TTB determines that the name represents a type of distilled spirit, in which case the designation must include a qualifier such as ''type'' or ''style'' or a statement indicating the true place of production. TTB proposed to list names of specific products that fall within the categories of products without geographical designations that are associated with a particular geographical region. Similarly, for malt beverages, TTB proposed to clarify the requirements for the use of geographical names, which are currently set out in 27 CFR 7.24(f) though (h), and to add to the regulations several established generic names as well as names of types of malt beverages that require a qualification that indicates the true place of production.

In response to these proposals, TTB received a significant number of comments from various interested parties, including distilled spirits and malt beverage producers, domestic and foreign trade associations, and foreign governments. The European Union (EU) expressed concern that certain names of distilled spirits and malt beverages listed in TTB's regulations ''correspond to EU [geographical indications].'' Likewise, Spirits Europe commented that ''a number of names quoted are registered as geographical indications in the EU (for example Ouzo, Aquavit).'' Furthermore, many commenters, including the EU, opposed certain aspects of TTB's proposal that allowed for the use of the terms ''type'' and ''style'' on the grounds that it would violate provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). For instance, DISCUS commented that the proposed regulations appear inconsistent with Article 23 of the Agreement and ''quer[ied] whether TTB has considered its applicability.'' Likewise, the NABI encouraged TTB to ''review the U.S. obligations [under TRIPS] to ensure that the U.S. is in compliance.''

Furthermore, several commenters suggested that the use of the terms ''type'' and ''style'' in conjunction with a geographical designation creates potential for consumer confusion. For example, FEVS commented that allowing for the use of ''type'' or ''style'' would be ''extremely confusing and misleading to consumers as to the nature and essential qualities of the product'' being purchased. Similarly, DISCUS commented that ''the use of the terms 'style' and 'type' would be extremely misleading to consumers in particular as it relates to the distinctive products of other nations.'' The Mexican Chamber of the Tequila Industry stated its belief that the use of the terms ''type'' or ''style'' on distinctive products ''undermines the traditional culture and social context associated with it'' and that ''labels using the name of the distinctive product should only be allowed when certified according to its standard of identity.'' The Republic of Ireland stated that ''use of the words 'Irish type' or 'Irish style' on whiskey-related goods will convey an improper association with Irish Whiskey and is an evocation of Ireland when such products will not have been produced in Ireland.''

Several commenters proposed further amendments to the regulations. For instance, an individual commenter requested that ''Berliner weiss [be]

added to the list of recognized non-geographical beer styles'' and Sazerac requested that TTB ''move 'Ojen' and 'Swedish Punch' to the list of products that are associated with a particular place that have become generic, and therefore may be manufactured in any place.'' The BNIC requested that TTB add language to its regulations to ''[make] absolutely clear that when a geographical designation is also a standard of identity (*e.g.,* a type designation), that designation cannot be used on a label or in advertising except in conformity with that standard of identity.'' ACSA supported the intent of TTB's proposal but stated that ''clarification and additional protections are necessary in order to avoid misleading consumers and to protect regional and national American spirit designations.'' Specifically, ACSA recommended that ''TTB recognize and protect any spirits designations that are a product of a specific geographic region and whose production standard have been formally agreed by an organized cohort of producers in that region such that their products are genuinely differentiated from the category.'' Furthermore, ACSA suggested that the terms ''type'' and ''style'' be required to appear ''on the same line and in the same font as the geographical designation stated.''

With regard to the proposed regulations for malt beverages, Beverly Brewery Consultants questioned whether ''Munich,'' ''Munchner,'' and ''Kulmbacher'' should still be recognized as being distinctive types that may be qualified with the word ''type'' or ''American'' or some other statement indicating the true place of production. On the other hand, the Brewers Association suggested that the proposed rule would require labeling changes and suggested that ''[a]ny attempt at this point in time to disentangle American and European geographic designations for beer styles is almost certain to result in arbitrary decisions.'' Finally, an owner of Schilling Beer Co. asked why TTB had not yet recognized ''IPA'' (which is an abbreviation of the designation ''India Pale Ale'') as a recognized style of beer.

TTB Response

After reviewing and considering the comments received, TTB will not move forward, at this time, with the proposed reorganization and clarifying amendments to the existing regulations on geographical names for distilled spirits and malt beverages. Instead, the final regulations for distilled spirits (§ 5.154) and malt beverages (§ 7.146) retain the provisions of the current regulations as they appear in sections 27 CFR 5.22(k)–(l) and 27 CFR 7.24(f)–(h), respectively. As several commenters raised issues relating to compliance with international agreements to which the United States is a Party, TTB believes that it must engage in further consultation with other government agencies on these matters prior to taking further action on the proposed amendments. For this reason, TTB will also evaluate the comments that address existing regulations as suggestions for further rulemaking.

TTB notes that its decision to retain the current regulations without incorporating the proposed amendments does not represent any change in TTB's current policy on the matter of geographical names, as set forth in TTB guidance or otherwise. Thus, for example, while the final rule does not specifically include Scotch ale (Scottish ale), and Russian Imperial Stout (Imperial Russian Stout) as examples of generic designations for malt beverages, TTB has already issued public guidance recognizing these names as generic. Accordingly, brewers may continue to use ''Imperial Russian Stout'' or ''Russian Imperial Stout'' and ''Scotch Ale'' or ''Scottish Ale'' on labels to describe this type of malt beverage without the addition of any qualifying statements, such as ''type,'' ''American,'' etc. Similarly, this final rule will not affect the continued validity of any certificates of label approval that TTB has issued for malt beverage or distilled spirits labels that include geographical names (such as approvals issued for ''Ojen'' products made in the United States).

TTB is finalizing the proposed change regarding the recognition of ''Andong Soju'' in the regulations in § 5.154. Pursuant to Article 2.13.2 of the United States–Korea Free Trade Agreement, the United States agreed to recognize Andong Soju as a distinctive product of the Republic of Korea. See TTB Ruling 2012–3.

Accordingly, the final rule includes Andong Soju in the examples of geographical names that may not be used on labels for distilled spirits produced in any other place than the particular place of region indicated in the name. With regard to the comment about recognition of ''IPA'' as a type of malt beverage, TTB notes that the designation ''India Pale Ale'' has been recognized as a generic designation since the issuance of the first malt beverage labeling rules under the FAA Act in 1936. However, the abbreviation ''IPA'' is not recognized as a designation for a malt beverage. It is TTB's policy is to allow ''IPA'' to appear as additional information on malt beverage labels; however, TTB has not allowed this abbreviation to suffice as the class/type designation without an additional designation (such as ''ale,'' ''beer,'' or ''India Pale Ale''). Because TTB did not solicit comments on whether the industry and consumers recognize the term ''IPA'' (standing alone on a label) to mean the same thing as ''India Pale Ale,'' TTB will not adopt the comment on this issue, but will instead consider it as a suggestion for future action.

9. Subpart L—Recordkeeping and Substantiation Requirements

Proposed Subpart L of parts 4, 5, and 7 provided rules for recordkeeping and substantiation requirements for alcohol beverages.

a. Recordkeeping Requirements and Retention Period

Current regulations require bottlers holding an original or duplicate original of a certificate of label approval (COLA) or a certificate of exemption to exhibit such certificates, upon demand, to a duly authorized representative of the United States Government (see 27 CFR 4.51, 5.55, and 7.42). Current regulations also require importers to provide a copy of the applicable COLA upon the request of the appropriate TTB officer or a customs officer (see 27 CFR 4.40, 5.51, and 7.31). However, these regulations do not state how long industry members should retain their COLA. Furthermore, since the current regulations were originally drafted, TTB has implemented the electronic filing of applications for label approval. Now, applicants electronically submit over 98 percent of new applications for label approval, and TTB electronically processes the remainder. Industry members have asked for clarification as to whether they have to retain paper copies of certificates that TTB electronically processed. Finally, because industry members may make certain specified revisions to approved labels without obtaining a new COLA, it is important that industry members keep track of which label approval they are using when they make such revisions.

Accordingly, proposed §§ 4.211, 5.211, and 7.211 provided that, upon request by the appropriate TTB officer, bottlers and importers must provide evidence of label approval for a label that is used on an alcohol beverage container and that is subject to the COLA requirements of the applicable part. The proposed regulations stated that bottlers and importers could satisfy the requirement by providing original certificates, photocopies, or electronic

copies of COLAs, or records showing the TTB identification number assigned to the approved COLA. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized to be made on the COLA form or otherwise authorized by TTB, the bottler or importer must be able to identify the COLA covering the product, upon request by the appropriate TTB officer. Bottlers and importers must be able to provide this information for a period of 5 years from the date the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

TTB proposed 5 years as a reasonable period for regulated industry members to retain records because this period covers both the civil and criminal statute of limitations for violations of the FAA Act. TTB noted that the proposed rule would not require industry members to retain paper copies of each certificate. They should simply be able to track a particular removal to a particular certificate, and they may rely on electronic copies of certificates, including copies contained in the TTB Public COLA Registry.

DISCUS expressed support for the recordkeeping requirement provisions, but raised a separate issue regarding how long TTB kept records of approved COLAs and formulas, suggesting that TTB should retain them in perpetuity. WineAmerica expressed support for the inclusion of a recordkeeping requirement in the regulations but asked that if such a form is not physically locatable, TTB should not penalize the producer, ''as virtually all TTB related documents can be accessed via online sources.'' NABI recommended that there be no mandatory retention period for COLAs available on COLAs Online, or in the alternative, stated that the retention period should be 3 years with a2-year optional extension. NABI stated that retention of certificates for every shipment imposed an undue burden on importers that a shorter retention period would be lessen, while the Williams Group believed 5 years was a reasonable record retention period for substantiating documentation. Wine Institute stated that maintaining the records required under §§ 4.212 and 5.212 for 5 years would create a significant recordkeeping and, therefore, financial burden on smaller wineries. Wine Institute recommended a3-year retention period, which was in line with other TTB record retention requirements and the period reviewed by TTB during audits.

Beverly Brewery Consultants suggested removing as redundant from § 7.211(b) the words ''if the product is required to be covered by a COLA,'' because the other text in the paragraph already establishes that the products and label revisions would be covered by a COLA. Beverly Brewery Consultants also recommend removing from § 7.211(c) a reference to § 7.26, which does not appear in the proposed regulations.

The New York Farm Bureau commented as follows:

> Beverage producers must provide proof of COLA approval at TTB's request. NYFB supports the idea that each producer keeps their own records of TTB approved forms, but if such form is not physically able to be located, the TTB does not penalize the producer, as virtually all TTB related documents can be accessed via online sources.

TTB Response

After reviewing the comments, TTB believes that the proposed recordkeeping provisions caused some confusion; therefore, the final rule does not adopt §§ 5.211 and 7.211 as proposed. Instead, TTB is finalizing the provision in current regulations that imposes a 5-year record retention period for certificates of age and origin for imported distilled spirits. These requirements are finalized in new § 5.30.

TTB is also finalizing the provision in the current regulations that requires certificate holders to produce COLAs upon demand from an appropriate TTB official.

TTB notes the proposed rule did not require industry members to retain paper copies of each certificate. Rather they may rely on electronic copies of certificates, including copies contained in the TTB Public COLA Registry. TTB is adopting final regulations that reflect the use of modern, online systems as it will no longer require certificate holders to provide original certificates in response to such requests. Instead of consolidating these requirements into a recordkeeping subpart, TTB will simply retain the requirements in the appropriate sections of the regulations in new §§ 5.21(c), 5.23, 5.24(d), 7.21, and 7.24.

The DISCUS comment about TTB's own schedule for retaining records in its online systems is beyond the scope of this rulemaking, and TTB will consider it as a request for further action. Because TTB is not adopting the proposed regulations in this final rule, TTB is not addressing editorial comments from Beverly Brewery Consultants.

b. Substantiation Requirements

Proposed §§ 4.212, 5.212, and 7.212 set forth specific substantiation requirements, which are new to the regulations, but which reflect TTB's current policies as to the level of evidence that industry members are expected to have to support labeling claims. The proposed regulations provided that all claims, whether implicit or explicit, must have a reasonable basis in fact. Claims that contain express or implied statements regarding the amount of support for the claim (*e.g.,* ''tests provide'' or ''studies show'') must have the claimed level of substantiation.

Furthermore, the proposed regulations provided for the first time that any labeling claim that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, would be considered misleading. The proposed regulations in subpart H similarly included the same requirement. TTB proposed these revisions to the regulations to clarify that industry members are responsible for ensuring that all labeling and advertising claims have adequate substantiation.

NABI raised due process concerns and stated that proposed §§ 4.212, 5.212, and 7.212 must be clarified and narrowed to inform industry members of their obligations. Specifically, NABI commented that the provisions allowing TTB to request substantiation for any claim, implicit or explicit, did not adequately inform industry members of their obligations, and would require importers to maintain an indeterminate amount of information for every product they import.

Wine Origins Alliance (WOA) expressed support for the proposed section and noted that the term ''claim'' was not defined in existing or proposed regulations, and expected that it would have the same broad meaning used by the Federal Trade Commission and Lanham Act jurisprudence, *i.e.,* text ''that states or implies a particular fact.'' WOA stated that under current TTB regulations, there is no specific obligation for an industry member to substantiate a claim on labeling, and therefore ''a claim could be based on mere supposition or speculation.'' According to WOA, it is currently TTB's burden to prove that an unsubstantiated claim is false or misleading, whereas under the proposal, TTB could request substantiation for any claim and take enforcement action if it found the support inadequate. With this understanding, WOA supported the proposed requirements to the extent they would cause industry members to be more conservative in deciding which claims to put on labels, and thus

''reduce the chances of claims that falsely or misleadingly suggest a connection to one of our member regions.''

Oregon Winegrowers Association and Willamette Valley Wineries Association supported proposed § 4.212 for similar reasons, believing it would help avoid consumer confusion by leading to fewer false or misleading labeling claims. The Williams Group supported requiring substantiation and a reasonable basis in fact for all labeling claims.

Wine Institute recommended removing § 4.122(b)(2) as duplicative of § 4.212(b). Proposed 4.122 states TTB's general prohibition of misleading statements or representations on wine labels, containers, or packaging, and references the substantiation requirement in § 4.212(b).

DISCUS opposed § 5.212 because substantiation requests by TTB may delay label approvals. According to DISCUS, TTB faces a significant and increasing label review burden and lacks the capacity and expertise to determine the sufficiency of scientific or other substantiation of claims on distilled spirits labels. DISCUS also expressed concern that subjective rejections of labels by label specialists could impede product launches or lead to other commercial impacts. The DISCUS comment also stated that the proposal may ''affect or delay historical labels to the detriment of industry members without commensurate benefit to TTB.''

ADSA similarly believed that TTB lacked expertise to police labeling substantiation. ADSA expressed concern that TTB personnel would allege substantiation failures that would result in either expensive legal proceedings or offers in compromise to resolve the allegations. ADSA stated that its member companies already must substantiate labeling claims to avoid potential civil and governmental liability, including actions by competitors, consumers, State attorneys general, and the Federal Trade Commission, so additional requirements from TTB were unnecessary.

Beer Institute believed the phrase ''adequately substantiated,'' the standard by which TTB official would determine if a claim was misleading under proposed § 7.212, was too vague and required clarification. Beverly Brewing Consultants opposed the proposed regulation at § 7.212 because it did not distinguish between potentially false and misleading claims and generally accepted advertising puffery, such as ''Vermont's Favorite Beer'' or ''Great Tasting Beer.'' Beverly Brewing Consultants stated that the proposed regulation did not have a basis in the current regulations or past practice or usage.

TTB Response

After careful review of the comments, TTB has concluded that the proposed language caused confusion among industry members. TTB did not intend the proposed regulations to slow down the label review process by requiring COLA applicants to substantiate all claims prior to label approval, but some commenters incorrectly interpreted them as such. Accordingly, TTB is not adopting the proposed regulations on substantiation of claims. TTB stresses that it continues to expect certificate holders to be able to provide substantiation of both implicit and explicit labeling claims upon request.

It is worth noting that while TTB has not issued regulations on ''puffery,'' TTB generally follows the FTC's policy under which the agency does not expect ''puffery,'' in the form of statements of opinion or hyperbolic claims regarding the quality of the product, to be substantiated. See ''FTC Policy Statement on Deception,'' dated October 14, 1983 (appended to *Cliffdale Assoc., Inc.,* 103 F.T.C. 110, 185 (1984), which states, ''The Commission generally will not pursue cases involving obviously exaggerated or puffing representations, *i.e.,* those that the ordinary consumers do not take seriously''). See also *Pfizer, Inc,* 81 F.T.C. 23, 64 (1972) (''[t]he term ''puffing'' refers generally to an expression of opinion not made as a representation of fact'').

10. Subpart M—Penalties and Compromise

a. Criminal Penalties

Consistent with statutory provisions of 27 U.S.C. 205(e), proposed §§ 4.221, 5.221 and 7.221 state that a violation of the labeling provisions is punishable as a misdemeanor and refer readers to 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

DISCUS, Willamette Valley Wineries Association (WVWA), Oregon Winegrower's Association (OWA) and the New York Farm Bureau expressed support for this proposal. WVWA and OWA also requested an amendment to the proposed penalty regulations, providing that TTB would refer permittees who have repeated or egregious labeling violations for further investigation.

TTB Response

The proposed regulatory language simply refers readers to the statutory provisions about criminal penalties, as it is not appropriate to codify the suggested enforcement policies in the regulations. Accordingly, TTB is finalizing §§ 5.221 and 7.221 as proposed.

b. Conditions of Basic Permits

Proposed §§ 4.222, 5.222, and 7.222 provide that basic permits are conditioned on compliance with the provisions of 27 U.S.C. 205, including the labeling provisions of parts 4, 5 and 7. The proposed regulations state that a willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in 27 CFR part 1.

DISCUS, Willamette Valley Wineries Association, and the Oregon Winegrower's Association expressed support for the regulations as proposed. Beverly Brewery Consultants, however, requested that TTB delete § 7.222 because part 7 ''does not describe or regulate FAA Basic Permits.'' Similarly, the National Beer Wholesalers Association questioned whether TTB was proposing to create such a permit requirement for brewers.

TTB Response

Brewers are not required to obtain a basic permit under the FAA Act. Instead, the Internal Revenue Code at 26 U.S.C. 5401 requires brewers to file a notice of intent to operate a brewery. Under this authority, TTB requires brewery applicants to submit TTB Form 5130.10, the Brewer's Notice, which collects information similar to that collected on a permit application and, when approved by TTB, is a brewer's authorization to operate. The requirements for filing and a maintaining a brewer's notice are located at 27 CFR part 25, subpart G.

While brewers are not required to obtain a permit, importers and wholesalers of malt beverages are subject to this requirement of the FAA Act. See 27 U.S.C. 203–204; 27 CFR 1.21 and 1.23. Because the FAA Act provides the authority for part 7 and sets forth the basic permit requirements for importers and wholesalers of malt beverages, TTB proposed, similar to the parallel provisions for wine and distilled spirits, to provide a reference to the basic permit requirement in part 7. Section 7.222 does not imply that brewers must obtain a basic permit, but simply states that possession of a basic permit is conditioned upon compliance with 27 U.S.C. 205. TTB is therefore finalizing §§ 5.222 and 7.222 as proposed.

c. Compromise

Proposed §§ 4.223, 5.223, and 7.223 set forth TTB's authority to compromise liability for a violation of 27 U.S.C. 205 upon payment of a sum not in excess of $500 for each offense. The appropriate TTB officer will collect this payment and deposit it into the Treasury as miscellaneous receipts.

DISCUS, Willamette Valley Wineries Association, and the Oregon Winegrower's Association expressed support for the regulations as proposed.

TTB Response

TTB is finalizing §§ 5.223 and 7.223 as proposed.

*B. Amendments Specific to 27 CFR Part 5 (Distilled Spirits)*

In addition to the changes discussed in section II.A. of this document that apply to more than one commodity, TTB proposed editorial and substantive changes specific to the distilled spirits labeling regulations in part 5. This section will not repeat the changes already discussed in section II.A. of this document, which relate to more than one commodity. Furthermore, the proposed changes regarding part 5 on which TTB received no comments, and that TTB has adopted without change in this final rule, will not be discussed in this section. The substantive changes that are unique to part 5, on which TTB received comments, are described below. They are organized by subpart.

1. Subpart A—General Provisions

In Notice No. 176, TTB proposed in § 5.1 a list of definitions. These were largely consistent with current regulations but included some proposed revisions. TTB addressed some of the proposed amendments in T.D. TTB–158. As explained in that final rule, TTB adopted the proposed definition of ''distilled spirits'' to codify its longstanding position that products containing less than 0.5 percent alcohol by volume are not regulated as ''distilled spirits'' under the FAA Act. TTB also stated in that final rule that it had decided not to move forward with the proposed new definition of the term ''oak barrel.'' TTB noted that in the absence of a regulatory definition for ''oak barrel'' or ''oak container,'' it will be TTB's policy that these terms include oak containers of varying shapes and sizes. However, T.D. TTB–158 did not address many of the other proposed amendments to the definitions. We address the comments on those proposed amendments here. Additionally TTB made minor clarifying edits in subpart A for consistency with statutory language and current requirements.

Comments on Definitions in § 5.1

TTB proposed to modify the definition of ''age'' to include the concept that the distilled spirits must have been stored in oak barrels ''in such a manner that chemical changes take place as a result of direct contact with the wood.'' TTB received several comments that objected to this standard on the grounds that it was subjective, vague, arbitrary, and/or unnecessary.

In Notice No. 176, TTB proposed to add a definition of ''American proof,'' which cross references the definition of ''proof,'' which is unchanged from the current regulations. TTB uses the term ''American proof'' in some circumstances to clarify that the proof listed on a certificate should be calculated using the standards in the part 5 regulations, not under another country's standards. TTB received two comments with regard to this proposed definition. One commenter stated that the term ''proof'' does not need a regulatory definition because it is well understood. The Distilled Spirits Council of the United States (DISCUS) commented in support of defining ''proof'' but urged TTB to change the temperature at which alcohol content is measured from 60 degrees Fahrenheit to 68 degrees Fahrenheit (20 degrees Celsius), stating that ''[m]oving the U.S. to a 68 °F (20 °C) standard would allow U.S. manufacturers to calculate proof in a manner similar to the rest of world and reduce production burdens.'' DISCUS also commented that it opposed the proposed definition of ''American proof'' because it is unnecessary and confusing. TTB also proposed to add a definition of ''grain,'' which would define the term to include cereal grains as well as the seeds of three pseudocereal grains: Amaranth, buckwheat, and quinoa. (A ''pseudocereal'' is not a grass, but its seeds may be ground into flour and otherwise used as cereals). TTB has received a number of applications for label approval for products using these pseudocereals, and TTB also notes that the FDA has proposed draft guidance regarding ''whole grain'' claims that include amaranth, buckwheat, and quinoa as ''cereal grains.'' See 71 FR 8597 (February 17, 2006).

TTB received seven comments in support of allowing the use of pseudocereals as grains for the purposes of distilled spirits labeling. One distiller suggested that pseudocereals are different from traditional cereal grains, and if they are permitted to be used in the distillation of whisky, they should be specifically identified on the label. DISCUS suggested that TTB include the grains listed in the definition of grain set forth in the U.S. Department of Agriculture (USDA) regulations at 7 CFR 810.101 (which includes barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat) and that the TTB definition should also include other grains not listed in the USDA regulations, such as rice, millet, and heirloom grains. DISCUS supported the language regarding pseudocereals.

The Kentucky Distillers Association (KDA) supported the inclusion of pseudocereals as grains but requested the inclusion of, and clarification of, the status of sorghum, proposing a distinction between sorghum grains vs. cane sorghum and sorghum stalks (which the commenter argued should not be allowed to be considered as grains for purposes of distilling whiskey).

The American Craft Spirits Association (ACSA) supported the inclusion of the three pseudo cereals, but also requested the specific addition of millet and sorghum, and requested that TTB revise the definition to clearly provide that it did not exclude cereals or pseudocereals that were not specifically listed. ACSA also requested that TTB revise the definition of a ''distiller,'' which is found in 27 CFR part 19.

TTB Response

After reviewing the comments on the proposed changes to the definition of ''age,'' TTB is retaining the current definition in the regulations. The comments suggested that the reference to chemical changes was vague, and TTB did not mean to introduce a subjective element to the definition. TTB notes that it retains its current policy that storage in paraffin-lined oak barrels does not meet regulatory requirements for ''aging'' distilled spirits in oak barrels. Finally, as proposed in Notice No. 176, the definition of ''age'' in the final rule refers to ''oak barrels'' rather than ''oak containers,'' to avoid confusion with the new definition of ''container'' in the final rule, which includes cans, bottles, and other closed receptacles that are for use in the sale of distilled spirits at retail. As previously noted, in T.D. TTB–158, TTB explained that in the absence of a regulatory definition for ''oak barrel'' or ''oak container,'' it will be TTB's policy that these terms include oak containers of varying shapes and sizes.

TTB is finalizing the proposed definition of ''American proof,'' because

in certain contexts, the use of this term makes it clear that the proof should be measured under American standards, which (as the DISCUS comment noted) differ from those of several other countries. TTB also notes that the measurement of proof at 60 degrees Fahrenheit in the current and proposed definitions of ''proof'' and ''proof gallon'' in part 5 is consistent with the statutory definition of ''proof spirits'' in the IRC (see 26 U.S.C. 5002(a)(10)), and adopting a different standard in the FAA Act regulations would cause confusion. Accordingly, TTB is finalizing the proposed definitions of ''proof,'' ''proof gallon,'' and ''American proof.''

TTB is also adopting the proposed definition of ''grain.'' TTB believes this definition will expand options for distillers by clarifying that they may use the seeds of amaranth, buckwheat, and quinoa to distill spirits (such as ''grain spirits'' or ''whisky'') that are required to be distilled from grain. TTB is not adopting the DISCUS suggestion to specifically list each type of cereal grain in the definition because such specificity is unnecessary. The definition includes all cereal grains; as such, TTB does not need to specifically list those grains. Furthermore, TTB sees no reason to implement specific labeling disclosure requirements for the seeds of the pseudocereals amaranth, buckwheat, and quinoa, beyond the labeling requirements that currently apply to grains. For example, if a commodity statement is required for a spirit distilled from buckwheat, the statement could be worded as either ''Distilled from Grain'' or ''Distilled from Buckwheat.'' This maintains labeling flexibility for the bottler or importer.

With regard to ACSA's suggestion that the regulation be revised to provide that all pseudocereals are included within the definition of grain, TTB currently has only addressed the status of the three pseudocereals that were listed in the proposed regulation (amaranth, buckwheat, and quinoa). The commenters did not identify any specific pseudocereals that they wished to use in distilled spirits, other than the three identified in the proposed rule, and thus TTB sees no reason to address this issue in the current rulemaking. Similarly, the proposed definition of ''grain'' did not address the issue of whether stalks and cane from certain agricultural products (such as sorghum) qualify as grains. Thus, the KDA comment proposing that the regulations exclude cane sorghum and sorghum stalks is outside the scope of this proposal. TTB will treat this comment as a suggestion for future rulemaking. TTB also notes that the definition adopted in this final rule in no way changes its current policy, which is that sorghum and corn syrups are not grains.

The ACSA comment on amending the definition of ''distiller'' in 27 CFR part 19 is outside the scope of this rulemaking document, which is not amending the part 19 regulations.

Finally, TTB is making a technical amendment to the definition of ''distilled spirits.'' As amended by T.D. TTB–158, the definition listed the maximum alcohol content of a distilled spirit containing wine as ''48 degrees of proof'' and the minimum alcohol content for any distilled spirits as ''0.5 percent alcohol by volume.'' For clarity and consistency, this final rule amends the definition to express both of these values in degrees of proof, with a parenthetical reference to the equivalent percentage of alcohol by volume. As amended, the two sentences in question state that ''[t]he term 'distilled spirits' does not include mixtures containing wine, bottled at 48 degrees of proof (24 percent alcohol by volume) or less, if the mixture contains more than 50 percent wine on a proof gallon basis. The term 'distilled spirits' also does not include products containing less than one degree of proof (0.5 percent alcohol by volume).''

Subpart E—Mandatory Label Information

a. Single Field of Vision Labeling

In Notice No. 176, TTB proposed to clarify where mandatory information must appear on a container by replacing the ''brand label'' concept with a requirement that three elements of mandatory information (the brand name; the class, type, or other designation; and the alcohol content) must appear within the same field of vision. TTB intended the proposed amendments to increase flexibility for placing such information on a distilled spirits container.

Previously, the term ''brand label'' was defined in current § 5.11 as the principal display panel that is most likely to be displayed, presented, shown, or examined under normal retail display conditions. Further, the definition stated that ''[t]he principal display panel appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.''

TTB proposed, in proposed § 5.63(a), to allow this mandatory information to appear anywhere on the labels, as long as it is within the same field of vision, which means a single side of a container (which for a cylindrical container is 40 percent of the circumference), where all pieces of information can be viewed simultaneously without the need to turn the container. TTB explained that requiring that this information appear in the same field of vision, rather than on the display panel ''most likely to be displayed, presented, shown, or examined'' at retail, is a more objective and understandable standard, particularly as applied to cylindrical bottles.

TTB received five comments related to this proposal. A distiller and the American Craft Spirits Association each supported the change to a ''single field of vision'' concept. Another distiller commented in favor of allowing the alcohol content statement to appear on either the front label or the back label. Diageo commented in favor of allowing all information required by TTB regulations to appear on a single label, stating that ''if TTB were to permit all mandatory information to appear on a single label, U.S. consumers almost certainly would quickly become accustomed to the new label and shop accordingly.'' DISCUS supported the increased flexibility that the proposal would allow, bringing distilled spirits more in line with current requirements for wine. However, DISCUS also recommended that TTB liberalize placement rules further, allowing mandatory information to appear anywhere on distilled spirits labels.

TTB Response

In T.D. TTB–158, TTB liberalized the placement rules as proposed by allowing the brand name, class and type designation, and alcohol content to appear anywhere on the container as long as those three pieces of information are in the same field of vision. TTB did not adopt the DISCUS comment to eliminate all placement standards for mandatory information, based upon TTB's position that it is important to keep these three closely-related elements of information together on the label since they express vital, related information that, taken together, conveys important facts to consumers about the identity of the product. With regard to the comment from Diageo, TTB notes that under the final rule, industry members may, if they wish, include additional optional or mandatory statements on the same label as the three pieces of information that are required to appear in the same field of vision.

In this final rule, TTB is finalizing its regulation for mandatory information as proposed in Notice No. 176, which

maintains the substance of the rule as finalized in T.D. TTB–158, but also eliminates the ''brand label'' concept from the regulations in part 5. As finalized, § 5.63 does not include the term ''brand label,'' and thus the definition of the term is also removed from the regulations. This amendment is a liberalizing change that will not require any changes to labels, but will allow further flexibility in the placement of labeling information on distilled spirits containers. TTB notes that it may take some time to make conforming changes to the COLAs Online system to remove references to a ''brand label,'' but, in the interim, COLA applicants may simply designate in COLAs Online the label(s) bearing the brand name, class and type designation, and alcohol content within a single field of vision as the ''brand label.''

b. Alcohol Content Statement—Proof

In Notice No. 176, TTB proposed to clarify the existing requirement that, if the alcohol content is stated as degrees of proof, that statement must appear in direct conjunction with the mandatory alcohol content statement. Proposed § 5.65 provided that the statement of proof must appear immediately adjacent to the mandatory alcohol content statement.

The proposed rule kept the current requirement that the mandatory alcohol content statement must be stated on the label as a percentage of alcohol by volume, and provided that a proof statement may, but need not, appear on the label. In ATF Ruling 88–1, TTB's predecessor agency clarified that an optional proof statement must appear in direct conjunction with the mandatory statement only once on the label or in an advertisement, specifically, in the place where the alcohol by volume statement is serving as the mandatory alcohol content statement. Accordingly, the proposed rule clarified that additional statements of proof need not be accompanied by the alcohol by volume statement.

TTB received one comment on this issue, from a distiller (SanTan) arguing that there was no need for an optional statement of proof to be in direct conjunction with the required statement of alcohol content as a percentage of alcohol by volume.

TTB Response

It is TTB's view that, if an optional proof statement appears on the label, it should be in the same field of vision as the required alcohol content statement to avoid confusing consumers. The proof of a distilled spirit is defined as being twice the ethyl alcohol content as a percentage of alcohol by volume, at 60 degrees Fahrenheit. Consumers who are used to seeing the alcohol content labeled as a percentage of alcohol by volume, however, may be confused if the only alcohol content statement on the label is, for example, ''80 proof.'' In contrast, if the ''80 proof'' statement appears in the same field of vision as the mandatory alcohol content statement (''40 percent alcohol by volume''), consumers will understand the relationship between proof and alcohol content as a percentage of alcohol by volume.

Accordingly, as finalized by this document, § 5.65 provides that, if a single optional proof statement appears on the label, it must be in the same field of vision as the required alcohol content statement, expressed as a percentage of alcohol by volume. This change liberalizes the placement requirements in the current regulations, which provide that there may be no intervening material between the mandatory alcohol content statement and the optional proof statement. The final rule also provides that additional statements of proof may appear on the label in different locations, without an accompanying alcohol by volume statement. The final rule adopts the proposal to allow other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume; however, it removes, as unnecessary, language clarifying that the mandatory statement may not be expressed as a range or by maximums or minimums. As discussed later in this document, similar language has also been removed from the malt beverage regulations at § 7.65.

c. Terms Used in Name and Address Statement

In Notice No. 176, TTB explained that the current regulations in 27 CFR 5.36 allow for various statements as part of the name and address statement, and limit the use of certain phrases, depending upon the party seeking to use those phrases. In general, a ''bottled by'' statement must appear on the label of domestically bottled distilled spirits, followed by the name and address of the bottler. In lieu of this statement, as explained elsewhere in this document, the phrase ''distilled by'' may appear on the label to describe the original distiller of the distilled spirits, where the spirits are bottled by or for that distiller. Current § 5.36(a)(4) provides that certain other terms may be used to describe the ''rectifier'' of the distilled spirits—these terms are ''blended by,'' ''made by,'' ''prepared by,'' ''manufactured by,'' and ''produced by.'' The current regulations do not define these terms. Because there is no longer a rectification tax on distilled spirits, and thus these terms have lost their significance under the IRC, some industry members and consumers are confused as to when the use of those terms is appropriate.

Accordingly, proposed § 5.66(b)(2) used the term ''processor'' of distilled spirits, rather than ''rectifier'' to be consistent with current IRC use. The proposed regulation also clarified that the term ''produced by,'' when applied to distilled spirits, does not refer to the original distillation of the spirits, but instead indicates a processing operation (formerly known as rectification) that involves a change in the class or type of the product through the addition of flavors or some other processing activity. TTB solicited comments on whether the proposed definitions of these terms are consistent with trade and consumer understanding.

TTB received several comments on this issue that raised questions as to whether the terms used in the regulations reflected current consumer understanding.

TTB Response

TTB is finalizing the proposed regulation, which accurately reflects current TTB policy as to the meaning of the term ''production,'' but does not define the other terms that describe processing operations (formerly known as rectification operations). TTB believes that several commenters raised valid points as to consumer understanding of these terms. The proposed rule, however, did not solicit specific comments on precise definitions for terms other than ''produced by,'' so incorporating new definitions for these terms would be outside the scope of the rulemaking. Accordingly, TTB will treat these comments as suggestions for future rulemaking.

d. State of Distillation

TTB noted in Notice No. 176 that it has received several inquiries about its existing regulations on labeling certain whisky products with the name of the State where distillation occurred. Current § 5.36(d) requires the State of distillation to be listed on the label if it is not included in the mandatory name and address statement. However, because the name and address statement may be satisfied with a bottling statement, there is no way to know, simply by reviewing a proposed label, if

distillation actually occurred in the same State as the bottling location. For example, a whisky label may indicate that the product was bottled in Kentucky, even if it was distilled in another State and transferred in bond to Kentucky for bottling.

Accordingly, TTB proposed, in § 5.66(f), an updated regulation that would provide that, where required, the State of original distillation for certain whisky products must be shown on the label in at least one of the following ways:

- By including a ''distilled by'' (or ''distilled and bottled by'' or any other phrase including the word ''distilled'') statement as part of the mandatory name and address statement, followed by a single location. This means that a principal place of business or a list with multiple locations would not suffice;
- By including the name of the State in which original distillation occurred immediately adjacent to the class or type designation (such as ''Kentucky Bourbon whisky''), as long as distillation and any required aging occurred in that State; or
- By including a separate statement, such as ''Distilled in [name of State].''

TTB received 47 comments on the proposal to clarify the State of distillation. Of those, 45 comments supported the proposal to require the State of distillation to be indicated on the label in one of the three ways proposed. For example, the Texas Whiskey Association stated that ''[w]e applaud the clarity in new proposals on listing the State of Distillation on a label where it is not the same as bottling or business address. We strongly support that distillation and aging must take place in the actual state where the whiskey is distilled for a whiskey to carry a state designation.'' The American Single Malt Whiskey Commission stated that ''[w]e are in favor of the current propos[ed] § 5.66(f) requiring that the state of distillation for certain whisky products be shown on the label in at least one of the three ways outlined.'' Heaven Hill Brands commented that: ''[w]e strongly support distillation and aging being labeled per the actual state where this occurs so that consumers know exactly what product they are buying, especially as it relates to Kentucky Bourbon Whisky.''

Some commenters suggested that TTB impose tighter restrictions on State of distillation labeling. For example, the Texas Whiskey Association commented as follows:

> We strongly support that distillation and aging must take place in the actual State where the whiskey is distilled for a whiskey to carry a state designation. We would go further and request that it be mashed, fermented, distilled and aged in that State before it carries a State designation. We would further support that if a whiskey is distilled more than once, with distillation occurring in more than one state, that no State designation be permitted.

TTB received two comments opposed to the proposal. The Confederated Tribes of the Chehalis Reservation explained that:

> Because tribes literally were barred from opening and operating distilleries until just recently, the Chehalis Tribe has had no ability to create and stockpile our own aging supply of products. We should be allowed to negotiate with older participants in the industry in creating and blending products without having to disclose confidential information about our sources, partners or partnerships * * *. At a minimum, the Chehalis Tribe and other tribes should be exempt from such requirements.

DISCUS, in its comment, urged TTB to eliminate the requirement to include a State of distillation on labels. DISCUS commented that State of distillation statements should be optional and subject to the relevant business circumstances of each supplier.

TTB Response

After carefully considering the comments, TTB has decided not to finalize the proposed changes to the State of distillation labeling requirement. While most of the comments from distillers supported the position that consumers should be provided with this information, DISCUS commented that TTB should eliminate the requirement altogether, allowing such statements as optional information on labels. This represents a new option that TTB did not air for comment in Notice No. 176. Because adoption of the amendment proposed in Notice No. 176 could reasonably be expected to require some labeling changes by bottlers of certain types of whisky, TTB has determined that, before adopting any substantive changes to this longstanding requirement, it might be appropriate to air, for public comment, the relative merits of making the State of distillation labeling statement optional rather than mandatory. This would also allow TTB to solicit comments on the costs and burdens of the different options. Accordingly, TTB will treat the comments on this issue as suggestions for future rulemaking.

Instead of mandating changes to labels, the final rule maintains the current requirements for labeling of the State of distillation on certain whisky products by continuing to allow the bottling statement to suffice where the whisky was in fact distilled in the State shown on the label, even though the label does not make any representation as to the place of distillation. However, the final rule further clarifies current requirements by revising the current language to provide that if the address shown in the ''bottled by'' statement includes the State in which distillation occurred, the requirement may be satisfied by including a ''bottled by'' statement as part of the mandatory name and address statement, followed by a single location. TTB believes this clarification will assist industry members in complying with the requirements, but it will not change the substance of the current labeling requirement.

With regard to the Texas Whiskey Association comment about when a whiskey may use a State designation, this document finalizes the proposed language clarifying that the use of, for example, ''Texas Rye Whisky'' means that the product was both distilled and aged in Texas. With regard to any additional redistillations in a second State, it has been the longstanding position of TTB and its predecessors that the State where the original distillation occurred is the State of distillation for purposes of the labeling regulations. See Rev. Rul. 54–416, 1954–2 C.B. 470. TTB is adopting this position in the final rule.

e. Coloring Materials

In Notice No. 176, TTB proposed to maintain the substantive requirements for disclosure, on labels, of the use of certain coloring materials used in the production of distilled spirits, including the provision (found in current § 5.39(b)(3)) that the use of caramel need not be indicated on labels of brandy, rum, Tequila, or whisky other than straight whisky. Pursuant to current § 5.23, caramel may be used in distilled spirits products if this use is customarily employed in them in accordance with established trade usage, and if the caramel is used at not more than 2.5 percent by volume of the finished product.

TTB received four comments related to coloring materials. Two distillers asked for more stringent labeling rules for the use of caramel in the categories of distilled spirits products that are currently exempted from the caramel disclosure requirements. Of these, Sazerac commented that ''[i]n order to respond to reasonable consumer expectations for consistency across products, Sazerac asks that TTB require consistent disclosure of caramel color.'' Privateer Rum commented in favor of the proposal and suggested that the

regulation should require disclosure of the use of caramel in rum.

ACSA commented that it was ''in favor and supportive of the language on coloring materials and feels strongly the provision should be applied equally to imported spirits.'' The European Union (EU) asked for an explanation as to the general rule on disclosure of caramel on distilled spirits, and the basis for the exceptions.

TTB Response

After careful consideration, TTB is finalizing the coloring materials labeling regulation as proposed in § 5.72, which clarifies current regulations but does not impose additional labeling requirements. TTB did not propose any changes to the current requirements, and believes that the addition of new labeling disclosure requirements for coloring materials such as caramel is beyond the scope of this rulemaking. The exception to the caramel disclosure requirement for brandy, rum, Tequila, and whisky other than straight whisky is a longstanding policy of TTB and its predecessors.

3. Subparts F, G, and H

a. Barrel Proof and Similar Terms

In Notice No. 176, TTB proposed in § 5.87 to set forth definitions for the terms ''barrel proof'', ''cask strength'', ''original proof'', ''original barrel proof'', ''original cask strength'', and ''entry proof'' on distilled spirits labels. The proposed rule also added ''cask strength'' as a term that means the same as ''barrel proof'' and ''original cask strength'' as a term that means the same as ''original barrel proof.''

The proposed rule incorporated the holding, set forth in ATF Ruling 79–9, that the terms ''original proof,'' ''original barrel proof,'' and ''entry proof,'' when appearing on a distilled spirits product label, indicate that the proof of the spirits entered into the barrel and the proof of the bottled spirits are the same. The ruling further held that the term ''barrel proof'' appearing on a distilled spirits label indicates that the bottling proof is not more than two degrees lower than the proof established at the time the spirits were gauged for tax determination.

The proposed regulations updated the description of the term ''barrel proof'' to take into account changes in the operation of distilled spirits plants as a result of the Distilled Spirits Tax Revision Act of 1979. The reference to the time of tax determination is no longer the applicable standard under the current tax determination system. Since the term ''barrel proof'' is intended to indicate that the spirit is approximately the same proof as when it is dumped from the barrel, the proposed regulations state that the term may be used on a label when the alcohol content (proof) of distilled spirits when bottled is not more than two degrees of proof lower than the proof of the spirit when the spirit was dumped from the barrel. Proposed § 5.87 accordingly provided that the term ''barrel proof'' or ''cask strength'' may be used to refer to distilled spirits that had been stored in wood barrels, and the proof when bottled is not more than two degrees lower than the proof of the spirits when the spirits are dumped from the barrels. TTB noted that it rarely sees such terms on distilled spirits labels and specifically sought comments on whether they still have relevance and provide meaningful information to the consumer and whether TTB should regulate their use on labels.

TTB received several comments on this proposal. Some of the comments reflected disagreement on the two different concepts that TTB addressed in proposed § 5.87. Proposed § 5.87(a) defined terms that may be used on a label when the proof at which the product is bottled is within 2 degrees of the proof of the product when the spirits were dumped from the barrel into the bottling tank. Proposed § 5.87(b) defined terms that refer to the proof of the spirits when entered into the barrels for aging.

DISCUS and the ACSA commented that all of the terms refer to proof at bottling, with the exception of ''entry proof,'' which it states is ''clearly understood as the proof at which the spirit was entered into the barrel and would therefore be confusing to define in relation to final proof post-maturation, which can be very different than the entry proof into the barrel.'' Therefore, ACSA recommended that ''entry proof'' not be included in this list of definitions, and instead be allowed as an applicable descriptor of the proof of entry into the barrels regardless of bottling proof.

On the other hand, DISCUS commented that ''Original proof'' and ''barrel proof'' are two distinct and separate concepts, as proof can go up or down during aging. DISCUS suggested that the two degree variance for ''cask strength'' and ''barrel proof'' is too narrow, suggesting that at a minimum, ''the standard should be set at a 7 percent differential and should be measured when the product is dumped from the barrel. Water is used as part of production, for example, to flush the production lines and other technical needs. This amount of water may differ based upon the length of the production line and other factors specific to each producer's facility. Based upon these realties, TTB should amend this proposal to establish that ''barrel proof'' may be within 7 percent of proof at dump.''

The Scotch Whisky Association commented that ''original proof'' is not a useful term for labeling. Spirits Canada commented in opposition to defining what they referred to as marketing terms. Two individual commenters also wrote in support of the proposed definitions.

TTB Response

After careful consideration of the comments, TTB is finalizing § 5.87 as proposed. TTB believes that it is useful to consumers to have uniform standards for these terms appearing on labels, and most of these terms have been subject to the definitions in ATF Ruling 79–9 for over 40 years. Many industry members rely on these labeling terms for their products.

b. Terms Related to Scotland

In Notice No. 176, TTB proposed rules that maintain and clarify standards for the use of terms related to Scotland on distilled spirits labels. Such rules currently appear only in the regulatory sections related to product standards of identity and class and type, at current §§ 5.22(k)(4) and 5.35, respectively. The proposed provision retained the current rule set forth at current § 5.22(k)(4), that the words ''Scotch,'' ''Scots,'' ''Highland,'' or ''Highlands'' and similar words connoting, indicating, or commonly associated with Scotland may be used only on a product wholly produced in Scotland. It moves this rule to the provisions on restricted labeling practices in the new subpart F. However, regardless of where the finished products are produced, the regulations would not prohibit the term ''Scotch Whisky'' from appearing on the label in the statement of composition for distilled spirits specialty products that use Scotch Whisky or in the statement of composition on the label of Flavored Scotch Whisky. (While the finished product may be produced anywhere, the Scotch Whisky component must continue to be made in Scotland under the rules of the United Kingdom.) In addition, proposed § 5.90(b) clarified (in accordance with current regulations as well as proposed § 5.127) that phrases related to government supervision may be allowed only if required or specifically authorized by the regulations of the United Kingdom. This supersedes Revenue Ruling 61–15, which applied that rule to specific

language on labels of Scotch whisky bottled in the United States.

The Scotch Whisky Association commented in support of the existing prohibition. Several commenters commented that the terms ''highlands'' and ''lowlands'' should not be restricted to Scotch Whisky products, as other areas of the world have highlands and lowlands areas. The Irish Whiskey Association and the Ireland Department of Agriculture commented that TTB should impose new restrictions on terms related to Ireland.

TTB Response

After careful consideration, TTB is finalizing § 5.90, on terms related to Scotland, as proposed, with a minor editorial change. TTB believes that these longstanding restrictions ensure that consumers are fully informed about the meanings of the regulated terms. TTB will consider comments about allowing the use of the terms ''highlands'' and ''lowlands'' in other contexts for potential future rulemaking.

c. Pure

In Notice No. 176, TTB proposed to maintain its longstanding restrictions on the use of the term ''pure'' on distilled spirits labels. The rule provides that the term ''pure'' may not be used unless it is a truthful representation about a particular ingredient, is part of the name of a permittee or retailer for whom the spirits are bottled, or is part of the name of the permittee who bottled the spirits.

While TTB did not specifically request comments on this issue, TTB received six comments regarding ''pure.'' Three commenters, Diageo, DISCUS, and the American Distilled Spirits Association (ADSA), urged TTB to eliminate the prohibition on the term ''pure.'' Diageo stated that allowing the use of the term on wine and malt beverages but not distilled spirits is inconsistent. SanTan Spirits suggested that TTB's definition of ''pure'' should include products that consist of distillate and water, such as, for example, ''pure whisky.'' St. George Spirits commented in support of the proposed regulation. ACSA commented that the term ''pure'' is vague and sought further clarification.

TTB Response

After careful consideration, TTB is finalizing the current regulations on the term ''pure'' as proposed in § 5.91. Thus, the final rule retains the longstanding restrictions on the use of the term ''pure'' on distilled spirits labels. The rule provides that the term ''pure'' may not be used unless it is a truthful representation about a particular ingredient, is part of the name of a permittee or retailer for whom the spirits are bottled, or is part of the name of the permittee who bottled the spirits.

This issue has been the subject of separate rulemaking, and TTB published an advance notice of proposed rulemaking (Notice No. 53, December 7, 2005, 70 FR 72731), soliciting comments on whether it or not it should revise the standard. TTB did not specifically solicit comments on this issue as part of the recodification, and it will consider the comments that it did receive as suggestions for future rulemaking.

4. Subpart I

In Notice No. 176, TTB set forth, in subpart I, the standards of identity for distilled spirits. The standards of identity are divided into classes and more specific types. TTB proposed certain revisions to the standards of identity, described in more detail below. In addition to comments on TTB's proposed revisions, TTB received a number of suggestions for new standards of identity, both classes and types, that had not been proposed in Notice No. 176. Examples of standards of identity that commenters advocated for include standards for Straight Applejack, Juniper Processed Spirits (including Genever), Straight Rum, Rum Agricole, Queen's Share Rum, Irish Cream Liqueur, and others. Additionally, TTB received comments supporting the creation of a type of whisky, American Single Malt Whisky. Because other commenters could not anticipate creation of new standards that were not initially proposed, TTB is not finalizing any of these suggested standards in this rulemaking. It will keep the comments for consideration for future rulemaking focused on the standards of identity for distilled spirits.

a. The Standards of Identity in General

In Notice No. 176, TTB stated that some distilled spirits products may conform to the standards of identity of more than one class. Consistent with longstanding policy, TTB proposed to clarify, in § 5.141(b)(3), that such a product may be designated with any class designation to which the product conforms. For example, a vodka with added natural orange flavor and sugar bottled at 45 percent alcohol by volume may meet the standard of identity for a flavored spirit or for a liqueur. Accordingly, the product may be designated as either ''orange flavored vodka'' or ''orange liqueur'' at the option of the bottler or importer. Under current policy, TTB would not allow a product to be designated on a single label as both ''orange flavored vodka'' and ''orange liqueur,'' because TTB views it as misleading for a label to bear two different class designations. TTB specifically sought comments on whether the TTB regulations should permit a distilled spirits label to bear more than one class designation if the product conforms to the standards of identity for more than one class.

TTB received three comments related to this issue. All three commenters wrote that TTB should allow labels to bear only one designation.

TTB Response

TTB will finalize this regulation as proposed, in § 5.141(b)(3), to allow industry members the flexibility of designating their products with any single class designation to which the product conforms, but not to use multiple designations. It was not TTB's intention to allow multiple designations on labels. A product that may meet the definition for two or more classes or types must still be designated with a single class or type.

b. Neutral Spirits

In Notice No. 176, TTB proposed to provide that the source material of the neutral spirits may be specifically included in the designation on the label of the product. Thus, the bottler would have the option of labeling a product as ''Apple Neutral Spirits'' (in addition to ''neutral spirits distilled from apples'' as the required commodity statement) or ''Grape Vodka,'' (in addition to ''vodka distilled from fruit'' as the required commodity statement) as long as such statements accurately describe the source materials.

TTB received four comments on this issue. Three commenters supported allowing the source material to provide better clarity to consumers and would allow for labeling flexibility. DISCUS commented that it opposes allowing the source material as part of the designation as it would affect current products that use terms such as ''Grape Vodka'' as the distinctive or fanciful name for a distilled spirits specialty product.

TTB Response

TTB agrees that allowing the source material as part of the designation for neutral spirits may cause confusion with distilled spirits specialty products that use similar statements as distinctive or fanciful names. As DISCUS pointed out, TTB has allowed terms such as ''grape vodka'' as the distinctive or fanciful name for specialty products—such a product is different from a vodka distilled from grapes. Accordingly, TTB

will not move forward with finalizing the proposed rule. TTB notes, however, that industry members are not precluded from placing information about the source materials on the label. For example, a phrase such as ''Distilled from grapes'' or ''Distilled from Washington apples'' would be allowed on vodka labels.

c. Whisky

In Notice No. 167, TTB proposed to set forth an updated standard of identity for whisky. Among other things, TTB proposed clarifying that Bourbon Whisky may not contain coloring, flavoring, or blending materials. TTB also proposed to specifically note that ''whisky'' may be spelled either ''whisky'' or ''whiskey,'' which is longstanding policy.

TTB received four comments supporting the clarification that bourbon whisky may not contain coloring, flavoring, or blending materials. Six commenters supported the clarification that whisky may be spelled ''whisky'' or ''whiskey'', while SanTan Spirits commented that whisky should only be spelled as ''whiskey''.

In Notice No. 176, TTB also proposed to provide for a new type designation of ''white whisky or unaged whisky.'' TTB has seen a marked increase in the number of products on the market that are distilled from grain but are unaged or that are aged for very short periods of time. Under current regulations, unaged products would not be eligible for a whisky designation (other than corn whisky) and would have to be labeled with a distinctive or fanciful name, along with a statement of composition.

Accordingly, TTB proposed new standards of identity for products that are either unaged (so they are colorless) or aged and then filtered to remove color; these products would be designated as ''unaged whisky'' or ''white whisky,'' respectively. This proposal represented a change in policy because, currently, all whiskies (except corn whisky) must be aged, although there is no minimum time requirement for such aging. TTB believes that, currently, some distillers may be using a barrel for a very short aging process solely for the purpose of meeting the requirement to age for a minimal time. Consequently, TTB proposed the new type designation of ''white whisky or unaged whisky'' and specifically requested comments on this new type and its standards.

TTB received 22 comments on the proposal to add the new ''white whisky or unaged whisky'' type. Twelve commenters wrote in support of the proposal. For example, Stoutridge Distillery commented in support of the change, suggesting that ''there are many craft distillers creating these products and 'passing them through' an oak container to meet the 'letter of the law'. This change would acknowledge that this is a legitimate whisky type and encourage further development of the commercial category.''

TTB also received 10 comments opposed to the creation of this new type. For example, Diageo objected to:

> the creation of a ''white whiskey'' or ''unaged whiskey'' categor[y] . . . Consumers expect whiskey to be aged. This is backed by hundreds of years of whiskey production domestically and internationally. Such products could be misleading by labeling as ''whiskey'' spirits that are otherwise neutral or bear no whiskey characteristics unless artificially imparted.

ADSA also opposed the new type, stating that its member companies have spent years building whisky brands based on aged liquids that are synonymous with quality. ADSA stated that the proposed category might cause consumer confusion.

TTB Response

After careful consideration, TTB is not finalizing the proposal to create a new type of ''white whisky or unaged whisky''. Both the current and amended standards for types of whisky adequately inform consumers of products that are aged for short periods of time and any whisky aged less than 4 years must include an age statement. TTB agrees that adding unaged whiskies to the ''whisky'' class may cause consumer confusion. Such products may continue to be labeled as distilled spirits specialty products with a statement of composition.

TTB is finalizing the proposals that whisky may be spelled as ''whisky'' or ''whiskey'' and that bourbon whisky must not contain any coloring, flavoring, or blending materials. These amendments reflect current policy and were supported by commenters. While there was one comment that advocated the use of a single spelling of ''whiskey,'' it has been longstanding policy to recognize either spelling, and TTB sees no basis for revising that policy and requiring changes to labels to enforce a single spelling for this term.

d. Cordials and Liqueurs

In Notice No. 167, TTB proposed to set out minor changes to the standards for cordials and liqueurs. Among other changes, TTB proposed to prohibit the terms ''distilled,'' ''compound,'' or ''straight'' from appearing on labels for cordials and liqueurs, on the grounds that the terms were misleading on labels for cordials and liqueurs, which are by definition blended (rectified) compounds. The proposed rule thus incorporated into this section the following holding in Revenue Ruling 61–71:

> In view of the fact that the term 'straight,' in relation to American types of whisky, can be employed on labels only if the product is a single distillate or a homogeneous mixture not subject to rectification tax, and as the term 'straight,' in every-day trade parlance, is regarded in much the same sense as 'unblended' in relation to distilled spirits, in general, the use of the term 'straight' on labels on rectified compounds, known as 'cordials' or 'liqueurs,' would be deceptive or misleading to the consumer with respect to the actual identity of the product thus labeled or advertised.

Current regulations also provide that certain cordials or liqueurs may be designated with a name known to consumers as referring to a cordial or liqueur and therefore need not use the word ''cordial'' or ''liqueur'' as part of their designation. Thus, pursuant to TTB's Beverage Alcohol Manual (TTB P 5110.7), several cordials and liqueurs—specifically, Kummel, Ouzo, Anise, Anisette, Sambuca, Peppermint Schnapps, Triple Sec, Curaçao, Goldwasser, and Crème de [predominant flavor]—currently may be designated by those names on the labels of those products. TTB proposed to codify this policy by adding these names as type designations under proposed § 5.150.

TTB received several comments related to this proposal. The American Distilling Institute commented that if a producer ferments and distills the base spirit used in the creation of the liqueur, they should be able to state that fact on their label along with other relevant production functions. Sazerac pointed out that ''Revenue Ruling 61–71, which TTB cites as the basis for this proposed change, only addresses the claim 'straight' and does not address 'distilled' or 'compound' '' and suggested that TTB had not provided an adequate basis for providing that terms like ''distilled'' imply original distillation and are misleading when used on cordials or liqueurs.

ACSA commented that it supports the proposed § 5.150 without further detail.

TTB Response

After considering the comments, TTB is finalizing § 5.150 with modifications. The final rule incorporates the holding of Rev. Rul. 61–71 with regard to the prohibition on the use of misleading claims that a cordial or liqueur is ''straight.'' For the reasons set forth in

that ruling, a cordial or liqueur cannot be ''straight.'' TTB agrees with the comment that stated that the proposed regulation went further than Rev. Rul. 61–71 but notes that the current regulations at 27 CFR 5.22(h)(6) provide that cordials and liqueurs ''shall not be designated as 'distilled' or 'compound.' '' However, TTB is not adopting the proposed amendment to prohibit the use of the term ''distilled'' or ''compound'' on cordial or liqueur labels. Additionally, TTB will consider for future rulemaking whether to expand the allowable sugars to other types of sweeteners.

e. Flavored Spirits

The TTB regulations currently list flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky as the class designations under Class 9. Currently, other types or classes of distilled spirits that are flavored must generally be labeled with a statement of composition in accordance with 27 CFR 5.35(a).

In Notice No. 176, TTB proposed to expand the current Class 9 by establishing a standard of identity for ''flavored spirits.'' The current Class 9 covers only five classes of distilled spirits (brandy, gin, rum, vodka and whisky) as ''base spirits'' to which flavoring materials may be added. As proposed, the base spirits for the new ''flavored spirits'' class would include types within these classes (such as corn whisky), as well as other classes of base spirits covered by a standard of identity (and types within those classes), such as agave spirits (or Tequila).

The proposed rule also included a clarification of current TTB policy, which is that a person may not add additional spirits to a base spirit in a flavored spirits product, even if the additional spirits are mixed into an intermediate product. As TTB explained in more detail in T.D. TTB–158, TTB's longstanding policy is that Class 9 flavored spirits must derive all of their spirits content from the base spirit of the product, in contrast with those products that are labeled with statements of composition in lieu of a class or type.

While TTB allows for any spirit to appear as part of a truthful statement of composition, TTB stated in Notice No. 176 that it did not believe that consumers perceive a distinction between, for example ''Orange Flavored Tequila''—which is how a flavored spirit would be designated under the proposed rule—and ''Tequila with Orange Flavor''—which is how the statement of composition would appear for a distilled spirits specialty product. TTB therefore proposed to allow any type of base spirit to be flavored in accordance with the flavored spirits standard instead of just brandy, gin, rum, vodka, and whisky, as permitted by the current regulations. Accordingly, proposed § 5.151 provided a class of flavored spirits that could be made by adding flavors to any base spirit made in accordance with the standards of identity set forth in the regulation. TTB proposed to maintain a minimum alcohol content at bottling of 30 percent (60° proof) for this revised and expanded class. Flavored spirits may contain added wine. TTB proposes to maintain the requirement that wine content above 2.5 percent (or 15 percent for brandy) must be disclosed on a label.

TTB received six comments related to this issue. ACSA, the Tequila Regulatory Council, and the Mexican Chamber of the Tequila Industry supported the proposed regulation. The Tequila Regulatory Council noted that it would lessen the administrative burden for Tequila bottlers in the United States if TTB allows any base spirits to be flavored. The Irish Whiskey Association and the Ireland Department of Agriculture commented in opposition to the proposal, stating that flavored Irish Whiskey would be misleading. Heritage Distilling commented in favor of amendments to clarify that flavored Bourbon whisky is a recognized type of flavored whisky. The Scotch Whisky Association opposed allowing ''flavored Scotch Whisky'' on labels because the United Kingdom does not allow for such a product under its laws and regulations.

TTB Response

After careful consideration of the comments, TTB is finalizing the flavored spirits regulations as proposed except that TTB is modifying the standards of identity to provide that the base spirit must be a distilled spirit conforming to one of the standards of identity set forth in §§ 5.142 through 5.148. This does not include liqueurs or distilled spirits specialty products, because these products may already contain natural flavors, so there is no need to have ''flavored'' versions of them. As a clarifying change, TTB is also adding the word ''natural'' to ''nonbeverage flavors'' to clarify that there is no change to the requirement in TTB's current regulations at § 5.22(i) that only natural (and not artificial) flavoring materials may be used in Class 9 flavored spirits.

The final rule will not require label changes, and simply clarifies current TTB policy. Industry members who choose to maintain their product as a distilled spirits specialty product will not need to change their labels, but may choose to label their products as, for example, ''Bourbon whisky with cherry flavor'' rather than ''Cherry flavored bourbon whisky.'' In response to the comment regarding the use of terms related to Scotland, under the final rule, TTB would approve the use of ''Scotch Whisky'' in a designation such as ''Cherry Flavored Scotch Whisky'' if the base spirit meets the standards of identity for Scotch Whisky, regardless of whether the United Kingdom would allow this type of designation. In such a case, TTB notes that the product may be flavored in the United States or another country after exportation from the United Kingdom. TTB notes that it is also finalizing without change the standard of identity for distilled spirits specialty products in § 5.156.

f. Diluted Spirits

In Notice No. 176, TTB proposed to codify standards for the use of the term ''diluted.'' As set forth in ATF Ruling 75–32, TTB currently requires that distilled spirits bottled at below the specified alcohol content for that particular class be designated on the label as ''diluted'' in direct conjunction with the statement of class and type to which it refers. For example, under the standard of identity for vodka set forth at current § 5.22(a), vodka must be bottled at ''not less than 80° proof.'' As a result, a vodka bottled at 60° proof must bear the statement ''diluted vodka'' on the label. TTB proposed, in § 5.153, to incorporate this policy into the regulations by establishing a class of spirits known as ''diluted spirits.'' This applies to products that would otherwise meet one of the class or type designations specified in subpart I except that it does not meet the minimum alcohol content, usually because of reduction of proof through the addition of water. Although the ruling states that the word ''diluted'' must be readily legible and as conspicuous as the statement of class to which it refers and in no case smaller than 8-point Gothic caps (except on small bottles), TTB proposed to require that the word ''diluted'' appear in readily legible type at least half the size of the class and type designation to which it refers. For example, but for the fact that a product is 70° proof, it would be eligible to be designated as ''Vodka.'' However, because of its lower proof, it must instead be designated as ''Diluted Vodka''.

TTB received ten comments opposed to the creation of the ''diluted spirits'' class. For example, Spirits Europe questioned whether the class would undermine certain traditional products

and confuse consumers. DISCUS and ACSA opposed the proposed language and believe that consumers would prefer a ''lite'', ''low alcohol'' or ''under-proof'' label rather than a ''diluted'' designation.

TTB Response

TTB has decided not to move forward with the creation of the ''diluted spirits'' class. TTB will maintain the comments related to other ways to label diluted products as suggestions for future rulemaking. The holding of ATF Ruling 75–32, including those relating to type size, will remain in effect.

5. Subpart J—Formulas for Distilled Spirits

With regard to the formula requirements in part 5, in Notice No. 176, TTB stated:

> The current regulations in subpart C of part 5 set forth requirements for formulas for distilled spirits. In the present rulemaking, TTB proposes to maintain the formula requirements with minor changes to reflect current policy as set forth in TTB Industry Circular 2007–4. However, TTB believes there may be formula requirements that no longer serve a labeling purpose. TTB seeks specific comments on whether certain formula requirements should be eliminated and the rationale for such a change. TTB may address these issues in the final rule or in a separate rulemaking document.

TTB received two comments on the distilled spirits formula regulations in proposed subpart J. ADSA commented in opposition to formula requirements for spirits that are first aged in an oak barrel and then aged in a different type of barrel, such as a barrel previously used to age wines or other types of spirits. ADSA stated that interest in this type of innovative production has grown in the past decade. Accordingly, ADSA urged TTB to delete from its final regulations the prohibition on claiming age for time spent in a second (or third, or fourth, etc.) barrel and the presumption that aging in a second barrel of different wood alters a product's class or type. For the same reasons, ADSA urged TTB to eliminate the proposed formula requirement for the mixing of spirits subject to different aging methods (charred and non-charred barrels, etc.). At a minimum, ADSA stated that proposed § 5.193 requires substantial revisions to better clarify exactly when a formula is required.

The National Association of Beverage Importers (NABI) noted that proposed § 5.193 requires a formula where, among other things, distilled spirits are ''mingled,'' and that the regulations do not define the term ''mingling.'' NABI suggested that if TTB is using the term ''mingling'' to cover mixing or blending activities, then it would be clearer to use those terms. NABI noted that the term ''mingling'' dates back to the pre-1980 regulatory framework, when the IRC imposed a rectification tax, and that the term lost its significance after the repeal of the rectification tax. NABI stated that clarification of the term is important to importers as they need to decide whether they must apply for formula approval for specific imported distilled spirits products.

TTB Response

With regard to the ADSA comment regarding formula requirements for aging in different types of barrels, and the NABI comment requesting clarification of when a formula is require for ''mingling,'' TTB believes that the commenters have raised valid concerns about whether the formula requirements are current and easy to understand.

As noted in the NABI comment, many of the formula requirements in part 5 date back to pre-1980 requirements. In recent years, it has been TTB's goal to update formula requirements on a regular basis through the issuance of public guidance. See, *e.g.,* Industry Circular 2020–1, dated February 12, 2020, Industry Circular 2018–6, dated September 18, 2018, and TTB Ruling 2016–3, dated September 29, 2016.

Accordingly, rather than revising the regulations in subpart J to address the specific issues that the commenters addressed, TTB is keeping the current regulations in place, with a change that will allow TTB to clarify or eliminate formula requirements for distilled spirits through public guidance, without amending the regulations. In this final rule, § 5.193 provides general rules for distilled spirits formulas, but also provides that TTB may exempt categories of distilled spirits products from specific regulatory formula requirements upon a finding that the filing of a formula is no longer necessary in order to properly classify the finished product. TTB will review the comments on this issue as suggestions for exemptions from the formula requirements when it issues new guidance on this issue, and as suggestions for future rulemaking to update the formula regulations.

TTB has also revised the language in § 5.193(a) to provide that while the compounding of distilled spirits through the mixing of a distilled spirits product with any coloring or flavoring material, wine, or other material containing distilled spirits generally requires a formula, there is an exception if TTB has issued public guidance recognizing that such ingredients are harmless coloring, flavoring or blending materials that do not alter the class or type pursuant to the standards set forth in § 5.155. This language is added for consistency with the provisions of TTB Ruling 2016–3, dated September 29, 2016, in which TTB approved general formulas for vodka and rum, and certain types of whisky and brandy, made with certain specified harmless coloring, flavoring, or blending materials, in accordance with the ruling. TTB referred to these formulas as ''general-use formulas'' and industry members who produce distilled spirits in conformance with a general-use formula do not need to submit a formula to TTB for approval.

*C. Amendments Specific to 27 CFR Part 7 (Malt Beverages)*

In addition to the changes discussed in Section II.A. of this document that apply to more than one commodity, this section discusses proposed editorial and substantive changes specific to the malt beverage labeling regulations in part 7. It will not repeat the changes already discussed in Section II.A. of this document, which relate to more than one commodity. The substantive changes that are unique to part 7, on which TTB received comments, are described below, and are organized by subpart. Unless otherwise stated, TTB is finalizing the proposals in Notice No. 176 specific to the malt beverage regulations in part 7.

1. Subpart A—General Provisions

In Notice No. 176, TTB proposed to set forth, in subpart A, several provisions with general applicability to part 7, including a list of defined terms, territorial limits of the regulations, a section setting forth to whom and to which products the regulations apply, and sections addressing administrative items such as forms used and delegations of the Administrator. For more information on the specific proposals for subpart A of part 7, please refer to Notice No. 176, section II.E.1. As explained below, TTB is finalizing the specific proposals for subpart A of part 7, with certain changes. Among other things, certain minor clarifying edits have been made for consistency with statutory language and current requirements.

a. Comments on Definitions in § 7.1

In Notice No 176, TTB proposed in § 7.1 a list of definitions largely consistent with the current regulations. TTB proposed to add definitions for the terms ''keg collar'' and ''tap cover,'' consistent with a proposed amendment,

discussed later in this document in Section II.C.3., to allow mandatory label information to appear on non-firmly affixed keg collars and tap covers, subject to certain conditions. See § 7.51, as finalized below. TTB is also finalizing its proposals to amend the definition of the term ''bottler'' to include any brewer or wholesaler who places malt beverages in containers (regardless of size), and to remove the definition of ''packer,'' consistent with amendments that remove from TTB's current name and address regulations a distinction between ''bottling'' malt beverages in containers of a capacity of one gallon or less and ''packing'' them in containers in excess of one gallon. See Section II.A.6.d.

TTB received several comments related to definitions in proposed § 7.1. Beverly Brewery Consultants approved of the proposal to remove the definition of ''packer.'' In a comment submitted previously in response to the Treasury Department's RFI, the Brewers Association had recommended elimination of the distinction between ''bottler'' and ''packer,'' although the Brewers Association did not address this issue in its comments on Notice No. 176.

Beverly Brewery Consultants also requested that TTB delete the definition of ''Certificate of exemption from label approval'' because the term is not used in part 7, and also suggested that TTB add a definition of ''packaging,'' noting that the term was defined nearly identically in proposed §§ 7.62(a), 7.81(a)(3), 7.101(a)(3), and 7.121(a)(3). In addition, Beverly Brewery Consultants suggested adding a definition for ''industry member.''

TTB Response

TTB is finalizing its proposal to eliminate the definition of ''packer'' from its part 7 regulations. TTB received two comments in support of this change and none opposed. In § 7.1, TTB is finalizing its proposed definition of ''bottler'' as ''Any brewer or wholesaler who places malt beverages in containers.'' Also in § 7.1, TTB is finalizing the proposed definition of ''Certificate of exemption from label approval'' to clarify that such certificates are available for wine and distilled spirits products only. See TTB Ruling 2013–1 (noting that, ''unlike the regulations for wine and distilled spirits (set forth in 27 CFR parts 4 and 5, respectively) the part 7 regulations do not require certificates of exemption for malt beverages sold exclusively in intrastate commerce. TTB and its predecessor agencies have never issued certificates of exemption for malt beverages.''). As discussed in Section II.C.2 below, the holdings of this ruling are being incorporated into the regulations, and thus this ruling is superseded by this final rule.

In response to the comment regarding the definition for ''packaging,'' TTB included the definition of packaging separately in subparts E, F, G, and H for ease of reference and along with other definitions relevant to those subparts. TTB is finalizing those definitions as proposed. In response to Beverly Brewery Consultants' request that TTB add a definition of ''industry member,'' TTB does not believe the definition is necessary because this term does not appear in the part 7 regulations. Where the term is used in relation to part 7 in the preamble of this final rule, it refers generally to the brewers, wholesalers, and importers of malt beverages to whom part 7 applies.

b. Minimum Quantities of Barley and Hops

In § 7.1, TTB proposed to retain the current definition of ''malt beverage,'' but requested comments on whether it should set forth any minimum standards for the quantity of malted barley or hops used in the production of malt beverages. The current definition states that malt beverages must be made with malted barley and hops but does not set forth minimum quantities.

Two commenters opposed establishing minimum standards for the quantity of malted barley or hops needed for an alcohol beverage to be considered a malt beverage. The Brewers Association supported TTB's decision not to include a minimum standard for use of barley and hops in its definition of ''malt beverage,'' noting that ''[a]t this point in the evolution of the brewing industry, new standards for use of barley and hops would necessitate reformulation of thousands of malt beverages.'' The Beer Institute also submitted a comment opposing minimum standards. TTB received no comments in support of establishing minimum standards.

TTB Response

TTB is not moving forward with minimum standards in this final rule. TTB will continue to enforce its current policy on this issue, as stated in TTB Ruling 2008–3. Under this policy, TTB does not mandate minimum quantities of malted barley and hops to meet the definition of a malt beverage.

c. Comments on Requirement To Obtain a COLA

In proposed § 7.3, TTB described the general requirements and prohibitions under the FAA Act, including the requirement for brewers, wholesalers, and importers to obtain from TTB a COLA covering the labeling on each container of a malt beverage. An owner of Schilling Beer Co. requested that TTB allow malt beverages to be shipped in interstate commerce after submitting labels to TTB, but before a COLA is issued, or alternatively, that TTB cease issuing COLAs but instead conduct periodic compliance checks of labels that are submitted. The commenter stated that a shutdown in government operations severely impacted the brewer and caused a delay in obtaining TTB label approvals.

TTB Response

TTB recognizes that label approvals are critical to brewers and that any disruption to normal TTB operations may increase label processing times. However, this comment is beyond the scope of the current rulemaking. Accordingly, TTB is not incorporating any special rules to address compliance with labeling requirements during government shutdowns in this final rule.

Separately, TTB finalized technical changes in § 7.3(d), which generally describes the regulatory requirements under each subpart of part 7. First, § 7.3(d)(3) and (5) contain editorial changes for consistency within § 5.3(d). Second, three references to regulatory definitions in § 7.3(d)(3)–(4) are updated to correspond to the correct definitions and subparts.

d. Comments on ''Similar'' State Law

In Notice No. 176, TTB proposed at § 7.4 a regulation setting forth the jurisdictional limits of the FAA Act found in 27 U.S.C. 205. Generally, the labeling and advertising provisions of the FAA Act apply only to malt beverages shipped in interstate commerce. However, the penultimate paragraph of 27 U.S.C. 205 includes an additional limitation, stating the labeling provisions apply ''to malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State'' from any place outside of that State only ''only to the extent that the law of such State imposes similar requirements with respect to the labeling . . . of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State'' from any place outside that State. Section 7.4(a)(1) sets forth this requirement in the regulations, while § 7.4(a)(2) defines ''similar'' State law as applying to those requirements ''found in State laws or regulations that apply

specifically to malt beverages or in State laws or regulations that provide general labeling requirements that are not specific to malt beverages.''

Separately, TTB proposed, at §§ 7.21(a) and 7.24(a), to require that bottlers and importers obtain a COLA for domestically bottled and imported malt beverages, respectively, subject to certain exceptions, which are addressed in §§ 7.21(b) and 7.24(f). These proposed regulations clarified, consistent with current regulations, that COLAs are required only if the laws or regulations of the State into which the malt beverages are being shipped ''require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of subparts D through I of this part.'' These provisions specify that this condition is met ''when the State has either adopted subparts D through I of this part in their entireties or has adopted requirements identical to those set forth in subparts D through I of this part.'' Consistent with §§ 7.4, 7.21(b), and 7.24(f), TTB also notes that malt beverages not subject to the COLA requirements may still be subject to the substantive labeling provisions of the part 7 labeling regulations.

For example, under both current regulations and the final rule, a brewer may not need a COLA to ship malt beverages, in interstate commerce, into a State that has adopted some, but not all, of the labeling requirements of part. However, if the regulations of that State require the name and address of the bottler to appear on the label, in a manner that is similar to TTB requirements, and the container bears no information as to the name and address of the bottler, then the brewer shipping that malt beverage has violated both State regulations and the FAA Act, even though it was not required to obtain a COLA for the malt beverage.

Beverly Brewery Consultants stated that proposed §§ 7.4(a)(2), 7.21(b), and 7.24(f) were inconsistent in their discussion of State law. The commenter stated that while § 7.4 refers to ''similar'' State laws, §§ 7.21(b) and 7.24(f) refer to ''identical'' State laws. Beverly Brewery Consultants stated that each section relates to the extent that malt beverages are subject to the provisions of the FAA Act, and therefore should use consistent language. NABI requested that TTB clarify in § 7.4 that similar State law refers only to State law that applies to alcohol beverages. For example, the NABI comment distinguished between a State consumer protection law relating to the labeling of foods in general that is broad enough to include alcohol beverages and a State labeling law that only applies to carbonated soft drinks, and thus would not be a similar State law.

TTB Response

TTB is finalizing §§ 7.4, 7.21(b), and 7.24(f) as proposed, with minor editorial revisions that are discussed below. Other comments received on § 7.21 are discussed in Section II.C.2 below. Other comments received on § 7.24 are discussed in Section II.A.3.b. and c. above.

As previously noted, Beverly Brewery Consultants commented that TTB was inconsistent in using the term ''similar'' State laws in § 7.4, while using the term ''identical'' State regulations in §§ 7.21(b) and 7.24(f). However, TTB intended to use different standards in these regulations. TTB reiterates that § 7.4 describes the jurisdictional limits of the labeling and advertising provisions of the FAA Act, whereas §§ 7.21 and 7.24 relate to the regulatory requirement to obtain a COLA. The statutory limits with regard to compliance with the substantive labeling requirements of the FAA Act for malt beverages shipped in interstate commerce provide there is no violation of the FAA Act unless the State into which the malt beverage is shipped has ''similar'' State law. However, the regulations have always provided that no COLA is required for malt beverages shipped, in interstate commerce, into a State that has not adopted the labeling regulations in part 7. TTB and its predecessor agencies have interpreted this to mean that a COLA is required only if the State into which the malt beverages are being introduced has either adopted the Federal malt beverage labeling regulations (specifically or by reference) or has adopted labeling requirements that are identical in effect (not just similar) to those in part 7. As described above, the relationship to State law is different for each of these situations.

This provision is consistent with current regulations at 27 CFR 7.40, and with the malt beverage COLA regulations since they were first adopted in 1936, both of which provided that the COLA requirement applied only where the State into which the malt beverages are being shipped had adopted the Federal malt beverage labeling regulations. In the proposed rule, TTB clarified the language further by specifically providing that this included the adoption of regulations identical to the labeling regulations in part 7. Because the comments indicate that this language may have been confusing, TTB is incorporating a minor technical change in the language of sections 7.21(b) and 7.24(f), which now state that the COLA requirement applies when malt beverages are being shipped from one State into another State, and the destination State has either adopted subparts D through I of this part in their entireties or has adopted requirements *identical in effect* to those set forth in subparts D through I of this part. This editorial change clarifies that the regulations of the destination State need not replicate the exact text of the Federal regulations, word for word, but simply must be identical in effect to the labeling regulations in part 7.

In response to NABI, TTB also finds that § 7.4, as proposed, accurately describes the relationship between ''similar'' State law and the labeling and advertising provisions of the FAA Act applicable to malt beverages. Section 7.4(a)(2) sets out the longstanding Bureau interpretation of ''similar'' State law by stating that if a malt beverage label does not violate the laws or regulations of the State or States into which the malt beverages are being shipped, it does not violate part 7. The similar State law referred to in § 7.4(a)(2) therefore includes State laws and regulations that apply specifically to malt beverages and those general labeling requirements that are not specific to malt beverages, but which apply to malt beverages.

TTB agrees with NABI's comment to the effect that a State law that specifically applied only to, for example, carbonated soft drinks, and did not apply to malt beverages, would not be a ''similar'' State law for this purpose. Accordingly, the regulatory text in § 7.4(a)(2) has been revised to include the clarification that in order to be ''similar,'' the State requirements need to apply to malt beverages, even if their application extends more broadly to non-alcoholic beverages as well. As revised, the regulations provide that a ''similar'' State law may be found in State laws or regulations that apply specifically to malt beverages or in State laws or regulations that provide general labeling requirements that are not specific to malt beverages but that do apply to malt beverages.

e. Other Editorial Changes

Beverly Brewery Consultants suggested other editorial and clarifying changes in §§ 7.7 and 7.10. For example, Beverly Brewery Consultants suggested that TTB remove a reference to ''alcoholic beverages'' from § 7.7(a)'s description of the health warning statement required under the Alcoholic Beverage Labeling Act of 1988 (ABLA).

TTB Response

TTB considered these recommendations of technical and clarifying changes and concluded that the text of the regulations as originally proposed clearly communicates TTB's requirements. In § 7.7(a), TTB accurately describes the requirements of the ABLA as applicable to alcoholic beverages, including malt beverages, that contain at least 0.5 percent alcohol by volume. See 27 U.S.C. 214. Separately, TTB corrected a minor spelling error corrected in § 7.10, as finalized below.

2. Subpart B—Certificates of Label Approval

In Notice No. 176, TTB proposed to consolidate the regulations related to TTB label approval in a new subpart B for each commodity in parts 4, 5, and 7. TTB further proposed in § 7.21 to clarify that certificates of label approval (COLAs) are not required for malt beverages sold exclusively in the State in which the malt beverages were bottled.

Proposed § 7.21(a) set forth the general requirement for bottlers of malt beverages to obtain a COLA. Section 7.21(b) clarified that a COLA is required for malt beverages shipped into a State from outside of the State only where the laws or regulations of the receiving State require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of part 7, subparts D through I. Proposed § 7.21(b) also noted that malt beverages that are not subject to the COLA requirements of current § 7.21 may still be subject to the substantive labeling provisions of part 7, subparts D through I, to the extent that the State into which the malt beverages are being shipped has similar State laws or regulations. As previously noted, these requirements are consistent with the longstanding policy of TTB and its predecessor agencies.

Proposed § 7.21(c) clarified that persons bottling malt beverages that will not be shipped, or delivered for sale or shipment, in interstate or foreign commerce, are not required to obtain a COLA or a certificate of exemption from label approval, along with a note explaining what constitutes a certificate of exemption from label approval. As noted in the NPRM, TTB has never issued certificates of exemption for malt beverages. TTB issues certificates of exemption from label approval to cover a wine or distilled spirits product that will not be introduced in interstate or foreign commerce. TTB solicited comments on whether the issuance of a certificates of exemption for malt beverages in such circumstances (for products that will not be sold outside of the State of the bottling brewery) would be useful to industry members, and whether the regulations should allow a certificate of exemption for such products.

TTB received four comments on the proposed regulations at § 7.21. The Brewers Association interpreted the proposed regulation as requiring brewers to obtain COLAs if they are located in States that incorporate TTB regulations by reference or have identical regulations, even if the product was bottled for intrastate sale. The Brewers Association stated that the proposal would have the effect of requiring brewers and brewpubs who only sell malt beverages in their home States to now obtain a COLA.

The Williams Group suggested that TTB allow industry members who are exempt from COLA requirements to request and obtain a COLA or a certificate of exemption ''in the rare instance that it might be required or otherwise helpful.'' NABI stated it would be valuable for brewers to obtain certificates of exemption so that the labels would appear on the COLA Public Registry, which would confirm that products were legally produced in the United States. Beverly Brewery Consultants suggested removing the note in § 7.21(c) explaining what a certificate of exemption from label approval is and replacing it with a statement that TTB does not issue certificates of exemption for malt beverages.

TTB Response

TTB is finalizing § 7.21 as proposed, except for the addition, at paragraph (d), of a provision originally proposed at § 7.211, regarding the presentation of evidence of label approval upon request by an appropriate TTB official. See Section II.A.9.a. Section 7.21 does not create any new COLA requirements for brewers. Consistent with TTB's current regulations, § 7.21 requires brewers or wholesalers bottling malt beverages to obtain a COLA prior to bottling the malt beverages or removing them from the bottling premises if the product is intended for sale in interstate commerce and if the State in which the product is to be sold incorporates TTB labeling regulations by reference or has identical regulations. Malt beverages intended only for sale intrastate are not required to obtain a COLA, as stated in § 7.21(c).

In response to the comment from the Williams Group, requesting that COLAs or certificates of exemption be available for malt beverages that will not be shipped or delivered for sale or shipment, in interstate or foreign commerce, TTB notes that bottlers may currently apply for COLAs on a voluntary basis. Brewers may therefore apply for COLAs covering malt beverages currently sold in intrastate commerce if, for example, they believe the State may require such documentation, or to cover the possibility that such products may be sold in interstate commerce in the future.

Because COLAs are granted based on the label's compliance with TTB's regulations in part 7, some malt beverages that are only distributed intrastate and are labeled in conformance with State law may not be eligible to obtain a COLA, such as where State law creates a conflicting requirement. This is why TTB sought comments on whether certificates of exemption should be available for malt beverages that are only distributed intrastate. While the Williams Group recommended making them available in the ''rare case that it might be required or otherwise helpful,'' it also stated that it was not aware of State requirements for COLAs or certificates of exemption for malt beverages only distributed intrastate. Because TTB did not receive comments referring to State requirements for TTB documentation for these types of malt beverages, this final rule does not include any provisions for allowing certificates of exemption for malt beverages on an optional basis.

NABI suggested that requiring certificates of exemption for malt beverages sold in intrastate commerce would be useful, so that industry members could confirm, via the COLA Public Registry, that products were legally produced in the United States. However, the NABI comment did not provide any evidence to establish that the theoretical benefit from such a requirement would justify the additional regulatory burden. TTB notes that such a requirement would constitute a new burden on bottlers of malt beverages distributed only in intrastate commerce and would represent a change to longstanding TTB policy to not require certificates of exemption for malt beverages sold exclusively in intrastate commerce. Accordingly, this final rule does not adopt the NABI comment.

Finally, TTB disagrees with the comment from Beverly Brewery Consultants, requesting that TTB remove from § 7.21(c) the parenthetical statement explaining what constitutes a certification of exemption from label approval. TTB believes this note in paragraph (c) provides useful information because it provides context

for the earlier statement in § 7.21 that bottlers of malt beverages that will not be shipped or delivered for sale or shipment in interstate or foreign commerce are not required to obtain a COLA or a certificate of exemption from label approval.

3. Subpart D—Label Standards

In Notice No. 176, TTB proposed a subpart D in each of parts 4, 5, and 7, containing regulations governing the placement of, and other requirements applicable to, mandatory and additional information on labels and containers. Most of the proposals applied similarly to the labels of the wine, distilled spirits, and malt beverage products. Specific to part 7, TTB proposed, and is now finalizing, an exception, for certain kegs, to the requirement that labels be firmly affixed to malt beverage containers.

Generally, TTB requires that labels be ''firmly affixed'' to malt beverage containers, that is, that they must be affixed in such manner that they cannot be removed without the thorough application of water or other solvents. Under § 7.51(b), TTB proposed an exception to this requirement for kegs that have a capacity of 10 gallons or more. The exception provided that a label in the form of a keg collar or a tap cover was not required to be firmly affixed, provided that the name of the brewer or bottler of the malt beverage was permanently or semi-permanently stated on the keg in the form of embossing, engraving, or stamping, or through the use of a sticker or ink jet method. (TTB notes that it inadvertently described the proposal as contingent on the name of the brewer appearing on the keg, but proposed regulatory text that provided that the name of the bottler appear on the keg.)

TTB proposed this exception in response to requests from brewers, who have asserted that the requirement for firmly affixed labels is unduly burdensome as applied to kegs. Brewers have noted that kegs are intended to be reused, but that it takes considerable time and effort to scrape off the label each time a keg is to be reused. For this reason, brewers requested that TTB authorize the use of keg collars that are not firmly affixed to the keg, or a tap cover, to bear mandatory labeling information.

Seven commenters addressed proposed § 7.51, including the proposed exception and the general requirement that labels must otherwise be firmly affixed to malt beverage containers. The commenters provided important information, including current practices of affixing labels to kegs, the burden of compliance with current and proposed regulations, and the prevalence of keg sharing programs. In light of those comments, TTB is finalizing the requirement that labels be firmly affixed to containers, as proposed at § 7.51(a), and is expanding the exception to this requirement from what was proposed at § 7.51(b).

Only the Williams Group appeared to support, without reservation, the proposed exception, for certain keg collars and tap covers, to the requirement that labels be firmly affixed to containers. The six other commenters raised one or more specific objections. The Brewers Association, the Beer Institute, and MicroStar Logistics opposed making the exception to the firmly affixed label requirement for keg collars and tap covers contingent upon permanently or semi-permanently marking the keg with the name of the bottler. The Brewers Association and MicroStar Logistics stated that many brewers rely on third-party keg-sharing programs and that the exception, as proposed, would not provide any additional flexibility in such circumstances. The Brewers Association, MicroStar Logistics, NBWA, and the Confederated Tribes of the Chehalis Reservation described the exception, with its reliance on identifying the brewer through marking on the keg, as a new requirement that would add costs to industry members. The Confederated Tribes of the Chehalis Reservation stated that ''the current use of keg collars with the brewery information is a system that is working'' and does not need to be changed. They stated that the proposed rule would impose costs on brewers and force them to purchase additional kegs. The Beer Institute requested that TTB clarify that brewers may use trade names in lieu of actual corporate names and provide guidance on the proposal as applied to contract brewing. NBWA requested that TTB clarify that brewers are responsible for affixing keg collars before kegs leave the brewery.

The Brewers Association and MicroStar Logistics also objected to the existing requirement that labels must be ''firmly affixed'' to malt beverages containers such that they ''cannot be removed without thorough application of water or other solvents.'' They described this requirement, proposed at § 7.51(a) and derived from TTB's prior regulations, as ''out of date and unnecessary in light of the significant adoption of keg sharing programs by the beer industry.'' The Brewers Association additionally opposed the ''unnecessary use of additional water or solvents'' out of concern for workplace safety and environmental protection.

The Brewers Association, the Beer Institute, and MicroStar Logistics suggested that TTB allow firmly affixed, non-adhesive keg collars that ''are specifically designed to affix to the neck of the keg and cannot be removed without deliberate effort.'' They stated that the use of such collars would save brewers from the burden and expense of scraping off old labels and would still maintain appropriate consumer protections. The Brewers Association stressed that TTB should allow the use of such non-adhesive keg collars because other aspects of malt beverage distribution and sale ensure that the proper products are delivered from brewers to wholesalers, retailers, and consumers. The Brewers Association stated that kegs are transported by licensed carriers and wholesalers, who have an economic motivation to deliver the proper product to retailers and consumers. It stated that kegs are typically shipped from packaging breweries shrink wrapped and on pallets, which deters tampering with keg collars. Once in commerce, the Brewers Association stated that State laws require retailers, bars, and restaurants to supply the correct product and that permanent keg marking would not serve to ameliorate any attempts to deceive consumers because kegs typically are not visible to consumers.

The Beer Institute, along with Beverly Brewery Consultants, also proposed extending the exception for keg collars to kegs with a capacity of less than 10 gallons. The Beer Institute favored a minimum capacity of 5.2 gallons, while Beverly Brewery Consultants recommended allowing keg collars on kegs with a capacity greater than 1 gallon. Both commenters stated that, because brewers frequently use a variety of keg sizes, these suggestions would allow brewers greater flexibility in labeling their kegs.

Finally, the Confederated Tribes of the Chehalis Reservation questioned the impact that the requirement, in proposed § 7.51(a), to firmly affix labels would have on growlers. The commenter asked that the regulations clarify that refillable beer containers, such as growlers, which are refilled at the request of consumers at the point of sale, do not need to be firmly affixed with product information.

TTB Response

After reviewing the comments, TTB has decided to finalize, as proposed in § 7.51(a), the requirement that labels be firmly affixed to containers, and expand

the exception for keg labels proposed in § 7.51(b). Recognizing the points made in the comments by the Beer Institute, the Brewers Association, and MicroStar Logistics, TTB is providing an exception to the ''firmly affixed'' requirement for kegs to incorporate certain types of non-adhesive keg collars or tap covers.

This final rule provides that a keg collar or tap cover is considered to be firmly affixed if removal would break or destroy the keg collar or tap cover in such a way that it cannot be reused. Because any attempt at removal will break the keg collar or tap cover, or render it unfit for reuse, this provision allows non-adhesive keg collars and tap covers but mitigates the risk that labels simply could be switched between kegs. TTB believes this additional option will reduce the burden on breweries of removing and replacing keg labels and recognizes the use of third party keg providers. Although the Brewers Association described various controls and requirements that deter intentional mislabeling of kegs in commerce, TTB believes that allowing keg labels that could be switched from one keg to another with minimal effort presents an undue risk of fraud or deliberate tampering that would result in consumer deception.

Any keg collar or tap cover that is either broken or destroyed and rendered unfit for reuse upon removal would be eligible for the exception under § 7.51(b)(1), including those that utilize tamper-resistant or tamper-evident seals, leave evidence of tampering behind, or are intended to be self-adhering as opposed to adhering directly to a keg. While some commenters suggested that TTB allow keg collars and tap covers that cannot be removed without ''deliberate effort,'' TTB finds that such a standard would be difficult to define and communicate, and would risk being unenforceable in practice.

TTB is also finalizing the exception proposed in Notice No. 176 that allows for placement of mandatory information on keg collars and tap covers that are not firmly affixed. The exception is now set forth below at § 7.51(b)(2). It provides that a keg collar or tap cover is not required to be firmly affixed if the name of the bottler or importer is permanently or semi-permanently stated on the keg in the form of embossing, engraving, or stamping, or through the use of a sticker or ink jet method. TTB has added the words ''or importer'' to clarify that the exception applies both to domestically brewed and imported malt beverages.

In both § 7.51(b)(1) and (b)(2), TTB is clarifying that these provisions apply only to keg collars and tap covers that meet the definitions of these terms in § 7.1, as finalized by this rule. TTB did not receive comments in response to the proposed definitions of ''keg collar'' or ''tap cover'' in § 7.1, which were proposed to provide clarity on the meaning of these terms in the context of the exception proposed at § 7.51(b).

In response to comments by the Beer Institute and Beverly Brewery Consultants, TTB is providing additional flexibility by reducing the minimum capacity of kegs to which § 7.51(b)(1) and (b)(2) apply, from the proposed 10 gallons to 5.16 gallons. Both of these commenters described common keg sizes used by brewers with a capacity of less than ten gallons, including ''sixth barrel'' kegs, which have a capacity of one-sixth of a 31-gallon barrel (or approximately 5.16 gallons). In Notice No. 176, TTB proposed the exception to the requirement that labels be firmly affixed to containers because kegs are intended to be reused and brewers had expressed that it takes considerable effort to remove and replace adhesive labels on kegs. TTB stressed that the proposed exception would afford additional flexibility without sacrificing consumer protection. This remains the case for kegs with a minimum capacity of 5.16 gallons. Such kegs are generally reused by brewers and delivered to bars or restaurants that dispense malt beverages to consumers, whereas smaller containers, such as one gallon kegs, typically are not reused and are often sold directly to consumers. For these reasons, TTB believes reducing the minimum keg capacity from the proposed 10 gallons to 5.16 gallons will ease the burden on industry members, particularly small brewers, of labeling and relabeling kegs while maintaining adequate consumer protections.

In response to the Brewers Association and MicroStar Logistics comments requesting changes to the requirement that labels be firmly affixed to containers, which appears in § 7.51(a), TTB notes that it did not propose changes to this standard. The standard, that generally labels must be affixed such that they ''cannot be removed without thorough application of water or other solvents,'' represents TTB's general requirement for labels in the malt beverage industry. This standard also exists in the wine and distilled spirits regulations. Because TTB did not propose changes to this standard, it finds that this option was not adequately aired for comment in the notice, and thus will consider it for further rulemaking.

The Confederated Tribes of the Chehalis Reservation asked TTB to clarify what impact the requirement to firmly affixed labels to containers under proposed § 7.51 would have on growlers. Section 7.51 does not create new requirements for growlers, which TTB considers to be bottles or glasses, depending on how they are used. See TTB Beer FAQs B9, What is TTB's policy with respect to ''growlers''?,'' available at *https://www.ttb.gov/beer/beer-faqs.*

Proposed § 7.51(a), requiring that labels be firmly affixed to containers of malt beverage, was derived from current TTB regulatory requirements. The exception described above only applies to malt beverages in kegs of 5.16 gallons or more.

In response to the Beer Institute's request that TTB clarify that brewers may use trade names in lieu of actual corporate names and provide guidance on the proposal as applied to contract brewing, TTB notes that § 7.51 only addresses how labels must be affixed to containers. The name and address statements required to appear on labels are described in part 7, subpart E, in §§ 7.66–7.68. TTB is therefore addressing this comment in the discussion of those sections below. In response to the NBWA request that TTB clarify that brewers are responsible for affixing keg collars before kegs leave the brewery, TTB refers the commenter to the discussion above under part 7 subpart A. Section 7.3(c) of that subpart states in relevant part that brewers and wholesalers may only introduce in interstate or foreign commerce malt beverages in containers that are marked, labeled, and branded in accordance with the labeling requirements of part 7. TTB notes that subject to the jurisdictional limits of the FAA Act, the law clearly prohibits the sale or shipment in interstate or foreign commerce of wine, distilled spirits, or malt beverages that are not bottled, packaged, and labeled in accordance with regulations issued by the Secretary. See 27 U.S.C. 205(e).

TTB is making two additional technical changes to proposed § 7.51. First, for clarity, TTB is changing the title of § 7.51 from ''Firmly affixed requirements.'' to ''Requirements for firmly affixed labels.'' Second, TTB is moving the second sentence from proposed § 7.51(b) to a separate paragraph (c). This provision states, ''This section in no way affects the requirements of part 16 of this chapter regarding the mandatory health warning statement.'' Part 16 contains TTB's requirements implementing the Alcoholic Beverage Labeling Act of 1988

(ABLA), which requires that a specific health warning statement appear on the labels of all containers of alcohol beverages for sale or distribution in the United States. See 27 U.S.C. 215. Part 16 contains a separate requirement that the health warning statement be firmly affixed to alcohol beverage containers. See § 16.22(c). TTB is therefore making this change to further clarify that none of the provisions in § 7.51 affect the regulatory requirements under part 16.

4. Subpart E—Mandatory Label Information

Subpart E in part 7 sets forth the information that is required to appear on malt beverage labels (otherwise known as ''mandatory information''). Proposed changes specific to malt beverages included removing restrictions on where mandatory information may appear on malt beverage labels, allowing alternative statements of alcohol content (such as alcohol by weight), expanding the tolerance for statements of alcohol content, clarifying the permissible name and address statements for brewers and bottlers, and codifying TTB's policy that statements of net contents may be expressed in metric units in addition to U.S. standard measures. For more information on the specific part 7 subpart E proposals, please refer to Notice No. 176, Section II.E.4. In the case of allowing alternative statements of alcohol content (such as alcohol by weight), TTB finalized this change in T.D. TTB–158. Regarding name and address statements for brewers and bottlers of malt beverages, TTB discussed these requirements along with similar requirements for wine and distilled spirits regulations above in Section II.A.6.d.

a. Placement of Mandatory Information

In Notice No. 176, TTB proposed in § 7.63 a provision to allow mandatory information to appear on any label on a malt beverage container. TTB is finalizing this proposal. TTB's current regulations require certain mandatory information to appear on a ''brand label,'' while other mandatory information or additional information could appear on any label. Our current regulations define brand label as ''[t]he label carrying, in the usual distinctive design, the brand name of the malt beverage.'' TTB proposed to remove this requirement because in practice, many malt beverage labels wrap around the container. As a result, mandatory information often appears anywhere on certain cans or bottles.

TTB did not receive any comments for or against this change specifically as applied to malt beverages. Therefore § 7.63 is finalized as proposed.

TTB notes that it may take some time to make conforming changes to the COLAs Online system to remove references to a ''brand label.'' COLA applicants may, in the interim, simply designate in COLAs Online any label bearing the brand name as the ''brand label.''

b. Alcohol Content Statements for Malt Beverage Labels

In Notice No. 176, TTB proposed to increase the alcohol content tolerance for malt beverages from 0.3 percent above or below the labeled alcohol content to 1 percent above or below. However, TTB is not finalizing this proposal. TTB made this proposal with the understanding that some brewers, especially small brewers, avoid putting optional alcohol content statements on malt beverage labels because of difficulty maintaining precise alcohol content from batch to batch. Currently, alcohol content statements must only be included on malt beverage labels if the product contains alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol. TTB stated that it believed increasing the tolerance for malt beverage alcohol content statements would encourage more brewers to include such statements when they are otherwise optional. TTB stated that it did not believe that a one percentage point variation from the labeled alcohol content would significantly impact consumers. TTB noted that under both its current regulations, and those finalized by this rule at § 7.65(c)–(e) below, the alcohol content tolerance is restricted in the case of malt beverages labeled with the statements ''low alcohol,'' ''reduced alcohol,'' ''non-alcoholic,'' and ''alcohol free.'' For example, alcohol content for malt beverages labeled as ''low alcohol'' or ''reduced alcohol'' must be less than 2.5 percent alcohol by volume. Likewise, malt beverages labeled ''non-alcoholic'' must contain less than 0.5 percent alcohol, and ''alcohol free'' malt beverages must contain no alcohol.

Four commenters, the Brewers Association, the Beer Institute, Beverly Brewery Consultants, and a team of professors from Abertay University and Heriot Watt University in Scotland, commented on TTB's proposed alcohol content tolerance for malt beverages in § 7.65. Beverly Brewery Consultants supported the proposed increase, noting that fermentation may result in batches of the same product that vary by alcohol content. The Brewers Association also supported the proposed increase in the alcohol content tolerance. The Brewers Association proposed that TTB require disclosure of alcohol content on malt beverage labels, provided it increased the tolerance as proposed. Prior to the publication of Notice No. 176, in its response to the Treasury Department's RFI, the Brewers Association also suggested maintaining the existing tolerance of plus or minus 0.3 percent for malt beverages below 5 percent alcohol-by-volume (ABV) and increasing the tolerance to plus or minus 0.5 percent for malt beverages with an alcohol content at or above 5 percent ABV.

The Beer Institute opposed the proposed increase of the alcohol tolerance for malt beverages. It stated that the proposed increase was too great and would undermine provisions of the FAA Act that direct the Secretary to promulgate regulations that prevent consumer deception, provide adequate information to consumers, and prohibit false or misleading statements. Further, the Beer Institute stated that the increase could confuse, mislead, and possibly endanger consumers due to higher than labeled alcohol content. The Beer Institute also expressed concern about the relationship of an increased tolerance to other TTB requirements, such as the labeling of low or reduced alcohol malt beverages and the use of optional Serving Facts statements. It raised concerns that brewers might use the increased tolerance to either save costs by brewing near the low end of the tolerance, or provide more alcohol than is labeled by brewing at the high end. The Beer Institute recommended keeping the current tolerance, which it stated balances the technical challenges of brewing with the consumer interest in predictable alcohol content.

The team of professors supported the proposed increase and submitted the results of a study of beers brewed in the United Kingdom showing that a significant fraction fell outside a tolerance of plus or minus 0.3 percent.

TTB Response

TTB is not finalizing the proposal to increase the alcohol content tolerance for malt beverages from 0.3 percent to 1 percent. Commenters have raised important issues in support of, and in opposition to, the proposal. The comments from the Brewers Association, Beverly Brewery Consultants, and the team of professors supported an expanded tolerance and observed that some brewers have difficulty maintaining precise alcohol content in malt beverages from batch to batch. However, TTB notes that the

Brewers Association's comment to the RFI sought a smaller increase (to plus or minus 0.5 percent) for those malt beverages with an alcohol content at or above 5 percent alcohol by volume, and no increase at all for other malt beverages.

TTB notes that it does not agree with a comment from the Beer Institute, which stated that an increased alcohol content tolerance would allow malt beverages labeled as ''low alcohol'' to contain one percentage point more alcohol than is labeled. This is not the case. As noted above, § 7.65 maintains the alcohol tolerance limitations from TTB's current regulations, including for malt beverages labeled as low or reduced alcohol. Under § 7.65(d), as finalized, alcohol content for such malt beverages must be less than 2.5 percent alcohol by volume regardless of the otherwise permitted tolerance.

Regarding the issue of increasing the tolerance for alcohol content, the Brewers Association appeared to request that disclosure of alcohol content be made mandatory for all malt beverages, and that TTB should increase the tolerance as part of such a change. In Notice No. 176, TTB stated that it was not proposing to expand the types of malt beverages for which an alcohol content statement would be mandatory. Accordingly, TTB finds that aspect of the Brewers Association comment to be outside the scope of this rulemaking.

Based on the comments received in response to the proposal on alcohol content tolerances, TTB has concluded that whether the alcohol content tolerance for malt beverages should be increased requires further consideration. As a result, TTB is finalizing § 7.65 without changing the alcohol content tolerance for malt beverages. The tolerance remains 0.3 percent above or below the stated alcohol content, subject to the limitations described in § 7.65. TTB will treat the Brewers Association comment as a request for further rulemaking on this issue.

TTB is also finalizing proposed § 7.65(b) with minor modifications. In T.D. TTB-–158, TTB amended existing regulations on alcohol content statements to provide that, while a statement of alcohol content must be expressed as a percentage of alcohol by volume, other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume. This document incorporates this amendment, with minor clarifying changes. Consistent with current regulations, the final rule clarifies that § 7.65 applies only where State law does not either prohibit alcohol content statements or provide its own requirements for the manner of such statements. The final rule also removes, as unnecessary, language clarifying that a mandatory alcohol content statement may not be expressed as a range or by maximums or minimums.

c. Net Content Labeling for Malt Beverages

In Notice No. 176, TTB proposed at § 7.70 to amend the net content labeling regulations for malt beverages to reflect current policy by specifically stating in the regulations that malt beverages may be labeled with the equivalent metric measure in addition to the mandatory U.S. measure. (As explained further below, the notice referred to ''U.S. standard measures'' to mean U.S. customary units of measurement, *e.g.,* U.S. gallons, quarts, pints, and fluid ounces). TTB noted that current regulations allow for the use of U.S. standard measures, but do not address whether metric contents also may be displayed. Because current TTB policy is to allow net contents to be expressed in both formats, TTB proposed that § 7.70 allow for the statement of net contents of metric measurements in addition to, but not in lieu of, the U.S. standard measures. TTB did not receive comments for or against this proposal.

In the interim, this change was adopted in the current malt beverage net content labeling regulations by T.D. TTB–165. The summary of that final rule explained that: ''TTB is also amending the labeling regulations for distilled spirits and malt beverages to reflect current policy by specifically stating in the regulations that distilled spirits may be labeled with the equivalent standard United States (U.S.) measure in addition to the mandatory metric measure, and that malt beverages may be labeled with the equivalent metric measure in addition to the mandatory U.S. measure.''

Separately, in response to the Treasury Department's RFI, the Brewers Association suggested that, for malt beverage containers with volumes of between one pint and one quart, TTB should allow the expression of net contents as fluid ounces only. Currently, net contents for containers of this size must be expressed as fractions of a quart, or in pints and fluid ounces.

TTB Response

Because TTB did not receive comments on its proposal to allow the statement of net contents in metric measurements in addition to, but not in lieu of, the U.S. standard measures, and because this change has already been made in the regulations as amended by T.D. TTB–165, TTB is finalizing § 7.70 as proposed. TTB is making a minor editorial revision to refer to the U.S. standard measures as ''U.S. customary units of measurement.'' While both terms have the same meaning, TTB finds that the term ''customary'' describes this system of measurement more accurately than the term ''standard.''

In response to the RFI comment from the Brewers Association, TTB notes that it did not propose changes to the permissible format of U.S. standard units. It is not clear whether industry members and consumers were given adequate notice that such formatting requirements were subject to change. TTB is therefore not adopting this suggestion from the Brewers Association. TTB may consider changes to the permissible formats for net contents statements in a future rulemaking.

5. Subpart H—Labeling Practices That Are Prohibited if They Are Misleading

In Notice No. 176, TTB proposed, in subpart H of parts 4, 5, and 7, regulations on labeling practices that are prohibited if they are misleading. See section II.B.6. TTB responds above to comments on proposals that apply similarly to wine, distilled spirits, and malt beverages. See section II.A.7.h. Regarding malt beverages specifically, TTB is incorporating in § 7.128 text from TTB's current regulations, which prohibits malt beverage labels from containing statements or representations that tend to create a false or misleading impression that a malt beverage contains distilled spirits or is a distilled spirits product. TTB is also adding in § 7.128(b)(4), based on current guidance, a provision that truthful and accurate statements about production of a malt beverage, such as ''aged in whisky barrels,'' do not violate this standard. See TTB Ruling 2015–1.

Finally, based on comments received, TTB is not finalizing proposed § 7.131, which contained a prohibition from TTB's current regulations on the use of the term ''bonded'' or similar terms that may imply governmental supervision over the production, bottling, or packing of a malt beverages product. TTB does not believe a separate regulation is necessary in this area and is opting to rely on its general prohibition against statements or representations, irrespective of falsity, that tend to mislead consumers.

a. Claims Related to Distilled Spirits

In Notice No. 176, TTB proposed regulations at §§ 4.128, 5.128, and 7.128 prohibiting labeling statements that tended to create a false or misleading impression that products of one commodity contain or are themselves a different commodity. In the case of malt beverages, the proposed regulation at § 7.128 prohibited labeling statements that would create a misleading impression that a malt beverage product contained or was itself a distilled spirit or wine product. The proposed regulations also would have prohibited homophones or coined words that simulate or imitate a class or type designation of a different commodity. TTB proposed this requirement based on its receipt of increasing numbers of applications for approval of labels that contained such terms.

In T.D. TTB–158, TTB decided not to finalize proposed §§ 4.128, 5.128, and 7.128, stating in response to comments that ''a blanket approach to cross-commodity terms * * * could unnecessarily restrict creativity in the use of truthful and non-misleading representations on labels.'' However, as discussed in Notice No. 176, current TTB regulations continue to prohibit misleading representations that a malt beverage product contains or is itself a distilled spirit product. See 27 CFR 7.29(a)(7). TTB received two comments in relation to this current regulation. The Beer Institute, although it opposed the language in proposed § 7.128, which took a more expansive approach to cross-commodity terms in general, supported TTB's current regulation. The Williams Group, however, commented that both TTB's current and proposed regulations limit producers' freedom to be creative. The Williams Group also stated that consumers are able to read labels and determine the type of commodity.

Both proposed § 7.128 and TTB's current regulation at § 7.29(a)(7) listed three types of labeling statements that TTB does not consider to create a false or misleading impression that a malt beverage contains distilled spirits or is a distilled spirits product. They are truthful and accurate statements of alcohol content, the use of a brand name of a distilled spirits product as a malt beverage brand name, or the use of a cocktail name as a brand name or distinctive or fanciful name. In Notice No. 176, TTB proposed to add items to this list. First, TTB proposed to allow truthful and accurate statements about the production of a malt beverage, such as ''aged in whisky barrels'' or ''Beer brewed with chardonnay grapes.'' This provision was based on labeling guidance in TTB Ruling 2014–4. TTB notes that Ruling 2014–4 was superseded by TTB Ruling 2015–1, which includes the content of Ruling 2014–4 in its entirety. Second, based on provisions in the Beverage Alcohol Manual for malt beverages, TTB proposed to allow the use of the designations ''barley (or wheat or rye) wine ale'' or ''barley (or wheat or rye) style wine ale.'' Third, TTB proposed to add a new provision, permitting ''[t]he use of terms that simply compare malt beverage products to wine or distilled spirits products without creating a misleading impression as to the identity of the product.''

The Beer Institute opposed adding these three items, on the grounds that TTB personnel in the future may interpret the exceptions as defining the limits of what labeling claims or statements related to non-malt beverage products may be used. In contrast, Beverly Brewery Consultants supported listing specific terms in the regulations to clarify to brewers that use of these terms on labels is permissible. TTB notes that while the Beer Institute opposed proposed § 7.128, it did not oppose the existing restrictions from the prior regulation at § 7.29(a)(7) and recommended that such restrictions be extended to wine product labels. Finally, Beverly Brewery Consultants expressed concern that the proposed regulation could impact currently permissible statements on malt beverage labels, such as those comparing malt beverage products to ''champagne.''

TTB Response

TTB is finalizing at § 7.128 its current regulation from § 7.29(a)(7), which prohibits malt beverage labels from containing statements or representations that tend to create a false or misleading impression that a malt beverage contains distilled spirits or is distilled spirits product.'' In response to the Williams Group, TTB believes its current regulation does not limit product innovation, because statements or representations related to distilled spirits are still permitted, provided they do not create a false or misleading impression about the identity of the product. For the same reason, TTB believes this provision is necessary for consumer protection.

TTB is also finalizing the provision proposed at § 7.128(b)(4), which incorporates current guidance to state that truthful and accurate statements about the production of a malt beverage, such as ''aged in whisky barrels'' are not prohibited. However, TTB is not including the proposed examples relating to the use of grapes in the production of beer (''fermented with grapes'' and ''Beer brewed with chardonnay grapes''), because they relate to the proposed regulatory language about misleading cross-commodity comparisons with wine, which was not finalized. Similarly, this final rule makes conforming changes to § 7.143(h)(3), which describes designations related to barrel aging that TTB would consider misleading, to remove examples of designations that mention wine or grapes. These types of claims remain subject to the general prohibition against misleading labeling statements.

TTB is also not finalizing in § 7.128 the proposed provision permitting terms ''barley (or wheat or rye) wine ale'' or ''barley (or wheat or rye) style wine ale,'' because they also relate specifically to claims related to wine. TTB's policy permitting these terms remains in effect, as reflected in the class and type regulations that are finalized at § 7.143(g).

TTB is also not finalizing the provision permitting labeling statements that simply compare malt beverage products to wine or distilled spirits products, without creating a misleading impression as to the identity of the product. Upon further review, this provision does not provide additional clarity over and above the general prohibition in § 7.128(a), that labels may not create a false or misleading impression that a malt beverage contains distilled spirits or is a distilled spirits product.

b. Use of the Term ''Bonded''

In proposed § 7.131, TTB maintained a provision from its current regulations that prohibited the use on malt beverage labels of the term ''bonded'' or similar terms that may imply governmental supervision over the production, bottling, or packing of the product. TTB sought comments, however, on whether it should continue to prohibit the use of such terms on malt beverage labels.

Two commenters responded to TTB's proposal. The Williams Group and Beverly Brewery Consultants both stated that the prohibition is unnecessary and outdated. The Williams Group stated that the term had little meaning and would not mislead consumers or cause them to believe that distilled spirits had been added to a malt beverage. Beverly Brewery Consultants stated that there did not appear to be a need to retain the prohibition. TTB also notes that the Brewers Association submitted a comment in response to the Treasury Department's RFI stating that there is no reason to prohibit the use of the word

''bonded'' on malt beverage labels because the word ''has no meaning related to malt beverages.''

TTB Response

Based on the comments received, TTB is eliminating the prohibition on the use of the word ''bonded'' or similar terms on malt beverage labels. Commenters generally stated that use of the term ''bonded'' or similar terms on malt beverages labels would not tend to mislead consumers. TTB notes that the general prohibition in § 7.122 against statements or representations, irrespective of falsity, that mislead consumers is finalized as proposed. This provision extends to labeling statements that use the term ''bonded'' or similar terms in a misleading fashion, for example, implying government supervision or certification that actually was not provided. Such uses would be prohibited under TTB's general prohibition on misleading labeling. See 27 CFR 7.102.

6. Subpart I—Class and Type

In Notice No. 176, TTB proposed to reorganize and amend its class and type designations for malt beverages. These regulations appear in current § 7.24 and were proposed to be reorganized into part 7 subpart I, §§ 7.141–7.147.

Part 7 does not prescribe standards of identity for malt beverages. Instead, current § 7.24(a) provides that statements of class and type for malt beverages shall conform to the designation of the product as known to the trade. If the product is not known to the trade under a particular designation, a distinctive or fanciful name, together with an adequate and truthful statement of composition of the product, shall be stated, and such statement is treated as a statement of class and type for purposes of part 7.

TTB did not propose now to include specific standards of identity. Proposed § 7.141 is derived from 27 CFR 7.24(a) and sets out standards for class and type designations on malt beverages. This section explains that the class of the malt beverage must be stated on the label. The type may optionally be stated. Statements of class and type must conform to the designation of the product as known to the trade. If the product is not known to the trade, the product must contain a distinctive or fanciful name as well as a statement of composition.

Proposed § 7.141 differs from the current regulations in that it proposes to define a ''malt beverage specialty'' as a malt beverage that does not fall under any of the class designations set forth in part 7 and is not known to the trade under a particular designation, usually because of the addition of ingredients such as colorings, flavorings, or food materials, or the use of certain types of production processes. Such beverages will not be designated as ''malt beverage specialties'' on the label, but the term reflects current usage and is a convenient way to refer to such products in the regulations.

Proposed § 7.142 sets out class designations. Any malt beverage may be designated simply as a ''malt beverage.'' The designations ''beer'', ''ale'', ''porter'', ''stout'', ''lager'', and ''malt liquor'' may be used to designate malt beverages that contain at least 0.5 percent alcohol by volume and that conform to the trade's understanding of those designations. TTB proposes to allow these designations to be preceded or followed by descriptions of the color of the product (such as brown, red, or golden).

Proposed § 7.143 is largely consistent with existing regulations on class and type designations. There are new proposed provisions for ''ice beer,'' ''wheat beer,'' ''rye beer,'' and ''barley wine ale,'' consistent with existing TTB policy.

The proposed regulations in proposed §§ 7.143(h) and 7.144 reflect changes adopted in TTB Ruling 2014–4 (which was then superseded by TTB Ruling 2015–1) with respect to the labeling of malt beverage products fermented or flavored with honey, certain fruits, and certain spices. In response to a petition from the Brewers Association, TTB exempted certain malt beverages from the formula requirements under part 25, and liberalized the labeling rules applicable to these products. We proposed to codify these labeling standards in the regulations.

Malt beverages that are not ''known to the trade'' are required to be labeled with a statement of composition. Proposed § 7.147 sets forth provisions for statements of composition on malt beverages. These provisions reflect current policy. Specifically, a statement of composition is required to appear on the label for malt beverage specialty products, as defined in proposed § 7.141(b), which are not known to the trade under a particular designation. For example, the addition of flavoring materials, colors, or artificial sweeteners may change the class and type of the malt beverage. The statement of composition along with a distinctive or fanciful name serves as the class and type designation for these products.

TTB notes that this final rule does not adopt the proposed regulations regarding the use of geographical names on malt beverage labels in §§ 7.142(c) and 7.146.

Instead, due to issues raised by commenters relating to compliance with international agreements to which the United States is a party, TTB is retaining its geographical names regulations under current § 7.24(f)–(h), codifying them at § 7.146 with organizational changes only. This determination is discussed in Section II.A.8.a. Otherwise, TTB is finalizing §§ 7.141–7.147 as proposed, with only minor changes as discussed below.

a. General Support and Opposition

TTB received one comment generally in favor of the reorganized class and type regulations changes, and one opposed. Beverly Brewery Consultants supported the reorganization of TTB's class and type regulations, stating that it was more logical and would enable users to find information more easily. Beverly Brewery Consultants also supported the proposed definition of ''malt beverage specialty products'' at § 7.141. The Brewers Association, however, opposed the proposed regulations at §§ 7.141–7.144 and 7.147, stating that they ''are based on longstanding concepts used in distilled spirits labeling and advertising regulations'' which ''are not generally understood by brewers and would necessitate many changes in existing labels and advertisements.'' The association requested that TTB retain the language addressing class and type found in the current regulations in § 7.24. Finally, Beverly Brewery Consultants suggested editorial changes at § 7.141(b) for clarity by breaking up the text into multiple sentences.

TTB Response

In response to the Brewer's Association's comment questioning the use of certain concepts, TTB believes the comment potentially refers to the terms ''malt beverage specialty products'' and ''distinctive or fanciful name.'' The inclusion of these terms does not reflect substantive changes to the class and type regulations for malt beverages. Under both TTB's current and proposed regulations, statements of class and type must conform to the designation of the product as known to the malt beverage trade, and if the product is not known to the trade, it must be labeled with a distinctive or fanciful name as well as a statement of composition.

Proposed § 7.141 designated such products not known to the trade under a particular designation as ''malt beverage specialty products.'' Thus, while the term ''malt beverage specialty

products'' is new to the regulations, the concept is not new to the malt beverage industry. It currently appears in Formulas Online and COLAs Online and is merely a way to refer to those products ''not known to the trade.'' TTB also notes that the term ''distinctive or fanciful name'' appears in TTB's current malt beverage class and type regulations. See 27 CFR 7.24(a). The inclusion of these terms will not result in changes to existing malt beverage labels or advertising because the substantive provisions are the same in both the current and proposed regulations and the terms themselves are not required to appear on labels.

In response to Beverly Brewery Consultant's editorial comments, TTB reviewed the text for clarity and found that it sufficiently communicates TTB's requirements.

b. Oak Barrels

TTB proposed in § 7.143(h) to expressly permit non-misleading labeling statements that describe malt beverages aged in barrels or with woodchips, spirals, or staves derived from barrels. TTB is finalizing § 7.143(h) as proposed. Paragraph (h)(2) of this section provided examples of acceptable designations such as ''beer aged in an oak barrel,'' ''bourbon barrel aged honey ale,'' and ''wine barrel aged beer.'' NABI noted that in Notice No. 176, TTB proposed a definition of ''oak barrel'' in its part 5 regulations regarding the labeling of distilled spirits and asked that TTB clarify what is meant by the term ''oak barrel'' as it appears in § 7.143(h).

TTB Response

TTB does not believe it is necessary to add a separate definition of ''oak barrel'' in part 7. Section 7.143(h) describes statements relating to barrel aging of malt beverages, and is not limited to oak barrels. TTB also notes that it previously declined to finalize the proposed definition of ''oak barrel'' for purposes of distilled spirits labeling. See T.D. TTB–158.

c. Comments on Existing and Additional Designations

As noted above, TTB proposed in § 7.142(b)(1) to expressly allow descriptions of color (*e.g.,* ''amber,'' ''brown,'' or ''red'') and descriptive terms (*e.g.,* ''dry,'' ''cream,'' or ''pale''). TTB also proposed to recodify at § 7.142(b)(2) a provision from TTB's current regulations at § 7.24(e) stating the requirement that: ''No product other than a malt beverage fermented at a comparatively high temperature, possessing the characteristics generally attributed to 'ale,' 'porter,' or 'stout' and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) may bear any of these class designations.'' Among other type designations, proposed § 7.143 included a new proposed definition for ''black and tan,'' describing it as a product containing two classes of malt beverage with the names of the two classes displayed together along with the term ''black and tan,'' for example, ''Black and Tan, Stout and Ale.''

Beverly Brewery Consultants suggested adding the terms ''session'' and ''imperial'' to the descriptive terms allowed with class designations included in proposed § 7.142. The Brewers Association submitted comments relating to class-and-type issues in its response to the Treasury Department's RFI. In those comments, the association recommended removing the requirement that products labeled as ''ale,'' ''porter,'' and ''stout'' must be fermented at a comparatively high temperature. The Brewers Association states that ale may be brewed at lower temperatures than in the past because ''modern brewing practice utilizes many yeast strands.'' TTB notes that the association did not specifically address this issue in its comments on Notice No. 176.

Finally, Beverly Brewery Consultants suggested that TTB amend its definition of ''black and tan'' in proposed § 7.143. The comment recommended that because this designation does not imply equal parts of the two classes, a minimum quantity of at least 25 percent of one of the classes should be a requirement for this designation.

TTB Response

TTB did not propose to incorporate into the regulations the additional descriptive terms that Beverly Brewery Consultants requested (''session'' and ''imperial''), but will consider this as a suggestion for future rulemaking. TTB will continue its policy of allowing such terms on labels.

TTB also declines to remove the requirement that ales, porters, and stouts be fermented at a comparatively high temperature, which was simply a reissuing of TTB's current regulation, set forth with only a minor typographical change. Because TTB did not air for public comment any revisions to these longstanding regulatory provisions, it would not be appropriate to adopt changes in this final rule. TTB will consider these comments as suggestions for future rulemaking.

Regarding the proposed type designation for ''black and tan,'' TTB's Beverage Alcohol Manual for Malt Beverages (TTB P 5130.3) currently provides that this type designation covers products where two classes of malt beverage are present in the product, and both classes are stated on the label in conjunction with the words ''black and tan.''

The comment from Beverly Brewery Consultants suggested that a minimum quantity of at least 25 percent of one of the classes should be a requirement for this designation. However, by definition, if the product is composed of only two different classes, at least one of the classes would always make up at least 25 percent of the product. If the commenter meant to instead suggest that each one of the classes should make up at least 25 percent of the finished product, TTB notes that Beverly Brewery Consultants did not articulate, and TTB is not aware of, any reason to believe that such a requirement is necessary in order to avoid consumer deception. Furthermore, such a requirement would also restrict industry flexibility. TTB sees no reason to further restrict the use of the term. Accordingly, TTB is finalizing the proposed type designation in § 7.143.

*D. Amendments of the Advertising Regulations*

In Notice No. 176, TTB proposed to consolidate its alcohol beverage advertising regulations in a new part, 27 CFR part 14, Advertising of Wine, Distilled Spirits, and Malt Beverages. The proposed part 14 contained only those updates needed to conform certain regulated practices to the updates being proposed for the labeling provisions. Additional updates to the regulations on advertising to address contemporary issues, such as social media, in more detail were not proposed, but TTB stated that such amendments might be proposed in future rulemaking initiatives.

In this final rule, TTB is not moving forward with the reorganization of the advertising regulations into a part 14. Instead, this final rule simply retains the existing regulations on advertising in parts 5 and 7 with minor modifications. As explained earlier, this final rule does not amend the labeling or advertising regulations in part 4, which relate to wine. Instead, TTB plans to address these issues in a future rulemaking, which will reorganize part 4 in a manner similar to the way in which parts 5 and 7 are being reorganized, and which will also address the substantive issues raised by the commenters on the labeling and advertising of wine. At that

time, TTB will also pursue the reorganization of the advertising regulations pertaining to wine, distilled spirits, and malt beverages in a new part 14, as proposed in Notice No. 176.

Pending the reorganization of the advertising regulations into a proposed part 14, this final rule simply retains the existing regulations on advertising in parts 5 and 7, with minor modifications for consistency with changes that were made to the labeling regulations in this final rule. For example, this final rule adopts changes to the advertising regulations to conform to amendments made to the labeling regulations on the use of flags, the use of disparaging statements about competitors, and statements relating to guarantees. These changes are liberalizing in nature. The final rule also includes minor clarifications in § 7.235, consistent with the proposed rule, to clarify that the advertising regulations do not require use of an approved label where a malt beverage container is not subject to the COLA requirements under part 7.

TTB is adding a paragraph to § 5.235 and § 7.235 stating that the use of the term ''organic'' in advertising must comply with the United States Department of Agriculture's National Organic Program rules. This is consistent with the current advertising regulations and is consistent with the finalized labeling regulations.

In §§ 5.234 and 7.234, the provision on the legibility of mandatory information is revised to include clarifying changes from the proposed rule.

The advertising regulations have also been amended to modify the definition of ''Advertisement or Advertising'' to include internet and social media advertisements, as proposed in Notice No. 176. The inclusion of internet and social media advertisements in the definition of ''advertisement'' reflects current TTB policy, and is simply a clarifying change in the part 5 and part 7 regulations. See TTB Industry Circular 2013–1, ''Use of Social Media in the Advertising of Alcohol Beverages,'' dated May 13, 2013, in which TTB noted that the ''regulations list specific types of advertising, including 'any other media.' TTB interprets 'any other media' in the regulations to apply to advertising in all types of media, including types of media that did not exist when the regulations were originally adopted.'' The Industry Circular clarifies that internet advertising and social media advertising, among other types of advertising, are subject to the requirements of the FAA Act and its implementing regulations. That policy will continue to apply to advertisements of wine, distilled spirits, and malt beverages. At this time, TTB is not addressing the more substantive comments that were received with regard to ways in which the TTB regulations should address those issues.

Finally, the numbering of the sections in the subparts on the advertising regulations has changed, due to the reorganization of the labeling regulations in parts 5 and 7.

*E. Impact on Public Guidance Documents*

The chart below describes the impact of this final rule on rulings, industry circulars, and other public guidance documents issued over the years by TTB and its various predecessor agencies. The following public guidance documents will be superseded by the publication of a final rule:

| Document No. | Subject | Incorporated into proposed sections at: |
|---|---|---|
| **Cross Cutting** | | |
| Industry Circular 1963–23 | Use of Disparaging Themes or References in Alcoholic Beverage Advertising is Prohibited. | Not incorporated. |
| **Distilled Spirits** | | |
| Revenue Ruling 54–592 | Relabeling Tax Paid Distilled Spirits | § 5.42. |
| Revenue Ruling 55–399 | Straight Whiskey | Not Incorporated. |
| Revenue Ruling 61–15 | Labeling of Scotch Whisky | § 5.90(b). |
| Revenue Ruling 61–25 | Distilled Spirits Labeling | §§ 5.141 and 5.143. |
| Revenue Ruling 61–71 | Use of the Word Straight in Labeling and Advertising of Liqueurs or Cordials. | § 5.150(a). |
| Revenue Ruling 62–224 | Relabeling by Wholesale Liquor Dealer | § 5.42. |
| Revenue Ruling 68–502 | Light Whisky from Kentucky | § 5.66(f)(3). |
| Revenue Ruling 71–535 | Labels on Imported Alcohol Beverages | § 5.68. |
| ATF Ruling 79–9 | Distilled Spirits Labels | § 5.87. |
| ATF Ruling 88–1 | Alcohol Content on Labels and in Advertisements of Distilled Spirits. | § 5.65. |
| ATF Ruling 93–3 | Age Statements on Grappa Brandy | § 5.74(c). |
| ATF Ruling 94–5 | Geographical Names | § 5.143 and § 5.145(c)(2)–(5). |
| ATF Ruling 2001–2 | Country of Origin Statements on Distilled Spirits Labels. | § 5.69. |
| Industry Circular 1971–7 | Protection of Names of Bourbon Whiskey and Certain French Brandies. | §§ 5.143 and 5.145. |
| Industry Circular 76–28 | Production of New Charred Barrels using Used Heads. | Not Incorporated. |
| **Malt Beverages** | | |
| Revenue Ruling 71–535 | Labels on Imported Alcohol Beverages | § 7.68. |
| ATF Ruling 76–13 | Malt Beverages of Less Than ½ of 1% Alcohol by Volume Subject to FAA Act. | § 7.145. |
| ATF Ruling 94–3 (superseded only with respect to the provisions related to part 7. The part 25 provisions remain in effect.). | Ice Beer | § 7.143. |

| Document No. | Subject | Incorporated into proposed sections at: |
|---|---|---|
| ATF Procedure 98–1 | Labeling of Imported Malt Beverages Bottled or Packed in the United States, and Labeling of Blends of Imported and Domestic Malt Beverages Bottled or Packed in the United States. | §§ 7.67 and 7.69. |
| TTB Ruling 2013–1 | Malt Beverages Sold Exclusively in Intrastate Commerce. | §§ 7.4 and 7.21. |

## III. Derivation Tables for Finalized Parts 5 and 7

### 27 CFR PART 5

| Requirements of new section: | Are derived from current section: |
|---|---|
| 5.0 | 5.1. |
| **Subpart A—General Provisions** | |
| 5.1 | 5.11. |
| 5.2 | 5.1. |
| 5.3 | New. |
| 5.4 | [reserved]. |
| 5.5 | [reserved]. |
| 5.6 | [reserved]. |
| 5.7 | New. |
| 5.8 | 5.1. |
| 5.9 | [reserved]. |
| 5.10 | 5.2. |
| 5.11 | 5.3. |
| 5.12 | 5.4. |
| **Subpart B—Certificates of Label Approval and Certificates of Exemption from Label Approval** | |
| 5.21 | 5.31(a). |
| 5.22 | 5.55. |
| 5.23 | 5.55(b). |
| 5.24 | 5.51(a) and 5.55(c). |
| 5.25 | 5.51. |
| 5.27 | 5.51 and 5.55. |
| 5.28 | 5.33(g). |
| 5.29 | 5.57. |
| 5.30 | 5.52. |
| **Subpart C—Alteration of Labels, Relabeling and Adding Information to Containers** | |
| 5.41 | 5.31(b). |
| 5.42 | 5.31(b). |
| 5.43 | New. |
| 5.44 | 5.31(b). |
| **Subpart D—Label Standards** | |
| 5.51 | 5.33(e). |
| 5.52 | 5.33(a). |
| 5.53 | 5.33(b)(5) and (6). |
| 5.54 | New. |
| 5.55 | 5.33(c). |
| 5.56 | 5.33(f). |
| **Subpart E—Mandatory Label Information** | |
| 5.61 | New. |
| 5.62 | 5.41. |
| 5.63 | 5.32. |
| 5.64 | 5.34. |
| 5.65 | 5.37. |
| 5.66 | 5.36. |

### 27 CFR PART 5—Continued

| Requirements of new section: | Are derived from current section: |
|---|---|
| 5.67 | 5.36. |
| 5.68 | 5.36. |
| 5.69 | 5.36(e). |
| 5.70 | 5.38. |
| 5.71 | 5.39(a). |
| 5.72 | 5.39(b). |
| 5.73 | 5.39(c). |
| 5.74 | 5.40. |
| **Subpart F—Restricted Labeling Statements** | |
| 5.81 | New. |
| 5.82 | 5.32a. |
| 5.83 | 5.32b. |
| 5.84 | 5.71. |
| 5.85 | [reserved]. |
| 5.86 | [reserved]. |
| 5.87 | New. |
| 5.88 | 5.42(b)(4). |
| 5.89 | 5.42(b)(6). |
| 5.90 | 5.22(k)(4). |
| 5.91 | 5.42(b)(5). |
| **Subpart G—Prohibited Labeling Practices** | |
| 5.101 | New. |
| 5.102 | 5.42(a)(1). |
| 5.103 | 5.42(a)(3). |
| **Subpart H—Labeling Practices That are Prohibited if They are Misleading** | |
| 5.121 | New. |
| 5.122 | 5.42(a)(1). |
| 5.123 | 5.42(a)(5). |
| 5.124 | 5.42(a)(2). |
| 5.125 | 5.42(a)(4). |
| 5.126 | 5.42(b)(7). |
| 5.127 | [reserved]. |
| 5.128 | [reserved]. |
| 5.129 | 5.42(b)(8). |
| 5.130 | 5.42(a)(6). |
| **Subpart I—The Standards of Identity for Distilled Spirits** | |
| 5.141 | 5.22. |
| 5.142 | 5.22(a). |
| 5.143 | 5.22(b) and 5.35(c). |
| 5.144 | 5.22(c). |
| 5.145 | 5.22(d). |
| 5.146 | 5.22(e). |
| 5.147 | 5.22(f). |
| 5.148 | 5.22(g). |
| 5.149 | [reserved]. |
| 5.150 | 5.22(h). |
| 5.151 | 5.22(i). |
| 5.152 | 5.22(j). |
| 5.153 | New. |

### 27 CFR PART 5—Continued

| Requirements of new section: | Are derived from current section: |
|---|---|
| 5.154 | 5.22(k) and (l). |
| 5.155 | 5.23. |
| 5.156 | 5.35(a) and (b). |
| 5.157–5.165 | [reserved]. |
| 5.166 | New. |
| **Subpart J—Formulas** | |
| 5.191 | 5.25. |
| 5.192 | 5.26. |
| 5.193 | 5.27. |
| 5.194 | 5.28. |
| **Subpart K—Distilled spirits containers and Authorized Container Sizes** | |
| 5.201 | 5.45. |
| 5.202 | 5.46. |
| 5.203 | 5.47a. |
| 5.204 | [reserved]. |
| 5.205 | New. |
| **Subpart L—[Reserved]** | |
| **Subpart M—Penalties and Compromise of Liability** | |
| 5.221 | New. |
| 5.222 | New. |
| 5.223 | New. |
| **Subpart N—Advertising of Distilled Spirits** | |
| 5.231 | 5.61. |
| 5.232 | 5.62. |
| 5.233 | 5.63. |
| 5.234 | 5.64. |
| 5.235 | 5.65. |
| 5.236 | 5.66. |
| **Subpart O—Paperwork Reduction Act** | |
| 5.241 | New. |

### 27 CFR PART 7

| Requirements of new section: | Are derived from current section: |
|---|---|
| 7.0 | 7.1. |
| **Subpart A—General Provisions** | |
| 7.1 | 7.10. |
| 7.2 | 7.2. |
| 7.3 | 7.20(b) and (c). |
| 7.4 | 7.20(a) and New. |
| 7.5 | 7.11. |
| 7.6 | 7.6. |

27 CFR PART 7—Continued

| Requirements of new section: | Are derived from current section: |
|---|---|
| 7.7 | New. |
| 7.8 | 7.60. |
| 7.9 | [reserved]. |
| 7.10 | 7.4. |
| 7.11 | 7.3. |
| 7.12 | 7.5. |
| **Subpart B—Certificates of Label Approval** | |
| 7.21 | 7.20(b), and 7.40–7.42. |
| 7.22 | 7.40 and 7.41. |
| 7.23 | [reserved]. |
| 7.24 | 7.30 and 7.31(b). |
| 7.25 | 7.30 and 7.31. |
| 7.27 | 7.42. |
| 7.28 | 7.31(d). |
| 7.29 | 7.43. |
| **Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers** | |
| 7.41 | 7.20(c)(1). |
| 7.42 | 7.20(c)(2). |
| 7.43 | New. |
| 7.44 | New. |
| **Subpart D—Label Standards** | |
| 7.51 | 7.28(d). |
| 7.52 | 7.28(a). |
| 7.53 | 7.28(b). |
| 7.54 | New. |
| 7.55 | 7.28(c). |
| 7.56 | 7.28(e). |
| **Subpart E—Mandatory Label Information** | |
| 7.61 | New. |
| 7.62 | 7.21(b) and 7.29(h). |
| 7.63 | 7.22. |
| 7.64 | 7.23. |
| 7.65 | 7.71. |
| 7.66 | 7.25(a) and (d). |
| 7.67 | 7.25(b). |
| 7.68 | 7.25(b). |
| 7.69 | 7.25(c). |
| 7.70 | 7.27. |
| **Subpart F—Restricted Labeling Statements** | |
| 7.81 | New. |
| 7.82 | 7.22a. |
| 7.83 | 7.22b. |
| 7.84 | 7.81. |
| 7.85 | [reserved]. |
| 7.86 | [reserved]. |
| 7.87 | [reserved]. |
| **Subpart G—Prohibited Labeling Practices** | |
| 7.101 | New. |
| 7.102 | 7.29(a)(1). |
| 7.103 | 7.29(a)(3). |
| **Subpart H—Labeling Practices That are Prohibited if They are Misleading** | |
| 7.121 | New. |
| 7.122 | 7.29(a)(1) and New. |
| 7.123 | 7.29(a)(5). |

27 CFR PART 7—Continued

| Requirements of new section: | Are derived from current section: |
|---|---|
| 7.124 | 7.29(a)(2). |
| 7.125 | 7.29(a)(4). |
| 7.126 | 7.29(d). |
| 7.127 | [reserved]. |
| 7.128 | 7.29(a)(7) and New. |
| 7.129 | 7.29(e). |
| 7.130 | 7.29(a)(6). |
| 7.131 | [reserved]. |
| 7.132 | [reserved]. |
| **Subpart I—Classes and Types of Malt Beverages** | |
| 7.141 | 7.24(a). |
| 7.142 | 7.24(e). |
| 7.143 | 7.24(b) and (c) and New. |
| 7.144 | New. |
| 7.145 | 7.24(d). |
| 7.146 | 7.24(g), (f), and (h). |
| 7.147 | New. |
| **Subparts J–L—[Reserved]** | |
| **Subpart M—Penalties and Compromise of Liability** | |
| 7.221 | New. |
| 7.222 | New. |
| 7.223 | New. |
| **Subpart N—Advertising of Malt Beverages** | |
| 7.231 | 7.50. |
| 7.232 | 7.51. |
| 7.233 | 7.52. |
| 7.234 | 7.53. |
| 7.235 | 7.54. |
| 7.236 | 7.55. |
| **Subpart O—Paperwork Reduction Act** | |
| 7.241 | New. |

## IV. Regulatory Analyses and Notices

### *A. Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities. While TTB has determined that the majority of businesses subject to this rule are small businesses, the regulatory amendments in this final rule will not have a significant impact on those small entities as it will not impose, or otherwise cause, an increase in reporting, recordkeeping, or other compliance burdens on regulated industry members. As finalized, this rule will not require industry members to make changes to labels or advertisements. The following analysis provides the factual basis for TTB's certification under 5 U.S.C. 605.

1. Background

In Notice No. 176, published on November 26, 2018, TTB proposed a recodification of the labeling and advertising regulations pertaining to wine, distilled spirits, and malt beverages. The purpose was to clarify and update these regulations to make them easier to understand and to incorporate agency policies. TTB determined that the majority of businesses subject to the proposed rule were small businesses (see Notice No. 176 for more information on this determination). Accordingly, TTB sought comments on the impact of the proposals, and on ways in which the regulations could be improved. TTB also proposed a delayed compliance date to provide all regulated entities 3 years to come into compliance with the proposed regulations, to minimize the costs associated with any label changes.

On April 2, 2020, TTB published T.D. TTB–158, (85 FR 18704), which finalized certain proposals from Notice No. 176, and announced its decision not to move forward with certain other proposals. Generally, the amendments that TTB adopted in T.D. TTB–158 were well supported by commenters, could be implemented relatively quickly, and would either give more flexibility to industry members or help industry members understand existing requirements, while not requiring any current labels or advertisements to be changed. TTB did not incorporate the proposed reorganization of the regulations in T.D. TTB–158 because that final rule only addressed a subset of the issues raised in Notice No. 176. Instead, amendments to the TTB regulations were made within the framework of the existing regulations.

In this rulemaking, TTB is finalizing the reorganization proposed in Notice No. 176 for 27 CFR parts 5 and 7. This includes clarifying regulatory language and breaking up large sections into smaller sections—resulting in a larger number of overall sections, but not a larger number of regulatory requirements. TTB is also adopting many proposals that include incorporation of current policy. This final rule addresses comments that TTB received on the proposed regulatory provisions for all of parts 5 and 7 by incorporating changes in the regulations, announcing that TTB will not move forward with some proposed changes, and identifying proposals or issues commenters raised that TTB will consider for future rulemaking.

2. Comment From SBA Chief Counsel for Advocacy

As required by section 7805(f) of the Internal Revenue Code (26 U.S.C. 7805(f)), TTB submitted Notice No. 176 to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of these regulations.

By letter dated August 6, 2019, the Office of Advocacy for the U.S. Small Business Administration (''SBA Office of Advocacy'') provided a comment on Notice No. 176. The comment stated that ''Advocacy commends the TTB on its logical reorganization of the labeling and advertising rules and streamlining some of its processes.'' However, the comment also indicated that in its discussions with small businesses in the alcohol beverage industry, two issues with the proposed rule were brought to its attention—the definition of an ''oak barrel,'' and creating a separate class and type for mead, a type of wine made from honey. The comment suggested that TTB revise the rule to reduce the impacts of the proposed definition of ''oak barrel'' and concluded that:

> Advocacy is concerned that the agency's certification that the rule will not have a significant economic impact on a substantial number of small entities lacks a factual basis. Advocacy suggests the agency revise the rule to reduce the impacts of the definition of 'oak barrel' and to establish a new class and type for mead or publish a supplemental initial regulatory flexibility analysis (IFRA) to propose alternatives to the rule

In T.D. TTB–158, TTB announced it was not moving forward with a number of proposals that received comments raising concerns about regulatory costs and burdens, including the proposed definition of an ''oak barrel.'' The other issue addressed by the comment from the SBA Office of Advocacy dealt with the proposed regulations on mead. This final rule does not address wine labeling issues; thus, TTB will review SBA's comment on mead, along with the other comments received on this issue, when it finalizes the rulemaking on wine labeling.

Because this final rule does not address either of the issues raised by the comment from the SBA Office of Advocacy, there is no need to conduct a supplemental initial regulatory flexibility analysis to propose alternatives to the rule.

3. Other Proposals That Will Not Be Adopted

In addition to not adopting its proposed definition of an ''oak barrel,'' TTB has decided not to adopt certain other proposals, including the following:

- A proposal to codify TTB's current policy, as stated on the label application form, that the issuance of a COLA does not confer trademark protection or relieve the certificate holder from liability for violations of the FAA Act, the IRC, ABLA, or related regulations, and that products covered by a COLA may still be mislabeled if the label contains statements that are false or misleading when applied to the beverage in the container.
- A proposed amendment that would clarify and somewhat expand existing requirements with regard to placing certain label information on closed ''packaging'' of wine, distilled spirits, and malt beverage containers.
- A proposal to codify TTB's current policy with respect to the allowed use of certain non-misleading labeling claims about environmental and sustainability practices.
- A proposal to establish a 5-year retention period for required records and to codify TTB's current substantiation requirements.
- A proposed amendment that would clarify and expand current requirements that certain whisky products distilled in the United States must include the State of distillation on the label, by providing that a bottling address within the State does not suffice unless it includes a representation as to distillation. TTB is not moving forward with this proposal because it might require labeling changes, but will instead clarify current requirements.
- A proposed amendment that would modify the standard of identity for whisky to provide for ''white whisky'' and ''unaged whisky.''
- A proposal that would address ''aggregate'' standards of fill in a manner that is based on current policy.
- A proposed amendment that would increase the alcohol content tolerance for malt beverages from 0.3 percent above or below the labeled alcohol content to 1 percent above or below.

This final rule includes only amendments that TTB believes clarify and liberalize requirements for industry members and that do not conflict with current labels or business practices, while still providing adequate protection for consumers. An example of a liberalizing change is the amendment to the malt beverage regulations that allows mandatory information to appear on keg collars that are not firmly affixed to the keg. Because the final rule will not require changes to labels, advertisements, or business practices, no delayed compliance date is necessary, and the final rule will take effect 30 days from publication in the **Federal Register**.

The preamble of Notice No. 176 explains in detail the reasons why the proposals that have been adopted in this final rule are either clarifying or liberalizing. Examples of clarifying changes include:

- Adding examples in the regulations of how certain requirements may be satisfied;
- Adding to the regulations guidance that had previously been provided in rulings, Industry Circulars, or other documents separate from the regulations;
- Addressing questions the public frequently asks TTB;
- Making definitions, organization, numbering of sections, and phrasing of requirements within the regulations consistent across 27 CFR parts 5 and 7 to the extent possible;
- Breaking large subparts and large sections into smaller subparts and smaller sections to increase readability;
- Providing more cross references in the regulations to relevant regulations and statutes;
- Making it explicit that mandatory information may not be covered or obscured in whole or in part;
- Codifying in the regulations the current requirement that distilled spirits covered by a certificate of exemption must bear a labeling statement that the product is ''For sale in [name of State] only'';
- Codifying current TTB guidance with respect to the use of a COLA by an importer other than the permittee to whom the COLA was issued;
- Codifying current policy with respect to the required name and address statement on labels for distilled spirits and malt beverages that have been subject to certain production activities after importation in bulk;
- Codifying current policy that allows truthful and non-misleading comparisons on labels and in advertisements without violating the prohibition against ''disparaging'' statements;
- Providing that the prohibition against the use of flags and other symbols of a government applies whenever the label may create a misleading impression that the product is endorsed by, or otherwise affiliated with, that government; and
- Specifying how the FAA Act applies to the labeling of malt beverages under the penultimate paragraph of 27 U.S.C. 205(f).

Some examples of liberalizing measures that TTB is finalizing in this document include:

- Allowing greater flexibility in the placement of mandatory information on labels by eliminating the requirement

that mandatory information appear on the ''brand label;''

- Allowing wholesalers to relabel distilled spirits when necessary and when approved by TTB;
- Allowing the use of designations in accordance with trade understanding, rather than statements of composition, in the labeling of malt beverages that are flavored or fermented with ingredients that TTB has determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor''; and
- Allowing certain mandatory information to appear on the keg collar or tap cover of malt beverage kegs with a capacity of 5.16 gallons or more, subject to certain requirements.

In summary, while the entities affected by the amendments in this final rule include a substantial number of small entities, the final rule does not require labeling or advertising changes by these small businesses, but instead offers industry members additional flexibility in complying with the regulations. Thus, TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

*B. Executive Order 12866*

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866 of September 30, 1993. Therefore, a regulatory assessment is not necessary.

*C. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has previously reviewed and approved the eight collections of information in the regulations contained in this final rule in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513–0020, 1513–0064, 1513–0084, 1513–0085, 1513–0087, 1513–0111, 1513–0121, and 1513–0122. 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 control number assigned by OMB.

This final rule includes only amendments that TTB believes offer clarifications and liberalizations of the TTB regulations, including their information collection requirements. The amendments adopted in this final rule are well supported by commenters, can be implemented relatively quickly, and will give more flexibility to industry members or help industry members understand existing regulatory and information collection requirements, but will not require industry members to change any current alcohol beverage label or advertisement. The preamble discussion contained in this final rule document explains in detail the reasons why the proposals adopted in this final rule are either clarifying or liberalizing.

The specific regulatory sections in this final rule that contain approved collections of information are found in part 5 at §§ 5.11, 5.21, 5.22, 5.23, 5.24, 5.25, 5.27, 5.28, 5.29, 5.30, 5.62, 5.63, 5.82, 5.83, 5.84, 5.87, 5.88, 5.89, 5.90, 5.91, 5.192, 5.193, 5.194, 5.203, 5.205, and 5.233, and in part 7 at §§ 7.11, 7.21, 7.22, 7.24, 7.25, 7.27, 7.28, 7.29, 7.62, 7.63, 7.66, 7.67, 7.81, 7.82, 7.83, 7.84, and 7.233.

Regarding OMB control number 1513–0020, the regulations in §§ 5.21, 5.22, 5.23, 5.24, 5.25, 5.29, 5.205, 7.21, 7.22, 7.24, 7.25, 7.27, and 7.29 set forth information collection requirements related to submission of applications for certification of, or exemption from, label or bottle approval. These regulations do not add any new requirements or respondent burden to this previously-approved collection as they merely recodify and clarify existing TTB regulations regarding the submission of such certificate of label approval (COLA) applications, including those for personalized labels.

Regarding OMB control number 1513–0064, which is related to importer records and reports, the regulations in §§ 5.24 and 7.24 state, respectively, that distilled spirits and malt beverages imported in containers are not eligible for release from customs custody for consumption unless the importer removing the products has obtained a COLA for the products in question, and is able to provide it (either electronically or on paper) upon request, which is consistent with TTB's current regulations regarding such imports. In addition, § 5.30 merely makes clarifications to the existing regulations concerning certificates of age and origin for distilled spirits and do not affect the information collection's requirements or estimated burden.

OMB control number 1513–0084 concerns the labeling of sulfites in alcohol beverages. The current TTB requirements that alcohol beverage labels disclose the presence of sulfites (defined as 10 or more parts per million of sulfur dioxide or other sulfating agent measured as total sulfur dioxide) are recodified in § 5.63(c)(7) for distilled spirits and in § 7.63(b)(3) for malt beverages.

OMB control number 1513–0085 concerns the use of the principal place of business of a brewer and place of production coding in lieu of the actual place of bottling on malt beverage labels. The existing requirements for such labeling are recodified for domestic beverages at § 7.66 and for imported beverages at § 7.68. As such, there are no changes to this information collection's estimated burden.

Information collection requirements approved under OMB control number 1513–0087, which concerns Federal Alcohol Administration (FAA) Act-based labeling and advertising information requirements, are contained in §§ 5.62, 5.63, 5.84, 5.87, 5.88, 5.89, 5.90, 5.91, 5.233, 7.62, 7.63, 7.81, 7.84, and 7.233. None of these regulatory amendments require changes to any alcohol beverage label or advertisement, or increase the requirements or estimated burden associated with OMB No. 1513–0087. Rather, these regulations recodify existing TTB label and advertising information requirements or allow for additional options in displaying or providing the required information. For example, § 5.63, which concerns mandatory label information, contains liberalizing changes that will not require any changes to labels, but will allow further flexibility in the placement of labeling information on distilled spirits containers; while §§ 5.233 and 7.233 will allow alcohol beverage advertisers optional ways to provide contact information in their advertisements, such as by displaying a telephone number, website, or email address in lieu of the advertiser's city and State.

Applications to request access TTB's COLA Online system are covered by OMB control number 1513–0111, and TTB's existing requirements to file such applications are recodified in §§ 5.11 and 7.11.

Regarding OMB control number 1513–0121, which covers the label disclosures of major food allergens and petitions from exemption from such labeling, §§ 5.82, 5.83, 7.82, and 7.83 merely recodify TTB's existing regulations regarding those matters, and there are no changes to this collection's requirements or burden estimate.

OMB No. 1513–0122, which covers submission of formulas and processes for domestic and imported alcohol beverages, is found in §§ 5.28 and 7.28. There are no changes to this information collection's existing requirements or estimated burden.

## V. Drafting Information

Christopher M. Thiemann, Kara T. Fontaine, and Curtis Eilers of the Regulations and Rulings Division drafted this document with the assistance of other employees of the

Alcohol and Tobacco Tax and Trade Bureau.

**List of Subjects**

*27 CFR Part 5*

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Grains, Imports, International agreements, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

*27 CFR Part 7*

Advertising, Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Food additives, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

**Regulatory Amendments**

For the reasons discussed in the preamble, TTB amends 27 CFR, chapter I, as follows:

■ 1. Revise part 5 to read as follows:

## PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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5.22 Rules regarding certificates of label approval (COLAs) for distilled spirits bottled in the United States.
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5.241 OMB control numbers assigned under the Paperwork Reduction Act.

**Authority:** 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

**§ 5.0 Scope.**

This part sets forth requirements that apply to the labeling and packaging of distilled spirits in containers, including requirements for label approval and rules regarding mandatory, regulated, and prohibited labeling statements. This part also sets forth requirements that apply to the advertising of distilled spirits.

## Subpart A—General Provisions

**§ 5.1 Definitions.**

When used in this part and on forms prescribed under this part, the following terms have the meaning assigned to them in this section, unless the terms appear in a context that requires a different meaning. Any other term defined in the Federal Alcohol Administration Act (FAA Act) and used in this part has the same meaning assigned to it by the FAA Act.

*Administrator.* The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

*Advertisement or Advertising.* See § 5.232 for meaning of these terms as used in subpart N of this part.

*Age.* The length of time during which, after distillation and before bottling, the distilled spirits have been stored in oak barrels. ''Age'' for bourbon whisky, rye whisky, wheat whisky, malt whisky, or rye malt whisky, and straight whiskies other than straight corn whisky, means the period the whisky has been stored in charred new oak barrels.

*American proof.* See *Proof.*

*Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any function relating to the administration or enforcement of this part by the current version of TTB Order 1135.5, Delegation of the Administrator's Authorities in 27 CFR part 5, Labeling and Advertising of Distilled Spirits.

*Bottler.* Any distiller or processor of distilled spirits who places distilled spirits in containers.

*Brand name.* The name under which a distilled spirit or a line of distilled spirits is sold.

*Certificate holder.* The permittee or brewer whose name, address, and basic permit number, plant registry number, or brewer's notice number appears on an approved TTB Form 5100.31.

*Certificate of exemption from label approval.* A certificate issued on TTB Form 5100.31, which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

*Certificate of label approval (COLA).* A certificate issued on TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, or malt beverages, or the removal of bottled wine, distilled spirits, or malt beverages from customs custody for introduction into commerce, as long as the product bears labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov).*

*Container.* Any can, bottle, box, cask, keg, or other closed receptacle, in any size or material, which is for use in the sale of distilled spirits at retail. See subpart K of this part for rules regarding authorized standards of fill for containers.

*Customs officer.* An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

*Distilled spirits.* Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use. The term ''distilled spirits'' does not include mixtures containing wine, bottled at 48 degrees of proof (24 percent alcohol by volume) or less, if the mixture contains more than 50 percent wine on a proof gallon basis. The term ''distilled spirits'' also does not include products containing less than one degree of proof (0.5 percent alcohol by volume).

*Distilling season.* The period from January 1 through June 30, which is the spring distilling season, or the period from July 1 through December 31, which is the fall distilling season.

*Distinctive or fanciful name.* A descriptive name or phrase chosen to identify a distilled spirits product on the label. It does not include a brand name, class or type designation, or statement of composition.

*FAA Act.* The Federal Alcohol Administration Act.

*Gallon.* A U.S. gallon of 231 cubic inches at 60 degrees Fahrenheit.

*Grain.* Includes cereal grains and the seeds of the pseudocereals amaranth, buckwheat, and quinoa.

*In bulk.* In barrels or other receptacles having a capacity in excess of 1 wine gallon (3.785 liters).

*Interstate or foreign commerce.* Commerce between any State and any place outside of that State or commerce within the District of Columbia or commerce between points within the same State but through any place outside of that State.

*Liter or litre.* A metric unit of capacity equal to 1,000 cubic centimeters or 1,000 milliliters (mL) of distilled spirits at 15.56 degrees Celsius (60 degrees Fahrenheit), and equivalent to 33.814 U.S. fluid ounces.

*Net contents.* The amount, by volume, of distilled spirits held in a container.

*Permittee.* Any person holding a basic permit under the FAA Act.

*Person.* Any individual, corporation, partnership, association, joint-stock company, business trust, limited liability company, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision of a State.

*Produced at or distilled at.* When used with reference to specific degrees of proof of a distilled spirits product, the phrases ''produced at'' and ''distilled at'' mean the composite proof of the distilled spirits after completion of distillation and before reduction in proof, if any.

*Proof.* The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percentage of ethyl alcohol by volume.

*Proof gallon.* A gallon of liquid at 60 degrees Fahrenheit that contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit, referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

*Responsible advertiser.* The permittee responsible for the publication or broadcast of an advertisement.

*Spirits.* See Distilled spirits.

*State.* One of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

*TTB.* The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

*United States (U.S.).* The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

**§ 5.2 Territorial extent.**

The provisions of this part apply to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

**§ 5.3 General requirements and prohibitions under the FAA Act.**

(a) *Certificates of label approval (COLAs).* Subject to the requirements and exceptions set forth in the regulations in subpart B of this part, any bottler of distilled spirits, and any person who removes distilled spirits in containers from customs custody for

sale or any other commercial purpose, is required to first obtain from TTB a COLA covering the label(s) on each container.

(b) *Alteration, mutilation, destruction, obliteration, or removal of labels.* Subject to the requirements and exceptions set forth in the regulations in subpart C of this part, it is unlawful to alter, mutilate, destroy, obliterate, or remove labels on distilled spirits containers. This prohibition applies to any person, including retailers, holding distilled spirits for sale in interstate or foreign commerce or any person holding distilled spirits for sale after shipment in interstate or foreign commerce.

(c) *Labeling requirements for distilled spirits.* It is unlawful for any person engaged in business as a distiller, rectifier (processor), importer, wholesaler, bottler, or warehouseman and bottler, directly or indirectly, or through an affiliate, to sell or ship, or deliver for sale or shipment, or otherwise introduce or receive in interstate or foreign commerce, or remove from customs custody, any distilled spirits in containers unless such containers are marked, branded, labeled, and packaged in conformity with the regulations in this part.

(d) *Labeled in accordance with this part.* In order to be labeled in accordance with the regulations in this part, a container of distilled spirits must be in compliance with the following requirements:

(1) It must bear one or more label(s) meeting the standards for ''labels'' set forth in subpart D of this part;

(2) One or more of the labels on the container must include the mandatory information set forth in subpart E of this part;

(3) Claims on any label, container, or packaging (as defined in § 5.81) must comply with the rules for restricted label statements, as applicable, set forth in subpart F of this part;

(4) Statements or any other representations on any label, container, or packaging (as defined in §§ 5.101 and 5.121) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of distilled spirits; and

(5) The class and type designation on any label, as well as any designation appearing on containers or packaging, must comply with the standards of identity set forth in subpart I of this part.

(e) *Packaged in accordance with this part.* In order to be packaged in accordance with the regulations in this part, the distilled spirits must be bottled in authorized standards of fill in containers that meet the requirements of subpart K of this part.

**§§ 5.4–5.6 [Reserved]**

**§ 5.7 Other TTB labeling regulations that apply to distilled spirits.**

In addition to the regulations in this part, distilled spirits must also comply with the following TTB labeling regulations:

(a) *Health warning statement.* Alcoholic beverages, including distilled spirits, that contain at least 0.5 percent alcohol by volume, must be labeled with a health warning statement, in accordance with the Alcoholic Beverage Labeling Act of 1988 (ABLA). The regulations implementing the ABLA are contained in 27 CFR part 16.

(b) *Internal Revenue Code requirements.* The labeling and marking requirements for distilled spirits under the Internal Revenue Code are found in 27 CFR part 19, subpart T (for domestic products) and 27 CFR part 27, subpart E (for imported products).

**§ 5.8 Distilled spirits for export.**

The regulations in this part shall not apply to distilled spirits exported in bond.

**§ 5.9 [Reserved]**

**§ 5.10 Other related regulations.**

(a) *TTB regulations.* Other TTB regulations that relate to distilled spirits are listed in paragraphs (a)(1) through (8) of this section:

(1) 27 CFR part 1—Basic Permit Requirements under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits;

(2) 27 CFR part 13—Labeling Proceedings;

(3) 27 CFR part 16—Alcoholic Beverage Health Warning Statement;

(4) 27 CFR part 19—Distilled Spirits Plants;

(5) 27 CFR Part 26—Liquors and Articles from Puerto Rico and the Virgin Islands;

(6) 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer;

(7) 27 CFR Part 28—Exportation of Alcohol; and

(8) 27 CFR Part 71—Rules of Practice in Permit Proceedings.

(b) *Other Federal Regulations.* The regulations listed in paragraphs (b)(1) through (8) of this section issued by other Federal agencies also may apply:

(1) 7 CFR Part 205—National Organic Program;

(2) 19 CFR Part 11—Packing and Stamping; Marking;

(3) 19 CFR Part 102—Rules of Origin;

(4) 19 CFR Part 134—Country of Origin Marking;

(5) 21 CFR Part 1—General Enforcement Regulations, Subpart H, Registration of Food Facilities, and Subpart I, Prior Notice of Imported Food;

(6) 21 CFR Parts 70–82, which pertain to food and color additives;

(7) 21 CFR Part 110—Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food; and

(8) 21 CFR Parts 170–189, which pertain to food additives and secondary direct food additives.

**§ 5.11 Forms.**

(a) *General.* TTB prescribes and makes available all forms required by this part. Any person completing a form must provide all of the information required by each form as indicated by the headings on the form and the instructions for the form. Each form must be filed in accordance with this part and the instructions for the form.

(b) *Electronically filing forms.* The forms required by this part can be filed electronically by using TTB's online filing systems: COLAs Online and Formulas Online. Anyone who intends to use one of these online filing systems must first register to use the system by accessing the TTB website at *https://www.ttb.gov.*

(c) *Obtaining paper forms.* Forms required by this part are available for printing through the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

**§ 5.12 Delegations of the Administrator.**

Most of the regulatory authorities of the Administrator contained in this part are delegated to ''appropriate TTB officers.'' To find out which officers have been delegated specific authorities, see the current version of TTB Order 1135.5, Delegation of the Administrator's Authorities in 27 CFR part 5, Labeling and Advertising of Distilled Spirits. Copies of this order can be obtained by accessing the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

## Subpart B—Certificates of Label Approval and Certificates of Exemption from Label Approval

### Requirements for Distilled Spirits Bottled in the United States

#### § 5.21 Requirement for certificates of label approval (COLAs) for distilled spirits bottled in the United States.

(a) *Applicability.* The certificate of label approval (COLA) requirements described in this section apply to distilled spirits bottled in the United States, outside of customs custody.

(b) *Distilled spirits shipped or sold in interstate commerce.* No person may bottle distilled spirits without first applying for and obtaining a COLA issued by the appropriate TTB officer. This requirement applies to distilled spirits produced and bottled in the United States and to distilled spirits imported in bulk, regardless of where produced, and bottled in the United States. Bottlers may obtain an exemption from this requirement only if they satisfy the conditions set forth in § 5.23.

(c) *Evidence of COLA.* Upon request by the appropriate TTB officer, a bottler or importer must provide evidence that a container of distilled spirits is covered by a COLA. This requirement may be satisfied by providing original COLAs, photocopies or electronic copies of COLAs, or records showing the TTB identification number assigned to the approved certificate.

#### § 5.22 Rules regarding certificates of label approval (COLAs) for distilled spirits bottled in the United States.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the bottling of distilled spirits covered by the certificate of label approval (COLA), as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by TTB on the COLA or otherwise (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

(b) *When to obtain a COLA.* The COLA must be obtained prior to bottling. No bottler may bottle distilled spirits, or remove distilled spirits from the premises where bottled, unless a COLA has been obtained.

(c) *Application for a COLA.* The bottler may apply for a COLA by submitting an application to TTB on Form 5100.31, in accordance with the instructions on the form. The bottler may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

#### § 5.23 Application for exemption from label approval for distilled spirits bottled in the United States.

(a) *Exemption.* Any bottler of distilled spirits may apply to be exempt from the requirements of §§ 5.21, 5.22, and 5.30(h), by showing to the satisfaction of the appropriate TTB officer that the distilled spirits to be bottled are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce.

(b) *Application required.* The bottler must file an application on TTB Form 5100.31 for exemption from label approval before bottling the distilled spirits. The bottler may apply for a certificate of exemption from label approval either electronically, by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by using the paper form. For procedures regarding the issuance of certificates of exemption from label approval, see part 13 of this chapter.

(c) *Labeling of distilled spirits covered by certificate of exemption.* The application for a certificate of exemption from label approval requires that the applicant identify the State in which the product will be sold. As a condition of receiving exemption from label approval, the label covered by an approved certificate of exemption must include the statement ''For sale in [name of State] only.'' See §§ 19.517 and 19.518 of this chapter for additional labeling rules that apply to distilled spirits covered by a certificate of exemption.

### Requirements for Distilled Spirits Imported in Containers

#### § 5.24 Certificates of label approval (COLAs) for distilled spirits imported in containers.

(a) *Application requirement.* Any person removing distilled spirits in containers from customs custody for consumption must first apply for and obtain a certificate of label approval (COLA) covering the distilled spirits from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued.

(b) *Release of distilled spirits from customs custody.* Distilled spirits, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such distilled spirits from customs custody for consumption, unless the person removing the distilled spirits has obtained a COLA covering the distilled spirits and is able to provide it (either electronically or on paper) upon request. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer.

(c) *Filing requirements.* If filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the product or lot of distilled spirits to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at the time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) *Evidence of COLA.* Upon request by the appropriate TTB officer, an importer must provide evidence that a container of distilled spirits is covered by a COLA. This requirement may be satisfied by providing original COLAs, photocopies or electronic copies of COLAs, or records showing the TTB identification number assigned to the approved certificate.

(e) *Scope of this section.* The COLA requirement imposed by this section applies only to distilled spirits that are removed for sale or any other commercial purpose. Distilled spirits that are imported in containers are not eligible for a certificate of exemption from label approval. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported samples of distilled spirits.

(f) *Relabeling in customs custody.* Containers of distilled spirits in customs custody that are required to be covered by a COLA but are not labeled in conformity with a COLA must be relabeled, under the supervision and direction of customs officers, prior to their removal from customs custody for consumption.

#### § 5.25 Rules regarding certificates of label approval (COLAs) for distilled spirits imported in containers.

(a) *What COLA authorizes.* An approved TTB Form 5100.31 authorizes the use of the labels covered by the

certificate of label approval (COLA) on containers of distilled spirits, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by the form or otherwise authorized by TTB (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

(b) *When to obtain a COLA.* The COLA must be obtained prior to the removal of distilled spirits in containers from customs custody for consumption.

(c) *Application for a COLA.* The person responsible for the importation of distilled spirits must obtain approval of the labels by submitting an application to TTB on TTB Form 5100.31. A person may apply for a COLA either electronically, by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

**Administrative Rules**

**§ 5.27 Presenting certificates of label approval (COLAs) to Government officials.**

A certificate holder must present the original or a paper or electronic copy of the appropriate certificate of label approval (COLA) upon the request of any duly authorized representative of the United States Government.

**§ 5.28 Formulas, samples, and documentation.**

(a) In addition to any formula specifically required under subpart J of this part, TTB may require formulas under certain circumstances in connection with the label approval process. Prior to or in conjunction with the review of an application for a certificate of label approval (COLA) on TTB Form 5100.31, the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing of the distilled spirits, or a sample of any distilled spirits or ingredients used in producing a distilled spirit. After the issuance of a COLA, or with regard to any distilled spirits required to be covered by a COLA, the appropriate TTB officer may require a full and accurate statement of the contents of the container.

(b) A formula may be filed electronically by using Formulas Online, or it may be submitted on paper on TTB Form 5100.51. See § 5.11 for more information on forms and Formulas Online.

**§ 5.29 Personalized labels.**

(a) *General.* Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. A personalized label is an alcohol beverage label that meets the minimum mandatory label requirements and is customized for customers. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a distiller may offer individual or corporate customers labels that commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label as part of the application for label approval required under §§ 5.21 or 5.24, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

**§ 5.30 Certificates of age and origin for imported spirits.**

(a) *Scotch, Irish, and Canadian whiskies.* (1) Scotch, Irish, and Canadian whiskies, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such whiskies from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, certifying:

(i) That the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be; and

(ii) That the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of whisky for home consumption.

(2) In addition, an official duly authorized by the appropriate foreign government must certify to the age of the youngest distilled spirits in the container. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

(b) *Brandy and Cognac.* Brandy (other than fruit brandies of a type not customarily stored in oak containers) or Cognac, imported in containers, is not eligible for release from customs custody for consumption, and no person may remove such brandy or Cognac from customs custody for consumption, unless the person so removing the brandy or Cognac possesses a certificate issued by an official duly authorized by the appropriate foreign country certifying that the age of the youngest brandy or Cognac in the container is not less than 2 years, or if age is stated on the label that none of the distilled spirits are of an age less than that stated. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers. If the label of any fruit brandy, not stored in oak containers, bears any statement of storage in another type of container, the brandy is not eligible for release from customs custody for consumption, and no person may remove such brandy from customs custody for consumption, unless the person so removing the brandy possesses a certificate issued by an official duly authorized by the appropriate foreign government certifying to such storage. Cognac, imported in bottles, is not eligible for release from customs custody for consumption, and no person may remove such Cognac from customs custody for consumption, unless the person so removing the Cognac possesses a certificate issued by an official duly authorized by the French Government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as ''Cognac'' by the laws and regulations of the French Government.

(c) *Rum.* Rum imported in containers that contain any statement of age is not eligible to be released from customs custody for consumption, and no person may remove such rum from customs custody for consumption, unless the person so removing the rum possesses a certificate issued by an official duly authorized by the appropriate foreign country, certifying to the age of the youngest rum in the container. The age certified shall be the period during which, after distillation and before

bottling, the distilled spirits have been stored in oak containers.

(d) *Tequila.* (1) Tequila imported in containers is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing such Tequila possesses a Certificate of Tequila Export issued by an official duly authorized by the Mexican Government or a conformity assessment body stating that the product is entitled to be designated as Tequila under the applicable laws and regulations of the Mexican Government.

(2) If the label of any Tequila imported in containers contains any statement of age, the Tequila is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing the Tequila possesses a Certificate of Tequila Export issued by an official duly authorized by the Mexican Government or a conformity assessment body as to the age of the youngest Tequila in the container. The age certified shall be the period during which the Tequila has been stored in oak containers after distillation and before bottling.

(e) *Other whiskies.* Whisky, as defined in § 5.143(c)(2) through (7) and (10) through (14), imported in bottles, is not eligible for release from customs custody for consumption, and no person shall remove such whiskies from customs custody for consumption, unless that person has obtained and is in possession of a certificate issued by an official duly authorized by the appropriate foreign government certifying:

(1) In the case of whisky (regardless of whether it is mixed or blended) that contains no neutral spirits:

(i) The type of the whisky as defined in § 5.143;

(ii) The American proof at which the whisky was distilled;

(iii) That no neutral spirits (or other whisky in the case of straight whisky) have been added or otherwise included in the whisky;

(iv) The age of the whisky; and

(v) The type of oak barrel in which the whisky was aged and whether the barrel was new or reused, charred or uncharred; and

(2) In the case of whisky containing neutral spirits:

(i) The type of the whisky as defined in § 5.143;

(ii) The percentage of straight whisky used in the blend, if any;

(iii) The American proof at which any straight whisky in the blend was distilled;

(iv) The percentage of whisky other than straight whisky in the blend, if any;

(v) The percentage of neutral spirits in the blend and the name of the commodity from which the neutral spirits were distilled;

(vi) The age of any straight whisky and the age of any other whisky in the blend; and

(vii) The type of oak barrel in which the age of each whisky in the blend was attained and whether the barrel was new or reused and charred or uncharred.

(f) *Miscellaneous.* Distilled spirits (other than Scotch, Irish, and Canadian whiskies, and Cognac) imported in containers are not eligible for release from customs custody for consumption, and no person shall remove such spirits from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, if the issuance of such certificates with respect to such distilled spirits is required by the foreign government concerned, certifying as to the identity of the distilled spirits and that the distilled spirits have been manufactured in compliance with the laws of the respective foreign government regulating the manufacture of such distilled spirits for home consumption.

(g) *Retention of certificates—distilled spirits imported in containers.* The importer of distilled spirits imported in containers must retain for 5 years following the removal of the bottled distilled spirits from customs custody copies of the certificates (and accompanying invoices, if applicable) required by paragraphs (a) through (f) of this section, and must provide them upon request of the appropriate TTB officer or a customs officer.

(h) *Distilled spirits imported in bulk for bottling in the United States.* Distilled spirits that would be required under paragraphs (a) through (f) of this section to be covered by a certificate of age and/or a certificate of origin and that are imported in bulk for bottling in the United States may be removed from the premises where bottled only if the bottler possesses a certificate of age and/or a certificate of origin, issued by the appropriate entity as set forth in paragraphs (a) through (f) of this section, applicable to the spirits that provides the same information as a certificate required under paragraphs (a) through (f) of this section, would provide for like spirits imported in bottles.

(i) *Retention of distilled spirits certificates—distilled spirits in bulk.* The bottler of distilled spirits imported in bulk must retain, for 5 years following the removal of such distilled spirits from the premises where bottled, copies of the certificates required by paragraphs (a) through (f) of this section, and must provide them upon request of the appropriate TTB officer.

## Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

### § 5.41 Alteration of labels.

(a) *Prohibition.* It is unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label on distilled spirits in containers held for sale in interstate or foreign commerce, or held for sale after shipment in interstate or foreign commerce, except as authorized by §§ 5.42, 5.43, or 5.44, or as otherwise authorized by Federal law.

(b) *Authorized relabeling.* For purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

(c) *Obligation to comply with other requirements.* Authorization to relabel under this subpart:

(1) In no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product;

(2) Does not relieve the person conducting the relabeling operations from any obligation to comply with the regulations in this part and with State or local law; and,

(3) Does not relieve the person conducting the relabeling operations from any obligation to obtain permission from the owner of the brand where otherwise required.

### § 5.42 Authorized relabeling activities by distillers and importers.

(a) *Relabeling at distilled spirits plant premises.* A proprietor of distilled spirits plant premises may relabel domestically bottled distilled spirits prior to removal from, and after return to bond at, the distilled spirits plant premises, with labels covered by a certificate of label approval (COLA), without obtaining separate permission

from TTB for the relabeling activity, provided that the proprietor is the certificate holder (and bottler).

(b) *Relabeling after removal from distilled spirits plant premises.* A proprietor of distilled spirits plant premises may relabel domestically bottled distilled spirits (or direct the relabeling of such spirits by an authorized agent) after removal from distilled spirits plant premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity, provided that the proprietor is the certificate holder (and bottler).

(c) *Relabeling in customs custody.* Under the supervision of U.S. customs officers, imported distilled spirits in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a COLA upon their removal from customs custody for consumption. See § 5.24(b).

(d) *Relabeling after removal from customs custody.* The importer of distilled spirits in containers may relabel imported distilled spirits (or direct the relabeling of such spirits by an authorized agent) after removal from customs custody without obtaining separate permission from TTB for the relabeling activity, as long as the labels are covered by a COLA.

**§ 5.43 Relabeling activities that require separate written authorization from TTB.**

(a) *General.* Any permittee holding distilled spirits for sale who needs to relabel the containers but is not the original bottler may apply for written permission for the relabeling of distilled spirits containers. The appropriate TTB officer may permit relabeling of distilled spirits in containers if the facts show that the relabeling is for the purpose of compliance with the requirements of this part or State law, or for the purpose of replacing damaged labels.

(b) *Application.* The written application must include:

(1) Copies of the original and proposed new labels;

(2) The circumstances of the request, including the reason for relabeling;

(3) The number of containers to be relabeled;

(4) The location where the relabeling will take place; and

(5) The name and address of the person who will be conducting the relabeling operations.

**§ 5.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.**

Any label or other information that identifies the wholesaler, retailer, or consumer of the distilled spirits may be added to containers (by the addition of stickers, engraving, stenciling, etc.) without prior approval from TTB and without being covered by a certificate of label approval or certificate of exemption from label approval. Such information may be added before or after the containers have been removed from distilled spirits plant premises or released from customs custody. The information added:

(a) May not violate the provisions of subpart F, G, or H of this part;

(b) May not contain any reference to the characteristics of the product; and

(c) May not be added to the container in such a way that it obscures any other labels on the container.

## Subpart D—Label Standards

**§ 5.51 Requirement for firmly affixed labels.**

Any label that is not an integral part of the container must be affixed to the container in such a way that it cannot be removed without thorough application of water or other solvents.

**§ 5.52 Legibility and other requirements for mandatory information on labels.**

(a) *Readily legible.* Mandatory information on labels must be readily legible to potential consumers under ordinary conditions.

(b) *Separate and apart.* Subject to the exceptions below, mandatory information on labels, except brand names, must be separate and apart from any additional information.

(1) This does not preclude the addition of brief optional phrases of additional information as part of the class or type designation (such as, ''premium vodka'' or ''delicious Tequila''), the name and address statement (such as, ''Proudly distilled and bottled by ABC Distilling Company, Atlanta, GA, for over 30 years'') or other information required by § 5.63(a) and (b). The statements required by § 5.63(c) may not include additional information.

(2) Mandatory information (other than an aspartame declaration required by § 5.63(c)(8)) may be contained among other descriptive or explanatory information if the script, type, or printing of the mandatory information is substantially more conspicuous than that of the descriptive or explanatory information.

(c) *Contrasting background.* Mandatory information must appear in a color that contrasts with the background on which it appears, except that if the net contents are blown into a glass container, they need not be contrasting. The color of the container and of the distilled spirits must be taken into account if the label is transparent or if mandatory label information is etched, engraved, sandblasted, or otherwise carved into the surface of the container or is branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container. Examples of acceptable contrasts are:

(1) Black lettering appearing on a white or cream background; or

(2) White or cream lettering appearing on a black background.

(d) *Capitalization.* Except for the aspartame statement when required by § 5.63(c)(8), which must appear in all capital letters, mandatory information prescribed by this part may appear in all capital letters, in all lower case letters, or in mixed-case using both capital and lower-case letters.

**§ 5.53 Minimum type size of mandatory information.**

All capital and lowercase letters in statements of mandatory information on labels must meet the following type size requirements.

(a) *Containers of more than 200 milliliters.* All mandatory information must be in script, type, or printing that is at least two millimeters in height.

(b) *Containers of 200 milliliters or less.* All mandatory information must be in script, type, or printing that is at least one millimeter in height.

**§ 5.54 Visibility of mandatory information.**

Mandatory information on a label must be readily visible and may not be covered or obscured in whole or in part. See § 5.62 for rules regarding packaging of containers (including cartons, coverings, and cases). See subpart N of this part for regulations pertaining to advertising materials.

**§ 5.55 Language requirements.**

(a) *General.* Mandatory information must appear in the English language, with the exception of the brand name and except as provided in paragraph (c) of this section.

(b) *Foreign languages.* Additional statements in a foreign language, including translations of mandatory information that appears elsewhere in English on the label, are allowed on labels and containers as long as they do not in any way conflict with, or contradict, the requirements of this part.

(c) *Distilled spirits for consumption in the Commonwealth of Puerto Rico.* Mandatory information may be stated solely in the Spanish language on labels of distilled spirits bottled for consumption within the Commonwealth of Puerto Rico.

**§ 5.56 Additional information.**

Information (other than mandatory information) that is truthful, accurate, and specific, and that does not violate subparts F, G, or H of this part, may appear on labels. Such additional information may not conflict with, modify, qualify or restrict mandatory information in any manner.

## Subpart E—Mandatory Label Information

**§ 5.61 What constitutes a label for purposes of mandatory information.**

(a) *Label.* Certain information, as outlined in § 5.63, must appear on a label. When used in this part for purposes of determining where mandatory information must appear, the term ''label'' includes:

(1) Material affixed to the container, whether made of paper, plastic, metal, or other matter;

(2) For purposes of the net content statement only, information blown, embossed, or molded into the container as part of the process of manufacturing the container;

(3) Information etched, engraved, sandblasted, or otherwise carved into the surface of the container; and

(4) Information branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container.

(b) *Information appearing elsewhere on the container.* Information appearing on the following parts of the container is subject to all of the restrictions and prohibitions set forth in subparts F, G and H of this part, but will not satisfy any requirements in this part for mandatory information that must appear on labels:

(1) Material affixed to, or information appearing on, the bottom surface of the container;

(2) Caps, corks or other closures unless authorized to bear mandatory information by the appropriate TTB officer; and

(3) Foil or heat shrink bottle capsules.

(c) *Materials not firmly affixed to the container.* Any materials that accompany the container to the consumer but are not firmly affixed to the container, including booklets, leaflets, and hang tags, are not ''labels'' for purposes of this part. Such materials are instead subject to the advertising regulations in subpart N of this part.

**§ 5.62 Packaging (cartons, coverings, and cases).**

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), may not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited on labels by regulations in subpart F, G, or H of this part.

(b) *Sealed opaque cartons.* If containers are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping containers), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.* (1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety—brand names required to be modified, *e.g.,* by ''Brand'' or ''Product of U.S.A.'', must also display such modification.

(3) Specialty products for which a truthful and adequate statement of composition is required must display such statement.

(d) *Labeling of containers within the packaging.* The container within the packaging is subject to all labeling requirements of this part, including mandatory labeling information requirements, regardless of whether the packaging bears such information.

**§ 5.63 Mandatory label information.**

(a) *Mandatory information required to appear within the same field of vision.* Distilled spirits containers must bear a label or labels (as defined in § 5.61) containing the following information within the same field of vision (which means a single side of a container (for a cylindrical container, a side is 40 percent of the circumference) where all of the pieces of information can be viewed simultaneously without the need to turn the container):

(1) Brand name, in accordance with § 5.64;

(2) Class, type, or other designation, in accordance with subpart I of this part; and

(3) Alcohol content, in accordance with § 5.65.

(b) *Other mandatory information.* Distilled spirits containers must bear a label or labels (as defined in § 5.61) anywhere on the container bearing the following information:

(1) Name and address of the bottler or distiller, in accordance with § 5.66, or the importer, in accordance with § 5.67 or § 5.68, as applicable; and

(2) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 5.70.

(c) *Disclosure of certain ingredients, processes and other information.* The following ingredients, processes, and other information must be disclosed on a label, without the inclusion of any additional information as part of the statement, as follows:

(1) *Neutral spirits.* The percentage of neutral spirits and the name of the commodity from which the neutral spirits were distilled, or in the case of continuously distilled neutral spirits or gin, the name of the commodity only, in accordance with § 5.7;

(2) *Coloring or treatment with wood.* Coloring or treatment with wood, in accordance with §§ 5.72 and 5.73;

(3) *Age.* A statement of age or age and percentage of type, when required or used, in accordance with § 5.74;

(4) *State of distillation.* State of distillation of any type of whisky defined in § 5.143(c)(2) through (c)(7), which is distilled in the United States, in accordance with § 5.66(f);

(5) *FD&C Yellow No. 5.* If a distilled spirit contains the coloring material FD&C Yellow No. 5, the label must include a statement to that effect, such as ''FD&C Yellow No. 5'' or ''Contains FD&C Yellow No. 5'';

(6) *Cochineal extract or carmine.* If a distilled spirit contains the color additive cochineal extract or the color additive carmine, the label must include a statement to that effect, using the respective common or usual name (such as ''contains cochineal extract'' or ''contains carmine''). This requirement applies to labels when either of the coloring materials was used in a distilled spirit that is removed from bottling premises or from customs custody on or after April 16, 2013;

(7) *Sulfites.* If a distilled spirit contains 10 or more parts per million of sulfur dioxide or other sulfiting agent measured as total sulfur dioxide, the label must include a statement to that effect. Examples of acceptable statements are ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent. The alternative terms ''sulphites'' or ''sulphiting'' may be used; and

(8) *Aspartame.* If the distilled spirit contains aspartame, the label must include the following statement, in capital letters, separate and apart from all other information:

''PHENYLKETONURICS: CONTAINS PHENYLALANINE.''

(d) *Distinctive liquor bottles.* See § 5.205(b)(2) for exemption from placement requirements for certain mandatory information for distinctive liquor bottles.

**§ 5.64 Brand name.**

(a) *Requirement.* The distilled spirits label must include a brand name. If the distilled spirits are not sold under a brand name, then the name of the bottler, distiller or importer, as applicable, appearing in the name and address statement is treated as the brand name.

(b) *Misleading brand names.* Labels may not include any misleading brand names. A brand name is misleading if it creates (by itself or in association with other printed or graphic matter) any erroneous impression or inference as to the age, origin, identity, or other characteristics of the distilled spirits. A brand name that would otherwise be misleading may be qualified with the word ''brand'' or with some other qualification, if the appropriate TTB officer determines that the qualification dispels any misleading impression that might otherwise be created.

**§ 5.65 Alcohol content.**

(a) *General.* The alcohol content for distilled spirits must be stated on the label as a percentage of alcohol by volume. Products that contain a significant amount of material, such as solid fruit, that may absorb spirits after bottling must state the alcohol content at the time of bottling as follows: ''Bottled at ____ percent alcohol by volume.''

(b) *How the alcohol content must be expressed.* The following rules apply to statements of alcohol content.

(1) A statement of alcohol content must be expressed as a percentage of alcohol by volume.

(i) In addition, the alcohol content in degrees of proof may be stated on a label as long as it appears in the same field of vision as the mandatory statement of alcohol content as a percentage of alcohol by volume. Additional statements of proof may appear on the label without being in the same field of vision as the mandatory alcohol by volume statement.

(ii) Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume.

(2)(i) The alcohol content statement must be expressed in one of the following formats:

(A) ''Alcohol ____ percent by volume'';

(B) ''____ percent alcohol by volume''; or

(C) ''Alcohol by volume ____ percent.''

(ii) Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(3) The statements listed in paragraph (b)(2)(i) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; and volume may be abbreviated as ''vol''.

(4) The following are examples of alcohol content statements that comply with the requirements of this part:

(i) ''40% alc/vol'';

(ii) ''Alc. 40 percent by vol.'';

(iii) ''Alc 40% by vol''; and

(iv) ''40% Alcohol by Volume.''

(c) *Tolerances.* A tolerance of plus or minus 0.3 percentage points is allowed for actual alcohol content that is above or below the labeled alcohol content.

**§ 5.66 Name and address for domestically bottled distilled spirits that were wholly made in the United States.**

(a) *General.* Domestically bottled distilled spirits that were wholly made in the United States and contain no imported distilled spirits must be labeled in accordance with this section. (See §§ 5.67 and 5.68 for name and address requirements applicable to distilled spirits that are not wholly made in the United States.) For purposes of this section, a ''processor'' who solely bottles the labeled distilled spirits will be considered the ''bottler.''

(b) *Form of statement.* The bottler, distiller, or processor of the distilled spirits must be identified by a phrase describing the function performed by that person. If that person performs more than one function, the label may (but is not required to) so indicate.

(1) If the name of the bottler appears on the label, it must be preceded by a phrase such as ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by,'' followed by the name and address of the bottler.

(2) If the name of the processor appears on the label, it must be preceded by a phrase such as ''blended by,'' ''made by,'' ''prepared by,'' ''produced by,'' or ''manufactured by,'' as appropriate, followed by the name and address of the processor. When applied to distilled spirits, the term ''produced by'' indicates a processing operation (formerly known as rectification) that involves a change in the class or type of the product through the addition of flavors or some other processing activity.

(3) If the name of the distiller appears on the label, it must be preceded by a phrase such as ''distilled by,'' followed by the name and address of the distiller. If the distilled spirits were bottled for the distiller thereof, the name and address of the distiller may be preceded by a phrase such as ''distilled by and bottled for,'' or ''bottled for.''

(c) *Listing of more than one function.* If different functions are performed by more than one person, statements on the label may not create the misleading impression that the different functions were performed by the same person.

(d) *Form of address*—(1) *General.* The address consists of the city and State where the operation occurred, or the city and State of the principal place of business of the person performing the operation. This information must be consistent with the information on the basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(2) *More than one address.* If the bottler, distiller, or processor listed on the name and address statement is the actual operator of more than one distilled spirits plant engaged in bottling, distilling, or processing operations, as applicable, the label may state, immediately following the name of the permittee, the addresses of those other plants, in addition to the address of the plant at which the distilled spirits were bottled. In this situation, the address where the operation occurred must be indicated on the label or on the container by printing, coding, or other markings.

(3) *Principal place of business.* The label may provide the address of the bottler's, distiller's, or processor's principal place of business, in lieu of the place where the bottling, distilling, or other operation occurred, provided that the address where the operation occurred is indicated on the label or on the container by printing, coding, or other markings.

(4) *Distilled spirits bottled for another person.* (i) If distilled spirits are bottled for another person, other than the actual

distiller thereof, the label may state, in addition to (but not in place of) the name and address of the bottler, the name and address of such other person, immediately preceded by the words ''bottled for'' or another similar appropriate phrase. Such statements must clearly indicate the relationship between the two persons (for example, contract bottling).

(ii) If the same brand of distilled spirits is bottled by two distillers that are not under the same ownership, the label for each distiller may set forth both locations where bottling takes place, as long as the label uses the actual location (and not the principal place of business) and as long as the nature of the arrangement is clearly set forth.

(5) *Additional addresses.* No additional places or addresses may be stated for the same person unless:

(i) That person is actively engaged in the conduct of an additional bona fide and actual alcohol beverage business at such additional place or address, and

(ii) The label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product (such as ''distilled by.'')

(e) *Special rule for straight whiskies.* If ''straight whiskies'' (see § 5.143) of the same type are distilled in the same State by two or more different distillers and are combined (either at the time of bottling or at a warehouseman's bonded premises for further storage) and subsequently bottled and labeled as ''straight whisky,'' that ''straight whisky'' must bear a label that contains name and address information of the bottler. If that combined ''straight whisky'' is bottled by or for the distillers, in lieu of the name and address of the bottler, the label may contain the words ''distilled by,'' followed immediately by the names (or trade names) and addresses of the different distillers who distilled a portion of the ''straight whisky'' and the percentage of ''straight whisky'' distilled by each distiller, with a tolerance of plus or minus 2 percent. If ''straight whisky'' consists of a mixture of ''straight whiskies'' of the same type from two or more different distilleries of the same proprietor located within the same State, and if that ''straight whisky'' is bottled by or for that proprietor, in lieu of the name and address of the bottler, the ''straight whisky'' may bear a label containing the words ''distilled by'' followed by the name (or trade name) of the proprietor and the addresses of the different distilleries that distilled a portion of the ''straight whisky.''

(f) *State of distillation for whisky.* (1) The State of distillation, which is the State in which original distillation takes place, must appear on the label of any type of whisky defined in § 5.143(c)(2) through (7), which is distilled in the United States. The State of distillation may appear on any label and must be shown in at least one of the following ways:

(i) By including a ''distilled by'' (or ''distilled and bottled by'' or any other phrase including the word ''distilled'') statement as part of the mandatory name and address statement, followed by a single location.

(ii) If the address shown in the ''bottled by'' statement includes the State in which distillation occurred, by including a ''bottled by'' statement as part of the mandatory name and address statement, followed by a single location;

(iii) By including the name of the State in which original distillation occurred immediately adjacent to the class or type designation (such as ''Kentucky bourbon whisky''), as long as the product was both distilled and aged in that State in conformance with the requirements of § 5.143(b); or

(iv) By including a separate statement, such as ''Distilled in [name of State].''

(2) The appropriate TTB officer may require that the State of distillation or other information appear on a label of any whisky subject to the requirements of paragraph (f)(1) of this section (and may prescribe placement requirements for such information), even if that State appears in the name and address statement, if such additional information is necessary to negate any misleading or deceptive impression that might otherwise be created as regards the actual State of distillation.

(3) In the case of ''light whisky,'' the State name ''Kentucky'' or ''Tennessee'' may not appear on any label, except as a part of a name and address as specified in paragraph (a)(1), (2), or (4) of this section.

(g) *Trade or operating names.* The name of the person appearing on the label may be the trade name or the operating name, as long as it is identical to a trade or operating name appearing on the basic permit. In the case of a distillation statement for spirits bottled in bond, the name or trade name under which the spirits were distilled must be shown.

**§ 5.67 Name and address for domestically bottled distilled spirits that were bottled after importation.**

(a) *General.* This section applies to distilled spirits that were bottled after importation. See § 5.68 for name and address requirements applicable to imported distilled spirits that were imported in a container. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Distilled spirits bottled after importation in the United States.* Distilled spirits bottled, without further blending, making, preparing, producing, manufacturing, or distilling activities after importation, must bear one of the following name and address statements:

(1) The name and address of the bottler, preceded by the words ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by'';

(2) If the distilled spirits were bottled for the person responsible for the importation, the words ''imported by and bottled (canned, packed, or filled) in the United States for'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation;

(3) If the distilled spirits were bottled by the person responsible for the importation, the words ''imported by and bottled (canned, packed, or filled) in the United States by'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation.

(c) *Distilled spirits that were subject to blending or other production activities after importation.* Distilled spirits that, after importation in bulk, were blended, made, prepared, produced, manufactured or further distilled, may not bear an ''imported by'' statement on the label, but must instead be labeled in accordance with the rules set forth in § 5.66 for mandatory and optional labeling statements.

(d) *Optional statements.* In addition to the statements required by paragraph (a)(1) of this section, the label may also state the name and address of the principal place of business of the foreign producer.

(e) *Form of address.* (1) The address consists of the city and State where the operation occurred, or the city and State of the principal place of business of the person performing the operation. This information must be consistent with the information on the basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses.

(2) If the bottler or processor listed on the name and address statement is the actual operator of more than one distilled spirits plant engaged in bottling, distilling, or processing

operations, as applicable, the label may state, immediately following the name of the bottler, the addresses of those other plants, in addition to the address of the plant at which the distilled spirits were bottled. In this situation, the address where the operation occurred must be indicated on the label or on the container by printing, coding, or other markings.

(3) The label may provide the address of the bottler's or processor's principal place of business, in lieu of the place where the bottling, distilling, or other operation occurred, provided that the address where the operation occurred is indicated on the label or on the container by printing, coding, or other markings.

(f) *Trade or operating names.* A trade name may be used if the trade name is listed on the basic permit or other qualifying documentation.

**§ 5.68 Name and address for distilled spirits that were imported in a container.**

(a) *General.* This section applies to distilled spirits that were imported in a container, as defined in § 5.1. See § 5.67 for name and address requirements applicable to distilled spirits that were domestically bottled after importation. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Mandatory labeling statement.* Distilled spirits imported in containers, as defined in § 5.1, must bear a label stating the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer.

(1) For purposes of this section, the importer is the holder of the importer's basic permit who either makes the original customs entry or is the person for whom such entry is made, or the holder of the importer's basic permit who is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and who places the order abroad.

(2) The address of the importer must be stated as the city and State of the principal place of business and must be consistent with the address reflected on the importer's basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(c) *Optional statements.* In addition to the statements required by paragraph (b)(1) of this section, the label may also state the name and address of the principal place of business of the foreign producer.

(d) *Form of address.* The ''place'' stated must be the city and State, shown on the basic permit or other qualifying document, of the premises at which the operations took place; and the place for each operation that is designated on the label must be shown.

(e) *Trade or operating names.* A trade name may be used if the trade name is listed on the basic permit or other qualifying documentation.

**§ 5.69 Country of origin.**

For U.S. Customs and Border Protection (CBP) rules regarding country of origin marking requirements, see the CBP regulations at 19 CFR parts 102 and 134.

**§ 5.70 Net contents.**

The requirements of this section apply to the net contents statement required by § 5.63.

(a) *General.* The volume of spirits in the container must appear on a label as a net contents statement. The word ''liter'' may be alternatively spelled ''litre'' or may be abbreviated as ''L''. The word ''milliliters'' may be abbreviated as ''ml.,'' ''mL.,'' or ''ML.'' Net contents in equivalent U.S. customary units of measurement and in metric equivalents such as centiliters may appear on a label and, if used, must appear in the same field of vision as the metric net contents statement.

(b) *Tolerances.* (1) The following tolerances are permissible for purposes of applying paragraph (a) of this section:

(i) *Errors in measuring.* Discrepancies due to errors in measuring that occur in filling conducted in compliance with good commercial practice;

(ii) *Differences in capacity.* Discrepancies due exclusively to differences in the capacity of containers, resulting solely from unavoidable difficulties in manufacturing the containers so as to be of uniform capacity, provided that the discrepancy does not result from a container design that prevents the manufacture of containers of an approximately uniform capacity; and

(iii) *Differences in atmospheric conditions.* Discrepancies in measure due to differences in atmospheric conditions in various places, including discrepancies resulting from the ordinary and customary exposure of alcohol beverage products in containers to evaporation, provided that the discrepancy is determined to be reasonable on a case by case basis.

(2) *Shortages and overages.* A contents shortage in certain of the containers in a shipment may not be counted against a contents overage in other containers in the same shipment for purposes of determining compliance with the requirements of this section.

**§ 5.71 Neutral spirits and name of commodity.**

(a) In the case of distilled spirits (other than cordials, liqueurs, flavored neutral spirits, including flavored vodka, and distilled spirits specialty products) manufactured by blending or other processing, if neutral spirits were used in the production of the spirits, the percentage of neutral spirits so used and the name of the commodity from which the neutral spirits were distilled must appear on a label. The statement of percentage and the name of the commodity must be in substantially the following form: ''____% neutral spirits distilled from____ (insert grain, cane products, fruit, or other commodity as appropriate)''; or ''____ % neutral spirits (vodka) distilled from ____ (insert grain, cane products, fruit, or other commodity as appropriate)''; or ''____ % (grain) (cane products), (fruit) neutral spirits'', or ''____ % grain spirits.''

(b) In the case of gin manufactured by a process of continuous distillation or in the case of neutral spirits, a label on the container must state the name of the commodity from which the gin or neutral spirits were distilled. The statement of the name of the commodity must appear in substantially the following form: ''Distilled from grain'' or ''Distilled from cane products''.

**§ 5.72 Coloring materials.**

The words ''artificially colored'' must appear on a label of any distilled spirits product containing synthetic or natural materials that primarily contribute color, or when information on a label conveys the impression that a color was derived from a source other than the actual source of the color, except that:

(a) If no coloring material other than a color exempt from certification under FDA regulations has been added, a truthful statement of the source of the color may appear in lieu of the words ''artificially colored,'' for example, ''Contains Beta Carotene'' or ''Colored with beet extract.'' See 21 CFR parts 73 and 74 for the list of such colors under Food and Drug Administration (FDA) regulations;

(b) If no coloring material has been added other than one certified as suitable for use in foods by the FDA, the words ''(to be filled in with name of) certified color added'' or ''Contains Certified Color'' may appear in lieu of the words ''artificially colored''; and

(c) If no coloring material other than caramel has been added, the words ''colored with caramel,'' ''contains caramel color,'' or another statement

specifying the use of caramel color, may appear in lieu of the words ''artificially colored.'' However, no statement of any type is required for the use of caramel color in brandy, rum, or Tequila, or in any type of whisky other than straight whisky if used at not more than 2.5 percent by volume of the finished product.

(d) As provided in § 5.61, the use of FD&C Yellow No. 5, carmine, or cochineal extract must be specifically stated on the label even if the label also contains a phrase such as ''contains certified color'' or ''artificially colored.''

**§ 5.73 Treatment of whisky or brandy with wood.**

The words ''colored and flavored with wood____ '' (inserting ''chips,'' ''slabs,'' etc., as appropriate) must appear immediately adjacent to, and in the same size of type as, the class and type designation under subpart I of this part for whisky and brandy treated, in whole or in part, with wood through percolation or otherwise during distillation or storage, other than through contact with an oak barrel. However, the statement specified in this section is not required in the case of brandy treated with an infusion of oak chips in accordance with § 5.155(b)(3)(B).

**§ 5.74 Statements of age, storage, and percentage.**

(a) *General.* (1) As defined in § 5.1, age is the length of time during which, after distillation and before bottling, the distilled spirits have been stored in oak barrels. For bourbon whisky, rye whisky, wheat whisky, malt whisky, or rye malt whisky, and straight whiskies other than straight corn whisky, aging must occur in charred new oak barrels.

(2) If an age statement is used, it is permissible to understate the age of a product, but overstatements of age are prohibited. However, the age statement may not conflict with the standard of identity, if aging is required as part of the standard of identity. For example, the standard of identity for straight rye whisky requires that the whisky be aged for a minimum of 2 years, so the age statement ''Aged 1 year,'' would be prohibited for a product designated as ''straight'' rye whisky, even if the spirits were actually aged for more than 2 years, because it is inconsistent with the standard of identity.

(3)The age may be stated in years, months, or days.

(b) *Age statements and percentage of type statements for whisky.* For all domestic or foreign whiskies that are aged less than 4 years, including blends containing a whisky that is aged less than 4 years, an age statement and percentage of types of whisky statement is required to appear on a label, unless the whisky is labeled as ''bottled in bond'' in conformity with § 5.88. For all other whiskies, the statements are optional, but if used, they must conform to the formatting requirements listed below. Moreover, if the bottler chooses to include a statement of age or percentage on the label of a product that is 4 years old or more and that contains neutral spirits, the statement must appear immediately adjacent to the neutral spirits statement required by § 5.70. The following are the allowable formats for the age and percentage statements for whisky:

(1)(i) In the case of whisky, whether or not mixed or blended but containing no neutral spirits, the age of the youngest whisky in the product. The age statement must appear substantially as follows: ''____ years old''; and

(ii) If a whisky is aged in more than one container, the label may optionally indicate the types of oak containers used.

(2) In the case of whisky containing neutral spirits, whether or not mixed or blended, if any straight whisky or other whisky in the product is less than 4 years old, the percentage by volume of each such whisky and the age of each such whisky (the age of the youngest of the straight whiskies or other whiskies if the product contains two or more of either). The age and percentage statement for a straight whisky and other whisky must appear immediately adjacent to the neutral spirits statement required by § 5.70 and must read substantially as follows:

(i) If the product contains only one straight whisky and no other whisky: ''____ percent straight whisky ____ years old;''

(ii) If the product contains more than one straight whisky but no other whisky: ''____ percent straight whiskies ____ years or more old.'' In this case the age blank must state the age of the youngest straight whisky in the product. However, in lieu of the foregoing statement, the following statement may appear on the label: ''____ percent straight whisky ____ years old, ____ percent straight whisky ____ years old, and ____ percent straight whisky ____ years old'';

(iii) If the product contains only one straight whisky and one other whisky: ''____ percent straight whisky ____ years old, ____ percent whisky ____ years old''; or

(iv) If the product contains more than one straight whisky and more than one other whisky: ''____ percent straight whiskies ____ years or more old, ____ percent whiskies ____ years or more old.'' In this case, the age blanks must state the age of the youngest straight whisky and the age of the youngest other whisky. However, in lieu of the foregoing statement, the following statement may appear on the label: ''____ percent straight whisky ____ years old, percent straight whisky ____ years old, ____ percent whisky ____ years old, and ____ percent whisky ____ years old'';

(3) In the case of an imported rye whisky, wheat whisky, malt whisky, or rye malt whisky, a label on the product must state each age and percentage in the manner and form that would be required if the whisky had been made in the United States;

(4) In the case of whisky made in the United States and stored in reused oak barrels, other than corn whisky and light whisky, in lieu of the words ''____ years old'' specified in paragraphs (b)(1) and (b)(2) of this section, the period of storage in the reused oak barrels must appear on the label as follows: ''stored ____ years in reused cooperage.''

(c) *Statements of age for rum, brandy, and agave spirits.* A statement of age on labels of rums, brandies, and agave spirits is optional, except that, in the case of brandy (other than immature brandies, fruit brandies, marc brandy, pomace brandy, Pisco brandy, and grappa brandy, which are not customarily stored in oak barrels) not stored in oak barrels for a period of at least 2 years, a statement of age must appear on the label. Any statement of age authorized or required under this paragraph must appear substantially as follows: ''____ years old,'' with the blank to be filled in with the age of the youngest distilled spirits in the product.

(d) *Statement of storage for grain spirits.* In the case of grain spirits, the period of storage in oak barrels may appear on a label immediately adjacent to the percentage statement required under § 5.73, for example: ''____ % grain spirits stored ____ years in oak barrels.''

(e) *Other distilled spirits.* (1) Statements regarding age or maturity or similar statements or representations on labels for all other spirits, except neutral spirits, are permitted only when the distilled spirits are stored in an oak barrel and, once dumped from the barrel, subjected to no treatment besides mixing with water, filtering, and bottling. If batches are made from barrels of spirits of different ages, the label may only state the age of the youngest spirits.

(2) Statements regarding age or maturity or similar statements of neutral spirits (except for grain spirits as stated

in paragraph (c) of this section) are prohibited from appearing on any label.

(f) *Other age representations.* (1) If a representation that is similar to an age or maturity statement permitted under this section appears on a label, a statement of age, in a manner that is conspicuous and in characters at least half the type size of the representation must also appear on each label that carries the representation, except in the following cases:

(i) The use of the word ''old'' or another word denoting age as part of the brand name of the product is not deemed to be an age representation that requires a statement of age; and

(ii) Labels of whiskies and brandies (other than immature brandies, pomace brandy, marc brandy, Pisco brandy, and grappa brandy) not required to bear a statement of age, and rum and agave spirits aged for not less than 4 years, may contain general inconspicuous age, maturity or similar representations without the label having to bear an age statement.

(2) Distillation dates (which may be an exact date or a year) may appear on a label of spirits where the spirits are manufactured solely through distillation. A distillation date may only appear if an optional or mandatory age statement is used on the label and must appear in the same field of vision as the age statement.

## Subpart F—Restricted Labeling Statements.

### § 5.81 General.

(a) *Application.* The labeling practices, statements, and representations in this subpart may be used on distilled spirits labels only when used in compliance with this subpart. In addition, if any of the practices, statements, or representations in this subpart are used elsewhere on containers or in packaging, they must comply with the requirements of this subpart. For purposes of this subpart:

(1) The term ''label'' includes all labels on distilled spirits containers on which mandatory information may appear, as set forth in § 5.61(a), as well as any other label on the container.

(2) The term ''container'' includes all parts of the distilled spirits container, including any part of a distilled spirits container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 5.61(b).

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

## Food Allergen Labeling

### § 5.82 Voluntary disclosure of major food allergens.

(a) *Definitions.* For purposes of this section, the following terms or phrases have the meanings indicated.

(1) *Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived* means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts); and

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts,'' as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the name ''soy,'' ''soybean,'' or ''soya'' may be used instead of ''soybeans.''

(b) *Voluntary labeling standards.* Major food allergens used in the production of a distilled spirits product may, on a voluntary basis, be declared on any label affixed to the container. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the distilled spirits product, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under § 5.83. The major food allergens declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains: egg'').

### § 5.83 Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 5.82. The burden is on the petitioner to provide scientific evidence (as well as the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 5.82(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition.

(d) *Availability of information*—(1) *General.* TTB will promptly post to its website (*https://www.ttb.gov*) all petitions received under this section, as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB website will be available to the public pursuant to the Freedom of Information Act, at 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons why the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

## Production Claims

### § 5.84 Use of the term "organic."

Use of the term ''organic'' is permitted if any such use complies with United States Department of Agriculture (USDA) National Organic Program rules (7 CFR part 205), as interpreted by the USDA.

### § 5.85 [Reserved]

### § 5.86 [Reserved]

## Other Label Terms

### § 5.87 "Barrel Proof" and similar terms.

(a) The term ''barrel proof'' or ''cask strength'' may be used to refer to distilled spirits stored in wood barrels only when the bottling proof is not more than two degrees lower than the proof of the spirits when the spirits are dumped from the barrels.

(b) The term ''original proof,'' ''original barrel proof,'' ''original cask strength,'' or ''entry proof'' may be used only if the distilled spirits were stored in wooden barrels and the proof of the spirits entered into the barrel and the proof of the bottled spirits are the same.

### § 5.88 Bottled in bond.

(a) The term ''bond,'' ''bonded,'' ''bottled in bond,'' or ''aged in bond,'' or phrases containing these or synonymous terms, may be used (including as part of the brand name) only if the distilled spirits are:

(1) Composed of the same kind (type, if one is applicable to the spirits, otherwise class) of spirits distilled from the same class of materials;

(2) Distilled in the same distilling season (as defined in § 5.1) by the same distiller at the same distillery.

(3) Stored for at least 4 years in wooden containers wherein the spirits have been in contact with the wood surface, except for vodka, which must be stored for at least 4 years in wooden containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface, and except for gin, which must be stored in paraffin-lined or unlined wooden containers for at least 4 years;

(4) Unaltered from their original condition or character by the addition or subtraction of any substance other than by filtration, chill proofing, or other physical treatments (which do not involve the addition of any substance which will remain in the finished product or result in a change in class or type);

(5) Reduced in proof by the addition of only pure water to 50 percent alcohol by volume (100 degrees of proof); and

(6) Bottled at 50 percent alcohol by volume (100 degrees of proof).

(b) Imported spirits labeled as ''bottled in bond'' or other synonymous term described above must be manufactured in accordance with paragraphs (a)(1) through (6) of this section and may only be so labeled if the laws and regulations of the country in which the spirits are manufactured authorize the bottling of spirits in bond and require or specifically authorize such spirits to be so labeled. The ''bottled in bond'' or synonymous statement must be immediately followed, in the same font and type size, by the name of the country under whose laws and regulations such distilled spirits were so bottled.

(c) Domestically manufactured spirits labeled as ''bottled in bond'' or with some other synonymous statement must bear the real name of the distillery or the trade name under which the distiller distilled and warehoused the spirits, and the number of the distilled spirits plant in which distilled, and the number of the distilled spirits plant in which bottled. The label may also bear the name or trade name of the bottler.

### § 5.89 Multiple distillation claims.

(a) Truthful statements about the number of distillations, such as ''double distilled,'' ''distilled three times,'' or similar terms to convey multiple distillations, may be used if they are truthful statements of fact. For the purposes of this section only, the term ''distillation'' means a single run through a pot still or a single run through a column of a column (reflux) still. For example, if a column still has three separate columns, one complete additional run through the system would constitute three additional distillations.

(b) The number of distillations may be understated but may not be overstated.

### § 5.90 Terms related to Scotland.

(a) The words ''Scotch,'' ''Scots,'' ''Highland,'' or ''Highlands,'' and similar words connoting, indicating, or commonly associated with Scotland, may be used to designate only distilled spirits wholly manufactured in Scotland, except that the term ''Scotch whisky'' may appear in the designation for a flavored spirit (''Flavored Scotch Whisky'') or in a truthful statement of composition (''Scotch whisky with natural flavors'') where the base distilled spirit meets the requirements for a Scotch whisky designation, regardless of where the finished product is manufactured.

(b) In accordance with § 5.127, statements relating to government supervision may appear on Scotch whisky containers only if such labeling statements are required or specifically authorized by the applicable regulations of the United Kingdom.

### § 5.91 Use of the term ''pure.''

Distilled spirits labels, containers, or packaging may not bear the word ''pure'' unless it:

(a) Refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient;

(b) Is part of the bona fide name of a permittee or retailer for which the distilled spirits are bottled; or

(c) Is part of the bona fide name of the permittee that bottled the distilled spirits.

## Subpart G—Prohibited Labeling Practices

### § 5.101 General.

(a) *Application.* The prohibitions set forth in this subpart apply to any distilled spirits label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on distilled spirits containers on which mandatory information may appear, as set forth in § 5.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the distilled spirits container, including any part of a distilled spirits container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 5.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

### § 5.102 False or untrue statements.

Distilled spirits labels, containers, or packaging may not contain any statement or representation that is false or untrue in any particular.

### § 5.103 Obscene or indecent depictions.

Distilled spirits labels, containers, or packaging may not contain any statement, design, device, picture, or representation that is obscene or indecent.

## Subpart H—Labeling Practices That Are Prohibited If They Are Misleading

### § 5.121 General.

(a) *Application.* The labeling practices that are prohibited if misleading set forth in this subpart apply to any distilled spirits label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on distilled spirits containers on which mandatory information may appear, as set forth in § 5.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the distilled spirits container, including any part of a distilled spirits container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 5.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

### § 5.122 Misleading statements or representations.

(a) *General prohibition.* Distilled spirits labels, containers, or packaging may not contain any statement or representation, irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the distilled spirits, or with regard to any other material factor.

(b) *Ways in which statements or representations may be found to be misleading.* (1) A statement or representation is prohibited, irrespective of falsity, if it directly creates a misleading impression, or if it does so indirectly through ambiguity, omission, inference, or by the addition of irrelevant, scientific, or technical matter. For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.

(2) All claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on distilled spirits labels, containers, or packaging that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, is considered misleading.

### § 5.123 Guarantees.

Distilled spirits labels, containers, or packaging may not contain any statement relating to guarantees if the appropriate TTB officer finds it is likely to mislead the consumer. However, money-back guarantees are not prohibited.

### § 5.124 Disparaging statements.

(a) *General.* Distilled spirits labels, containers, or packaging may not contain any false or misleading statement that explicitly or implicitly disparages a competitor's product.

(b) *Truthful and accurate comparisons.* This section does not prevent truthful and accurate comparisons between products (such as, ''Our liqueur contains more strawberries than Brand X'') or statements of opinion (such as, ''We think our rum tastes better than any other distilled spirits on the market'').

### § 5.125 Tests or analyses.

Distilled spirits labels, containers, or packaging may not contain any statement or representation of or relating to analyses, standards, or tests, whether or not it is true, that is likely to mislead the consumer. An example of such a misleading statement is ''tested and approved by our research laboratories'' if the testing and approval does not in fact have any significance.

### § 5.126 Depictions of government symbols.

*Representations of the armed forces and flags.* Distilled spirits labels, containers, or packaging may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols on the label, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of, the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

**§ 5.127 [Reserved]**

**§ 5.128 [Reserved]**

**§ 5.129 Health-related statements.**

(a) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Health-related statement* means any statement related to health (other than the warning statement required under part 16 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits product, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (for example, statements of vitamin content).

(2) *Specific health claim* means a type of health-related statement that, expressly or by implication, characterizes the relationship of distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between alcohol, distilled spirits, or any substance found within the distilled spirits, and a disease or health-related condition.

(3) *Health-related directional statement* means a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(b) *Rules for labeling*—(1) *Health-related statements.* In general, distilled spirits may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(2) *Specific health claims.* (i) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on the distilled spirits. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on the distilled spirits.

(ii) TTB will approve the use of a specific health claim on a distilled spirits label only if the claim is truthful and adequately substantiated by scientific or medical evidence; is sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(3) *Health-related directional statements.* A health-related directional statement is presumed misleading unless it:

(i) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of distilled spirits or alcohol consumption; and

(ii)(A) Includes as part of the health-related directional statement the following disclaimer: ''This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;'' or

(B) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

**§ 5.130 Appearance of endorsement.**

(a) *General.* Distilled spirits labels, containers, or packaging may not include the name, or the simulation or abbreviation of the name, of any living individual of public prominence, or an existing private or public organization, or any graphic, pictorial, or emblematic representation of the individual or organization, if its use is likely to lead a consumer to falsely believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. This section does not prohibit the use of such names where the individual or organization has provided authorization for their use.

(b) *Disclaimers.* Statements or other representations do not violate this section if, taken as a whole, they create no misleading impression as to an implied endorsement either because of the context in which they are presented or because of the use of an adequate disclaimer.

(c) *Exception.* This section does not apply to the use of the name of any person engaged in business as a distiller, rectifier (processor), blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman of distilled spirits. This section also does not apply to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by the industry member or its predecessors in interest prior to August 29, 1935.

## Subpart I—Standards of Identity for Distilled Spirits

**§ 5.141 The standards of identity in general.**

(a) *General.* Distilled spirits are divided, for labeling purposes, into classes, which are further divided into specific types. As set forth in § 5.63, a distilled spirits product label must bear the appropriate class, type or other designation. The standards that define the classes and types are known as the ''standards of identity.'' The classes and types of distilled spirits set forth in this subpart apply only to distilled spirits for beverage or other nonindustrial purposes.

(b) *Rules.* (1) Unless otherwise specified, when a standard of identity states that a mash is of a particular ingredient (such as ''fermented mash of grain''), the mash must be made entirely of that ingredient without the addition of other fermentable ingredients.

(2) Some distilled spirits products may conform to the standards of identity of more than one class. Such products may be designated with any single class designation defined in this subpart to which the products conform.

(c) *Designating with both class and type.* If a product is designated with both the class and the type, the type designation must be as conspicuous as the class designation, and must appear in the same field of vision.

(d) *Words in a designation.* All words in a designation must be similarly conspicuous and must appear together.

**§ 5.142 Neutral spirits or alcohol.**

(a) *The class neutral spirits.* ''Neutral spirits'' or ''alcohol'' are distilled spirits distilled from any suitable material at or above 95 percent alcohol by volume (190° proof), and, if bottled, bottled at not less than 40 percent alcohol by volume (80° proof). Neutral spirits other than the type ''grain spirits'' may be designated as ''neutral spirits'' or ''alcohol'' on a label. Neutral spirits (other than the type ''grain spirits'') may not be aged in wood barrels at any time.

(b) *Types.* The following chart lists the types of neutral spirits and the rules that apply to the type designation.

| Type designation | Standards |
|---|---|
| (1) Vodka | Neutral spirits which may be treated with up to two grams per liter of sugar and up to one gram per liter of citric acid. Products to be labeled as vodka may not be aged or stored in wood barrels at any time except when stored in paraffin-lined wood barrels and labeled as bottled in bond pursuant to § 5.88. Vodka treated and filtered with not less than one ounce of activated carbon or activated charcoal per 100 wine gallons of spirits may be labeled as ''charcoal filtered.'' Addition of any other flavoring or blending materials changes the classification to flavored vodka or to a distilled spirits specialty product, as appropriate. Vodka must be designated on the label as ''neutral spirits,'' ''alcohol,'' or ''vodka''. |
| (2) Grain spirits | Neutral spirits distilled from a fermented mash of grain and stored in oak barrels. ''Grain spirits'' must be designated as such on the label. Grain spirits may not be designated as ''neutral spirits'' or ''alcohol'' on the label. |

**§ 5.143 Whisky.**

(a) *The class whisky.* ''Whisky'' or ''whiskey'' is distilled spirits that is an alcoholic distillate from a fermented mash of any grain distilled at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to whisky, stored in oak barrels (except that corn whisky need not be so stored), and bottled at not less than 40 percent alcohol by volume (80° proof), and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

(b) *Label designations.* The word whisky may be spelled as either ''whisky'' or ''whiskey''. The place, State, or region where the whisky was distilled may appear as part of the designation on the label if the distillation and any required aging took place in that location (*e.g.,* ''New York Bourbon Whisky'' must be distilled and aged in the State of New York); however, blending and bottling need not have taken place in the same place, State, or region. However, if any whisky is made partially from whisky distilled in a country other than that indicated by the type designation, the label must indicate the percentage of such whisky and the country where that whisky was distilled. Additionally, the label of whisky that does not meet one of the standards for specific types of whisky and that is comprised of components distilled in more than one country must contain a statement of composition indicating the country of origin of each component (such as ''Whisky—50% from Japan, 50% from the United States''). The word ''bourbon'' may not be used to describe any whisky or whisky-based distilled spirits not distilled and aged in the United States. The whiskies defined in paragraphs (c)(2) through (6) and (10) through (14) of this section are distinctive products of the United States and must have the country of origin stated immediately adjacent to the type designation if it is distilled outside of the United States, or the whisky designation must be proceeded by the term ''American type'' if the country of origin appears elsewhere on the label. For example, ''Brazilian Corn Whisky,'' ''Rye Whisky distilled in Sweden,'' and ''Blended Whisky—Product of Japan'' are statements that meet this country of origin requirement. ''Light whisky'', ''Blended light whisky'', and ''Whisky distilled from bourbon (rye, wheat, malt, rye malt, or other named grain) mash'' may only be produced in the United States.

(c) *Types of whisky.* The following tables set out the designations for whisky. Table 1 sets forth the standards for whisky that are defined based on production, storage, and processing standards, while Table 2 sets forth rules for the types of whisky that are defined as distinctive products of certain foreign countries. For the whiskies listed in Table 1, a domestic whisky may be labeled with the designation listed, when it complies with the production standards in the subsequent columns. The ''source'' column indicates the source of the grain mash used to make the whisky. The ''distillation proof'' indicates the allowable distillation proof for that type. The ''storage'' column indicates the type of packages (barrels) in which the spirits must be stored and limits for the proof of the spirits when entering the packages. The ''neutral spirits permitted'' column indicates whether neutral spirits may be used in the product in their original state (and not as vehicles for flavoring materials), and if so, how much may be used. The ''harmless coloring, flavoring, blending materials permitted'' column indicates whether harmless coloring, flavoring, or blending materials, other than neutral spirits in their original form, described in § 5.142, may be used in the product. The use of the word ''straight'' is a further designation of a type, and is optional.

TABLE 1 TO PARAGRAPH (c)—TYPES OF WHISKY AND PRODUCTION, STORAGE, AND PROCESSING STANDARDS

| Type | Source | Distillation proof | Storage | Neutral spirits permitted | Allowable coloring, flavoring, blending materials permitted |
|---|---|---|---|---|---|
| (1) Whisky, which may be used as the designation for any of the type designations under the class ''whisky,'' or may be used as the designation if the whisky does not meet one of the type designations but satisfies the class designation. | Fermented grain mash | Less than 190° | Oak barrels with no minimum time requirement. | No | Yes. |

TABLE 1 TO PARAGRAPH (c)—TYPES OF WHISKY AND PRODUCTION, STORAGE, AND PROCESSING STANDARDS—Continued

| Type | Source | Distillation proof | Storage | Neutral spirits permitted | Allowable coloring, flavoring, blending materials permitted |
|---|---|---|---|---|---|
| (2) Bourbon Whisky, Rye Whisky, Wheat Whisky, Malt Whisky, Rye Malt Whisky, or [name of other grain] Whisky. | Fermented mash of not less than 51%, respectively: Corn, Rye, Wheat, Malted Barley, Malted Rye Grain, [Other grain]. | 160° or less | Charred new oak barrels at 125° or less. | No | Yes, except for bourbon whisky. |
| (3) Corn Whisky. (Whisky conforming to this standard must be designated as "corn whisky."). | Fermented mash of not less than 80% corn. | 160° or less | Required only if age is claimed on the label. If stored, must be stored at 125° or less in used or uncharred new oak barrels. | No | Yes. |
| (4) Straight Whisky | Fermented mash of less than 51% corn, rye, wheat, malted barley, malted rye [or other] grain. (Includes mixtures of straight whiskies made in the same state.). | 160° or less | Charred new oak barrels at 125° or less for a minimum of 2 years. | No | No. |
| (5) Straight Bourbon Whisky, Straight Rye Whisky, Straight Wheat Whisky, Straight Malt Whisky, or Straight Rye Malt Whisky. | Fermented mash of not less than 51%, respectively: Corn, Rye, Wheat, Malted Barley, Malted Rye Grain. | 160° or less | Charred new oak barrels at 125° or less for a minimum of 2 years. | No | No. |
| (6) Straight Corn Whisky | Fermented mash of not less than 80% corn. | 160° or less | 125° or less in used or uncharred new oak barrels for a minimum of 2 years. | No | No. |
| (7) Whisky distilled from Bourbon/Rye/Wheat/Malt/Rye Malt/[Name of other grain] mash. | Fermented mash of not less than 51%, respectively: Corn, Rye, Wheat, Malted Barley, Malted Rye Grain, [Other grain]. | 160° or less | Used oak barrels | No | Yes. |
| (8) Light Whisky | Fermented grain mash | More than 160° | Used or uncharred new oak barrels. | No | Yes. |
| (9) Blended Light Whisky (Light Whisky—a blend). | Light whisky blended with less than 20% Straight Whisky on a proof gallon basis. | Blend | Will contain a blend. | No | Yes. |
| (10) Blended Whisky (Whisky—a blend). | At least 20% Straight Whisky on a proof gallon basis plus Whisky or Neutral Spirits alone or in combination. | 160° or less | Will contain a blend of spirits, some stored and some not stored. | Maximum of 80% on a proof gallon basis. | Yes. |
| (11) Blended Bourbon Whisky, Blended Rye Whisky, Blended Wheat Whisky, Blended Malt Whisky, Blended Rye Malt Whisky, Blended Corn Whisky (or Whisky—a blend). | At least 51% on a proof gallon basis of: Straight Bourbon, Rye, Wheat, Malt, Rye Malt, or Corn Whisky; the rest comprised of Whisky or Neutral Spirits alone or in combination. | Blend | Will contain a blend of spirits, some stored and some not stored. | Maximum of 49% on a proof gallon basis. | Yes. |
| (12) Blend of Straight Whiskies (Blended Straight Whiskies). | Mixture of Straight Whiskies that does not conform to "Straight Whisky". | 160° or less | Will contain a blend of spirits which were aged at least 2 years. | No, except as part of a flavor. | Yes. |
| (13) Blended Straight Bourbon Whiskies, Blended Straight Rye Whiskies, Blended Straight Wheat Whiskies, Blended Straight Malt Whiskies, Blended Straight Rye Malt Whiskies, Blended Straight Corn Whiskies, (or a blend of straight whiskies). | Mixture of Straight Whiskies of the same named type produced in different states or produced in the same state but contains coloring, flavoring or blending material. | 160° or less | Will contain a blend of spirits which were aged at least 2 years. | No, except as part of a flavor. | Yes. |
| (14) Spirit Whisky | Mixture of Neutral Spirits and 5% or more on a proof gallon basis of: Whisky or Straight Whisky or a combination of both. The Straight Whisky component must be less than 20% on a proof gallon basis. | Blend | Will contain a blend of spirits, some stored and some not stored. | Maximum of 95% on a proof gallon basis. | Yes. |

TABLE 2 TO PARAGRAPH (c)—TYPES OF WHISKY THAT ARE DISTINCTIVE PRODUCTS

| | |
|---|---|
| (16) Scotch whisky | Whisky which is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of the United Kingdom regulating the manufacture of Scotch whisky for consumption in the United Kingdom: *Provided,* That if such product is a mixture of whiskies, such mixture is ''blended Scotch whisky'' or ''Scotch whisky—a blend''. |
| (17) Irish whisky | Whisky which is a distinctive product of Ireland, manufactured either in the Republic of Ireland or in Northern Ireland, in compliance with their laws regulating the manufacture of Irish whisky for home consumption: *Provided,* That if such product is a mixture of whiskies, such mixture is ''blended Irish whisky'' or ''Irish whisky—a blend''. |
| (18) Canadian whisky | Whisky which is a distinctive product of Canada, manufactured in Canada in compliance with the laws of Canada regulating the manufacture of Canadian whisky for consumption in Canada: *Provided,* That if such product is a mixture of whiskies, such mixture is ''blended Canadian whisky'' or ''Canadian whisky—a blend''. |

**§ 5.144 Gin.**

(a) *The class gin.* ''Gin'' is distilled spirits made by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and, optionally, with or over other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials, and includes mixtures of gin and neutral spirits. It must derive its main characteristic flavor from juniper berries and be bottled at not less than 40 percent alcohol by volume (80° proof). Gin may be aged in oak containers.

(b) *Distilled gin.* Gin made exclusively by original distillation or by redistillation may be further designated as ''distilled,'' ''Dry,'' ''London,'' ''Old Tom'' or some combination of these four terms.

**§ 5.145 Brandy.**

(a) *The class brandy.* ''Brandy'' is spirits that are distilled from the fermented juice, mash, or wine of fruit, or from the residue thereof, distilled at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 40 percent alcohol by volume (80° proof).

(b) *Label designations.* Brandy conforming to one of the type designations must be designated with the type name or specific designation specified in the requirements for that type. The term ''brandy'' without further qualification (such as ''peach'' or ''marc'') may only be used as a designation on labels of grape brandy as defined in paragraph (c)(1) of this section. Brandy conforming to one of the type designations defined in paragraphs (c)(1) through (12) of this section must be designated on the label with the type name unless a specific designation is included in the requirements for that type. Brandy, or mixtures thereof, not conforming to any of the types defined in this section must be designated on the label as ''brandy'' followed immediately by a truthful and adequate statement of composition.

(c) *Types.* Paragraphs (c)(1) through (12) of this section set out the types of brandy and the standards for each type.

| Type | Standards |
|---|---|
| (1) Fruit brandy | Brandy distilled solely from the fermented juice or mash of whole, sound, ripe fruit, or from standard grape or other fruit wine, with or without the addition of not more than 20 percent by weight of the pomace of such juice or wine, or 30 percent by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation). Fruit brandy includes mixtures of such brandy with not more than 30 percent (calculated on a proof gallon basis) of lees brandy. Fruit brandy derived solely from grapes and stored for at least 2 years in oak containers must be designated ''grape brandy'' or ''brandy.'' Grape brandy that has been stored in oak barrels for fewer than 2 years must be designated ''immature grape brandy'' or ''immature brandy.'' Fruit brandy, other than grape brandy, derived from one variety of fruit, must be designated by the word ''brandy'' qualified by the name of such fruit (for example, ''peach brandy''), except that ''apple brandy'' may be designated ''applejack,'' ''plum brandy'' may be designated ''Slivovitz,'' and ''cherry brandy'' may be designated ''Kirschwasser.'' Fruit brandy derived from more than one variety of fruit must be designated as ''fruit brandy'' qualified by a truthful and adequate statement of composition, for example ''Fruit brandy distilled from strawberries and blueberries.'' |
| (2) Cognac or ''Cognac (grape) brandy'' | Grape brandy distilled exclusively in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French government. |
| (3) Armagnac | Grape brandy distilled exclusively in France in accordance with the laws and regulations of France regulating the manufacture of Armagnac for consumption in France. |
| (4) Brandy de Jerez | Grape brandy distilled exclusively in Spain in accordance with the laws and regulations of Spain regulating the manufacture of Brandy de Jerez for consumption in Spain. |
| (5) Calvados | Apple brandy distilled exclusively in France in accordance with the laws and regulations of France regulating the manufacture of Calvados for consumption in France. |
| (6) Pisco | Grape brandy distilled in Peru or Chile in accordance with the laws and regulations of the country of manufacture of Pisco for consumption in the country of manufacture, including:<br>(i) ''Pisco Perú'' (or ''Pisco Peru''), which is Pisco manufactured in Peru in accordance with the laws and regulations of Peru governing the manufacture of Pisco for consumption in that country; and<br>(ii) ''Pisco Chileno'' (or ''Chilean Pisco''), which is Pisco manufactured in Chile in accordance with the laws and regulations of Chile governing the manufacture of Pisco for consumption in that country. |
| (7) Dried fruit brandy | Brandy that conforms to the standard for fruit brandy except that it has been derived from sound, dried fruit, or from the standard wine of such fruit. Brandy derived from raisins, or from raisin wine, must be designated ''raisin brandy.'' Dried fruit brandy, other than raisin brandy, must be designated by the word ''brandy'' qualified by the name of the dried fruit(s) from which made preceded by the word ''dried'', for example, ''dried apricot brandy.'' |

| Type | Standards |
|---|---|
| (8) Lees brandy | Brandy distilled from the lees of standard grape or other fruit wine, and such brandy derived solely from grapes must be designated ''grape lees brandy'' or ''lees brandy.'' Lees brandy derived from fruit other than grapes must be designated as ''lees brandy,'' qualified by the name of the fruit from which such lees are derived, for example, ''cherry lees brandy.'' |
| (9) Pomace brandy or Marc brandy | Brandy distilled from the skin and pulp of sound, ripe grapes or other fruit, after the withdrawal of the juice or wine therefrom. Such brandy derived solely from grape components must be designated ''grape pomace brandy,'' ''grape marc brandy'', ''pomace brandy,'' or ''mark brandy.'' Grape pomace brandy may alternatively be designated as ''grappa'' or ''grappa brandy.'' Pomace or marc brandy derived from fruit other than grapes must be designated as ''pomace brandy'' or ''marc brandy'' qualified by the name of the fruit from which derived, for example, ''apple pomace brandy'' or ''pear marc brandy.'' |
| (10) Residue brandy | Brandy distilled wholly or in part from the fermented residue of fruit or wine. Such brandy derived solely from grapes must be designated ''grape residue brandy,'' or ''residue brandy.'' Residue brandy, derived from fruit other than grapes, must be designated as ''residue brandy'' qualified by the name of the fruit from which derived, for example, ''orange residue brandy.'' Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in paragraphs (b)(1) and (7) through (9) of this section may, regardless of such fact, be designated ''residue brandy'', but the use of such designation shall be conclusive, precluding any later change of designation. |
| (11) Neutral brandy | Any type of brandy distilled at more than 85% alcohol by volume (170° proof) but less than 95% alcohol by volume. Such brandy derived solely from grapes must be designated ''grape neutral brandy,'' or ''neutral brandy.'' Other neutral brandies, must be designated in accordance with the rules for those types of brandy, and be qualified by the word ''neutral''; for example, ''neutral citrus residue brandy''. |
| (12) Substandard brandy | Any brandy:<br>(i) Distilled from fermented juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20 degrees Celsius); measurements of volatile acidity must be calculated exclusive of water added to facilitate distillation.<br>(ii) Distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace, or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material.<br>(iii) Such brandy derived solely from grapes must be designated ''substandard grape brandy,'' or ''substandard brandy.'' Other substandard brandies must be designated in accordance with the rules for those types of brandy, and be qualified by the word ''substandard''; for example, ''substandard fig brandy''. |

**§ 5.146 Blended applejack.**

(a) *The class blended applejack.* ''Blended applejack'' is a mixture containing at least 20 percent on a proof gallon basis of apple brandy (applejack) that has been stored in oak barrels for not less than 2 years, and not more than 80 percent of neutral spirits on a proof gallon basis. Blended applejack must be bottled at not less than 40 percent alcohol by volume (80° proof).

(b) *Label designation.* The label designation for blended applejack may be ''blended applejack'' or ''applejack–a blend.''

**§ 5.147 Rum.**

(a) *The class rum.* ''Rum'' is distilled spirits that is distilled from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to rum, and bottled at not less than 40 percent alcohol by volume (80° proof); and also includes mixtures solely of such spirits. All rum may be designated as ''rum'' on the label, even if it also meets the standards for a specific type of rum.

(b) *Types.* Paragraph (b)(1) of this section describes a specific type of rum and the standards for that type.

| Type | Standards |
|---|---|
| (1) Cachaça | Rum that is a distinctive product of Brazil, manufactured in Brazil in compliance with the laws of Brazil regulating the manufacture of Cachaça for consumption in that country. The word ''Cachaça'' may be spelled with or without the diacritic mark (i.e., ''Cachaça'' or ''Cachaca''). Cachaça may be designated as ''Cachaça'' or ''rum'' on labels. |
| (2) [Reserved] | |

**§ 5.148 Agave spirits.**

(a) *The class agave spirits.* ''Agave spirits'' are distilled from a fermented mash, of which at least 51 percent is derived from plant species in the genus Agave and up to 49 percent is derived from other sugars. Agave spirits must be distilled at less than 95 percent alcohol by volume (190° proof) and bottled at or above 40 percent alcohol by volume (80° proof). Agave spirits may be stored in wood barrels. Agave spirits may contain added flavoring or coloring materials as authorized by § 5.155. This class also includes mixtures of agave spirits. Agave spirits that meet the standard of identity for ''Tequila'' or ''Mezcal'' may be designated as ''agave spirits,'' or as ''Tequila'' or ''Mezcal'', as applicable.

(b) *Types.* Paragraphs (b)(1) and (2) of this section describe the types of agave spirits and the rules for each type.

| Type | Standards |
|---|---|
| (1) Tequila | An agave spirit that is a distinctive product of Mexico. Tequila must be made in Mexico, in compliance with the laws and regulations of Mexico governing the manufacture of Tequila for consumption in that country. |
| (2) Mezcal | An agave spirit that is a distinctive product of Mexico. Mezcal must be made in Mexico, in compliance with the laws and regulations of Mexico governing the manufacture of Mezcal for consumption in that country. |

**§ 5.149 [Reserved]**

**§ 5.150 Cordials and liqueurs.**

(a) *The class cordials and liqueurs.* Cordials and liqueurs are flavored distilled spirits that are made by mixing or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolation, or maceration of such materials, and containing sugar (such as sucrose, fructose, dextrose, or levulose) in an amount of not less than 2.5 percent by weight of the finished product. Designations on labels may be ''Cordial'' or ''Liqueur,'' or, in the alternative, may be one of the type designations below. Cordials and liqueurs may not be designated as ''straight''. The designation of a cordial or liqueur may include the word ''dry'' if sugar is less than 10 percent by weight of the finished product.

(b) *Types.* Paragraph (b)(1) through (12) of this section list definitions and standards for optional type designations.

| Type | Rule |
|---|---|
| (1) Sloe gin | A cordial or liqueur with the main characteristic flavor derived from sloe berries. |
| (2) Rye liqueur, bourbon liqueur (or rye cordial or bourbon cordial). | Liqueurs, bottled at not less than 30 percent alcohol by volume, in which not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and which possess a predominant characteristic rye or bourbon flavor derived from such whisky. Wine, if used, must be within the 2.5 percent limitation provided in § 5.155 for coloring, flavoring, and blending materials. |
| (3) Rock and rye; Rock and bourbon; Rock and brandy; Rock and rum. | Liqueurs, bottled at not less than 24 percent alcohol by volume, in which, in the case of rock and rye and rock and bourbon, not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and, in the case of rock and brandy and rock and rum, the distilled spirits used are all grape brandy or rum, respectively; containing rock candy or sugar syrup, with or without the addition of fruit, fruit juices, or other natural flavoring materials, and possessing, respectively, a predominant characteristic rye, bourbon, brandy, or rum flavor derived from the distilled spirits used. Wine, if used, must be within the 2.5 percent limitation provided in § 5.155 for harmless coloring, flavoring, and blending materials. |
| (4) Rum liqueur, gin liqueur, brandy liqueur. | Liqueurs, bottled at not less than 30 percent alcohol by volume, in which the distilled spirits used are entirely rum, gin, or brandy, respectively, and which possess, respectively, a predominant characteristic rum, gin, or brandy flavor derived from the distilled spirits used. In the case of brandy liqueur, the type of brandy must be stated in accordance with paragraph (d) of this section, except that liqueurs made entirely with grape brandy may be designated simply as ''brandy liqueur.'' Wine, if used, must be within the 2.5 percent limitation provided for in § 5.155 for harmless coloring, flavoring, and blending materials. |
| (5) Amaretto | Almond flavored liqueur/cordial |
| (6) Kummel | Caraway flavored liqueur/cordial |
| (7) Ouzo, Anise, Anisette | Anise flavored liqueurs/cordials |
| (8) Sambuca | Anise flavored liqueur. See § 5.154(b)(2) for designation rules for Sambuca not produced in Italy. |
| (9) Peppermint Schnapps | Peppermint flavored liqueur/cordial |
| (10) Triple Sec and Curacao | Orange flavored liqueurs/cordials. Curacao may be preceded by the color of the liqueur/cordial (for example, Blue Curacao). |
| (11) Crème de | A liqueur/cordial where the blank is filled in with the predominant flavor (for example, Crème de menthe is mint flavored liqueur/cordial.) |
| (12) Goldwasser | Herb flavored liqueur/cordial and containing gold flakes. See § 5.154(b)(2) for designation rules for Goldwasser not made in Germany. |

**§ 5.151 Flavored spirits.**

(a) *The class flavored spirits.* ''Flavored spirits'' are distilled spirits that are spirits conforming to one of the standards of identity set forth in §§ 5.142 through 5.148 to which have been added nonbeverage natural flavors, wine, or nonalcoholic natural flavoring materials, with or without the addition of sugar, and bottled at not less than 30 percent alcohol by volume (60° proof). The flavored spirits must be specifically designated by the single base spirit and one or more of the most predominant flavors (for example, ''Pineapple Flavored Tequila'' or ''Cherry Vanilla Flavored Bourbon Whisky''). The base spirit must conform to the standard of identity for that spirit before the flavoring is added. Base spirits that are a distinctive product of a particular place must be manufactured in accordance with the laws and regulations of the country as designated in the base spirit's standard of identity. If the finished product contains more than 2.5 percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation (whether the wine is added directly to the product or whether it is first mixed into an intermediate product), except that a flavored brandy may contain an additional 12.5 percent by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

(b) [Reserved]

**§ 5.152 Imitations.**

(a) Imitations must bear, as a part of the designation thereof, the word ''imitation'' and include the following:

(1) Any class or type of distilled spirits to which has been added coloring or flavoring material of such nature as to cause the resultant product to simulate any other class or type of distilled spirits;

(2) Any class or type of distilled spirits (other than distilled spirits specialty products as defined in § 5.156) to which has been added flavors considered to be artificial or imitation.

(3) Any class or type of distilled spirits (except cordials, liqueurs and specialties marketed under labels which do not indicate or imply that a particular class or type of distilled spirits was used in the manufacture thereof) to which has been added any whisky essence, brandy essence, rum essence, or similar essence or extract which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any class or type of distilled spirits;

(4) Any type of whisky to which beading oil has been added;

(5) Any rum to which neutral spirits or distilled spirits other than rum have been added;

(6) Any brandy made from distilling material to which has been added any amount of sugar other than the kind and amount of sugar expressly authorized in the production of standard wine; and

(7) Any brandy to which neutral spirits or distilled spirits other than brandy have been added, except that this provision shall not apply to any product conforming to the standard of identity for blended applejack.

(b) If any of the standards set forth in paragraphs (a)(1) through (7) of this section apply, the ''Imitation'' class designation must be used in front of the appropriate class as part of the designation (for example, Imitation Whisky).

**§ 5.153 [Reserved]**

**§ 5.154 Rules for geographical designations.**

(a) *Geographical designations.* (1) Geographical names for distinctive types of distilled spirits (other than names found by the appropriate TTB officer under paragraph (a)(2) of this section to have become generic) may not be applied to distilled spirits produced in any other place than the particular region indicated by the name, unless:

(i) There appears the word ''type'' or the word ''American'' or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name; and

(ii) The distilled spirits to which the name is applied conform to the distilled spirits of that particular region. The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Eau de Vie de Dantzig (Danziger Goldwasser), Ojen, Swedish punch. Geographical names for distinctive types of distilled spirits may be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in this section, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type.

(2) Only such geographical names for distilled spirits as the appropriate TTB officer finds have by usage and common knowledge lost their geographical significance to such extent that they have become generic shall be deemed to have become generic. Examples are London dry gin, Geneva (Hollands) gin.

(3) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. Examples are Armagnac, Greek brandy, Jamaica rum, Puerto Rico rum, Demerara rum and Andong Soju.

(b) *Products without geographical designations but distinctive of a particular place.* (1) The whiskies of the types specified in paragraphs (c)(2) through (6) and (10) through (14) of § 5.143 are distinctive products of the United States and if produced in a foreign country shall be designated by the applicable designation prescribed in such paragraphs, together with the words ''American type'' or the words ''produced (distilled, blended) in ____'', the blank to be filled in with the name of the foreign country: *Provided,* That the word ''bourbon'' shall not be used to describe any whisky or whisky-based distilled spirits not produced in the United States. If whisky of any of these types is composed in part of whisky or whiskies produced in a foreign country there shall be stated, on the brand label, the percentage of such whisky and the country of origin thereof.

(2) The name for other distilled spirits which are distinctive products of a particular place or country (such as Habanero), may not be given to the product of any other place or country unless the designation for such product includes the word ''type'' or an adjective such as ''American'', or the like, clearly indicating the true place of production. The provision for place of production shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that the appropriate TTB officer finds they have become generic. Examples of generic designations are Slivovitz, Zubrovka, Aquavit, Arrack, and Kirschwasser.

**§ 5.155 Alteration of class and type.**

(a) *Definitions*—(1) *Coloring, flavoring, or blending material.* For the purposes of this section, the term ''coloring, flavoring, or blending material'' means a harmless substance that is an essential component of the class or type of distilled spirits to which it is added; or a harmless substance, such as caramel, straight malt or straight rye malt whiskies, fruit juices, sugar, infusion of oak chips when approved by the Administrator, or wine, that is not an essential component part of the distilled spirits product to which it is added but which is customarily employed in the product in accordance with established trade usage.

(2) *Certified color.* For purposes of this section, the term ''certified color'' means a color additive that is required to undergo batch certification in accordance with part 74 or part 82 of the Food and Drug Administration regulations (21 CFR parts 74 and 82). An example of a certified color is FD&C Blue No. 2.

(b) *Allowable additions.* Except as provided in paragraph (c) of this section, the following may be added to distilled spirits without changing the class or type designation:

(1) Coloring, flavoring, and blending materials that are essential components of the class or type of distilled spirits to which added;

(2) Coloring, flavoring, and blending materials that are not essential component parts of the distilled spirits to which added, provided that such coloring, flavoring, or blending materials do not total more than 2.5 percent by volume of the finished product; and

(3) Wine, when added to Canadian whisky in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian whisky.

(c) *Special rules.* The addition of the following will require a redesignation of the class or type of the distilled spirits product to which added:

(1) Coloring, flavoring, or blending materials that are not essential component parts of the class or type of distilled spirits to which they are added, if such coloring, flavoring, and blending

materials total more than 2.5 percent by volume of the finished product;

(2) Any material, other than caramel, infusion of oak chips, and sugar, added to Cognac brandy;

(3) Any material whatsoever added to neutral spirits or straight whisky, except that vodka may be treated with sugar, in an amount not to exceed two grams per liter, and with citric acid, in an amount not to exceed one gram per liter;

(4) Certified colors, carmine, or cochineal extract;

(5) Any material that would render the product to which it is added an imitation, as defined in § 5.152; or

(6) For products that are required to be stored in oak barrels in accordance with a standard of identity, the storing of the product in an additional barrel made of another type of wood.

(d) *Extractions from distilled spirits.* The removal of any constituents from a distilled spirits product to such an extent that the product no longer possesses the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits will alter the class or type of the product, and the resulting product must be redesignated appropriately. In addition, in the case of straight whisky, the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or the removal of more than 25 percent of the soluble color, constitutes an alteration of the class or type of the product and requires a redesignation of the product.

(e) *Exceptions.* Nothing in this section has the effect of modifying the standards of identity specified in § 5.150 for cordials and liqueurs, and in § 5.151 for flavored spirits, or of authorizing any product defined in § 5.152 to be designated as other than an imitation.

### § 5.156 Distilled spirits specialty products.

(a) *General.* Distilled spirits that do not meet one of the other standards of identity specified in this subpart are distilled spirits specialty products and must be designated in accordance with trade and consumer understanding, or, if no such understanding exists, with a distinctive or fanciful name (which may be the name of a cocktail) appearing in the same field of vision as a statement of composition. The statement of composition and the distinctive or fanciful name serve as the class and type designation for these products. The statement of composition must follow the rules found in § 5.166. A product may not bear a designation which indicates it contains a class or type of distilled spirits unless the distilled spirits therein conform to such class and type.

(b) *Products designated in accordance with trade and consumer understanding.* Products may be designated in accordance with trade and consumer understanding without a statement of composition if the appropriate TTB officer has determined that there is such understanding.

### §§ 5.157–5.165 [Reserved]

### § 5.166 Statements of composition.

(a) *Rules for the statement of composition.* When a statement of composition is required as part of a designation for a distilled spirits specialty product, the statement must be truthful and adequate.

(b) *Cocktails.* A statement of the classes and types of distilled spirits used in the manufacture thereof will be deemed a sufficient statement of composition in the case of highballs, cocktails, and similar prepared specialties when the designation adequately indicates to the consumer the general character of the product.

## Subpart J—Formulas

### § 5.191 Application.

The requirements of this subpart apply to the following persons:

(a) Proprietors of distilled spirits plants qualified as processors under part 19 of this chapter;

(b) Persons in the Commonwealth of Puerto Rico who manufacture distilled spirits products for shipment to the United States. However, the filing of a formula for approval by TTB is only required for those products that will be shipped to the United States; and

(c) Persons who ship Virgin Islands distilled spirits products into the United States.

### § 5.192 Formula requirements.

(a) *General.* An approved formula is required to blend, mix, purify, refine, compound, or treat distilled spirits in a manner that results in a change of class or type of the spirits.

(b) *Preparation and submission.* In order to obtain formula approval, a person listed in § 5.191 must file a formula in accordance with the instructions on TTB Form 5100.51, Formula and Process for Domestic and Imported Alcohol Beverages (if filing by paper) or on Formulas Online, if filing electronically. When a product will be made or processed under the same formula at more than one location operated by the distiller or processor, the distiller or processor must identify on the form each place of production or processing by name and address, and by permit number, if applicable, and must ensure that a copy of the approved formula is maintained at each location.

(c) *Existing approvals.* Any approval of a formula will remain in effect until revoked, superseded, or voluntarily surrendered, and if the formula is revoked, superseded, or voluntarily surrendered, any existing qualifying statements on such approval as to the rate of tax or the limited use of alcoholic flavors will be made obsolete.

(d) *Change in formula.* Any change in an approved formula requires the filing of a new TTB Form 5100.51 for approval of the changed formula. After a changed formula is approved, the filer must surrender the original formula approval to the appropriate TTB officer.

### § 5.193 Operations requiring formulas.

The following operations change the class or type of distilled spirits and therefore require formula approval under § 5.192: *Provided,* That, TTB may exempt categories of distilled spirits products from specific regulatory formula requirements upon a finding that the filing of a formula is no longer necessary in order to properly classify the finished product:

(a) The compounding of distilled spirits through the mixing of a distilled spirits product with any coloring or flavoring material, wine, or other material containing distilled spirits, unless TTB has issued public guidance recognizing that such ingredients are harmless coloring, flavoring or blending materials that do not alter the class or type pursuant to the standards set forth in § 5.155;

(b) The manufacture of an intermediate product to be used exclusively in other distilled spirits products on bonded premises;

(c) Any filtering or stabilizing process that results in a distilled spirits product's no longer possessing the taste, aroma, and characteristics generally attributed to the class or type of distilled spirits before the filtering or stabilizing, or, in the case of straight whisky, that results in the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or more than 25 percent of the soluble color;

(d) The mingling of spirits that differ in class or in type of materials from which made;

(e) The mingling of distilled spirits that were stored in charred cooperage with distilled spirits that were stored in plain or reused cooperage, or the mixing of distilled spirits that have been treated with wood chips with distilled spirits not so treated, or the mixing of distilled spirits that have been subjected to any treatment which changes their character

with distilled spirits not subjected to such treatment, unless it is determined by the appropriate TTB officer in each of these cases that the composition of the distilled spirits is the same notwithstanding the storage in different kinds of cooperage or the treatment of a portion of the spirits;

(f) Except when authorized for production or storage operations by part 19 of this chapter, the use of any physical or chemical process or any apparatus that accelerates the maturing of the distilled spirits;

(g) The steeping or soaking of plant materials, such as fruits, berries, aromatic herbs, roots, or seeds, in distilled spirits or wines at a distilled spirits plant;

(h) The artificial carbonating of distilled spirits;

(i) In Puerto Rico, the blending of distilled spirits with any liquors manufactured outside Puerto Rico;

(j) The production of gin by:

(1) Redistillation, over juniper berries and other natural aromatics or over the extracted oils of such materials, of spirits distilled at or above 190 degrees of proof that are free from impurities, including such spirits recovered by redistillation of imperfect gin spirits; or

(2) Mixing gin with other distilled spirits;

(k) The treatment of gin by:

(1) The addition or abstraction of any substance or material other than pure water after redistillation in a manner that would change its class and type designation; or

(2) The addition of any substance or material other than juniper berries or other natural aromatics or the extracted oils of such materials, or the addition of pure water, before or during redistillation, in a manner that would change its class and type designation; and

(l) The recovery of spirits by redistillation from distilled spirits products containing other alcoholic ingredients and from spirits that have previously been entered for deposit. However, no formula approval is required for spirits redistilled into any type of neutral spirits other than vodka or for spirits redistilled at less than 190 degrees of proof that lack the taste, aroma and other characteristics generally attributed to whisky, brandy, rum, or gin and that are designated as ''Spirits'' preceded or followed by a word or phrase descriptive of the material from which distilled. Such spirits may not be designated ''Spirits Grain'' or ''Grain Spirits'' on any label.

### § 5.194 Adoption of predecessor's formulas.

A successor to a person listed in § 5.191 may adopt a predecessor's approved formulas by filing an application with the appropriate TTB officer. The application must include a list of the formulas for adoption and must identify each formula by formula number, name of product, and date of approval. The application must clearly show that the predecessor has authorized the use of the previously approved formulas by the successor.

## Subpart K—Standards of Fill and Authorized Container Sizes.

### § 5.201 General.

No person engaged in business as a distiller, rectifier (processor), importer, wholesaler, bottler, or warehouseman and bottler, directly or indirectly, or through an affiliate, may sell or ship or deliver for sale or shipment in interstate or foreign commerce, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody for consumption, any distilled spirits in containers, unless the distilled spirits are bottled in conformity with §§ 5.202 and 5.203.

### § 5.202 Standard liquor containers.

(a) *General.* Except as provided in paragraph (d) of this section and in § 5.205, distilled spirits must be bottled in standard liquor containers, as defined in this paragraph. A standard liquor container is a container that is made, formed, and filled in such a way that it does not mislead purchasers as regards its contents. An individual carton or other container of a bottle may not be so designed as to mislead purchasers as to the size of the bottle it contains.

(b) *Headspace.* A filled liquor container of a capacity of 200 milliliters (6.8 fl. oz.) or more is deemed to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the container after closure.

(c) *Design.* Regardless of the correctness of the stated net contents, a liquor container is deemed to mislead the purchaser if it is made and formed in such a way that its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

(d) *Exception for distinctive liquor bottles.* The provisions of paragraphs (b) and (c) of this section do not apply to liquor bottles for which a distinctive liquor bottle approval has been issued pursuant to § 5.205.

### § 5.203 Standards of fill (container sizes).

(a) *Authorized standards of fill.* The following metric standards of fill are authorized for distilled spirits, whether domestically bottled or imported:

(1) *Containers other than cans.* For containers other than cans described in paragraph (a)(2) of this section—

(i) 1.8 Liters.
(ii) 1.75 Liters.
(iii) 1.00 Liter.
(iv) 900 mL.
(v) 750 mL.
(v) 720 mL.
(vi) 700 mL.
(vii) 375 mL.
(viii) 200 mL.
(ix) 100 mL.
(x) 50 mL.

(2) *Metal cans.* For metal containers that have the general shape and design of a can, that have a closure that is an integral part of the container, and that cannot be readily reclosed after opening—

(i) 355 mL.
(ii) 200 mL.
(iii) 100 mL.
(iv) 50 mL.

(b) *Spirits bottled using outdated standards.* Paragraph (a) of this section does not apply to:

(1) Imported distilled spirits in the original containers in which entered into customs custody prior to January 1, 1980 (or prior to July 1, 1989 in the case of distilled spirits imported in 500 mL containers); or

(2) Imported distilled spirits bottled or packed prior to January 1, 1980 (or prior to July 1, 1989 in the case of distilled spirits in 500 mL containers) and certified as to such in a statement signed by an official duly authorized by the appropriate foreign government.

### § 5.204 [Reserved]

### § 5.205 Distinctive liquor bottle approval.

(a) *General.* A bottler or importer of distilled spirits in distinctive liquor bottles may apply for a distinctive liquor bottle approval from the appropriate TTB officer. The distinctive liquor bottle approval will provide an exemption only from those requirements that are specified in paragraph (b) of this section. A distinctive liquor bottle is a container that is not the customary shape and that may obscure the net contents of the distilled spirits.

(b) *Exemptions provided by the distinctive liquor bottle approval.* The distinctive liquor bottle approval issued pursuant to this section will provide that:

(1) The provisions of § 5.202(b) and (c) do not apply to the liquor containers

for which the distinctive liquor bottle approval has been issued; and

(2) The information required to appear in the same field of vision pursuant to § 5.63(a) may appear elsewhere on a distinctive liquor bottle for which the distinctive liquor bottle approval has been issued, if the design of the container precludes the presentation of all mandatory information in the same field of vision.

(c) *How to apply.* A bottler or importer of distilled spirits in distinctive liquor bottles may apply for a distinctive liquor bottle approval as part of the application for a certificate of label approval (COLA).

## Subpart L [Reserved]

### § 5.211 [Reserved]

### § 5.212 [Reserved]

## Subpart M—Penalties and Compromise of Liability

### § 5.221 Criminal penalties.

A violation of the labeling provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor. See 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

### § 5.222 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the labeling and advertising provisions of this part. A willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in part 1 of this chapter.

### § 5.223 Compromise.

Pursuant to 27 U.S.C. 207, the appropriate TTB officer is authorized, with respect to any violation of 27 U.S.C. 205, to compromise the liability arising with respect to such violation upon payment of a sum not in excess of $500 for each offense, to be collected by the appropriate TTB officer and to be paid into the Treasury as miscellaneous receipts.

## Subpart N—Advertising of Distilled Spirits

### § 5.231 Application.

No person engaged in business as a distiller, rectifier (processor), importer, wholesaler, bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or by electronic or internet media, or any other printed or graphic matter, any advertisement of distilled spirits, if such advertising is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with this subpart: *Provided,* That such sections shall not apply to outdoor advertising in place on September 7, 1984, but shall apply upon replacement, restoration, or renovation of any such advertising; *and provided further,* that such sections shall not apply to a retailer or the publisher of any newspaper, periodical, or other publication, or radio or television or internet broadcast, unless such retailer or publisher or broadcaster is engaged in business as a distiller, rectifier (processor), importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate.

### § 5.232 Definition.

As used in this subpart, the term ''advertisement'' ''or advertising'' includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, internet or other electronic site or social network, or in any written, printed, graphic, or other matter (such as hang tags) accompanying, but not firmly affixed to, the bottle, representations made on shipping cases or in any billboard, sign, other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle which constitute a part of the labeling under this part.

(b) Any editorial or other reading material (such as a news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration or thing of value is paid or promised, directly or indirectly, by any permittee, and which is not written by or at the direction of the permittee.

### § 5.233 Mandatory statements.

(a) *Responsible advertiser.* The advertisement must display the responsible advertiser's name, city, and State or the name and other contact information (such as, telephone number, website, or email address) where the responsible advertiser may be contacted.

(b) *Class and type.* The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) *Alcohol content*—(1) *Mandatory statement.* The alcohol content for distilled spirits must be stated as a percentage of alcohol by volume, in the manner set forth in § 5.65 of this chapter for labels. Products that contain a significant amount of material, such as solid fruit, that may absorb spirits after bottling must state the alcohol content at the time of bottling as follows: ''Bottled at ____ percent-alcohol-by-volume.''

(2) *Optional statement.* In addition, the advertisement may also state the alcohol content in degrees of proof if this information appears in the same field of vision as the statement expressed in percent-alcohol-by-volume.

(d) Percentage of neutral spirits and name of commodity.

(1) In the case of distilled spirits (other than cordials, liqueurs, flavored neutral spirits, including flavored vodka, and distilled spirits specialty products) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: ''____% neutral spirits distilled from ____ (insert grain, cane products, or fruit, or other products as appropriate)''; or ____% neutral spirits (vodka) distilled from ____ (insert grain, cane product, fruit, or other commodity, as appropriate)''; or ''____% grain (cane products), (fruit) neutral spirits''; or ''____% grain spirits''. The statement used under this paragraph must be identical to that on the label of distilled spirits to which the advertisement refers.

(2) In the case of gin manufactured by a process of continuous distillation or in the case of neutral spirits, there shall be stated the name of the commodity from which such gin or neutral spirits were distilled. The statement of the name of the commodity shall be made in substantially the following form: ''Distilled from grain'', or ''Distilled from cane products'', or ''Distilled from

fruit.'' The statement used under this paragraph must be identical to that on the label of distilled spirits to which the advertisement refers.

(e) *Exception.* (1) If an advertisement refers to a general distilled spirits line or all of the distilled spirits products of one company, whether by the company name or by the brand name common to all the distilled spirits in the line, the only mandatory information necessary is the responsible advertiser's name, city, and State or the name and other contact information (such as telephone number, website, or email address) where the responsible advertiser may be contacted. This exception does not apply where only one type of distilled spirits is marketed under the specific brand name advertised.

(2) On consumer specialty items (such as T-shirts, hats, bumper stickers, or refrigerator magnets), the only information necessary is the company name of the responsible advertiser or brand name of the product.

**§ 5.234 Legibility of mandatory information.**

(a) Statements required under this subpart to appear in any written, printed, or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible.

(b) In the case of signs, billboards, and displays the name and address or name and other contact information (such as, telephone number, website, or email) of the permittee responsible for the advertisement may appear in type size of lettering smaller than the other mandatory information, provided such information can be ascertained upon closer examination of the sign or billboard.

(c) Mandatory information shall be so stated as to be clearly a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(d) Mandatory information for two or more products shall not be stated unless clearly separated.

(e) Mandatory information shall be so stated in both the print and audio-visual media that it will be readily apparent to the persons viewing the advertisement.

**§ 5.235 Prohibited practices.**

(a) *Restrictions.* An advertisement of distilled spirits shall not contain:

(1) Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter tends to create a misleading impression.

(2) Any false or misleading statement that explicitly or implicitly disparages a competitor's product. This does not prevent truthful and accurate comparisons between products (such as, ''Our liqueur contains more strawberries than Brand X'') or statements of opinion (such as, ''We think our rum tastes better than any other distilled spirits on the market'').

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) The words ''bond'', ''bonded'', ''bottled in bond'', ''aged in bond'', or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to § 5.88, on labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are permitted to appear on the label.

(7) The word ''pure'' unless:

(i) It refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about the ingredient; or

(ii) It is part of the bona fide name of a permittee or retailer from whom the distilled spirits are bottled; or

(iii) It is part of the bona fide name of the permittee who bottled the distilled spirits.

(8) The words ''double distilled'' or ''triple distilled'' or any similar terms unless it is a truthful statement of fact. For purposes of this paragraph only, a distillation means a single run through a pot still or a single run through a column of a column (reflux) still. The number of distillations may be understated but may not be overstated.

(b) *Statements inconsistent with labeling.* (1) Advertisements shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof.

(2) Any label depicted on a container in an advertisement shall be a reproduction of an approved label.

(c) *Statement of age.* The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of § 5.74. An advertisement for any whisky or brandy (except immature brandies, pomace brandy, marc brandy, Pisco brandy, and grappa brandy) which is not required to bear a statement of age on the label or an advertisement for any rum or agave spirits, which has been aged for not less than 4 years may, however, contain inconspicuous, general representations as to age, maturity or other similar representations even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

(d) *Health-related statements*—(1) *Definitions.* When used in this paragraph (d), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (*e.g.,* statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between distilled spirits, alcohol, or any substance found within the distilled spirits, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related

statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(2) *Rules for advertising*—(i) *Health-related statements.* In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must appear as prominent as the health-related statement.

(ii) *Specific health claims.* A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of distilled spirits or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: ''This statement should not encourage you to drink or increase your alcohol consumption for health reasons;'' or

(*2*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(e) *Place of origin.* The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) *Confusion of brands.* Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provisions of this subpart or are in any respect untrue.

(g) *Representations of the armed forces or flags.* Advertisements may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of, the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

(h) *Deceptive advertising techniques.* Subliminal or similar techniques are prohibited. ''Subliminal or similar techniques,'' as used in this subpart, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

(i) Any use of the term ''organic'' in the advertising of distilled spirits must comply with the United States Department of Agriculture's (USDA) National Organic Program rules, 7 CFR part 205, as interpreted by the USDA.

**§ 5.236 Comparative advertising.**

(a) *General.* Comparative advertising shall not be disparaging of a competitor's product in a manner that is false or misleading.

(b) *Taste tests.* (1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging in a false or misleading manner; deceptive; or likely to mislead the consumer.

(2) The taste test procedure used shall meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the Manual on Sensory Testing Methods, ASTM Special Technical Publication 434, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, ASTM, 1968, Library of Congress Catalog Card Number 68–15545.

(3) A statement shall appear in the advertisement providing the name and address of the testing administrator.

## Subpart O—Paperwork Reduction Act

**§ 5.241 OMB control numbers assigned under the Paperwork Reduction Act.**

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Table.* The following table identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

TABLE 1 TO PARAGRAPH (b)

| Section where contained | Current OMB control No. |
|---|---|
| 5.11 | 1513–0111 |
| 5.21 | 1513–0020 |
| 5.22 | 1513–0020 |
| 5.23 | 1513–0020 |
| 5.24 | 1513–0020 |
| | 1513–0064 |
| 5.25 | 1513–0020 |
| 5.27 | 1513–0020 |
| 5.28 | 1513–0122 |
| 5.29 | 1513–0020 |
| 5.30 | 1513–0064 |
| 5.62 | 1513–0087 |
| 5.63 | 1513–0084 |
| | 1513–0087 |
| 5.82 | 1513–0121 |
| 5.83 | 1513–0121 |
| 5.84 | 1513–0087 |
| 5.87 | 1513–0087 |
| 5.88 | 1513–0087 |
| 5.89 | 1513–0087 |
| 5.90 | 1513–0087 |
| 5.91 | 1513–0087 |
| 5.192 | 1513–0122 |
| 5.193 | 1513–0122 |
| 5.194 | 1513–0122 |
| 5.203 | 1513–0064 |
| 5.205 | 1513–0020 |
| 5.233 | 1513–0087 |

■ 2. Revise part 7 to read as follows:

# PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Sec.
7.0 Scope.

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7.4 Jurisdictional limits of the FAA Act.
7.5 Ingredients and processes.
7.6 Brewery products not covered by this part.
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**Requirements for Malt Beverages Bottled in the United States**

7.21 Requirement for certificates of label approval (COLAs) for malt beverages bottled in the United States.
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**Requirements for Malt Beverages Imported in Containers**

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**Administrative Rules**

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7.231 Application.
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7.234 Legibility of mandatory information.
7.235 Prohibited practices.
7.236 Comparative advertising.

**Subpart O—Paperwork Reduction Act**

7.241 OMB control numbers assigned under the Paperwork Reduction Act.

**Authority:** 27 U.S.C. 205 and 207.

**§ 7.0 Scope.**

This part sets forth requirements that apply to the labeling and packaging of malt beverages in containers, including requirements for label approval and rules regarding mandatory, regulated, and prohibited labeling statements. This part also sets forth requirements that apply to the advertising of malt beverages.

## Subpart A—General Provisions

**§ 7.1 Definitions.**

When used in this part and on forms prescribed under this part, the following terms have the meaning assigned to them in this section, unless the terms appear in a context that requires a different meaning. Any other term defined in the Federal Alcohol Administration Act (FAA Act) and used in this part has the same meaning assigned to it by the FAA Act.

*Administrator.* The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

*Advertisement or Advertising.* See § 7.232 for meaning of these terms as used in subpart N of this part.

*Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any function relating to the administration or enforcement of this part by the current version of TTB Order 1135.7, Delegation of the Administrator's Authorities in 27 CFR part 7, Labeling and Advertising of Malt Beverages.

*Bottler.* Any brewer or wholesaler who places malt beverages in containers.

*Brand name.* The name under which a malt beverage or a line of malt beverages is sold.

*Certificate holder.* The permittee or brewer whose name, address, and basic permit number, plant registry number, or brewer's notice number appears on an approved TTB Form 5100.31.

*Certificate of exemption from label approval.* A certificate issued on TTB Form 5100.31, which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

*Certificate of label approval (COLA).* A certificate issued on form TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, or malt beverages, or the removal of bottled wine, distilled spirits, or malt beverages from customs custody for introduction into commerce, as long as the product bears labels

identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

*Container.* Any can, bottle, box, cask, keg, barrel or other closed receptacle, in any size or material, which is for use in the sale of malt beverages at retail.

*Customs officer.* An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

*Distinctive or fanciful name.* A descriptive name or phrase chosen to identify a malt beverage product on the label. It does not include a brand name, class or type designation, statement of composition, or designation known to the trade or consumers.

*FAA Act.* The Federal Alcohol Administration Act.

*Gallon.* A U.S. gallon of 231 cubic inches of malt beverages at 39.1 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions of the gallon as defined.

*Interstate or foreign commerce.* Commerce between any State and any place outside of that State or commerce within the District of Columbia or commerce between points within the same State but through any place outside of that State.

*Keg collar.* A disk that is pushed down over the keg's bung or tap cover.

*Malt beverage.* A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. See § 7.5 for standards applying to the use of processing methods and flavors in malt beverage production.

*Net contents.* The amount, by volume, of a malt beverage held in a container.

*Permittee.* Any person holding a basic permit under the FAA Act.

*Person.* Any individual, corporation, partnership, association, joint-stock company, business trust, limited liability company, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision of a State.

*Responsible advertiser.* The permittee or brewer responsible for the publication or broadcast of an advertisement.

*State.* One of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

*Tap cover.* A cap, usually made of plastic, that fits over the top of the tap (or bung) of a keg.

*TTB.* The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

*United States (U.S.).* The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

**§ 7.2 Territorial extent.**

The provisions of this part apply to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

**§ 7.3 General requirements and prohibitions under the FAA Act.**

(a) *Certificates of label approval (COLAs).* Subject to the requirements and exceptions set forth in the regulations in subpart B of this part, any brewer or wholesaler who bottles malt beverages, and any person who removes malt beverages in containers from customs custody for sale or any other commercial purpose, is required to first obtain from TTB a certificate of label approval (COLA) covering the label(s) on each container.

(b) *Alteration, mutilation, destruction, obliteration, or removal of labels.* Subject to the requirements and exceptions set forth in the regulations in subpart C of this part, it is unlawful to alter, mutilate, destroy, obliterate, or remove labels on malt beverage containers. This prohibition applies to any person, including retailers, holding malt beverages for sale in interstate or foreign commerce or any person holding malt beverages for sale after shipment in interstate or foreign commerce.

(c) *Labeling requirements for malt beverages.* Subject to the jurisdictional limits of the FAA Act, as set forth in § 7.4, it is unlawful for any person engaged in business as a brewer, wholesaler, or importer of malt beverages, directly or indirectly, or through an affiliate, to sell or ship, or deliver for sale or shipment, or otherwise introduce or receive in interstate or foreign commerce, or remove from customs custody, any malt beverages in containers unless such containers are marked, branded, labeled, and packaged in conformity with the regulations in this part.

(d) *Labeled in accordance with this part.* In order to be labeled in accordance with the regulations in this part, a container of malt beverages must be in compliance with the following requirements:

(1) It must bear one or more labels meeting the standards for ''labels'' set forth in subpart D of this part;

(2) One or more of the labels on the container must include the mandatory information set forth in subpart E of this part;

(3) Claims on any label, container, or packaging (as defined in § 7.81) must comply with the rules for restricted label statements, as applicable, set forth in subpart F of this part;

(4) Statements or any other representations on any malt beverage label, container, or packaging (as defined in §§ 7.101 and 7.121) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of malt beverages; and

(5) The class and type designation on any label, as well as any designation appearing on containers or packaging, must comply with the standards for classes and types set forth in subpart I of this part.

**§ 7.4 Jurisdictional limits of the FAA Act.**

(a) *Malt beverages sold in interstate or foreign commerce*—(1) *General.* The labeling provisions of this part apply to malt beverages sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the laws or regulations of such State impose requirements similar to the requirements of the regulations in this part, with respect to the labels and labeling of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

(2) *Similar State law.* For purposes of this section, a ''similar'' State law may be found in State laws or regulations that apply specifically to malt beverages or in State laws or regulations that provide general labeling requirements that are not specific to malt beverages but that do apply to malt beverages. In order to be ''similar'' to the Federal requirements, the State requirements need not be identical to the Federal requirements. Nonetheless, if the label in question does not violate the laws or regulations of the State or States into which the brewer, wholesaler, or importer is shipping the malt beverages, it does not violate this part.

(b) *Malt beverages not sold in interstate or foreign commerce.* The labeling regulations in this part do not apply to domestically bottled malt beverages that are not and will not be sold, or offered for sale, or shipped or delivered for shipment, or otherwise

introduced in interstate or foreign commerce.

**§ 7.5 Ingredients and processes.**

(a) *Use of nonbeverage flavors and other nonbeverage ingredients containing alcohol.* (1) Nonbeverage flavors and other nonbeverage ingredients containing alcohol may be used in producing a malt beverage (sometimes referred to as a ''flavored malt beverage''). Except as provided in paragraph (a)(2) of this section, no more than 49 percent of the overall alcohol content (determined without regard to any tolerance otherwise allowed by this part) of the finished product may be derived from the addition of nonbeverage flavors and other nonbeverage ingredients containing alcohol. For example, a finished malt beverage that contains 5.0 percent alcohol by volume must derive a minimum of 2.55 percent alcohol by volume from the fermentation of barley malt and other materials and may derive not more than 2.45 percent alcohol by volume from the addition of nonbeverage flavors and other nonbeverage ingredients containing alcohol.

(2) In the case of malt beverages with an alcohol content of more than 6 percent by volume (determined without regard to any tolerance otherwise allowed by this part), no more than 1.5 percent of the volume of the malt beverage may consist of alcohol derived from added nonbeverage flavors and other nonbeverage ingredients containing alcohol.

(b) *Processing.* Malt beverages may be filtered or otherwise processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.

**§ 7.6 Brewery products not covered by this part.**

Certain fermented products that are regulated as ''beer'' under the Internal Revenue Code (IRC) do not fall within the definition of a ''malt beverage'' under the FAA Act and thus are not subject to this part. See § 7.7 for related TTB regulations that may apply to these products. See §§ 25.11 and 27.11 of this chapter for the definition of ''beer'' under the IRC.

(a) *Saké and similar products.* Saké and similar products (including products that fall within the definition of ''beer'' under parts 25 and 27 of this chapter) that fall within the definition of a ''wine'' under the FAA Act are covered by the labeling regulations for wine in 27 CFR part 4.

(b) *Other beers not made with both malted barley and hops.* The regulations in this part do not cover beer products that are not made with both malted barley and hops, or their parts or their products, or that do not fall within the definition of a ''malt beverage'' under § 7.1 for any other reason. Bottlers and importers of alcohol beverages that do not fall within the definition of malt beverages, wine, or distilled spirits under the FAA Act should refer to the applicable labeling regulations for foods issued by the U.S. Food and Drug Administration. See 21 CFR part 101.

**§ 7.7 Other TTB labeling regulations that apply to malt beverages.**

In addition to the regulations in this part, malt beverages must also comply with the following TTB labeling regulations:

(a) *Health warning statement.* Alcoholic beverages, including malt beverages, that contain at least 0.5 percent alcohol by volume, must be labeled with a health warning statement in accordance with the Alcoholic Beverage Labeling Act of 1988 (ABLA). The regulations implementing the ABLA are contained in 27 CFR part 16.

(b) *Internal Revenue Code requirements.* The labeling and marking requirements for beer under the Internal Revenue Code are found in 27 CFR part 25, subpart J (for domestic breweries) and 27 CFR part 27, subpart E (for importers).

**§ 7.8 Malt beverages for export.**

The regulations in this part shall not apply to malt beverages exported in bond.

**§ 7.9 [Reserved]**

**§ 7.10 Other related regulations.**

(a) *TTB regulations.* Other TTB regulations that relate to malt beverages are listed in paragraphs (a)(1) through (8) of this section:

(1) 27 CFR part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits;

(2) 27 CFR part 13—Labeling Proceedings;

(3) 27 CFR part 16—Alcoholic Beverage Health Warning Statement;

(4) 27 CFR part 25—Beer;

(5) 27 CFR part 26—Liquors and Articles from Puerto Rico and the Virgin Islands;

(6) 27 CFR part 27—Importation of Distilled Spirits, Wines, and Beer;

(7) 27 CFR part 28—Exportation of Alcohol; and

(8) 27 CFR part 71—Rules of Practice in Permit Proceedings.

(b) *Other Federal regulations.* The regulations listed in paragraphs (b)(1) through (8) of this section issued by other Federal agencies also may apply:

(1) 7 CFR part 205—National Organic Program;

(2) 19 CFR part 11—Packing and Stamping; Marking;

(3) 19 CFR part 102—Rules of Origin;

(4) 19 CFR part 134—Country of Origin Marking;

(5) 21 CFR part 1—General Enforcement Provisions, Subpart H, Registration of Food Facilities, and Subpart I, Prior Notice of Imported Food;

(6) 21 CFR parts 70–82, which pertain to food and color additives;

(7) 21 CFR part 110—Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food; and

(8) 21 CFR parts 170–189, which pertain to food additives and secondary direct food additives for human consumption.

**§ 7.11 Forms.**

(a) *General.* TTB prescribes and makes available all forms required by this part. Any person completing a form must provide all of the information required by each form as indicated by the headings on the form and the instructions for the form. Each form must be filed in accordance with this part and the instructions for the form.

(b) *Electronically filing forms.* The forms required by this part can be filed electronically by using TTB's online filing systems: COLAs Online and Formulas Online. Anyone who intends to use one of these online filing systems must first register to use the system by accessing the TTB website at *https://www.ttb.gov.*

(c) *Obtaining paper forms.* Forms required by this part are available for printing through the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

**§ 7.12 Delegations of the Administrator.**

Most of the regulatory authorities of the Administrator contained in this part are delegated to ''appropriate TTB officers.'' To find out which officers have been delegated specific authorities, see the current version of TTB Order 1135.7, Delegation of the Administrator's Authorities in 27 CFR part 7, Labeling and Advertising of Malt Beverages. Copies of this order can be obtained by accessing the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax

and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

## Subpart B—Certificates of Label Approval

### Requirements for Malt Beverages Bottled in the United States

#### § 7.21 Requirement for certificates of label approval (COLAs) for malt beverages bottled in the United States.

(a) *COLA requirement.* Subject to the requirements and exceptions set forth in paragraphs (b) and (c) of this section, a brewer or wholesaler bottling malt beverages must obtain a certificate of label approval (COLA) covering the malt beverages from TTB prior to bottling the malt beverages or removing the malt beverages from the premises where they were bottled.

(b) *Malt beverages shipped or sold in interstate commerce.* Persons bottling malt beverages (other than malt beverages in customs custody) for shipment, or delivery for sale or shipment, into a State (from outside of that State) are required to obtain a COLA covering those malt beverages only if the laws or regulations of the State require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of subparts D through I of this part. This requirement applies when the State has either adopted subparts D through I of this part in their entireties or has adopted requirements that are identical in effect to those set forth in subparts D through I of this part. In accordance with §§ 7.3 and 7.4, malt beverages that are not subject to the COLA requirements of this section may still be subject to the substantive labeling provisions of subparts D through I of this part to the extent that the State into which the malt beverages are being shipped has similar State laws or regulations.

(c) *Products not shipped or sold in interstate commerce.* Persons bottling malt beverages that will not be shipped or delivered for sale or shipment in interstate or foreign commerce are not required to obtain a COLA or a certificate of exemption from label approval. (Note: A certificate of exemption from label approval is a certificate issued by TTB to cover a wine or distilled spirits product that will not be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced, in interstate or foreign commerce.)

(d) *Evidence of COLA.* Upon request by the appropriate TTB officer, a bottler or importer must provide evidence of label approval for a label used on a container of malt beverages that is subject to the COLA requirements of this part. This requirement may be satisfied by providing original COLAs, photocopies, or electronic copies of COLAs, or records showing the TTB identification number assigned to the approved COLA.

#### § 7.22 Rules regarding certificates of label approval (COLAs) for malt beverages bottled in the United States.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the bottling of malt beverages covered by the certificate of label approval (COLA), as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by TTB on the COLA or otherwise, (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

(b) *When to obtain a COLA.* The COLA must be obtained prior to bottling. No brewer or wholesaler may bottle malt beverages or remove malt beverages from the premises where bottled unless a COLA has been obtained.

(c) *Application for a COLA.* The bottler may apply for a COLA by submitting an application to TTB on Form 5100.31, in accordance with the instructions on the form. The bottler may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

#### § 7.23 [Reserved]

### Requirements for Malt Beverages Imported in Containers

#### § 7.24 Certificates of label approval (COLAs) for malt beverages imported in containers.

(a) *Application requirement.* Any person removing malt beverages in containers from customs custody for consumption must first apply for and obtain a certificate of label approval (COLA) covering the malt beverages from the appropriate TTB officer, or obtain authorization to use the COLA from the person to whom the COLA is issued.

(b) *Release of malt beverages from customs custody.* Malt beverages, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such malt beverages from customs custody for consumption, unless the person removing the malt beverages has obtained a COLA covering the malt beverages and is able to provide it (either electronically or on paper) upon request. Products imported under another person's COLA are eligible for release only if each bottle or individual container to be imported bears the name (or trade name) and address of the person to whom the COLA was issued by TTB, and only if the importer using the COLA to obtain release of a shipment can substantiate that the person to whom the COLA was issued has authorized its use by the importer.

(c) *Filing requirements.* If filing electronically, the importer must file with U.S Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the product or lot of malt beverages being imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at the time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the COLA holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) *Evidence of COLA.* Upon request by the appropriate TTB officer, an importer must provide evidence of label approval for a label used on a container of malt beverages that is subject to the COLA requirements of this part. This requirement may be satisfied by providing original COLAs, photocopies, or electronic copies of COLAs, or records showing the TTB identification number assigned to the approved COLA.

(e) *Scope of this section.* The COLA requirement imposed by this section applies only to malt beverages that are removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported samples of malt beverages.

(f) *Relabeling in customs custody.* Containers of malt beverages in customs custody that are required to be covered by a COLA but are not labeled in conformity with a COLA must be relabeled, under the supervision and direction of customs officers, prior to their removal from customs custody for consumption.

(g) *State law.* Paragraphs (a) through (c) of this section apply only if the laws or regulations of the State in which the malt beverages are withdrawn require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of subparts D through I of this part. A State

requires that malt beverages be labeled in conformity with the requirements of subparts D through I of this part when the State has either adopted subparts D through I of this part in their entireties or has adopted requirements identical in effect to those set forth in subparts D through I in this part. In accordance with §§ 7.3 and 7.4, malt beverages that are not subject to the COLA requirements of this section may still be subject to the substantive labeling provisions of subparts D through I of this part to the extent that the State into which the malt beverages are being shipped has similar State law or regulation.

**§ 7.25 Rules regarding certificates of label approval (COLAs) for malt beverages imported in containers.**

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the use of the labels covered by the certificate of label approval (COLA) on containers of malt beverages, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by the form or otherwise authorized by TTB (such as through the issuance of public guidance available on the TTB website at *https://www.ttb.gov*).

(b) *When to obtain a COLA.* The COLA must be obtained prior to the removal of malt beverages in containers from customs custody for consumption.

(c) *Application for a COLA.* The person responsible for the importation of malt beverages must obtain approval of the labels by submitting an application to TTB on Form 5100.31. A person may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

## Administrative Rules

**§ 7.27 Presenting certificates of label approval (COLAs) to Government officials.**

A certificate holder must present the original or a paper or electronic copy of the appropriate certificate of label approval (COLA) upon the request of any duly authorized representative of the United States Government.

**§ 7.28 Formulas, samples, and documentation.**

(a) Prior to or in conjunction with the review of an application for a certificate of label approval (COLA) on TTB Form 5100.31, the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing of the malt beverage, or a sample of any malt beverage or ingredients used in producing a malt beverage. After the issuance of a COLA, or with regard to any malt beverage required to be covered by a COLA, the appropriate TTB officer may require a full and accurate statement of the contents of the container.

(b) A formula may be filed electronically by using Formulas Online, or it may be submitted on paper on TTB Form 5100.51. See § 7.11 for more information on forms and Formulas Online.

**§ 7.29 Personalized labels.**

(a) *General.* Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. A personalized label is an alcohol beverage label that meets the minimum mandatory label requirements and is customized for customers. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a brewer may offer individual or corporate customers labels that commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label as part of the application for label approval required under §§ 7.21 or 7.24, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

## Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

**§ 7.41 Alteration of labels.**

(a) *Prohibition.* It is unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label on malt beverages in containers held for sale in interstate or foreign commerce, or held for sale after shipment in interstate or foreign commerce, except as authorized by §§ 7.42, 7.43, or 7.44, or as otherwise authorized by Federal law.

(b) *Authorized relabeling.* For purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

(c) *Obligation to comply with other requirements.* Authorization to relabel under this subpart:

(1) In no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product;

(2) Does not relieve the person conducting the relabeling operations from any obligation to comply with the regulations in this part and with State or local law: and,

(3) Does not relieve the person conducting the relabeling operations from any obligation to obtain permission from the owner of the brand where otherwise required.

**§ 7.42 Authorized relabeling activities by brewers and importers.**

(a) *Relabeling at brewery premises.* A brewer may relabel domestically bottled malt beverages prior to removal from, and after return to bond at, the brewery premises, with labels covered by a certificate of label approval (COLA) without obtaining separate permission from TTB for the relabeling activity, provided that the brewer is the certificate holder (and bottler).

(b) *Relabeling after removal from brewery premises.* A brewer may relabel domestically bottled malt beverages (or direct the relabeling of such malt beverages by an authorized agent) after removal from brewery premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity, provided that

the brewer is the certificate holder (and bottler).

(c) *Relabeling in customs custody.* Under the supervision of U.S. customs officers, imported malt beverages in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a certificate of label approval (COLA) upon their removal from customs custody for consumption. See § 7.24(b).

(d) *Relabeling after removal from customs custody.* The importer of malt beverages in containers may relabel such malt beverages (or direct the relabeling of such malt beverages by an authorized agent) after removal from customs custody without obtaining separate permission from TTB for the relabeling activity, as long as the labels are covered by a COLA.

**§ 7.43 Relabeling activities that require separate written authorization from TTB.**

(a) *General.* Any permittee or brewer holding malt beverages for sale who needs to relabel the containers but is not the original bottler may apply for written permission for the relabeling of malt beverage containers. The appropriate TTB officer may permit relabeling of malt beverages in containers if the facts show that the relabeling is for the purpose of compliance with the requirements of this part or State law, or for the purpose of replacing damaged labels.

(b) *Application.* The written application must include:

(1) Copies of the original and proposed new labels;

(2) The circumstances of the request, including the reason for relabeling;

(3) The number of containers to be relabeled;

(4) The location where the relabeling will take place; and,

(5) The name and address of the person who will be conducting the relabeling operations.

**§ 7.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.**

Any label or other information that identifies the wholesaler, retailer, or consumer of the malt beverage may be added to containers (by the addition of stickers, engraving, stenciling, etc.) without prior approval from TTB and without being covered by a certificate of label approval. Such information may be added before or after the containers are removed from brewery premises or released from customs custody. The information added:

(a) May not violate the provisions of subparts F, G, and H of this part;

(b) May not contain any reference to the characteristics of the product; and

(c) May not be added to the container in such a way that it obscures any other label on the container.

## Subpart D—Label Standards

**§ 7.51 Requirement for firmly affixed labels.**

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, any label that is not an integral part of the container must be affixed to the container in such a way that it cannot be removed without thorough application of water or other solvents.

(b) *Exception for keg labels.* The following provisions apply to labels on kegs with a capacity of 5.16 gallons or more that bear mandatory information, as defined by § 7.61(a)(5), and are in the form of a keg collar or tap cover, as defined in § 7.1.

(1) Such keg collars or tap covers are considered to be firmly affixed if removal would break or destroy the keg collar or tap cover in such a way that it cannot be reused.

(2) Such keg collars or tap covers are not required to be firmly affixed, provided that the name of the bottler or importer of the malt beverage, as applicable under §§ 7.66–7.68, is permanently or semi-permanently stated on the keg in the form of embossing, engraving, stamping, or through the use of a sticker or ink jet method.

(c) This section in no way affects the requirements of part 16 of this chapter regarding the mandatory health warning statement.

**§ 7.52 Legibility and other requirements for mandatory information on labels.**

(a) *Readily legible.* Mandatory information on labels must be readily legible to potential consumers under ordinary conditions.

(b) *Separate and apart.* Subject to the exceptions below, mandatory information on labels, except brand names, must be separate and apart from any additional information.

(1) This does not preclude the addition of brief optional phrases of additional information as part of the class or type designation (such as ''premium malt beverage''), the name and address statement (such as ''Proudly brewed and bottled by ABC Brewing Co. in Pittsburgh, PA, for over 30 years''), or other information required by § 7.63(a). The statements required by § 7.63(b) may not include additional information.

(2) Mandatory information (other than an aspartame declaration required by § 7.63(b)(4)) may be contained among other descriptive or explanatory information if the script, type, or printing of the mandatory information is substantially more conspicuous than that of the descriptive or explanatory information.

(c) *Contrasting background.* Mandatory information must appear in a color that contrasts with the background on which it appears, except that if the net contents or the name and address are blown into a glass container, they need not be contrasting. The color of the container and of the malt beverages must be taken into account if the label is transparent or if mandatory label information is etched, engraved, sandblasted, or otherwise carved into the surface of the container or is branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container. Examples of acceptable contrasts are:

(1) Black lettering appearing on a white or cream background; or

(2) White or cream lettering appearing on a black background.

(d) *Capitalization.* Except for the aspartame statement when required by § 7.63(b)(4), which must appear in all capital letters, mandatory information may appear in all capital letters, in all lower case letters, or in mixed-case using both capital and lower-case letters.

**§ 7.53 Type size of mandatory information and alcohol content statements.**

(a) All capital and lowercase letters in statements of mandatory information on labels must meet the following type size requirements.

(1) *Minimum type size—Containers of more than one-half pint.* All mandatory information (including an alcohol content statement required by § 7.63(a)(3)) must be in script, type, or printing that is at least two millimeters in height.

(2) *Minimum type size—Containers of one-half pint or less.* All mandatory information (including an alcohol content statement required by § 7.63(a)(3)) must be in script, type, or printing that is at least one millimeter in height.

(b) *Maximum type size for mandatory and optional alcohol content statements*—(1) *Containers of more than 40 fluid ounces.* An alcohol content statement, whether required or optional under this part, may not appear in script, type, or printing that is more than four millimeters in height on containers of malt beverages of more than 40 fluid ounces.

(2) *Containers of 40 fluid ounces or less.* An alcohol content statement, whether required or optional under this

part, may not appear in script, type, or printing that is more than three millimeters in height on containers of malt beverages of 40 fluid ounces or less.

**§ 7.54 Visibility of mandatory information.**

Mandatory information on a label must be readily visible and may not be covered or obscured in whole or in part. See § 7.62 for rules regarding packaging of containers (including cartons, coverings, and cases). See subpart N of this part for regulations pertaining to advertising materials.

**§ 7.55 Language requirements.**

(a) *General.* Mandatory information must appear in the English language, with the exception of the brand name and except as provided in paragraph (c) of this section.

(b) *Foreign languages.* Additional statements in a foreign language, including translations of mandatory information that appears elsewhere in English on the label, are allowed on labels and containers as long as they do not in any way conflict with, or contradict, the requirements of this part.

(c) *Malt beverages for consumption in the Commonwealth of Puerto Rico.* Mandatory information may be stated solely in the Spanish language on labels of malt beverages bottled for consumption within the Commonwealth of Puerto Rico.

**§ 7.56 Additional information.**

Information (other than mandatory information) that is truthful, accurate, and specific, and that does not violate subpart F, G, or H of this part, may appear on labels. Such additional information may not conflict with, modify, qualify or restrict mandatory information in any manner.

## Subpart E—Mandatory Label Information

**§ 7.61 What constitutes a label for purposes of mandatory information.**

(a) *Label.* Certain information, as outlined in § 7.63, must appear on a label. When used in this part for purposes of determining where mandatory information must appear, the term ''label'' includes:

(1) Material affixed to the container, whether made of paper, plastic, metal, or other matter;

(2) For purposes of the net contents statement and the name and address statement only, information blown, embossed, or molded into the container as part of the process of manufacturing the container;

(3) Information etched, engraved, sandblasted, or otherwise carved into the surface of the container;

(4) Information branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container; and

(5) Information on a keg collar or a tap cover of a keg, only if it includes mandatory information that is not repeated elsewhere on a label firmly affixed to the container and only if it meets the requirements of § 7.51.

(b) *Information appearing elsewhere on the container.* Information appearing on the following parts of the container is subject to all of the restrictions and prohibitions set forth in subparts F, G, and H of this part, but will not satisfy any requirements in this part for mandatory information that must appear on labels:

(1) Material affixed to, or information appearing on, the bottom surface of the container;

(2) Caps, corks, or other closures unless authorized to bear mandatory information by the appropriate TTB officer; and

(3) Foil or heat shrink bottle capsules.

(c) *Materials not firmly affixed to the container.* Any materials that accompany the container to the consumer but are not firmly affixed to the container, including booklets, leaflets, and hang tags, are not ''labels'' for purposes of this part. Such materials are instead subject to the advertising regulations in subpart N of this part.

**§ 7.62 Packaging (cartons, coverings, and cases).**

(a) *General.* The term ''packaging'' includes any covering, carton, case, carrier, or other packaging of malt beverage containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Prohibition.* Any packaging of malt beverage containers may not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited on labels by regulations in subpart F, G, or H of this part.

(c) *Other information on packaging.* The following requirements apply to optional information on packaging.

(1) The packaging may display any information that is not in conflict with the labeling on the container or containers within the packaging.

(2) If the packaging displays a brand name, it must display the brand name in its entirety. For example, if a brand name is required to be modified with additional information on the container or containers within the packaging, the packaging must also display the same modifying language.

(3) If the packaging displays a class or type designation it must be identical to the class or type designation appearing on the container or containers within the packaging. For example, if the packaging displays a class or type designation for a specialty product for which a statement of composition is required on the container, the packaging must include the statement of composition as well.

(d) *Labeling of containers within the packaging.* The container or containers within the packaging are subject to all labeling requirements of this part, including mandatory labeling information requirements, regardless of whether the packaging bears such information.

**§ 7.63 Mandatory label information.**

(a) *Mandatory information.* Malt beverage containers must bear a label or labels (as defined in § 7.61(a)) containing the following information:

(1) Brand name, in accordance with § 7.64;

(2) Class, type, or other designation, in accordance with subpart I of this part;

(3) Alcohol content, in accordance with § 7.65, for malt beverages that contain any alcohol derived from added nonbeverage flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol;

(4) Name and address of the bottler or importer (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.66, 7.67, or 7.68, as applicable; and

(5) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.70.

(b) *Disclosure of certain ingredients.* Certain ingredients must be declared on a label without the inclusion of any additional information as part of the statement as follows:

(1) *FD&C Yellow No. 5.* If a malt beverage contains the coloring material FD&C Yellow No. 5, the label must include a statement to that effect, such as ''FD&C Yellow No. 5'' or ''Contains FD&C Yellow No. 5.''

(2) *Cochineal extract or carmine.* If a malt beverage contains the color additive cochineal extract or the color additive carmine, the label must include a statement to that effect, using the respective common or usual name (such as, ''contains cochineal extract'' or ''contains carmine''). This requirement applies to labels when either of the

coloring materials is used in a malt beverage that is removed from bottling premises or from customs custody on or after April 16, 2013.

(3) *Sulfites.* If a malt beverage contains 10 or more parts per million of sulfur dioxide or other sulfiting agent(s) measured as total sulfur dioxide, the label must include a statement to that effect. Examples of acceptable statements are ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent. The alternative terms ''sulphites'' or ''sulphiting'' may be used.

(4) *Aspartame.* If the malt beverage contains aspartame, the label must include the following statement, in capital letters, separate and apart from all other information: ''PHENYLKETONURICS: CONTAINS PHENYLALANINE.''

**§ 7.64 Brand name.**

(a) *Requirement.* The malt beverage label must include a brand name. If the malt beverage is not sold under a brand name, then the name of the bottler or importer, as applicable, appearing in the name and address statement is treated as the brand name.

(b) *Misleading brand names.* Labels may not include any misleading brand names. A brand name is misleading if it creates (by itself or in association with other printed or graphic matter) any erroneous impression or inference as to the age, origin, identity, or other characteristics of the malt beverage. A brand name that would otherwise be misleading may be qualified with the word ''brand'' or with some other qualification if the appropriate TTB officer determines that the qualification dispels any misleading impression that might otherwise be created.

**§ 7.65 Alcohol content.**

(a) *General.* Alcohol content and the percentage and quantity of the original gravity or extract may be stated on any malt beverage label, unless prohibited by State law. When alcohol content is stated, and the manner of statement is not required under State law, it must be stated as prescribed in paragraph (b) of this section.

(b) *How the alcohol content must be expressed.* The following rules apply to both mandatory and optional statements of alcohol content.

(1) A statement of alcohol content must be expressed as a percentage of alcohol by volume. Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume.

(2) For malt beverages containing one half of one percent (0.5 percent) or more alcohol by volume, statements of alcohol content must be expressed to the nearest one-tenth of a percentage point, subject to the tolerance permitted by paragraph (c) of this section. For malt beverages containing less than 0.5 percent alcohol by volume, alcohol content may be expressed either to the nearest one-tenth or the nearest one-hundredth of a percentage point, and such statements are not subject to any tolerance. See paragraph (e) of this section for the rules applicable to such statements.

(3)(i) The alcohol content statement must be expressed in one of the following formats:

(A) ''Alcohol percent by volume'';

(B) ''percent alcohol by volume''; or

(C) ''Alcohol by volume: percent.''

(ii) Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(4) The statements listed in paragraph (b)(3) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; and volume may be abbreviated as ''vol''.

(5) *Examples.* The following are examples of alcohol content statements that comply with the requirements of this part:

(i) ''4.2% alc/vol'';

(ii) ''Alc. 4.0 percent by vol.'';

(iii) ''Alc 4% by vol''; and

(iv) ''5.9% Alcohol by Volume.''

(c) *Tolerances.* Except as provided by paragraph (d) of this section, a tolerance of 0.3 percentage points will be permitted, either above or below the stated alcohol content, for malt beverages containing 0.5 percent or more alcohol by volume. However, any malt beverage that is labeled as containing 0.5 percent or more alcohol by volume may not contain less than 0.5 percent alcohol by volume, regardless of any tolerance. The tolerance provided by this paragraph does not apply in determining compliance with the provisions of § 7.5 regarding the percentage of alcohol derived from added nonbeverage flavors and other nonbeverage ingredients containing alcohol.

(d) *Low alcohol and reduced alcohol.* The terms ''low alcohol'' or ''reduced alcohol'' may be used only on labels of malt beverages containing less than 2.5 percent alcohol by volume. The actual alcohol content may not equal or exceed 2.5 percent alcohol by volume, regardless of any tolerance permitted by paragraph (c) of this section.

(e) *Non-alcoholic.* The term ''non-alcoholic'' may be used on labels of malt beverages only if the statement ''contains less than 0.5 percent (or .5%) alcohol by volume'' appears immediately adjacent to it, in readily legible printing, and on a completely contrasting background. No tolerances are permitted for malt beverages labeled as ''non-alcoholic'' and containing less than 0.5 percent alcohol by volume. A malt beverage may not be labeled with an alcohol content of 0.0 percent alcohol by volume, unless it is also labeled as ''alcohol free'' in accordance with paragraph (f) of this section, and contains no alcohol.

(f) *Alcohol free.* The term ''alcohol free'' may be used only on malt beverages containing no alcohol. No tolerances are permitted for ''alcohol free'' malt beverages.

**§ 7.66 Name and address for domestically bottled malt beverages that were wholly fermented in the United States.**

(a) *General.* Domestically bottled malt beverages that were wholly fermented in the United States and contain no imported malt beverages must be labeled in accordance with this section. (See §§ 7.67 and 7.68 for name and address requirements applicable to malt beverages that are not wholly fermented in the United States.)

(b) *Mandatory statement.* A label on the container must state the name and address of the bottler, in accordance with the rules set forth in this section.

(c) *Form of address.* The address consists of the city and State and must be consistent with the information reflected on the brewer's notice required under part 25 of this chapter. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(d) *Optional statements.* The bottler may, but is not required to, be identified by a phrase describing the function performed by that person, such as ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by,'' followed by the name and address of the bottler. If one person performs more than one function, the label may so indicate (for

example, ''brewed and bottled by XYZ Brewery.'') If different functions are performed by more than one person, statements on the label may not create the misleading impression that the different functions were performed by the same person. The appropriate TTB officer may require specific information about the functions performed if necessary to prevent a misleading impression on the label.

(e) *Principal place of business.* The bottler's principal place of business may be shown in lieu of the actual place where the malt beverage was bottled if the address shown is a location where a bottling operation takes place. The appropriate TTB officer may disapprove the listing of a principal place of business if its use would create a false or misleading impression as to the geographic origin of the malt beverage. See 27 CFR 25.141 and 25.142 for coding requirements applicable in these circumstances.

(f) *Multiple breweries under the same ownership.* If two or more breweries are owned or operated by the same person, the place where the malt beverage is bottled within the meaning of paragraph (a) of this section may be shown in one of the following two ways:

(1) *Listing of where bottled.* The place where the malt beverage is bottled may be shown as the only location on the label; or

(2) *Listing of all brewer's locations.* The place where the malt beverage is bottled may appear in a listing of the locations of breweries owned by that person if the place of bottling is not given less emphasis than any of the other locations. See 27 CFR 25.141 and 25.142 for coding requirements applicable in these circumstances.

(g) *Malt beverages bottled for another person.* (1) If malt beverages are bottled for another person, the label may state, in addition to (but not in lieu of) the name and address of the bottler, the name and address of such other person, immediately preceded by the words ''brewed and bottled for'' or ''bottled for'' or another similar appropriate phrase. Such statements must clearly indicate the relationship between the two persons (for example, contract brewing).

(2) If the same brand of malt beverage is brewed and bottled by two or more breweries that are not under the same ownership, the label for each brewery may set forth all the locations where bottling takes place, as long as the label uses the actual location (and not the principal place of business) and as long as the nature of the arrangement is clearly set forth.

(h) *Use of trade names.* The name of the person appearing on the label may be the trade name or the operating name, as long as it is identical to a trade or operating name appearing on the brewer's notice.

**§ 7.67 Name and address for domestically bottled malt beverages that were bottled after importation.**

(a) *General.* This section applies to domestically bottled malt beverages that were bottled after importation. See § 7.68 for name and address requirements applicable to imported malt beverages that are imported in a container. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Malt beverages that were subject to blending or other production activities after importation.* Malt beverages that were subject, after importation, to blending or other production may not bear an ''imported by'' statement on the label, but must instead be labeled in accordance with the rules set forth in § 7.66 with regard to mandatory and optional labeling statements.

(c) *Malt beverages bottled after importation without blending or other production activities.* The label on malt beverages that are bottled without being subject to blending or other production activities in the United States after the malt beverages were imported must state the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer. The label must also state the words ''bottled by'' or ''packed by,'' followed by the name and address of the bottler, except that the following phrases are acceptable in lieu of the name and address of the bottler under the circumstances set forth below:

(1) If the malt beverages were bottled for the person responsible for the importation, the words ''imported and bottled (canned, packed or filled) in the United States for'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation;

(2) If the malt beverages were bottled by the person responsible for the importation, the words ''imported and bottled (canned, packed or filled) in the United States by'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation;

(3) In the situations set forth in paragraphs (c)(1) and (2) of this section, the address shown on the label may be that of the principal place of business of the importer who is also the bottler, provided that the address shown is a location where bottling takes place.

(d) *Use of trade names.* A trade name may be used if the trade name is listed on the importer's basic permit.

**§ 7.68 Name and address for malt beverages that are imported in a container.**

(a) *General.* This section applies to malt beverages that are imported in a container, as defined in § 7.1. See § 7.67 for rules regarding name and address requirements applicable to malt beverages that are domestically bottled after importation. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Mandatory labeling statement.* The label on malt beverages imported in containers, as defined in § 7.1, must state the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer.

(1) For purposes of this section, the importer is the holder of the importer's basic permit that either makes the original customs entry or is the person for whom such entry is made, or the holder of the importer's basic permit that is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and that places the order abroad.

(2) The address of the importer must be stated as the city and State of the principal place of business and must be consistent with the address reflected on the importer's basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

**§ 7.69 Country of origin.**

For U.S. Customs and Border Protection (CBP) rules regarding country of origin marking requirements, see the CBP regulations at 19 CFR parts 102 and 134.

**§ 7.70 Net contents.**

The following rules apply to the net contents statement required by § 7.63.

(a) The volume of malt beverage in the container must appear on a label as a net contents statement using the following measures:

(1) If less than one pint, the net contents must be stated in fluid ounces or fractions of a pint.

(2) If one pint, one quart, or one gallon, the net contents must be so stated.

(3) If more than one pint, but less than one quart, the net contents must be

stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than one quart, but less than one gallon, the net contents must be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(5) If more than one gallon, the net contents must be stated in gallons and fractions thereof.

(b) All fractions must be expressed in their lowest denominations.

(c) Metric measures may be used in addition to, but not in lieu of, the U.S. customary units of measurement and must appear in the same field of vision.

## Subpart F—Restricted Labeling Statements

### § 7.81 General.

(a) *Application.* The labeling practices, statements, and representations in this subpart may be used on malt beverage labels only when used in compliance with this subpart. In addition, if any of the practices, statements, or representations in this subpart are used elsewhere on containers or in packaging, they must comply with the requirements of this subpart. For purposes of this subpart:

(1) The term ''label'' includes all labels on malt beverage containers on which mandatory information may appear, as set forth in § 7.61(a), as well as any other label on the container.

(2) The term ''container'' includes all parts of the malt beverage container, including any part of a malt beverage container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 7.61(b).

(3) The term ''packaging'' includes any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

**Food Allergen Labeling**

### § 7.82 Voluntary disclosure of major food allergens.

(a) *Definitions.* For purposes of this section, the following terms have the meanings indicated.

(1) *Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to the FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived* means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts);

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts,'' as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the names ''soy,'' ''soybean,'' or ''soya'' may be used instead of ''soybeans.''

(b) *Voluntary labeling standards.* Major food allergens used in the production of a malt beverage product may, on a voluntary basis, be declared on a label. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the malt beverage product, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under § 7.83. The major food allergens declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains: egg'').

(c) *Cross reference.* For mandatory labeling requirements applicable to malt beverage products containing FD&C Yellow No. 5, sulfites, aspartame, and cochineal extract or carmine, see § 7.63(b).

### § 7.83 Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 7.82. The burden is on the petitioner to provide scientific evidence (as well as the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 7.82(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition.

(d) *Availability of information*—(1) *General.* TTB will promptly post to its website (*https://www.ttb.gov*) all petitions received under this section as well as TTB's responses to those

petitions. Any information submitted in support of the petition that is not posted to the TTB website will be available to the public pursuant to the Freedom of Information Act (5 U.S.C. 552), except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential, commercial, or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential, commercial, or financial information and that the information is not already in the public domain.

## Production and Other Claims

### § 7.84 Use of the term "organic."

Use of the term ''organic'' is permitted if any such use complies with the United States Department of Agriculture (USDA) National Organic Program rules (7 CFR part 205), as interpreted by the USDA.

### § 7.85 [Reserved]

### § 7.86 [Reserved]

### § 7.87 [Reserved]

## Subpart G—Prohibited Labeling Practices

### § 7.101 General.

(a) *Application.* The prohibitions set forth in this subpart apply to any malt beverage label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on malt beverage containers on which mandatory information may appear, as set forth in § 7.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the malt beverage container, including any part of a malt beverage container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 7.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

### § 7.102 False or untrue statements.

Malt beverage labels, containers, or packaging may not contain any statement or representation that is false or untrue in any particular.

### § 7.103 Obscene or indecent depictions.

Malt beverage labels, containers, or packaging may not contain any statement or representation that is obscene or indecent.

## Subpart H—Labeling Practices That Are Prohibited if They Are Misleading

### § 7.121 General.

(a) *Application.* The labeling practices that are prohibited if misleading set forth in this subpart apply to any malt beverage label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on malt beverage containers on which mandatory information may appear, as set forth in § 7.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the malt beverage container, including any part of a malt beverage container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 7.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

### § 7.122 Misleading statements or representations.

(a) *General prohibition.* Malt beverage labels, containers, or packaging may not contain any statement or representation, irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the malt beverage, or with regard to any other material factor.

(b) *Ways in which statements or representations may be found to be misleading.* (1) A statement or representation is prohibited, irrespective of falsity, if it directly creates a misleading impression or if it does so indirectly through ambiguity, omission, inference, or by the addition of irrelevant, scientific, or technical matter. For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.

(2) All claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on malt beverage labels, containers, or packaging that does not have a reasonable basis in fact or cannot be adequately substantiated upon the request of the appropriate TTB officer is considered misleading.

### § 7.123 Guarantees.

Malt beverage labels, containers, or packaging may not contain any statement relating to guarantees if the appropriate TTB officer finds it is likely

to mislead the consumer. However, money-back guarantees are not prohibited.

**§ 7.124 Disparaging statements.**

(a) *General.* Malt beverage labels, containers, or packaging may not contain any false or misleading statement that explicitly or implicitly disparages a competitor's product.

(b) *Truthful and accurate comparisons.* This section does not prevent truthful and accurate comparisons between products (such as ''Our ale contains more hops than Brand X'') or statements of opinion (such as ''We think our beer tastes better than any other beer on the market'').

**§ 7.125 Tests or analyses.**

Malt beverage labels, containers, or packaging may not contain any statement or representation of or relating to analyses, standards, or tests, whether or not it is true, that is likely to mislead the consumer. An example of a misleading statement is ''tested and approved by our research laboratories'' if the testing and approval does not in fact have any significance.

**§ 7.126 Depictions of government symbols.**

*Representations of the armed forces or flags.* Malt beverage labels, containers, or packaging may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols on the label, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

**§ 7.127 [Reserved]**

**§ 7.128 Claims related to distilled spirits.**

(a) *General.* Except as provided in paragraph (b) of this section, containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic, or other material accompanying such containers to the consumer, must not contain any statement, design, device, or representation that tends to create a false or misleading impression that the malt beverage contains distilled spirits or is a distilled spirits product.

(b) *Exceptions.* This section does not prohibit:

(1) A truthful and accurate statement of alcohol content, in conformity with § 7.65;

(2) The use of a brand name of a distilled spirits product as a malt beverage brand name, provided that the overall label does not create a misleading impression as to the identity of the product;

(3) The use of a cocktail name as a brand name or a distinctive or fanciful name of a malt beverage, provided that the overall labeling does not present a misleading impression about the identity of the product; or

(4) The use of truthful and accurate statements about the production of the malt beverage as part of a statement of composition or otherwise, such as ''aged in whisky barrels,'' as long as such statements do not create a misleading impression as to the identity of the product.

**§ 7.129 Health-related statements.**

(a) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Health-related statement* means any statement related to health (other than the warning statement required under part 16 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, a malt beverage, or any substance found within the malt beverage product, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the alcohol beverage product, as well as statements and claims of nutritional value (for example, statements of vitamin content). Numerical statements of the calorie, carbohydrate, protein, and fat content of the product do not constitute claims of nutritional value.

(2) *Specific health claim* means a type of health-related statement that, expressly or by implication, characterizes the relationship of malt beverages, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between alcohol, malt beverages, or any substance found within the malt beverage, and a disease or health-related condition.

(3) *Health-related directional statement* means a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(b) *Rules for malt beverage labels, containers, and packaging*—(1) *Health-related statements.* In general, malt beverage labels, containers, or packaging may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(2) *Specific health claims.* (i) TTB will consult with the Food and Drug Administration (FDA) as needed on the use of specific health claims on labels, containers, or packaging. If FDA determines that the use of such a claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on the malt beverage label.

(ii) TTB will approve the use of a specific health claim on a malt beverage label only if the claim is truthful and adequately substantiated by scientific or medical evidence; is sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(3) *Health-related directional statements.* A health-related directional statement is presumed misleading unless it:

(i) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(ii)(A) Includes as part of the health-related directional statement the following disclaimer: ''This statement

should not encourage you to drink or to increase your alcohol consumption for health reasons''; or

(B) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

**§ 7.130 Appearance of endorsement.**

(a) *General.* Malt beverage labels, containers, or packaging may not include the name, or the simulation or abbreviation of the name, of any living individual of public prominence or an existing private or public organization, or any graphic, pictorial, or emblematic representation of the individual or organization if its use is likely to lead a consumer to falsely believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. This section does not prohibit the use of such names where the individual or organization has provided authorization for their use.

(b) *Disclaimers.* Statements or other representations do not violate this section if, taken as a whole, they create no misleading impression as to an implied endorsement either because of the context in which they are presented or because of the use of an adequate disclaimer.

(c) *Exception.* This section does not apply to the use of the name of any person engaged in business as a producer, importer, bottler, packer, wholesaler, retailer, or warehouseman, of malt beverages. This section also does not apply to the use by any industry member of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by the industry member or its predecessors in interest prior to August 29, 1935.

**§ 7.131 [Reserved]**

**§ 7.132 [Reserved]**

## Subpart I—Classes and Types of Malt Beverages

**§ 7.141 Class and type.**

(a) *Products known to the trade.* The class of the malt beverage must be stated on the label (see § 7.63). The type of the malt beverage may be stated, but is not required to appear on the label. Statements of class and type must conform to the designation of the product as known to the trade. All parts of the designation must appear together.

(b) *Malt beverage specialty products*—(1) *General.* A malt beverage specialty product is a malt beverage that does not fall under any of the class designations set forth in §§ 7.142 through 7.144 and is not known to the trade under a particular designation, usually because of the addition of ingredients such as colorings, flavorings, or food materials or the use of certain types of production processes where the appropriate TTB officer has not determined that such ingredients or processes are generally recognized as traditional in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor.''

(2) *Designation.* A malt beverage specialty product must be designated with a distinctive or fanciful name, together with a statement of the composition of the product, in accordance with § 7.147. This statement will be considered the class designation for the purposes of this part. All parts of the designation must appear together.

**§ 7.142 Class designations.**

The following class designations may be used in accordance with this section:

(a) Any malt beverage, as defined in § 7.1, may be designated simply as a ''malt beverage.''

(b)(1) The class designations ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' and ''malt liquor'' may be used to designate malt beverages that contain at least 0.5 percent alcohol by volume and that conform to the trade understanding of those designations. These designations may be preceded or followed by descriptions of the color of the product (such as ''amber,'' ''brown,'' ''red,'' or ''golden'') as well as descriptive terms such as ''dry,'' ''export,'' ''cream,'' and ''pale.''

(2) No product other than a malt beverage fermented at a comparatively high temperature, possessing the characteristics generally attributed to ''ale,'' ''porter,'' or ''stout'' and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) may bear any of these class designations.

**§ 7.143 Class and type—special rules.**

The following special rules apply to specified class and type designations:

(a) *Reconstituted malt beverages.* Malt beverages that have been concentrated by the removal of water therefrom and reconstituted by the addition of water and carbon dioxide must for the purpose of this part be labeled in the same manner as malt beverages which have not been concentrated and reconstituted, except that there must appear immediately adjacent to, and as a part of, the class designation the statement ''PRODUCED FROM____ __CONCENTRATE'' (the blank to be filled in with the appropriate class designation). All parts of the class designation must appear in lettering of substantially the same size and kind. However, ice beers, described in paragraph (c) of this section, which are produced by the removal of less than 0.5 percent of the volume of the beer in the form of ice crystals and that retain beer character are not considered concentrated.

(b) *Half and half.* No product may be designated with the type designation ''half and half'' unless it is in fact composed of equal parts of two classes of malt beverages, the names of which are conspicuously stated immediately adjacent to the designation ''half and half'' (for example, ''Half and Half, Porter and Stout''). This does not preclude the use of terms such as ''half and half'' as part of a distinctive or fanciful name that refers to flavors added to a malt beverage designated in accordance with trade understanding or with a statement of composition.

(c) *Ice beer.* Malt beverages supercooled during the brewing process to form ice crystals may be labeled with the type designation ''ice'' preceding the class designation (beer, ale, etc.).

(d) *Black and tan.* A product composed of two classes of malt beverages may be designated with the type designation ''black and tan,'' and the class and type designation is the names of the two classes of malt beverages in conjunction with ''black and tan'' (for example, ''Black and Tan, Stout and Ale'').

(e) *Wheat beer.* Any ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' ''malt liquor,'' or other malt beverage made from a fermentable base that consists of at least 25 percent by weight malted wheat may be designated with the type designation ''wheat'' preceding the applicable class designation.

(f) *Rye beer.* Any ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' ''malt liquor,'' or other malt beverage made from a fermentable base that consists of at least 25 percent by weight malted rye may be designated with the type designation ''rye'' preceding the applicable class designation.

(g) *Barley wine ale.* The term ''barley (or wheat or rye) wine ale'' or ''barley (or wheat or rye) wine style ale'' may be used in accordance with trade understanding.

(h) *Malt beverages aged in barrels*—(1) *General.* Label designations for malt beverages aged in barrels or with woodchips, spirals, or staves derived

from barrels may, but are not required to, include a description of how the product was aged. Thus, for example, acceptable designations for a standard beer aged in an oak barrel would include ''beer,'' ''oak aged beer,'' and ''beer aged in an oak barrel.''

(2) *Barrels previously used in the production or storage of wine or distilled spirits.* Malt beverages aged in barrels previously used in the production or storage of wine or distilled spirits, or with woodchips, spirals, or staves derived from barrels previously used in the production or storage of wine or distilled spirits, or from woodchips previously used in the aging of distilled spirits or wine may, but are not required to, include a description of how the product was aged.

(i) Examples of acceptable designations for a standard beer aged in a wine barrel include ''beer,'' ''beer aged in a wine barrel,'' and ''wine barrel aged beer.''

(ii) Examples of acceptable designations for an ale brewed with honey and aged in a bourbon barrel include ''honey ale'' and ''bourbon barrel aged honey ale'' but not simply ''ale'' or ''bourbon barrel aged ale.''

(3) *Misleading designations.* Designations that create a misleading impression as to the identity of the product by emphasizing certain words or terms are prohibited. As set forth in § 7.122, designations may not mislead consumers as to the age, origin, identity, or other characteristics of the malt beverage. Examples of designations that would be prohibited under this provision are ''bourbon ale,'' ''bourbon-flavored lager,'' ''Chardonnay lager,'' or ''lager with whisky flavors.''

(i) *Other designations.* Other type designations (such as ''milk'' preceding the class designation ''stout'') may be applied in conformance with trade understanding.

**§ 7.144 Malt beverages fermented or flavored with certain traditional ingredients.**

(a) *General.* Any malt beverage that has been fermented or flavored only with one or more ingredients (such as honey or certain fruits) that the appropriate TTB officer has determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor'' may be labeled in accordance with trade understanding following the rules set forth in this section.

(1) A list of such traditional ingredients may be found on the TTB website (*https://www.ttb.gov*).

(2) If the malt beverage has also been fermented or flavored with ingredients that the appropriate TTB officer has not determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor,'' it is a malt beverage specialty and must be labeled in accordance with the statement of composition rules in § 7.147.

(b) *Rules for designation.* (1) A designation in accordance with trade understanding must identify the base product, such as ''malt beverage,'' ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor'' along with a modifier or explanation that provides the consumer with adequate information about the fruit, honey, or other food ingredient used in production of the malt beverage. The label may include additional information about the production process (such as ''beer fermented with cherry juice'').

(2) Where more than one exempted ingredient is included, a designation in accordance with trade understanding may identify each ingredient (such as ''Ale with cherry juice, cinnamon, and nutmeg''), refer to the ingredients by category (such as ''Fruit ale,'' ''Spiced ale,'' or ''Ale with natural flavors''), or simply include the ingredient or ingredients that the bottler or importer believes best identify the product (such as ''Cherry ale,'' ''Cinnamon ale,'' or ''Nutmeg ale''). The designation must distinguish the product from a malt beverage, beer, ale, porter, stout, lager, or malt liquor that is not brewed or flavored with any of these ingredients; thus, unmodified designations such as ''beer,'' ''stout,'' or ''ale'' would not be acceptable.

(c) *Other requirements.* All parts of the designation must appear together and must be readily legible on a contrasting background. Designations that create a misleading impression as to the identity of the product by emphasizing certain words or terms are prohibited.

**§ 7.145 Malt beverages containing less than 0.5 percent alcohol by volume.**

(a) Products containing less than 0.5 percent of alcohol by volume must bear the class designation ''malt beverage,'' ''cereal beverage,'' or ''near beer.''

(b) If the designation ''near beer'' is used, both words must appear in the same size and style of type, in the same color of ink, and on the same background.

(c) No product containing less than 0.5 percent of alcohol by volume may bear the class designations ''beer,'' ''lager beer,'' ''lager,'' ''ale,'' ''porter,'' ''stout,'' or any other class or type designation commonly applied to malt beverages containing 0.5 percent or more of alcohol by volume.

**§ 7.146 Geographical names.**

(a) Geographical names for distinctive types of malt beverages (other than names found under paragraph (b) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless:

(1) In direct conjunction with the name there appears the word ''type'' or the word ''American'', or some other statement indicating the true place of production in lettering substantially as conspicuous as such name; and

(2) The malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic; Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wurtzburger, Pilsen (Pilsener and Pilsner): *Provided,* That notwithstanding the foregoing provisions of this section, beer which is produced in the United States may be designated as ''Pilsen,'' ''Pilsener,'' or ''Pilsner'' without further modification, if it conforms to such type.

(b) Only such geographical names for distinctive types of malt beverages as the appropriate TTB officer finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic, *e.g.,* India Pale Ale.

(c) Except as provided in § 7.64(b), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

**§ 7.147 Statement of composition.**

(a) A statement of composition is required to appear on the label for malt beverage specialty products, as defined in § 7.141(b), which are not known to the trade under a particular designation. For example, the addition of flavoring materials, colors, or artificial sweeteners may change the class and type of the malt beverage. The statement of composition along with a distinctive or fanciful name serves as the class and type designation for these products.

(b) When required by this part, a statement of composition must contain all of the following information, as applicable:

(1) *Identify the base class and/or type designation.* The statement of composition must clearly identify the base class and/or type designation of the malt beverage product (*e.g.,* ''beer,'' ''lager beer,'' ''lager,'' ''ale,'' ''porter,'' ''stout,'' or ''malt beverage'').

(2) *Identify added flavoring material(s) used before, during, and after fermentation.* The statement of composition must disclose fermentable or non-fermentable flavoring materials added to the malt beverage base class.

(i) If the flavoring material is used before or during the fermentation process, the statement of composition must indicate that the malt beverage was fermented or brewed with the flavoring material (such as ''Beer Fermented with grapefruit juice'' or ''Grapefruit Ale''). If the flavoring material is added after fermentation, the statement of composition must describe that process, using terms such as ''added,'' ''with,'' ''infused,'' or ''flavored'' (such as ''Grapefruit-flavored ale.'').

(ii) If a single flavoring material is used in the production of the malt beverage product, the flavoring material may be specifically identified (such as ''Ale Fermented with grapefruit juice'') or generally referenced (such as ''Ale with natural flavor''). If two or more flavoring materials are used in the production of the malt beverage, each flavoring material may be specifically identified (such as ''lemon juice, kiwi juice'' or ''lemon and kiwi juice'') or the characterizing flavoring material may be specifically identified and the remaining flavoring materials may be generally referenced (such as ''kiwi and other natural and artificial flavor(s)''), or all flavors may be generally referenced (such as ''with artificial flavors'').

(3) *Identify added coloring material(s).* The statement of composition must disclose the addition of coloring material(s), whether added directly or through flavoring material(s). The coloring materials may be identified specifically (such as ''caramel color,'' ''FD&C Red #40,'' ''annatto,'' etc.) or as a general statement, such as ''Contains certified color'' for colors approved under 21 CFR subpart 74 or ''artificially colored'' to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5, carmine, and cochineal extract require specific disclosure in accordance with § 7.63(b)(1) and (2) and that specific disclosure may appear either in the statement of composition or elsewhere in accordance with those sections.

(4) *Identify added artificial sweeteners.* The statement of composition must disclose any artificial sweetener that is added to a malt beverage product, whether the artificial sweetener is added directly or through flavoring material(s). The artificial sweetener may be identified specifically by either generic name or trademarked brand name, or as a general statement (such as ''artificially sweetened'') to indicate the presence of any one or combination of artificial sweeteners. However, if aspartame is used, an additional warning statement is required in accordance with § 7.63(b)(4).

## Subparts J–L—[Reserved]

## Subpart M—Penalties and Compromise of Liability

### § 7.221 Criminal penalties.

A violation of the labeling provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor. See 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

### § 7.222 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the labeling and advertising provisions of this part. A willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in part 1 of this chapter.

### § 7.223 Compromise.

Pursuant to 27 U.S.C. 207, the appropriate TTB officer is authorized, with respect to any violation of 27 U.S.C. 205, to compromise the liability arising with respect to such violation upon payment of a sum not in excess of $500 for each offense, to be collected by the appropriate TTB officer and to be paid into the Treasury as miscellaneous receipts.

## Subpart N—Advertising of Malt Beverages

### § 7.231 Application.

No person engaged in business as a brewer, wholesaler, or importer, of malt beverages directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or by electronic or internet media, or in any other printed or graphic matter, any advertisement of malt beverages, if such advertising is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with this subpart: *Provided,* That such sections shall not apply to outdoor advertising in place on September 7, 1984, but shall apply upon replacement, restoration, or renovation of any such advertising; and *provided further,* that this subpart shall apply to advertisements of malt beverages intended to be sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the laws of such State impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in such State. *And provided further* that such sections shall not apply to a retailer or the publisher of any newspaper, periodical, or other publication, or radio or television or internet broadcast, unless such retailer or publisher or broadcaster is engaged in business as a brewer, wholesaler, bottler, or importer of malt beverages, directly or indirectly, or through an affiliate.

### § 7.232 Definitions.

As used in this subpart, the term ''advertisement'' or ''advertising'' includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, internet or other electronic site or social network, or in any written, printed, graphic, or other matter (such as hang tags) accompanying, but not firmly affixed to, the container, representations made on shipping cases, or in any billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any container of malt beverages; or any coverings, cartons, or cases of containers of malt beverages used for sale at retail which constitute a part of the labeling under this part.

(b) Any editorial or other reading material (such as a news release) in any periodical or publication or newspaper, for the publication of which no money or valuable consideration or thing of value is paid or promised, directly or indirectly, by any permittee or brewer, and which is not written by or at the direction of the permittee or brewer.

**§ 7.233 Mandatory statements.**

(a) *Responsible advertiser.* The advertisement must display the responsible advertiser's name, city, and State or the name and other contact information (such as, telephone number, website, or email address) where the responsible advertiser may be contacted.

(b) *Class.* The advertisement shall contain a conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required to appear on the label of the product.

(c) *Exception.* (1) If an advertisement refers to a general malt beverage line or all of the malt beverage products of one company, whether by the company name or by the brand name common to all the malt beverages in the line, the only mandatory information necessary is the responsible advertiser's name, city, and State or the name and other contact information (such as telephone number, website, or email address) where the responsible advertiser may be contacted. This exception does not apply where only one type of malt beverage is marketed under the specific brand name advertised.

(2) On consumer specialty items, the only information necessary is the company name or brand name of the product.

**§ 7.234 Legibility of mandatory information.**

(a) Statements required under this subpart that appear in any written, printed, or graphic advertisement must be in lettering or type size sufficient to be conspicuous and readily legible.

(b) In the case of signs, billboards, and displays the name and address or name and other contact information (such as, telephone number, website, or email) of the permittee responsible for the advertisement may appear in type size of lettering smaller than the other mandatory information, provided such information can be ascertained upon closer examination of the sign or billboard.

(c) Mandatory information must be so stated as to be clearly a part of the advertisement and may not be separated in any manner from the remainder of the advertisement.

(d) Mandatory information for two or more products shall not be stated unless clearly separated.

(e) Mandatory information must be so stated in both the print and audiovisual media that it will be readily apparent to the persons viewing the advertisement.

**§ 7.235 Prohibited practices.**

(a) *General prohibition.* An advertisement of malt beverages must not contain:

(1) Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any false or misleading statement that explicitly or implicitly disparages a competitor's product. This does not prevent truthful and accurate comparisons between products (such as ''Our ale contains more hops than Brand X'') or statements of opinion (such as ''We think our beer tastes better than any other beer on the market'').

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the appropriate TTB officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) [Reserved].

(7) [Reserved].

(8) Any statement, design, device, or representation that tends to create a false or misleading impression that the malt beverage contains distilled spirits or is a distilled spirits product. Advertisements may include the types of statements that are listed as being not prohibited on labels in § 7.128(b).

(b) *Statements inconsistent with labeling.* (1) Advertisements shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.

(2) Any label depicted on a container in an advertisement shall be a reproduction of an approved label, except that malt beverage labels not required to be covered by a COLA in accordance with the rules in § 7.21 of this chapter may also appear on advertisements.

(c) [Reserved]

(d) *Class.* (1) No product containing less than 0.5 percent of alcohol by volume shall be designated in any advertisement as ''beer'', ''lager beer'', ''lager'', ''ale'', ''porter'', or ''stout'', or by any other class or type designation commonly applied to fermented malt beverages containing 0.5 percent or more of alcohol by volume.

(2) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to ''ale,'' ''porter,'' or ''stout'' and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall be designated in any advertisement by any of these class designations.

(e) *Health-related statements*—(1) *Definitions.* When used in this paragraph (e), terms are defined as follows:

(i) *Health-related statement* means any statement related to health and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, malt beverages, or any substance found within the malt beverage, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the malt beverage, as well as statements and claims of nutritional value (*e.g.,* statements of vitamin content). Statements concerning caloric, carbohydrate, protein, and fat content do not constitute nutritional claims about the product.

(ii) *Specific health claim* is a type of health-related statement that, expressly or by implication, characterizes the relationship of the malt beverage, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between malt beverages, alcohol, or any substance found within the malt beverage, and a disease or health-related condition.

(iii) *Health-related directional statement* is a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(2) *Rules for advertising*—(i) *Health-related statements.* In general, advertisements may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects

on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such disclaimer or other qualifying statement must appear as prominent as the health-related statement.

(ii) *Specific health claims.* A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and in a manner as prominent as the specific health claim.

(iii) *Health-related directional statements.* A statement that directs consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(B)(*1*) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, the following disclaimer: ''This statement should not encourage you to drink or increase your alcohol consumption for health reasons;'' or

(2) Includes as part of the health-related directional statement, and in a manner as prominent as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

(f) *Confusion of brands.* Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or a newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of this subpart or are in any respect untrue.

(g) *Representations of the armed forces or flags.* Advertisements may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of, the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

(h) *Deceptive advertising techniques.* Subliminal or similar techniques are prohibited. ''Subliminal or similar techniques,'' as used in this part, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

(i) *Organic.* Any use of the term ''organic'' in the advertising of malt beverages must comply with the United States Department of Agriculture's (USDA) National Organic Program rules, 7 CFR part 205, as interpreted by the USDA.

### § 7.236 Comparative advertising.

(a) *General.* Comparative advertising shall not be disparaging of a competitor's product in a manner that is false or misleading.

(b) *Taste tests.* (1) Taste test results may be used in advertisements comparing competitors' products unless they are disparaging in a false or misleading manner, deceptive, or likely to mislead the consumer.

(2) The taste test procedure used shall meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the Manual on Sensory Testing Methods, ASTM Special Technical Publication 434, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, ASTM, 1968, Library of Congress Catalog Card Number 68–15545.

(3) A statement shall appear in the advertisement providing the name and address of the testing administrator.

## Subpart O—Paperwork Reduction Act

### § 7.241 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Table.* The following table identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

TABLE 1 TO PARAGRAPH (b)

| Section where contained | Current OMB Control No. |
|---|---|
| 7.11 | 1513–0111 |
| 7.21 | 1513–0020 |
| 7.22 | 1513–0020 |
| 7.24 | 1513–0020 |
| | 1513–0064 |
| 7.25 | 1513–0020 |
| 7.27 | 1513–0020 |
| 7.28 | 1513–0122 |
| 7.29 | 1513–0020 |
| 7.62 | 1513–0087 |
| 7.63 | 1513–0084 |
| | 1513–0087 |
| 7.66 | 1513–0085 |
| 7.67 | 1513–0085 |
| 7.81 | 1513–0087 |
| 7.82 | 1513–0121 |
| 7.83 | 1513–0121 |
| 7.84 | 1513–0087 |
| 7.233 | 1513–0087 |

Signed: January 7, 2022.

**Mary G. Ryan,**

*Administrator.*

Approved: January 7, 2022.

**Timothy E. Skud,**

*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. 2022–00841 Filed 2–8–22; 8:45 am]

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## Part III

## Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding; Notice of Proposed Rulemaking; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[EPA–HQ–OAR–2018–0794; FRL–6716.2–01–OAR]**

**RIN 2060–AV12**

# National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding; Notice of Proposed Rulemaking

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to revoke a May 22, 2020 finding that it is not appropriate and necessary to regulate coal- and oil-fired electric utility steam generating units (EGUs) under Clean Air Act (CAA) section 112, and to reaffirm the Agency's April 25, 2016 finding that it remains appropriate and necessary to regulate hazardous air pollutant (HAP) emissions from EGUs after considering cost. The Agency is also reviewing another part of the May 22, 2020 action, a residual risk and technology review (RTR) of Mercury and Air Toxics Standards (MATS). Accordingly, in addition to soliciting comments on all aspects of this proposal, the EPA is soliciting information on the performance and cost of new or improved technologies that control HAP emissions, improved methods of operation, and risk-related information to further inform the Agency's review of the MATS RTR as directed by Executive Order 13990.

**DATES:** Comments must be received on or before April 11, 2022.

*Public hearing:* The EPA will hold a virtual public hearing on February 24, 2022. See **SUPPLEMENTARY INFORMATION** for information on the hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OAR–2018–0794, 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–2018–0794 in the subject line of the message.
- Fax: (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2018–0794.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2018–0794, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation 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 detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. 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.*

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Melanie King, Sector Policies and Programs Division (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2469; and email address: *king.melanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The EPA is proposing to revoke a May 22, 2020 finding that it is not appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112, and to reaffirm the Agency's April 25, 2016 finding that it remains appropriate and necessary to regulate HAP emissions from EGUs after considering cost. The 2016 finding was made in response to the U.S. Supreme Court's 2015 *Michigan* v. *EPA* decision, where the Court held that the Agency had erred by not taking cost into consideration when taking action on February 16, 2012, to affirm a 2000 EPA determination that it was appropriate and necessary to regulate HAP emissions from EGUs. In the same 2012 action, the EPA also promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for coal- and oil-fired EGUs, commonly known as the Mercury and Air Toxics Standards or MATS.

Based on a re-evaluation of the administrative record and the statute, the EPA proposes to conclude that the framework applied in the May 22, 2020 finding was ill-suited to assessing and comparing the full range of benefits to costs, and the EPA concludes that, after applying a more suitable framework, the 2020 determination should be withdrawn. For reasons explained in this notice, the EPA further proposes to reaffirm that it is appropriate and necessary to regulate HAP emissions from EGUs after weighing the volume of pollution that would be reduced through regulation, the public health risks and harms posed by these emissions, the impacts of this pollution on particularly exposed and sensitive populations, the availability of effective controls, and the costs of reducing this harmful pollution including the effects of control costs on the EGU industry and its ability to provide reliable and affordable electricity. This notice also presents information and analysis that has become available since the 2016 finding, pertaining to the health risks of mercury emissions and the costs of reducing HAP emissions, that lend further support for this determination.

The review that led to this proposal is consistent with the direction in Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' signed by President Biden on January 20, 2021. In response to the Executive Order, the Agency is also reviewing another part of the May 22, 2020 action, a RTR of MATS. Accordingly, in addition to soliciting comments on all aspects of this proposal, the EPA is soliciting information on the performance and cost of new or improved technologies that control HAP emissions, improved methods of operation, and risk-related information to further inform the Agency's review of the MATS RTR as directed by the Executive Order. Results of the EPA's review of the RTR will be presented in a separate action.

*Participation in virtual public hearing.* Please note that the EPA is deviating from its typical approach for public hearings because the President has declared a national emergency. Due to the current Centers for Disease Control and Prevention (CDC) recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, the EPA

cannot hold in-person public meetings at this time.

The virtual public hearing will be held via teleconference on February 24, 2022 and will convene at 10:00 a.m. Eastern Time (ET) and will conclude at 7:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. For information or questions about the public hearing, please contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.*

The EPA will begin pre-registering speakers for the hearing no later than 1 business day following publication of this document in the **Federal Register**. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be February 18, 2022. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *king.melanie@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by February 16, 2022. The EPA may not be able to arrange accommodations without advanced notice.

*Docket.* The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2018–0794.[1] All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *https://www.regulations.gov/.*

*Instructions.* Direct your comments to Docket ID No. EPA–HQ–OAR–2018–0794. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, 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/* as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

*Submitting CBI.* Do not submit information containing CBI to the EPA

[1] As explained in a memorandum to the docket, the docket for this action includes the documents and information, in whatever form, in Docket ID Nos. EPA–HQ–OAR–2009–0234 (National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units), EPA–HQ–OAR–2002–0056 (National Emission Standards for Hazardous Air Pollutants for Utility Air Toxics; Clean Air Mercury Rule (CAMR)), and Legacy Docket ID No. A–92–55 (Electric Utility Hazardous Air Pollutant Emission Study). *See* memorandum titled *Incorporation by reference of Docket Number EPA–HQ–OAR–2009–0234, Docket Number EPA–HQ–OAR–2002–0056, and Docket Number A–92–55 into Docket Number EPA–HQ–OAR–2018–0794* (Docket ID Item No. EPA–HQ–OAR–2018–0794–0005).

through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in title 40 of the Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2018–0794. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

*Preamble acronyms and abbreviations.* We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACI activated carbon injection
ATSDR Agency for Toxic Substances and Disease Registry
ARP Acid Rain Program
BCA benefit-cost analysis
CAA Clean Air Act
CAAA Clean Air Act Amendments of 1990
CAMR Clean Air Mercury Rule
CBI Confidential Business Information
CFR Code of Federal Regulations
CVD cardiovascular disease
DSI dry sorbent injection
EGU electric utility steam generating unit
EIA Energy Information Administration
EPA Environmental Protection Agency
ESP electrostatic precipitator
EURAMIC European Multicenter Case-Control Study on Antioxidants, Myocardial Infarction, and Cancer of the Breast Study
FF fabric filter
FGD flue gas desulfurization
FR Federal Register
GW gigawatt
HAP hazardous air pollutant(s)
HCl hydrogen chloride
HF hydrogen fluoride
IHD ischemic heart disease
IPM Integrated Planning Model
IRIS Integrated Risk Information System
KIHD Kuopio Ischaemic Heart Disease Risk Factor Study
kW kilowatt
MACT maximum achievable control technology
MATS Mercury and Air Toxics Standards
MI myocardial infarction
MIR maximum individual risk
MW megawatt
NAS National Academy of Sciences
NESHAP national emission standards for hazardous air pollutants
OMB Office of Management and Budget
O&M operation and maintenance
PM particulate matter
PUFA polyunsaturated fatty acid
RfD reference dose
RIA regulatory impact analysis
RTR residual risk and technology review
SCR selective catalytic reduction
SO2 sulfur dioxide
TSD technical support document
tpy tons per year

*Organization of this document.* The information in this preamble is organized as follows:

I. General Information
A. Executive Summary
B. Does this action apply to me?
C. Where can I get a copy of this document and other related information?
II. Background
A. Regulatory History
B. Statutory Background
III. Proposed Determination Under CAA Section 112(n)(1)(A)
A. Public Health Hazards Associated With Emissions From EGUs
B. Consideration of Cost of Regulating EGUs for HAP
C. Revocation of the 2020 Final Action
D. The Administrator's Proposed Preferred Framework and Proposed Conclusion
E. The Administrator's Proposed Benefit-Cost Analysis Approach and Proposed Conclusion
IV. Summary of Cost, Environmental, and Economic Impacts
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VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

## I. General Information

### *A. Executive Summary*

On January 20, 2021, President Biden signed Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'' (86 FR 7037, January 25, 2021). The Executive Order, among other things, instructs the EPA to review the 2020 final action titled, ''National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review'' (85 FR 31286; May 22, 2020) (2020 Final Action) and consider publishing a notice of proposed rulemaking suspending, revising, or rescinding that action. Consistent with the Executive Order, the EPA has undertaken a careful review of the 2020 Final Action, in which the EPA reconsidered its April 25, 2016 supplemental finding (81 FR 24420) (2016 Supplemental Finding). Based on that review, the Agency proposes to find that the decisional framework for making the appropriate and necessary determination under CAA section 112(n)(1)(A) that was applied in the 2020 Final Action was unsuitable because it failed to adequately account for statutorily relevant factors. Therefore, we propose to revoke the May 2020 determination that it is not appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs under section 112 of the CAA. We further propose to reaffirm our earlier determinations—made in 2000 (65 FR 79825; December 20, 2000) (2000 Determination), 2012 (77 FR 9304; February 16, 2012) (2012 MATS Final Rule), and 2016—that it is appropriate and necessary to regulate coal- and oil-fired EGUs under section 112 of the CAA.

In 1990, frustrated with the EPA's pace in identifying and regulating HAP, Congress radically transformed its treatment of that pollution. It rewrote section 112 of the CAA to require the EPA to swiftly regulate 187 HAP with technology-based standards that would require all major sources (defined by the quantity of pollution a facility has the potential to emit) to meet the levels of reduction achieved in practice by the best-performing similar sources. EGUs were the one major source category excluded from automatic application of these new standards. EGUs were treated differently primarily because the 1990

Amendments to the CAA (1990 Amendments) included the Acid Rain Program (ARP), which imposed criteria pollution reduction requirements on EGUs. Congress recognized that the controls necessary to comply with this and other requirements of the 1990 Amendments might reduce HAP emissions from EGUs as well. Therefore, under CAA section 112(n)(1)(A), Congress directed the EPA to regulate EGUs if, after considering a study of ''the hazards to public health reasonably anticipated to occur as a result of [HAP] emissions by [EGUs] . . . after imposition of the [Acid Rain Program and other] requirements of this chapter,'' the EPA concluded that it ''is appropriate and necessary'' to do so. *See* CAA section 112(n)(1)(A).

The EPA completed that study in 1998 and, in 2000, concluded that it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs. *See* 65 FR 79825 (December 20, 2000). The EPA reaffirmed that conclusion in 2012, explaining that the other requirements of the CAA, in particular the ARP, did not lead to the HAP emission reductions that had been anticipated because many EGUs switched to lower-sulfur coal rather than deploy pollution controls that may have also reduced emissions of HAP. Indeed, the statute contemplated that the EPA would be conducting the required study within 3 years of the 1990 Amendments; but when the EPA re-examined public health hazards remaining after imposition of the Act's requirements in 2012, the Agency accounted for over 20 years of CAA regulation, and EGUs still remained one of the largest sources of HAP pollution. Specifically, in 2012, the EPA concluded that EGUs were the largest domestic source of emissions of mercury, hydrogen fluoride (HF), hydrogen chloride (HCl), and selenium; and among the largest domestic contributors of emissions of arsenic, chromium, cobalt, nickel, hydrogen cyanide, beryllium, and cadmium. The EPA further found that a significant majority of EGUs were located at facilities that emitted above the statutory threshold set for major sources (*e.g.,* 10 tons per year (tpy) of any one HAP or 25 tpy or more of any combination of HAP). *See* 77 FR 9304 (February 16, 2012). In 2012, the EPA also established limits for emissions of HAP from coal- and oil-fired EGUs. *Id.*

Many aspects of the EPA's appropriate and necessary determination and the CAA section 112 regulations were challenged in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), and all challenges were denied and the finding and standards upheld in full in *White Stallion Energy Center* v. *EPA,* 748 F.3d 1222 (2014). The Supreme Court granted review on a single issue and, in *Michigan* v. *EPA,* 576 U.S. 743 (2015), the Court held that the EPA erred when it failed to consider the costs of its regulation in determining that it is appropriate and necessary to regulate HAP emissions from EGUs, and remanded that determination to the D.C. Circuit for further proceedings. Following *Michigan,* in 2016 the EPA issued a Supplemental Finding that it is appropriate and necessary to regulate EGU HAP after considering the costs of such regulation. *See* 81 FR 24420 (April 25, 2016). In 2020, the Agency reversed that determination.[2] In this action, we conclude that the methodology we applied in 2020 is ill-suited to the appropriate and necessary determination because, among other reasons, it did not give adequate weight to the significant volume of HAP emissions from EGUs and the attendant risks remaining after imposition of the other requirements of the CAA, including many adverse health and environmental effects of EGU HAP emissions that cannot be quantified or monetized. We propose, therefore, to revoke the 2020 Final Action.

We further propose to affirm, once again, that it is appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112. We first examine the benefits or advantages of regulation, including new information on the risks posed by EGU HAP. We then examine the costs or disadvantages of regulation, including both the costs of compliance (which we explain we significantly overestimated in 2012) and how those costs affect the industry and the public. We then weigh these benefits and costs to reach the conclusion that it is appropriate and necessary to regulate using two alternative methodologies.

Our preferred methodology, as it was in the 2016 Supplemental Finding, is to consider all of the impacts of the regulation—both costs and benefits to society—using a totality-of-the-circumstances approach rooted in the *Michigan* court's direction to ''pay[ ] attention to the advantages *and* disadvantages of [our] decision[ ].'' 576 U.S. at 753; *see id.* at 752 (''In particular, 'appropriate' is 'the classic broad all-encompassing term that naturally includes consideration of all relevant factors.''). To help determine the relevant factors to weigh, we look to CAA section 112(n)(1)(A), the other provisions of CAA section 112(n)(1), and to the statutory design of CAA section 112.

Initially, we consider the human health advantages of reducing HAP emissions from EGUs because in CAA section 112(n)(1)(A) Congress directed the EPA to make the appropriate and necessary determination after considering the results of a ''study of the hazards to public health reasonably anticipated to occur as a result of [HAP] emissions'' from EGUs. *See* CAA section 112(n)(1)(A). We consider all of the advantages of reducing emissions of HAP (*i.e.,* the risks posed by HAP) regardless of whether those advantages can be quantified or monetized, and we explain why almost none of those advantages can be monetized. Consistent with CAA section 112(n)(1)(B)'s direction to examine the rate and mass of mercury emissions, and the design of CAA section 112, which required swift reduction of the volume of HAP emissions based on an assumption of risk, we conclude that we should place substantial weight on reducing the large volume of HAP emissions from EGUs—both in absolute terms and relative to other source categories—that, absent MATS, was entering our air, water, and land, thus reducing the risk of grave harms that can occur as a result of exposure to HAP. Also consistent with the statutory design of CAA section 112, in considering the advantages of HAP reductions, we consider the distribution of those benefits, and the statute's clear goal in CAA section 112(n)(1)(C) and other provisions of CAA section 112 to protect the most exposed and susceptible populations, such as communities that are reliant on local fish for their survival, and developing fetuses. We think it is highly relevant that while EGUs generate power for all, and EGU HAP pollution poses risks to all Americans exposed to such HAP, a smaller set of Americans who live near EGUs face a disproportionate risk of being significantly harmed by toxic pollution. Finally, we also consider the identified risks to the environment posed by mercury and acid-gas HAP, consistent with CAA section 112(n)(1)(B) and the general goal of CAA

[2] The 2020 Final Action, while reversing the 2016 Supplemental Finding as to the EPA's determination that it was ''appropriate'' to regulate HAP from EGUs, did not rescind the Agency's prior determination that it was necessary to regulate. *See* 84 FR 2674 (February 7, 2019). Instead, the 2020 rulemaking stated that its rescission was based on the appropriate prong alone: ''CAA section 112(n)(1)(A) requires the EPA to determine that both the appropriate *and* necessary prongs are met. Therefore, if the EPA finds that either prong is not satisfied, it cannot make an affirmative appropriate and necessary finding. The EPA's reexamination of its determination . . . focuses on the first prong of that analysis.'' *Id.*

section 112 to reduce risks posed by HAP to the environment.

We next weigh those advantages against the disadvantages of regulation, principally in the form of the costs incurred to control HAP before they are emitted into the environment. Consistent with the statutory design, we consider those costs comprehensively, examining them in the context of the effect of those expenditures on the economics of power generation more broadly, the reliability of electricity, and the cost of electricity to consumers. These metrics are relevant to our weighing exercise because they give us a more complete picture of the disadvantages to producers and consumers of electricity imposed by this regulation, and because our conclusion might change depending on how this burden affects the ability of the industry to thrive and to provide reliable, affordable electricity to the benefit of all Americans. These metrics are relevant measures for evaluating costs to the utility sector in part because they are the types of metrics considered by the owners and operators of EGUs themselves. *See* 81 FR 24428 (April 25, 2016). Per CAA section 112(n)(1)(B), we further consider the availability and cost of control technologies, including the relationship of that factor to controls installed under the ARP.

As explained in detail in this document, we ultimately propose to conclude that, weighing the risks posed by HAP emissions from EGUs against the costs of reducing that pollution on the industry and society as a whole, it is worthwhile (*i.e.,* ''appropriate'') to regulate those emissions to protect all Americans, and in particular the most vulnerable populations, from the inherent risks posed by exposure to HAP emitted by coal- and oil-fired EGUs. We propose to find that this is true whether we are looking at the record in 2016 (*i.e.,* information available as of the time of the 2012 threshold finding and rulemaking) or at the updated record in 2021, in which we quantify additional risks posed by HAP emissions from EGUs and conclude that the actual cost of complying with MATS was almost certainly significantly less than the EPA's projected estimate in the 2011 RIA, primarily because fewer pollution controls were installed than projected and because the unexpected increases in natural gas supply led to a dramatic decrease in the price of natural gas.

In the 2016 Supplemental Finding we did not consider non-HAP health benefits that occur by virtue of controlling HAP from EGUs as a relevant factor for our consideration under the preferred approach. However, because the Supreme Court in *Michigan* directed us to consider health and environmental effects beyond those posed by HAP, ''including, for instance, harms that regulation might do to human health or the environment,'' and stressed that ''[n]o regulation is 'appropriate' if it does significantly more harm than good,'' 576 U.S. at 752, we take comment on whether it is reasonable to also consider the advantages associated with non-HAP emission reductions that result from the application of HAP controls as part of our totality-of-the-circumstances approach. In the 2012 MATS Final Rule, we found that regulating EGUs for HAP resulted in substantial health benefits accruing from coincidental reductions in particulate matter (PM) pollution and its precursors. We also projected that regulating EGUs for HAP would similarly result in an improvement in ozone pollution. While we propose to reach the conclusion that HAP regulation is appropriate even absent consideration of these additional benefits, adding these advantages to the weighing inquiry would provide further support for our proposed conclusion that the advantages of regulation outweigh the disadvantages.

We recognize, as we did in 2016, that our preferred, totality-of-the-circumstances approach to making the appropriate and necessary determination is an exercise in judgment, and that ''[r]easonable people, and different decision-makers, can arrive at different conclusions under the same statutory provision'' (81 FR 24431; April 25, 2016). However, this type of weighing of factors and circumstances is an inherent part of regulatory decision-making, and we think it is a reasonable approach where the factors the statute identifies as important to consider cannot be quantified or monetized.

Next, we turn to our alternative approach of a formal benefit-cost analysis (BCA). This approach independently supports the determination that it is appropriate to regulate EGU HAP. Based on the 2011 Regulatory Impacts Analysis (2011 RIA) [3] performed as part of the 2012 MATS Final Rule, the total net benefits of MATS were overwhelming even though the EPA was only able to monetize one of the many benefits of reducing HAP emissions from EGUs. Like the preferred approach, this conclusion is further supported by newer information on the risks posed by HAP emissions from EGUs as well as the actual costs of implementing MATS, which almost certainly were significantly lower than estimated in the 2011 RIA.

Our proposal is organized as follows. In section II.A of this preamble, we provide as background the regulatory and procedural history leading up to this proposal. We also detail, in preamble section II.B, the statutory design of HAP regulation that Congress added to the CAA in 1990 in the face of the EPA's failure to make meaningful progress in regulating HAP emissions from stationary sources. In particular, we point out that many provisions of CAA section 112 demonstrate the value Congress placed on reducing the volume of HAP emissions from stationary sources as much as possible and quickly, with a particular focus on reducing HAP related risks to the most exposed and most sensitive members of the public. This background assists in identifying the relevant statutory factors to weigh in considering the advantages and disadvantages of HAP regulation.

Against this backdrop, we propose to revoke the 2020 Final Action and reaffirm the 2016 determination that it remains appropriate to regulate HAP emissions from EGUs after a consideration of cost. Specifically, in section III.A of this preamble, we review the long-standing and extensive body of evidence, as well as new mercury-related risk analyses performed since 2016, identifying substantial risks to human health and the environment from HAP emissions from coal- and oil-fired EGUs that support a conclusion that regulating HAP emissions from EGUs is appropriate. In preamble section III.B, we analyze information regarding how the power sector elected to comply with MATS, and how our 2012 projections for the cost of regulation almost certainly overestimated the actual costs of the regulation by a significant amount. In preamble section III.C, we explain our reasons for revoking the 2020 Final Action, which applied an ill-suited framework for evaluating cost because it gave little to no weight to the statutory concern with reducing the volume of and risks from HAP emissions to protect even the most exposed and most vulnerable members of the public. In section III.D of this preamble, we describe and apply our preferred, totality-of-the-circumstances approach, giving particular weight to the factors identified in CAA section 112(n)(1) and 112 more generally. We propose to conclude that after considering all of the

[3] U.S. EPA. 2011. *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards.* EPA–452/R–11–011. Available at: *https://www3.epa.gov/ttn/ecas/docs/ria/utilities_ria_final-mats_2011-12.pdf.*

relevant factors and weighing the advantages of regulation against the cost of doing so, it is appropriate and necessary to regulate EGUs under CAA section 112. In section III.E of this preamble, we propose an alternative formal benefit-cost approach for making the appropriate and necessary determination. Under this approach, we propose to conclude that it remains appropriate to regulate HAP emissions from EGUs after considering cost because the BCA issued with the MATS rule indicated that the total net benefits of MATS were overwhelming even though the EPA was only able to monetize one of many statutorily identified benefits of regulating HAP emissions from EGUs. The new information examined by the EPA with respect to updated science and cost information only strengthens our conclusions under either of these methodologies. Section IV of this preamble notes that because this proposal reaffirms prior determinations and does not impact implementation of MATS, this action, if finalized, would not change those standards.

Finally, in preamble section V, in addition to soliciting comments on all aspects of this proposed action, we separately seek comment on any data or information that will assist in the EPA's ongoing review of the RTR that the Agency completed for MATS in 2020.

*B. Does this action apply to me?*

The source category that is the subject of this proposal is Coal- and Oil-Fired EGUs regulated by NESHAP under 40 CFR 63, subpart UUUUU, commonly known as MATS. The North American Industry Classification System (NAICS) codes for the Coal- and Oil-Fired EGU source category are 221112, 221122, and 921150. This list of NAICS codes is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect.

*C. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

## II. Background

*A. Regulatory History*

In the 1990 Amendments, Congress substantially modified CAA section 112 to address hazardous air pollutant emissions from stationary sources. CAA section 112(b)(1) sets forth a list of 187 identified HAP, and CAA sections 112(b)(2) and (3) give the EPA the authority to add or remove pollutants from the list. CAA section 112(a)(1) and (2) specify the two types of sources to be addressed: major sources and area sources. A major source is any stationary source or group of stationary sources at a single location and under common control that emits or has the potential to emit, considering controls, 10 tpy or more of any HAP or 25 tpy or more of any combination of HAP. CAA section 112(a)(1). Any stationary source of HAP that is not a major source is an area source.[4] CAA section 112(a)(2). All major source categories, besides EGUs, and certain area source categories, were required to be included on an initial published list of sources subject to regulation under CAA section 112. *See* CAA sections 112(a)(1) and (c)(1). The EPA is required to promulgate emission standards under CAA section 112(d) for every source category on the CAA section 112(c)(1) list.

The general CAA section 112(c) process for listing source categories does not apply to EGUs. Instead, Congress enacted a special provision, CAA section 112(n)(1)(A), which establishes a separate process by which the EPA determines whether to add EGUs to the CAA section 112(c) list of source categories that must be regulated under CAA section 112. Because EGUs were subject to other CAA requirements under the 1990 Amendments, most importantly the ARP, CAA section 112(n)(1)(A) directs the EPA to conduct a study to evaluate the hazards to public health that are reasonably anticipated to occur as a result of the HAP emissions from EGUs ''after imposition of the requirements of this chapter.'' *See* CAA section 112(n)(1)(A); *see also Michigan* v. *EPA,* 576 U.S. at 748 (''Quite apart from the hazardous-air-pollutants program, the Clean Air Act Amendments of 1990 subjected power plants to various regulatory requirements. The parties agree that these requirements were expected to have the collateral effect of reducing power plants' emissions of hazardous air pollutants, although the extent of the reduction was unclear.''). The provision directs that the EPA shall regulate EGUs under CAA section 112 if the Administrator determines, after considering the results of the study, that such regulation is ''appropriate and necessary.'' CAA section 112(n)(1)(A), therefore, sets a unique process by which the Administrator is to determine whether to add EGUs to the CAA section 112(c) list of sources that must be subject to regulation under CAA section 112.

The study required under CAA section 112(n)(1)(A) is one of three studies commissioned by Congress under CAA section 112(n)(1), a subsection entitled ''Electric utility steam generating units.'' The first, which, as noted, the EPA was required to consider before making the appropriate and necessary determination, was completed in 1998 and was entitled the *Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units–Final Report to Congress* (Utility Study).[5] The Utility Study contained an analysis of HAP emissions from EGUs, an assessment of the hazards and risks due to inhalation exposures to these emitted pollutants, and a multipathway (inhalation plus non-inhalation exposures) risk assessment for mercury and a subset of other relevant HAP. The study indicated that mercury was the HAP of greatest concern to public health from coal- and oil-fired EGUs. The study also concluded that numerous control strategies were available to reduce HAP emissions from this source category. The second study commissioned by Congress under CAA section 112(n)(1)(B), the Mercury Study Report to Congress (Mercury Study),[6] was released in 1997. Under this provision, the statute tasked the EPA with focusing exclusively on mercury, but directed the Agency to look at other stationary sources of mercury emission in addition to EGUs, the rate and mass of emissions coming from those sources, available technologies for controlling mercury and the costs of such technologies, and a broader scope of impacts including environmental effects. As in the Utility Study, the EPA confirmed that mercury is highly toxic, persistent, and bioaccumulates in food chains. Fish consumption is the primary pathway for human exposure to mercury, which can lead to higher risks in certain populations. The third study, required under CAA section 112(n)(1)(C),

[4] The statute includes a separate definition of ''EGU'' that includes both major and area source power plant facilities. CAA section 112(a)(8).

[5] U.S. EPA. *Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress.* EPA–453/R–98–004a. February 1998.

[6] U.S. EPA. 1997. *Mercury Study Report to Congress.* EPA–452/R–97–003 December 1997.

directed the National Institute of Environmental Health Sciences (NIEHS) to conduct a study to determine the threshold level of mercury exposure below which adverse human health effects were not expected to occur (NIEHS Study). The statute required that the study include a threshold for mercury concentrations in the tissue of fish that could be consumed, even by sensitive populations, without adverse effects to public health. NIEHS submitted the required study to Congress in 1995.[7] *See* 76 FR 24982 (May 3, 2011). Later, after submission of the CAA section 112(n)(1) reports and as part of the fiscal year 1999 appropriations, Congress further directed the EPA to fund the National Academy of Sciences (NAS) to perform an independent evaluation of the data related to the health impacts of methylmercury, and, similar to the CAA section 112(n)(1)(C) inquiry, specifically to advise the EPA as to the appropriate reference dose (RfD) for methylmercury. Congress also indicated in the 1999 conference report directing the EPA to fund the NAS Study, that the EPA should not make the appropriate and necessary regulatory determination until the EPA had reviewed the results of the NAS Study. *See* H.R. Conf. Rep. No. 105–769, at 281–282 (1998). This last study, completed by the NAS in 2000, was entitled Toxicological Effects of Methylmercury (NAS Study),[8] and it presented a rigorous peer-review of the EPA's RfD for methylmercury. Based on the results of these studies and other available information, the EPA determined on December 20, 2000, pursuant to CAA section 112(n)(1)(A), that it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs and added such units to the CAA section 112(c) list of source categories that must be regulated under CAA section 112. *See* 65 FR 79825 (December 20, 2000) (2000 Determination).[9]

In 2005, the EPA revised the original 2000 Determination and concluded that it was neither appropriate nor necessary to regulate EGUs under CAA section 112 in part because the EPA concluded it could address risks from EGU HAP emissions under a different provision of the statute. *See* 70 FR 15994 (March 29, 2005) (2005 Revision). Based on that determination, the EPA removed coal- and oil-fired EGUs from the CAA section 112(c) list of source categories to be regulated under CAA section 112. In a separate but related 2005 action, the EPA also promulgated the Clean Air Mercury Rule (CAMR), which established CAA section 111 standards of performance for mercury emissions from EGUs. *See* 70 FR 28605 (May 18, 2005). Both the 2005 Revision and the CAMR were vacated by the D.C. Circuit in 2008. *New Jersey* v. *EPA,* 517 F.3d 574 (DC Cir. 2008). The D.C. Circuit held that the EPA failed to comply with the requirements of CAA section 112(c)(9) for delisting source categories, and consequently also vacated the CAA section 111 performance standards promulgated in CAMR, without addressing the merits of those standards. *Id.* at 582–84.

Subsequent to the *New Jersey* decision, the EPA conducted additional technical analyses, including peer-reviewed risk assessments on human health effects associated with mercury (2011 Final Mercury TSD) [10] and non-mercury metal HAP emissions from EGUs (2011 Non-Hg HAP Assessment).[11] Those analyses, which focused on populations with higher fish consumption (*e.g.,* subsistence fishers) and residents living near the facilities who experienced increased exposure to HAP through inhalation, found that mercury and non-mercury HAP emissions from EGUs remain a public health hazard and that EGUs were the largest anthropogenic source of mercury emissions to the atmosphere in the U.S. Based on these findings, and other relevant information regarding the volume of HAP, environmental effects, and availability of controls, in 2012, the EPA affirmed the original 2000 Determination that it is appropriate and necessary to regulate EGUs under CAA section 112. *See* 77 FR 9304 (February 16, 2012).

In the same 2012 action, the EPA established a NESHAP, commonly referred to as MATS, that required coal- and oil-fired EGUs to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT) for all HAP emissions from EGUs.[12] MATS applies to existing and new coal- and oil-fired EGUs located at both major and area sources of HAP emissions. An EGU is a fossil fuel-fired steam generating combustion unit of more than 25 megawatts (MW) that serves a generator that produces electricity for sale. *See* CAA section 112(a)(8) (defining EGU). A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW electric output to any utility power distribution system for sale is also an EGU. *Id.*

For coal-fired EGUs, MATS includes standards to limit emissions of mercury, acid gas HAP, non-mercury HAP metals (*e.g.,* nickel, lead, chromium), and organic HAP (*e.g.,* formaldehyde, dioxin/furan). Standards for HCl serve as a surrogate for the acid gas HAP, with an alternate standard for sulfur dioxide ($SO_2$) that may be used as a surrogate for acid gas HAP for those coal-fired EGUs with flue gas desulfurization (FGD) systems and $SO_2$ continuous emissions monitoring systems that are installed and operational. Standards for filterable PM serve as a surrogate for the non-mercury HAP metals, with standards for total non-mercury HAP metals and individual non-mercury HAP metals provided as alternative equivalent standards. Work practice standards that require periodic combustion process tune-ups were established to limit formation and emissions of the organic HAP.

For oil-fired EGUs, MATS includes standards to limit emissions of HCl and HF, total HAP metals (*e.g.,* mercury, nickel, lead), and organic HAP (*e.g.,* formaldehyde, dioxin/furan). Standards for filterable PM serve as a surrogate for total HAP metals, with standards for total HAP metals and individual HAP metals provided as alternative equivalent standards. Periodic combustion process tune-up work practice standards were established to

[7] National Institute of Environmental Health Sciences (NIEHS) Report on Mercury; available in the rulemaking docket at EPA–HQ–OAR–2009–0234–3053.

[8] National Research Council (NAS). 2000. *Toxicological Effects of Methylmercury.* Committee on the Toxicological Effects of Methylmercury, Board on Environmental Studies and Toxicology, National Research Council. Many of the peer-reviewed articles cited in this section are publications originally cited in the NAS report.

[9] In the same 2000 action, the EPA Administrator found that regulation of HAP emissions from natural gas-fired EGUs is not appropriate or necessary because the impacts due to HAP emissions from such units are negligible. *See* 65 FR 79831 (December 20, 2000).

[10] U.S. EPA. 2011. *Revised Technical Support Document: National-Scale Assessment of Mercury Risk to Populations with High Consumption of Self-caught Freshwater Fish in Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units.* Office of Air Quality Planning and Standards. December 2011. EPA–452/R–11–009. Docket ID Item No. EPA–HQ–OAR–2009–0234–19913 (2011 Final Mercury TSD).

[11] U.S. EPA. 2011. *Supplement to the Non-Hg Case Study Chronic Inhalation Risk Assessment In Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units.* Office of Air Quality Planning and Standards. November 2011. EPA–452/R–11–013. Docket ID Item No. EPA–HQ–OAR–2009–0234–19912 (2011 Non-Hg HAP Assessment).

[12] Although the 2012 MATS Final Rule has been amended several times, the amendments are not a result of actions regarding the appropriate and necessary determination and, therefore, are not discussed in this preamble. Detail regarding those amendatory actions can be found at *https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards.*

limit formation and emissions of the organic HAP.

Additional detail regarding the types of units regulated under MATS and the regulatory requirements that they are subject to can be found in 40 CFR 63, subpart UUUUU.[13] The existing source compliance date was April 16, 2015, but many existing sources were granted an additional 1-year extension of the compliance date for the installation of controls.

After MATS was promulgated, both the rule itself and many aspects of the EPA's appropriate and necessary determination were challenged in the D.C. Circuit. In *White Stallion Energy Center* v. *EPA,* the D.C. Circuit unanimously denied all challenges to MATS, with one exception discussed below in which the court was not unanimous. 748 F.3d 1222 (D.C. Cir. 2014). As part of its decision, the D.C. Circuit concluded that the ''EPA's 'appropriate and necessary' determination in 2000, and the reaffirmation of that determination in 2012, are amply supported by EPA's findings regarding the health effects of mercury exposure.'' *Id.* at 1245.[14] While joining the D.C. Circuit's conclusions as to the adequacy of the EPA's identification of public health hazards, one judge dissented on the issue of whether the EPA erred by not considering costs together with the harms of HAP pollution when making the ''appropriate and necessary'' determination, finding that cost was a required consideration under that determination. *Id.* at 1258–59 (Kavanaugh, J., dissenting).

The U.S. Supreme Court subsequently granted *certiorari,* directing the parties to address a single question posed by the Court itself: ''Whether the Environmental Protection Agency unreasonably refused to consider cost in determining whether it is appropriate to regulate hazardous air pollutants emitted by electric utilities.'' *Michigan* v. *EPA,* 135 S. Ct. 702 (Mem.) (2014). In 2015, the U.S. Supreme Court held that ''EPA interpreted [CAA section 112(n)(1)(A)] unreasonably when it deemed cost irrelevant to the decision to regulate power plants.'' *Michigan,* 576 U.S. at 760. In so holding, the U.S. Supreme Court found that the EPA ''must consider cost–including, most importantly, cost of compliance–before deciding whether regulation is appropriate and necessary.'' *Id.* at 2711. It is ''up to the Agency,'' the Court added, ''to decide (as always, within the limits of reasonable interpretation) how to account for cost.'' *Id.* The rule was ultimately remanded back to the EPA to complete the required cost analysis, and the D.C. Circuit left the MATS rule in place pending the completion of that analysis. *White Stallion Energy Center* v. *EPA,* No. 12–1100, ECF No. 1588459 (D.C. Cir. December 15, 2015).

In response to the U.S. Supreme Court's direction, the EPA finalized a supplemental finding on April 25, 2016, that evaluated the costs of complying with MATS and concluded that the appropriate and necessary determination was still valid. The 2016 Supplemental Finding promulgated two different approaches to incorporate cost into the decision-making process for the appropriate and necessary determination. *See* 81 FR 24420 (April 25, 2016). The EPA determined that both approaches independently supported the conclusion that regulation of HAP emissions from EGUs is appropriate and necessary.

The EPA's preferred approach to incorporating cost evaluated estimated costs of compliance with MATS against several cost metrics relevant to the EGU sector (*e.g.,* historical annual revenues, annual capital expenditures, and impacts on retail electricity prices), and found that the projected costs of MATS were reasonable for the sector in comparison with historical data on those metrics. The evaluation of cost metrics that the EPA applied was consistent with approaches commonly used to evaluate environmental policy cost impacts.[15] The EPA also examined as part of its cost analysis what the impact of MATS would be on retail electricity prices and the reliability of the power grid. Using a totality-of-the-circumstances approach, the EPA weighed these supplemental findings as to cost against the existing administrative record detailing the identified hazards to public health and the environment from mercury, non-mercury metal HAP, and acid gas HAP that are listed under CAA section 112, and the other advantages to regulation. Based on that balancing, the EPA concluded under the preferred approach that it remains appropriate to regulate HAP emissions from EGUs after considering cost. *See* 81 FR 24420 (April 25, 2016) (''After evaluating cost reasonableness using several different metrics, the Administrator has, in accordance with her statutory duty under CAA section 112(n)(1)(A), weighed cost against the previously identified advantages of regulating HAP emissions from EGUs—including the agency's prior conclusions about the significant hazards to public health and the environment associated with such emissions and the volume of HAP that would be reduced by regulation of EGUs under CAA section 112.'')

In a second alternative and independent approach (referred to as the alternative approach), the EPA considered the BCA in the 2011 RIA for the 2012 MATS Final Rule. *Id.* at 24421. In that analysis, even though the EPA was only able to monetize one HAP-specific endpoint, the EPA estimated that the final MATS rule would yield annual monetized net benefits (in 2007 dollars) of between $37 billion to $90 billion using a 3-percent discount rate and between $33 billion to $81 billion using a 7-percent discount rate, in comparison to the projected $9.6 billion in annual compliance costs. *See id.* at 24425. The EPA therefore determined that the alternative approach also independently supported the conclusion that regulation of HAP emissions from EGUs remains appropriate after considering cost. *Id.*

Several state and industry groups petitioned for review of the 2016 Supplemental Finding in the D.C. Circuit. *Murray Energy Corp.* v. *EPA,* No. 16–1127 (D.C. Cir. filed April 25, 2016). In April 2017, the EPA moved the D.C. Circuit to continue oral argument and hold the case in abeyance in order to give the then-new Administration an opportunity to review the 2016 action, and the D.C. Circuit ordered that the consolidated challenges to the 2016

[13] Available at *www.ecfr.gov/cgi-bin/text-idx?node=sp40.15.63.uuuuu.*

[14] In discussing the 2011 Final Mercury TSD, the D.C. Circuit concluded that the EPA considered the available scientific information in a rational manner, and stated:

As explained in the technical support document (TSD) accompanying the Final Rule, EPA determined that mercury emissions posed a significant threat to public health based on an analysis of women of child-bearing age who consumed large amounts of freshwater fish. *See* [2011 Final] Mercury TSD . . . . The design of EPA's TSD was neither arbitrary nor capricious; the study was reviewed by EPA's independent Science Advisory Board, stated that it ''support[ed] the overall design of and approach to the risk assessment'' and found ''that it should provide an objective, reasonable, and credible determination of potential for a public health hazard from mercury emissions emitted from U.S. EGUs.'' . . . In addition, EPA revised the final TSD to address SAB's remaining concerns regarding EPA's data collection practices.

*Id.* at 1245–46.

[15] For example, see ''Economic Impact and Small Business Analysis–Mineral Wool and Wool Fiberglass RTRs and Wool Fiberglass Area Source NESHAP'' (U.S. EPA, 2015; *https://www.epa.gov/sites/default/files/2020-07/documents/mwwf_eia_neshap_final_07-2015.pdf*) or ''Economic Impact Analysis of Final Coke Ovens NESHAP'' (U.S. EPA, 2002; *https://www.epa.gov/sites/default/files/2020-07/documents/coke-ovens_eia_neshap_final_08-2002.pdf*).

Supplemental Finding be held in abeyance (*i.e.,* temporarily on hold).[16]

Accordingly, the EPA reviewed the 2016 action, and on May 22, 2020, finalized a revised response to the *Michigan* decision. *See* 85 FR 31286 (May 22, 2020). In the 2020 Final Action, after primarily comparing the projected costs of compliance to the one post control HAP emission reduction benefit that could be monetized, the EPA reconsidered its previous determination and found that it is not appropriate to regulate HAP emissions from coal- and oil-fired EGUs after a consideration of cost, thereby reversing the Agency's conclusion under CAA section 112(n)(1)(A), first made in 2000 and later affirmed in 2012 and 2016. Specifically, in its reconsideration, the Agency asserted that the 2016 Supplemental Finding considering the cost of MATS was flawed based on its assessment that neither of the two approaches to considering cost in the 2016 Supplemental Finding satisfied the EPA's obligation under CAA section 112(n)(1)(A), as that provision was interpreted by the U.S. Supreme Court in *Michigan.* Additionally, the EPA determined that, while finalizing the action would reverse the 2016 Supplemental Finding, it would not remove the Coal- and Oil-Fired EGU source category from the CAA section 112(c)(1) list, nor would it affect the existing CAA section 112(d) emissions standards regulating HAP emissions from coal- and oil-fired EGUs that were promulgated in the 2012 MATS Final Rule.[17] *See* 85 FR 31312 (May 22, 2020).

In the 2020 Final Action, the EPA also finalized the risk review required by CAA section 112(f)(2) and the first technology review required by CAA section 112(d)(6) for the Coal- and Oil-Fired EGU source category regulated under MATS.[18] The EPA determined that residual risks due to emissions of air toxics from the Coal- and Oil-Fired EGU source category are acceptable and that the current NESHAP provides an ample margin of safety to protect public health and to prevent an adverse environmental effect. In the technology review, the EPA did not identify any new developments in HAP emission controls to achieve further cost-effective emissions reductions. Based on the results of these reviews, the EPA found that no revisions to MATS were warranted. *See* 85 FR 31314 (May 22, 2020).

Several states, industry, public health, environmental, and civil rights groups petitioned for review of the 2020 Final Action in the D.C. Circuit. *American Academy of Pediatrics* v. *Regan,* No. 20–1221 and consolidated cases (D.C. Cir. filed June 19, 2020). On September 28, 2020, the D.C. Circuit granted the EPA's unopposed motion to sever from the lead case and hold in abeyance two of the petitions for review: *Westmoreland Mining Holdings LLC* v. *EPA,* No. 20–1160 (D.C. Cir. filed May 22, 2020) (challenging the 2020 Final Action as well as prior EPA actions related to MATS, including a challenge to the MATS CAA section 112(d) standards on the basis that the 2020 Final Action's reversal of the appropriate and necessary determination provided a ''grounds arising after'' for filing a petition outside the 60-day window for judicial review of MATS), and *Air Alliance Houston* v. *EPA,* No. 20–1268 (D.C. Cir. filed July 21, 2020) (challenging only the RTR portion of the 2020 Final Action).[19]

On January 20, 2021, President Biden signed Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' The Executive Order, among other things, instructs the EPA to review the 2020 Final Action and consider publishing a notice of proposed rulemaking suspending, revising, or rescinding that action. In February 2021, the EPA moved the D.C. Circuit to hold *American Academy of Pediatrics* and consolidated cases in abeyance, pending the Agency's review of the 2020 Final Action as prompted in Executive Order 13990, and on February 16, 2021, the D.C. Circuit granted the Agency's motion.[20]

In the meantime, the requirements of MATS have been fully implemented, resulting in significant reductions in HAP emissions from EGUs and the risks associated with those emissions. The EPA had projected that annual EGU mercury emissions would be reduced by 75 percent with MATS implementation. In fact, EGU emission reductions have been far more substantial (down to approximately 4 tons in 2017), which represents an 86 percent reduction compared to 2010 (pre-MATS) levels. *See* Table 4 at 84 FR 2689 (February 7, 2019). Acid gas HAP and non-mercury metal HAP have similarly been reduced—by 96 percent and 81 percent, respectively—as compared to 2010 levels. *Id.* MATS is the only Federal requirement that guarantees this level of HAP control from EGUs.

The EPA is now proposing to revoke the 2020 reconsideration of the 2016 Supplemental Finding and to reaffirm once again that it is appropriate and necessary to regulate emissions of HAP from coal- and oil-fired EGUs. We will provide notice of the results of our review of the 2020 RTR in a separate future action.

### *B. Statutory Background*

Additional statutory context is useful to help identify the relevant factors that the Administrator should weigh when making the appropriate and necessary determination.

#### 1. Pre-1990 History of HAP Regulation

In 1970, Congress enacted CAA section 112 to address the millions of pounds of HAP emissions that were estimated to be emitted from stationary sources in the country. At that time, the CAA defined HAP as ''an air pollutant to which no ambient air quality standard is applicable and which, in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness,'' but the statute left it to the EPA to identify and list pollutants that were HAP. Once a HAP was listed, the statute required the EPA to regulate sources of that identified HAP ''at the level which in [the Administrator's] judgment provides an ample margin of safety to protect the public health from such hazardous air pollutants.'' CAA section 112(b)(1)(B) (pre-1990 amendments); Legislative History of the CAA Amendments of 1990 (''Legislative

[16] Order, *Murray Energy Corp.* v. *EPA,* No. 16–1127 (D.C. Cir. April 27, 2017), ECF No. 1672987. In response to a joint motion from the parties to govern future proceedings, the D.C. Circuit issued an order in February 2021 to continue to hold the consolidated cases in *Murray Energy Corp.* v. *EPA* in abeyance. Order, *Murray Energy Corp.* v. *EPA,* No. 16–1127 (D.C. Cir. February 25, 2021), ECF No. 1887125.

[17] This finding was based on *New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2008), which held that the EPA is not permitted to remove source categories from the CAA section 112(c)(1) list unless the CAA section 112(c)(9) criteria for delisting have been met.

[18] CAA section 112(f)(2) requires the EPA to conduct a one-time review of the risks remaining after imposition of MACT standards under CAA section 112(d)(2) within 8 years of the effective date of those standards (risk review). CAA section 112(d)(6) requires the EPA to conduct a review of all CAA section 112(d) standards at least every 8 years to determine whether it is necessary to establish more stringent standards after considering, among other things, advances in technology and costs of additional control (technology review). The EPA has always conducted the first technology review at the same time it conducts the risk review and collectively the actions are known at RTRs.

[19] Order, *Westmoreland Mining Holdings LLC* v. *EPA,* No. 20–1160 (D.C. Cir. September 28, 2020), ECF No. 1863712.

[20] Order, *American Academy of Pediatrics* v. *Regan,* No. 20–1221 (D.C. Cir. February 16, 2021), ECF No. 1885509.

History''), at 3174–75, 3346 (Comm. Print 1993). The statute did not define the term ''ample margin of safety'' or provide a risk metric on which the EPA was to establish standards, and initially the EPA endeavored to account for costs and technological feasibility in every regulatory decision. In *Natural Resources Defense Council (NRDC)* v. *EPA,* 824 F.2d 1146 (D.C. Cir. 1987), the D.C. Circuit concluded that the CAA required that in interpreting what constitutes ''safe,'' the EPA was prohibited from considering cost and technological feasibility. *Id.* at 1166.

The EPA subsequently issued the NESHAP for benzene in accordance with the *NRDC* holding.[21] Among other things, the Benzene NESHAP concluded that there is a rebuttable presumption that any cancer risk greater than 100-in-1 million to the most exposed individual is unacceptable, and per *NRDC,* must be addressed without consideration of cost or technological feasibility. The Benzene NESHAP further provided that, after evaluating the acceptability of cancer risks, the EPA must evaluate whether the current level of control provides an ample margin of safety for any risk greater than 1-in-1 million and, if not, the EPA will establish more stringent standards as necessary after considering cost and technological feasibility.[22]

2. Clean Air Act 1990 Amendments to Section 112

In 1990, Congress radically transformed section 112 of the CAA and its treatment of hazardous air pollution. The legislative history of the amendments indicates Congress' dissatisfaction with the EPA's slow pace addressing these pollutants under the 1970 CAA: ''In theory, [hazardous air pollutants] were to be stringently controlled under the existing Clean Air Act section 112. However, . . . only seven of the hundreds of potentially hazardous air pollutants have been regulated by EPA since section 112 was enacted in 1970.'' H.R. Rep. No. 101–490, at 315 (1990); *see also id.* at 151 (noting that in 20 years, the EPA's establishment of standards for only seven HAP covered ''a small fraction of the many substances associated . . . with cancer, birth defects, neurological damage, or other serious health impacts.''). Congress was concerned with how few sources had been addressed during this time. *Id.* (''[The EPA's] regulations sometimes apply only to limited sources of the relevant pollutant. For example, the original benzene standard covered just one category of sources (equipment leaks). Of the 50 toxic substances emitted by industry in the greatest volume in 1987, only one—benzene—has been regulated even partially by EPA.''). Congress noted that state and local regulatory efforts to act in the face of ''the absence of Federal regulations'' had ''produced a patchwork of differing standards,'' and that ''[m]ost states . . . limit the scope of their program by addressing a limited number of existing sources or source categories, or by addressing existing sources only on a case-by-case basis as problem sources are identified'' and that ''[o]ne state exempts all existing sources from review.'' *Id.*

In enacting the 1990 Amendments with respect to the control of hazardous air pollution, Congress noted that ''[p]ollutants controlled under [section 112] tend to be less widespread than those regulated [under other sections of the CAA], but are often associated with more serious health impacts, such as cancer, neurological disorders, and reproductive dysfunctions.'' *Id.* at 315. In its substantial 1990 Amendments, Congress itself listed 189 HAP (CAA section 112(b)) and set forth a statutory structure that would ensure swift regulation of a significant majority of these HAP emissions from stationary sources. Specifically, after defining major and area sources and requiring the Agency to list all major sources and many area sources of the listed pollutants (CAA section 112(c)), the new CAA section 112 required the Agency to establish technology-based emission standards for listed source categories on a prompt schedule and to revisit those technology-based standards every 8 years (CAA section 112(d) (emission standards); CAA section 112(e) (schedule for standards and review)). The 1990 Amendments also obligated the EPA to evaluate the residual risk within 8 years of promulgation of technology-based standards. CAA section 112(f)(2).

In setting the standards, CAA section 112(d) requires the Agency to establish technology-based standards that achieve the ''maximum degree of reduction,'' ''including a prohibition on such emissions where achievable.'' CAA section 112(d)(2). Congress specified that the maximum degree of reduction must be at least as stringent as the average level of control achieved in practice by the best performing sources in the category or subcategory based on emissions data available to the Agency at the time of promulgation. This technology-based approach permitted the EPA to swiftly set standards for source categories without determining the risk or cost in each specific case, as the EPA had done prior to the 1990 Amendments. In other words, this approach to regulation quickly required that all major sources and many area sources of HAP install control technologies consistent with the top performers in each category, which had the effect of obtaining immediate reductions in the volume of HAP emissions from stationary sources. The statutory requirement that sources obtain levels of emission limitation that have actually been achieved by existing sources, instead of levels that could theoretically be achieved, inherently reflects a built-in cost consideration.[23]

Further, after determining the minimum stringency level of control, or MACT floor, CAA section 112(d)(2) requires the Agency to determine whether more stringent standards are achievable after considering the cost of achieving such standards and any non-air-quality health and environmental impacts and energy requirements of additional control. In doing so, the statute further specifies in CAA section 112(d)(2) that the EPA should consider requiring sources to apply measures that, among other things, ''reduce the volume of, or eliminate emissions of, such pollutants . . .'' (CAA section 112(d)(2)(A)), ''enclose systems or processes to eliminate emissions'' (CAA section 112(d)(2)(B)), and ''collect, capture, or treat such pollutants when released . . .'' (CAA section 112(d)(2)(C)). The 1990 Amendments also built in a regular review of new

[21] National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP). 54 FR 38044 (September 14, 1989).

[22] ''In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' Benzene NESHAP, 54 FR 38044–5, September 14, 1989.

[23] Congress recognized as much:

''The Administrator may take the cost of achieving the maximum emission reduction and any non-air quality health and environmental impacts and energy requirements into account when determining the emissions limitation which is achievable for the sources in the category or subcategory. Cost considerations are reflected in the selection of emissions limitations which have been achieved in practice (rather than those which are merely theoretical) by sources of a similar type or character.''

A Legislative History of the Clean Air Act Amendments of 1990 (CAA Legislative History), Vol 5, pp. 8508 –8509 (CAA Amendments of 1989; p. 168–169; Report of the Committee on Environment and Public Works S. 1630).

technologies and a one-time review of risks that remain after imposition of MACT standards. CAA section 112(d)(6) requires the EPA to evaluate every NESHAP no less often than every 8 years to determine whether additional control is necessary after taking into consideration ''developments in practices, processes, and control technologies,'' without regard to risk. CAA section 112(f) requires the EPA to ensure that the risks are acceptable and that the MACT standards provide an ample margin of safety.

The statutory requirement to establish technology-based standards under CAA section 112 avoided the need for the EPA to identify hazards to public health and the environment in order to justify regulation of HAP emissions from stationary sources, reflecting Congress' judgment that such emissions are inherently dangerous. *See* S. Rep. No. 101–228, at 148 (''The MACT standards are based on the performance of technology, and not on the health and environmental effects of the [HAP].''). The technology review required in CAA section 112(d)(6) further mandates that the EPA continually evaluate standards to determine if additional reductions can be obtained, without consideration of the specific risk associated with the HAP emissions that would be reduced. Notably, the CAA section 112(d)(6) review of what additional reductions may be obtained based on new technology is required *even after* the Agency has conducted the CAA section 112(f)(2) review and determined that the existing standard will protect the public with an ample margin of safety.

The statutory structure and legislative history also demonstrate Congress' concern with the many ways that HAP can harm human health and Congress' goal of protecting the most exposed and vulnerable members of society. The committee report accompanying the 1990 Amendments discussed the scientific understanding regarding HAP risk at the time, including the 1989 report on benzene performed by the EPA noted above. H.R. Rep. No. 101–490, at 315. Specifically, Congress highlighted the EPA's findings as to cancer incidence, and importantly, lifetime individual risk to the most exposed individuals. *Id.* The report also notes the limitations of the EPA's assessment: ''The EPA estimates evaluated the risks caused by emissions of a single toxic air pollutant from each plant. But many facilities emit numerous toxic pollutants. The agency's risk assessments did not consider the combined or synergistic effects of exposure to multiple toxics, or the effect of exposure through indirect pathways.'' *Id.* Congress also noted the EPA's use of the maximum exposed individual (MEI) tool to assess risks faced by heavily exposed citizens. *Id.* The report cited particular scientific studies demonstrating that some populations are more affected than others—for example, it pointed out that ''[b]ecause of their small body weight, young children and fetuses are especially vulnerable to exposure to PCB-contaminated fish. One study has found long-term learning disabilities in children who had eaten high-levels of Great Lakes fish.'' *Id.*

The statutory structure confirms Congress' approach to risk and sensitive populations. As noted, the CAA section 112(f)(2) residual risk review requires the EPA to consider whether, after imposition of the CAA section 112(d)(2) MACT standard, there are remaining risks from HAP emissions that warrant more stringent standards to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. *See* CAA section 112(f)(2)(A). Specifically, the statute requires the EPA to promulgate standards under the risk review provision if the CAA section 112(d) standard does not ''reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million.'' *Id.* Thus, even after the application of MACT standards, the statute directs the EPA to conduct a rulemaking if even *one* person has a risk, not a guarantee, of getting cancer. This demonstrates the statutory intent to protect even the most exposed member of the population from the harms attendant to exposure to HAP emissions.

If a residual risk rulemaking is required, as noted above, the statute incorporates the detailed rulemaking approach set forth in the Benzene NESHAP for determining whether HAP emissions from stationary sources pose an unacceptable risk and whether standards provide an ample margin of safety. *See* CAA section 112(f)(2)(B) (preserving the prior interpretation of ''ample margin of safety'' set forth in the Benzene NESHAP). That approach includes a rebuttable presumption that any cancer risk greater than 100-in-1 million to the most exposed person is per se unacceptable. For non-cancer chronic and acute risks, the EPA has more discretion to determine what is acceptable, but even then, the statute requires the EPA to evaluate the risks to the most exposed individual and our RfDs are developed with the goal of being protective of even sensitive members of the population. *See e.g.,* CAA section 112(n)(1)(C) (requiring, in part, the development of ''a threshold for mercury concentration in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health''). If risks are found to be unacceptable, the EPA must impose additional control requirements to ensure that post CAA section 112(f) risks from HAP emissions are at an acceptable level, regardless of cost and technological feasibility.

After determining whether the risks are acceptable and developing standards to achieve an acceptable level of risk if necessary, the EPA must then determine whether more stringent standards are necessary to provide an ample margin of safety to protect public health, and at this stage we must take into consideration cost, technological feasibility, uncertainties, and other relevant factors. As stated in the Benzene NESHAP, ''In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by . . . protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million.'' *See* 54 FR 38044–45 (September 14, 1989); *see also NRDC* v. *EPA,* 529 F.3d 1077, 1082 (D.C. Cir. 2008) (finding that ''the Benzene NESHAP standard established a maximum excess risk of 100-in-one million, while adopting the one-in-one million standard as an aspirational goal.'').

The various listing and delisting provisions of CAA section 112 further demonstrate a statutory intent to reduce risk and protect the most exposed members of the population from HAP emissions. *See, e.g.,* CAA section 112(b)(2) (requiring the EPA to add pollutants to the HAP list if the EPA determines the HAP ''presents, or may present'' adverse human health or adverse environmental effects); *id.* at CAA section 112(b)(3)(B) (requiring the EPA to add a pollutant to the list if a petitioner shows that a substance is known to cause or ''may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects''); *id.* at CAA section 112(b)(3) (authorizing the EPA to delete a substance only on a showing that ''the substance may not reasonably be anticipated to cause any adverse effects to human health or adverse environmental effects.''); *id.* at CAA section 112(c)(9)(B)(i) (prohibiting the EPA from delisting a source category if even one source in the category causes

a lifetime cancer risk greater than 1-in-1 million to ''the individual in the population who is most exposed to emissions of such pollutants from the source.''); *id.* at CAA section 7412(c)(9)(B)(i) (prohibiting the EPA from delisting a source category unless the Agency determines that the non-cancer causing HAP emitted from the source category do not ''exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions of any source'' in the category); *id.* at CAA section 112(n)(1)(C) (requiring a study to determine the level of mercury in fish tissue that can be consumed by even sensitive populations without adverse effect to public health).

The deadlines for action included in the 1990 Amendments indicate that Congress wanted HAP pollution addressed quickly. The statute requires the EPA to list all major source categories within 1 year of the 1990 Amendments and to regulate those listed categories on a strict schedule that prioritizes the source categories that are known or suspected to pose the greatest risks to the public. *See* CAA sections 112(c)(1), 112(e)(1) and 112(e)(2). For area sources, where the statute provides the EPA with greater discretion to determine the sources to regulate, it also directs the Agency to collect the information necessary to make the listing decision for many area source categories and requires the Agency to act on that information by a date certain.

For example, CAA section 112(k) establishes an area source program designed to identify and list at least 30 HAP that pose the greatest threat to public health in the largest number of urban areas (urban HAP) and to list for regulation area sources that account for at least 90 percent of the area source emissions of the 30 urban HAP. *See* CAA sections 112(k) and 112(c)(3). In addition to the urban air toxics program, CAA section 112(c)(6) directs the EPA to identify and list sufficient source categories to ensure that at least 90 percent of the aggregate emissions of seven bioaccumulative and persistent HAP, including mercury, are subject to standards pursuant to CAA sections 112(d)(2) or (d)(4). *See* CAA section 112(c)(6). Notably, these requirements were *in addition to* any controls on mercury and other CAA section 112(c)(6) HAP that would be imposed if the EPA determined it was appropriate and necessary to regulate EGUs under CAA section 112. This was despite the fact that it was known at the time of enactment that other categories with much lower emissions of mercury would have to be subject to MACT standards because of the exclusion of EGUs from CAA section 112(c)(6).

As the preceding discussion demonstrates, throughout CAA section 112 and its legislative history, Congress made clear its intent to quickly secure large reductions in the volume of HAP emissions from stationary sources because of its recognition of the hazards to public health and the environment inherent in exposure to such emissions. CAA section 112 and its legislative history also reveal Congress' understanding that fully characterizing the risks posed by HAP emissions was exceedingly difficult; thus, Congress purposefully replaced a regime that required an assessment of risk in the first instance with one that assumed that risk and directed swift and substantial reductions. The statutory design and direction also repeatedly emphasize that the EPA should regulate with the most exposed and most sensitive members of the population in mind in order to achieve an acceptable level of HAP emissions with an ample margin of safety. As explained further below, this statutory context informs the EPA's judgment as to the relevant factors to weigh in the analysis of whether regulation remains appropriate after a consideration of cost.

## III. Proposed Determination Under CAA Section 112(n)(1)(A)

In this action, the EPA is proposing to revoke the 2020 Final Action and to reaffirm the appropriate and necessary determination made in 2000, and reaffirmed in 2012 and 2016.[24] We propose to find that, under either our preferred totality-of-the-circumstances framework or our alternative formal BCA framework, the information that would have been available to the Agency as of the time of the 2012 rulemaking supports a determination that it is appropriate and necessary to regulate HAP from EGUs. We also consider new information regarding the hazards to public health and the environment and the costs of compliance with MATS that has become available since the 2016 Supplemental Finding, and find that the updated information strengthens the EPA's conclusion that it is appropriate and necessary to regulate HAP from coal- and oil-fired EGUs.

At the outset, we note that CAA section 112(n)(1)(A) is silent as to whether the EPA may consider updated information when acting on a remand of the appropriate and necessary determination. CAA section 112(n)(1)(A) directs the EPA to conduct the Utility Study within 3 years, and requires the EPA to regulate EGUs if the Administrator makes a finding that it is appropriate and necessary to do so ''after'' considering the results of the Utility Study. Consistent with the EPA's interpretation in 2005, 2012, 2016, and 2020, we do not read this language to *require* the EPA to consider the most-up-to-date information where the Agency is compelled to revisit the determination, but nor do we interpret the provision to *preclude* consideration of new information where reasonable. *See* 70 FR 16002 (March 29, 2005); 77 FR 9310 (February 16, 2012); 81 FR 24432 (April 25, 2016); 85 FR 31306 (May 22, 2020). As such, the Agency has applied its discretion in determining when to consider new information under this provision based on the circumstances. For example, when the EPA was revisiting the determination in 2012, we noted that ''[b]ecause several years had passed since the 2000 finding, the EPA performed additional technical analyses for the proposed rule, even though those analyses were not required.'' 77 FR 9310 (February 16, 2012).[25] Similarly, we think that it is reasonable to consider new information in the context of this proposal, given that almost a decade has passed since we last considered updated information. In this proposed reconsideration of the

[24] Our proposal focuses on an analysis of the ''appropriate'' prong of the CAA section 112(n)(1)(A). The *Michigan* decision and subsequent EPA actions addressing that decision have been centered on supplementing the Agency's record with a consideration of the cost of regulation as part of the ''appropriate'' aspect of the overall determination. As noted, the 2020 Final Action, while reversing the 2016 Supplemental Finding as to the EPA's determination that it was ''appropriate'' to regulate HAP from EGUs, did not rescind the Agency's prior determination that it was necessary to regulate. *See* 84 FR 2674 (February 7, 2019) (''CAA section 112(n)(1)(A) requires the EPA to determine that both the appropriate *and* necessary prongs are met. Therefore, if the EPA finds that either prong is not satisfied, it cannot make an affirmative appropriate and necessary finding. The EPA's reexamination of its determination . . . focuses on the first prong of that analysis.''). The ''necessary'' determination rested on two primary bases: (1) In 2012, the EPA determined that the hazards posed to human health and the environment by HAP emissions from EGUs would not be addressed in its future year modeling, which accounted for all CAA requirements to that point; and (2) our conclusion that the only way to ensure permanent reductions in U.S. EGU emissions of HAP and the associated risks to public health and the environment was through standards set under CAA section 112. *See* 76 FR 25017 (May 23, 2011). We therefore continue our focus in this proposal on reinstating the ''appropriate'' prong of the determination, leaving undisturbed the Agency's prior conclusions that regulation of HAP from EGUs is ''necessary.'' *See* 65 FR 79830 (December 20, 2000); 76 FR 25017 (May 3, 2011); 77 FR 9363 (February 16, 2012).

[25] The EPA was not challenged on this interpretation in *White Stallion.*

determination per the President's Executive Order, both the growing scientific understanding of public health risks associated with HAP emissions and a clearer picture of the cost of control technologies and the make-up of power sector generation over the last decade may inform the question of whether it is appropriate to regulate, and, in particular, help address the inquiry that the Supreme Court directed us to undertake in *Michigan.* We believe the evolving scientific information with regard to benefits and the advantage of hindsight with regard to costs warrant considering currently available information in making this determination. To the extent that our determination should flow from information that would have been available at the ''initial decision to regulate,'' *Michigan,* 576 U.S. at 754, we propose conclusions here based on analyses limited to this earlier record. But we also believe it is reasonable to consider new data, and propose to find that the new information regarding both public health risks and costs bolsters the finding and supports a determination that it is appropriate and necessary to regulate EGUs for HAP.

In section III.A of this preamble, we first describe the advantages of regulation—the reduction in emissions of HAP and attendant reduction of risks to human health and the environment, including the distribution of these health benefits. We carefully document the numerous risks to public health and the environment posed by HAP emissions from EGUs. This includes information previously recognized and documented in the statutorily mandated CAA section 112(n)(1) studies, the 2000 Determination, the 2012 MATS Final Rule, and the 2016 Supplemental Finding about the nature and extent of health and environmental impacts from HAP that are emitted by EGUs, as well as additional risk analyses supported by new scientific studies. Specifically, new risk screening analyses on the connection between mercury and heart disease as well as IQ loss in children across the U.S. further supports the conclusion that HAP emissions from EGUs pose hazards to public health and the environment warranting regulating under CAA section 112. The EPA also discusses the challenges associated with fully quantifying and monetizing the human health and environmental effects associated with HAP emissions. Finally, we note that in addition to reducing the identified risks posed by HAP emissions from EGUs, regulation of such HAP emissions results in significant health and environmental co-benefits.

We then turn in preamble section III.B. to the disadvantages of regulation—the costs associated with reducing EGU HAP emissions and other potential impacts to the sector and the economy associated with MATS. With the benefit of hindsight, we first consider whether MATS actually cost what we projected in the 2011 RIA and conclude that the projection in the 2011 RIA was almost certainly a significant overestimate of the actual costs. We then evaluate the costs estimated in the 2011 RIA against several metrics relevant to the impacts those costs have on the EGU sector and American electricity consumers (*e.g.,* historical annual revenues, annual capital and production expenditures, impacts on retail electricity prices, and impacts on resource adequacy and reliability). These analyses, based on data available in 2012 and based on updated data, all show that the costs of MATS were within the bounds of typical historical fluctuations and that the industry would be able to comply with MATS and continue to provide a reliable source of electricity without price increases that were outside the range of historical variability.

In section III.C of this preamble, we explain why the methodology used in our 2020 Finding was ill-suited to determining whether EGU HAP regulation is appropriate and necessary because it gave virtually no weight to the volume of HAP that would be reduced, and the vast majority of the benefits of reducing EGU HAP, including the reduction of risk to sensitive populations, based on the Agency's inability to quantify or monetize post-control benefits of HAP regulations.

In preamble section III.D, we explain our preferred totality-of-the-circumstances methodology that we propose to use to make the appropriate determination, and our application of that methodology. This approach looks to the statute, and particularly CAA section 112(n)(1)(A) and the other provisions in CAA section 112(n)(1), to help identify the relevant factors to weigh and what weight to afford those factors. Under that methodology we weigh the significant health and environmental advantages of reducing EGU HAP, and in particular the benefits to the most exposed and sensitive individuals, against the disadvantages of expending money to achieve those benefits—*i.e.,* the effects on the electric generating industry and its ability to provide reliable and affordable electricity. We ultimately propose to conclude that the advantages outweigh the disadvantages whether we look at the record from 2012 or at our new record, which includes an expanded understanding of the health risks associated with HAP emissions and finds that the costs projected in the 2011 RIA were almost certainly significantly overestimated. We further consider that, if we also account for the non-HAP benefits in our preferred totality-of-the-circumstances approach, such as the benefits (including reduced mortality) of coincidental reductions in PM and ozone that flow from the application of controls on HAP, the balance weighs even more heavily in favor of regulating HAP emissions from coal- and oil-fired EGUs.

Finally, in section III.E, we consider an alternative methodology to make the appropriate determination, using a formal BCA of MATS that was conducted consistent with economic principles. This methodology is not our preferred way to consider advantages and disadvantages for the CAA section 112(n)(1)(A) determination, because the EPA's inability to generate a monetized estimate of the full benefits of HAP reductions can lead to an underestimate of the monetary value of the net benefits of regulation. To the extent that a formal BCA is appropriate for making the CAA section 112(n)(1)(A) determination, however, that approach demonstrates that the monetized benefits of MATS outweigh the monetized costs by a considerable margin, whether we look at the 2012 record or our updated record. We therefore propose that it is appropriate to regulate EGUs for HAP applying a BCA approach as well.

In sum, the EPA proposes to conclude that it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs, whether we are applying the preferred totality-of-the-circumstances methodology or the alternative formal benefit-cost approach, and whether we are considering only the administrative record as of the original EPA response on remand to *Michigan* in 2016 or based on new information made available since that time. The information and data amassed by the EPA over the decades of administrative analysis and rulemaking devoted to this topic overwhelmingly support the conclusion that the advantages of regulating HAP emissions from coal- and oil-fired EGUs outweigh the costs. The EPA requests comment on this proposed finding and on the supporting information presented in this proposal, including information related to the risks associated with HAP emissions from U.S. EGUs and the actual costs incurred by the power sector due to MATS, as well as on the

preferred and alternative methodologies for reaching the proposed conclusion.

*A. Public Health Hazards Associated With Emissions From EGUs*

1. Overview

The administrative record for the MATS rule detailed several hazards to public health and the environment from HAP emitted by EGUs that remained after imposition of the ARP and other CAA requirements. *See* 80 FR 75028–29 (December 1, 2015). *See also* 65 FR 79825–31 (December 20, 2000); 76 FR 24976–25020 (May 3, 2011); 77 FR 9304–66 (February 16, 2012). The EPA considered all of this information again in the 2016 Supplemental Finding, noting that this sector represented a large fraction of U.S. emissions of mercury, non-mercury metal HAP, and acid gases. Specifically, the EPA found that even after imposition of the other requirements of the CAA, but absent MATS, EGUs remained the largest domestic source of mercury, HF, HCl, and selenium and among the largest domestic contributors of arsenic, chromium, cobalt, nickel, hydrogen cyanide, beryllium, and cadmium, and that a significant majority of EGU facilities emitted above the major source thresholds for HAP emissions.

Further, the EPA noted that the totality of risks that accrue from these emissions were significant. These hazards include potential neurodevelopmental impairment, increased cancer risks, contribution to chronic and acute health disorders, as well as adverse impacts on the environment. Specifically, the EPA pointed to results from its revised nationwide Mercury Risk Assessment (contained in the 2011 Final Mercury TSD) [26] as well as an inhalation risk assessment (2011 Non-Hg HAP Assessment) for non-mercury HAP (*i.e.,* arsenic, nickel, chromium, selenium, cadmium, HCl, HF, hydrogen cyanide, formaldehyde, benzene, acetaldehyde, manganese, and lead). The EPA estimated lifetime cancer risks for inhabitants near some coal- and oil-fired EGUs to exceed 1-in-1 million [27] and noted that this case-study-based estimate likely underestimated the true maximum risks for the EGU source category. *See* 77 FR 9319 (February 16, 2012). The EPA also found that mercury emissions pose a hazard to wildlife, adversely affecting fish-eating birds and mammals, and that the large volume of acid gas HAP associated with EGUs also pose a hazard to the environment.[28] These technical analyses were all challenged in the *White Stallion* case, and the D.C. Circuit found that the EPA's risk finding as to mercury alone—that is, before reaching any other risk finding—established a significant public health concern. The court stated that ''EPA's 'appropriate and necessary' determination in 2000, and its reaffirmation of that determination in 2012, are amply supported by EPA's finding regarding the health effects of mercury exposure.'' *White Stallion Energy Center* v. *EPA,* 748 F.3d 1222, 1245 (D.C. Cir. 2014). Additional scientific evidence about the human health hazards associated with EGU HAP emissions that has been collected since the 2016 Supplemental Finding and is discussed in this section has extended our confidence that these emissions pose an unacceptable risk to the American public and in particular, to vulnerable, exposed populations.

This section of the preamble starts by briefly reviewing the long-standing and extensive body of evidence, including new scientific information made available since the 2016 Supplemental Finding, which demonstrates that HAP emissions from oil- and coal-fired EGUs present hazards to public health and the environment warranting regulation under CAA section 112 (section III.A.2). This is followed by an expanded discussion of the health risks associated with domestic EGU mercury emissions based on additional evidence regarding cardiovascular effects that has become available since the 2016 Supplemental Finding (section III.A.3). In section III.A.4, the EPA describes the reasons why it is extremely difficult to estimate the full health and environmental impacts associated with exposure to HAP. We note the longstanding challenges associated with quantifying and monetizing these effects, which may be permanent and life-threatening and are often distributed unevenly (*i.e.,* concentrated among highly exposed individuals). Next, the section provides an expanded discussion of some identified environmental justice (EJ) issues associated with these emissions (section III.A.5). Section III.A.6 identifies health effects associated with other, non-HAP emissions from EGUs such as $SO_2$, direct $PM_{2.5}$ and other $PM_{2.5}$ and ozone precursors. Because these pollutants are co-emitted with HAP, the controls necessary to reduce HAP emissions from EGUs often reduce these pollutants as well. After assessing all the evidence, the EPA concludes again (section III.A.7) that regulation of HAP emissions from EGUs under CAA section 112 greatly improves public health for Americans by reducing the risks of premature mortality from heart attacks, cancer, and neurodevelopmental delays in children, and by helping to restore economically vital ecosystems used for recreational and commercial purposes. Further, we conclude that these public health improvements will be particularly pronounced for certain segments of the American population that are especially vulnerable (*e.g.,* subsistence fishers [29] and their children) to impacts from EGU HAP emissions. In addition, the concomitant reductions in co-emitted pollutants will also provide substantial public health and environmental benefits.

2. Overview of Health Effects Associated With Mercury and Non-Mercury HAP

In calling for the Agency to consider the regulation of HAP from EGUs, the

[26] U.S. EPA. 2011. *Revised Technical Support Document: National-Scale Assessment of Mercury Risk to Populations with High Consumption of Self-caught Freshwater Fish In Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units.* Office of Air Quality Planning and Standards. November. EPA–452/R–11–009. Docket ID Item No. EPA–HQ–OAR–2009–0234–19913.

[27] The EPA determined the 1-in-1 million standard was the correct metric in part because CAA section 112(c)(9)(B)(1) prohibits the EPA from removing a source category from the list if even one person is exposed to a lifetime cancer risk greater than 1-in-1 million, and CAA section 112(f)(2)(A) directs the EPA to conduct a residual risk rulemaking if even one person is exposed to a lifetime excess cancer risk greater than 1-in-1 million. *See White Stallion* at 1235–36 (agreeing it was reasonable for the EPA to consider the 1-in-1 million delisting criteria in defining ''hazard to public health'' under CAA section 112(n)(1)(A)).

[28] The EPA had determined it was reasonable to consider environmental impacts of HAP emissions from EGUs in the appropriate determination because CAA section 112 directs the EPA to consider impacts of HAP emissions on the environment, including in the CAA section 112(n)(1)(B) Mercury Study. *See White Stallion* at 1235–36 (agreeing it was reasonable for the EPA to consider the environmental harms when making the appropriate and necessary determination).

[29] Subsistence fishers, who by definition obtain a substantial portion of their dietary needs from self-caught fish consumption, can experience elevated levels of exposure to chemicals that bioaccumulate in fish including, in particular, methylmercury. Subsistence fishing activity can be related to a number of factors including socio-economic status (poverty) and/or cultural practices, with ethnic minorities and tribal populations often displaying increased levels of self-caught fish consumption (Burger *et al.,* 2002, Shilling *et al.,* 2010, Dellinger 2004).

Burger J, (2002). *Daily consumption of wild fish and game: exposures of high end recreationalists.* International Journal of Environmental Health Research 12:4, p. 343–354.

Shilling F, White A, Lippert L, Lubell M, (2010). *Contaminated fish consumption in California's Central Valley Delta.* Environmental Research 110, p. 334–344.

Dellinger J, (2004). *Exposure assessment and initial intervention regarding fish consumption of tribal members in the Upper Great Lakes Region in the United States.* Environmental Research 95, p. 325–340.

CAA stipulated that the EPA complete three studies (all of which were extensively peer-reviewed) exploring various aspects of risk posed to human health and the environment by HAP released from EGUs. The first of these studies, the Utility Study, published in 1998, focused on the hazards to public health specifically associated with EGU-sourced HAP including, but not limited to, mercury. *See* CAA section 112(n)(1)(A). A second study, the Mercury Study, released in 1997, while focusing exclusively on mercury, was broader in scope including not only human health, but also environmental impacts and specifically addressed the potential for mercury released from multiple emissions sources (in addition to EGUs) to affect human health and the environment. *See* CAA section 112(n)(1)(B). The third study, required under CAA section 112(n)(1)(C), the NIEHS Study, submitted to Congress in 1995, considered the threshold level of mercury exposure below which adverse human health effects were not expected to occur. An additional fourth study, the NAS Study, directed by Congress in 1999 and completed in 2000, focused on determining whether a threshold for mercury health effects could be identified for sensitive populations and, as such, presented a rigorous peer review of the EPA's RfD for methylmercury. The aggregate results of these peer-reviewed studies commissioned by Congress as part of CAA section 112(n)(1) supported the determination that HAP emissions from EGUs represented a hazard to public health and the environment that would not be addressed through imposition of the other requirements of the CAA. In the 2 decades that followed, the EPA has continued to conduct additional research and risk assessments and has surveyed the latest science related to the risk posed to human health and the environment by HAP released from EGUs.

a. Review of Health Effects and Previous Risk Analyses for Methylmercury

Mercury is a persistent and bioaccumulative toxic metal that, once released from power plants into the ambient air, can be readily transported and deposited to soil and aquatic environments where it is transformed by microbial action into methylmercury. *See* Mercury Study; 76 FR 24976 (May 3, 2011) (2011 NESHAP Proposal); 80 FR 75029 (December 1, 2015) (2015 Proposal). Methylmercury bioaccumulates in the aquatic food web eventually resulting in highly concentrated levels of methylmercury within the larger and longer-living fish, which can then be consumed by humans.[30] As documented in both the NAS Study and the Mercury Study, fish and seafood consumption is the primary route of human exposure to methylmercury, with populations engaged in subsistence-levels of consumption being of particular concern.[31] The NAS Study reviewed the effects of methylmercury on human health, concluding that it is highly toxic to multiple human and animal organ systems. Of particular concern is chronic prenatal exposure via maternal consumption of foods containing methylmercury. Elevated exposure has been associated with developmental neurotoxicity and manifests as poor performance on neurobehavioral tests, particularly on tests of attention, fine motor function, language, and visual-spatial ability. Evidence also suggests potential for adverse effects on the cardiovascular system, adult nervous system, and immune system, as well as potential for causing cancer.[32] Below we review the broad range of public health hazards associated with methylmercury exposure.

*Neurodevelopmental Effects of Exposure to Methylmercury.* Methylmercury is a powerful neurotoxin. Because the impacts of the neurodevelopmental effects of methylmercury are greatest during periods of rapid brain development, developing fetuses and young children are particularly vulnerable. Children born to populations with high fish consumption (*e.g.,* people consuming fish as a dietary staple) or impaired nutritional status (*e.g.,* people with iron or vitamin C deficiencies) are especially vulnerable to adverse neurodevelopmental outcomes. These dietary and nutritional vulnerabilities are often particularly pronounced in underserved communities with minority populations and low-income populations that have historically faced economic and environmental injustice and are overburdened by cumulative levels of pollution.[33]

Infants in the womb can be exposed to methylmercury when their mothers eat fish and shellfish that contain methylmercury. This exposure can adversely affect unborn infants' growing brains and nervous systems. Children exposed to methylmercury while they are in the womb can have impacts to their cognitive thinking, memory, attention, language, fine motor skills, and visual spatial skills. Based on scientific evidence reflecting concern about a range of neurodevelopmental effects seen in children exposed *in utero* to methylmercury, the EPA defined an RfD of 0.0001 mg/kg-day for methylmercury.[34] An RfD is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime (EPA, 2002).[35]

Prenatal exposure to methylmercury from maternal consumption of fish has been associated with several adverse neurodevelopmental outcomes in various fish consuming populations. Although data are limited, the EPA has focused on several subpopulations likely to be at higher risk from methylmercury exposure associated with EGU HAP due to fish consumption. As part of the 2011 Final Mercury TSD, the EPA completed a national-scale risk assessment focused on mercury emissions from domestic EGUs. Specifically, we examined risk associated with mercury released from U.S. EGUs that deposits to watersheds within the continental U.S., bioaccumulates in fish as methylmercury, and is consumed when fish are eaten by female subsistence fishers of child-bearing age and other freshwater self-caught fish consumers. There is increased risk for *in utero* exposure and adverse outcomes in children born to female subsistence fishers with elevated exposure to methylmercury. The risk assessment modeled scenarios representing high-end self-caught fish consumers active at inland freshwater lakes and streams. The analysis estimated that 29 percent of the watersheds studied would lead to

[30] We recognize that mercury deposition over land with subsequent impacts to agricultural-sourced food may also represent a public health concern, however as noted below, primary exposure to the U.S. population is through fish consumption.

[31] In light of the methylmercury impacts, the EPA and the Food and Drug Administration have collaborated to provide advice on eating fish and shellfish as part of a healthy eating pattern (*https://www.fda.gov/food/consumers/advice-about-eating-fish*). In addition, states provide fish consumption advisories designed to protect the public from eating fish from waterbodies within the state that could harm their health based on local fish tissue sampling.

[32] National Research Council. 2000. *Toxicological Effects of Methylmercury.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/9899.*

[33] Burger J, 2002. *Daily consumption of wild fish and game: Exposures of high end recreationalists.* International Journal of Environmental Health Research 12:4, p. 343–354.

[34] U.S. EPA. 2001. *IRIS Summary for Methylmercury.* U.S. Environmental Protection Agency, Washington, DC. (USEPA, 2001).

[35] U.S. EPA. 2002. *A Review of the Reference Dose and Reference Concentration Processes.* EPA/630/P–02/002F, December 2002.

female subsistence fishers having exposures which exceeded the methylmercury RfD, based on *in utero* effects, due in whole or in part to the contribution of domestic EGU emissions of mercury. This included up to 10 percent of modeled watersheds where deposition from U.S. EGUs alone leads to potential exposures that exceed the RfD.[36]

In addition to the 2011 Final Mercury TSD focusing on subsistence fishers referenced above, the EPA also completed a RIA in 2011 including the characterization of benefits associated with the prospective reduction of U.S. EGU mercury emissions under MATS.[37] However, due to limitations on the available data with regard to the extent of subsistence fishing activity in the U.S., which prevented the enumeration of subsistence fisher populations, the EPA was unable to develop a quantitative estimate of the reduction in population-level risk or associated dollar benefits for children of female subsistence fishers. Instead, in the 2011 MATS RIA, the EPA focused on a different population of self-caught fish consumers that could be enumerated. Specifically, we quantitatively estimated the amount and value of IQ loss associated with prenatal methylmercury exposure among the children of recreational anglers consuming self-caught fish from inland freshwater lakes, streams and rivers (unlike subsistence fishers, available data allow the characterization of recreational fishing activity across the U.S. including enumeration of these populations). Although the EPA acknowledged uncertainty about the size of the affected population and acknowledged that it could be underestimated, these unborn children associated with recreational anglers represented precisely the type of sensitive population most at risk from mercury exposure that CAA section 112 is designed to protect. The results generated in the 2011 RIA for recreational anglers suggested that by reducing methylmercury exposure, MATS was estimated to yield an additional 511 IQ points among the affected population of children, which would increase their future lifetime earnings. The EPA noted at the time that the analysis likely underestimated potential benefits for children of recreational anglers since, due to data limitations, it did not cover consumption of recreationally caught seafood from estuaries, coastal waters, and the deep ocean which was expected to contribute significantly to overall exposure. Nevertheless, this single endpoint alone, evaluated solely for the recreational angler, provides evidence of potentially significant health harm from methylmercury exposure.

In 2011 we noted that other, more difficult to quantify endpoints may also contribute to the overall burden across a broader range of subgroups. The metrics studied in addition to IQ include those measured by performance on neurobehavioral tests, particularly on tests of attention, fine motor-function, language, and visual spatial ability (USEPA, 2001; Agency for Toxic Substances and Disease Registry (ATSDR), 1999).[38] Such adverse neurodevelopmental effects are well documented in cohorts of subsistence fisher populations (*i.e.,* Faroe Islands and the Nunavik region of Arctic Canada).

At this time, the EPA is conducting an updated methylmercury IRIS assessment and recently released preliminary assessment materials, an IRIS Assessment Plan (IAP) and Systematic Review Protocol for methylmercury.[39] The update to the methylmercury IRIS assessment will focus on updating the quantitative aspects of neurodevelopmental outcomes associated with methylmercury exposure. As noted in these early assessment materials, new studies are available, since 2001, assessing the effects of methylmercury exposure on cognitive function, motor function, behavioral, structural, and electrophysiological outcomes at various ages following prenatal or postnatal exposure to methylmercury (USEPA, 2001; NAS Study; 84 FR 13286 (April 4, 2019);[40] 85 FR 32037 (May 8, 2020)).[41]

*Cardiovascular Impacts of Exposure to Methylmercury.* The NAS Study indicated that there was evidence that exposure to methylmercury in humans and animals can have adverse effects on both the developing and adult cardiovascular system. Infant exposure in the womb to methylmercury has been associated with altered blood-pressure and heart-rate variability in children. In adults, dietary exposure to methylmercury has been linked to a higher risk of acute myocardial infarction (MI), coronary heart disease, or cardiovascular heart disease. To date, the EPA has not attempted to utilize a quantitative dose-response assessment for cardiovascular effects associated with methylmercury exposures because of a lack of consensus among scientists on the dose-response functions for these effects and inconsistency among available studies as to the association between methylmercury exposure and various cardiovascular system effects.

However, additional studies have become available that have increased the EPA's confidence in characterizing the dose-response relationship between methylmercury and adverse cardiovascular outcomes. These new studies were leveraged to inform new quantitative screening analyses (described in section III.A.3, below) to estimate one cardiovascular endpoint—incidence of MI mortality—that may potentially be linked to U.S. EGU mercury emissions as well as the number of U.S. EGU impacted watersheds. In addition to a new meta-analysis (Hu *et al.,* 2021)[42] on the association of methylmercury generally with cardiovascular disease (CVD), stroke, and ischemic heart disease (IHD), there is a limited body of existing literature that has examined associations between mercury and various cardiovascular outcomes. These include acute MI, hypertension, atherosclerosis, and heart rate variability (Roman *et al.,* 2011).[43]

[36] The EPA chose this risk metric in part because CAA section 112(n)(1)(C) directed the NIEHS to develop a threshold for mercury concentration in fish tissue that can be consumed by even sensitive populations without adverse effect and because CAA section 112(c)(6) demonstrates a special interest in protecting the public from exposure to mercury.

[37] The 2011 MATS RfD-based risk assessment focusing on the subsistence fisher population was designed as a screening-level analysis to inform consideration for whether U.S. EGU-sourced mercury represented a public health hazard. As such, the most appropriate risk metric was modeled exposure (for highly-exposed subsistence fishers) compared to the RfD for methylmercury. By contrast, the 2011 RIA was focused on estimating the dollar benefits associated with MATS and as such focused on a health endpoint which could be readily enumerated and then monetized, which at the time was IQ for infants born to recreational anglers.

[38] Agency for Toxic Substances and Disease Registry (ATSDR). 1999. *Toxicological profile for mercury.* Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

[39] *https://iris.epa.gov/ChemicalLanding/&substance_nmbr=73.*

[40] *Availability of the IRIS Assessment Plan for Methylmercury.* 84 FR 13286 (April 4, 2019).

[41] *Availability of the Systematic Review Protocol for the Methylmercury Integrated Risk Information System (IRIS) Assessment.* 85 FR 32037 (May 28, 2020).

[42] Hu, X. F., Lowe, M., Chan, H.M., *Mercury exposure, cardiovascular disease, and mortality: A systematic review and dose-response meta-analysis.* Environmental Research 193 (2021),110538.

[43] Roman HA, Walsh TL, Coull BA, Dewailly É, Guallar E, Hattis D, Mariën K, Schwartz J, Stern AH, Virtanen JK, Rice G. *Evaluation of the cardiovascular effects of methylmercury exposures: Current evidence supports development of a dose-response function for regulatory benefits analysis.*

Continued

*Immunotoxic Effects of Exposure to Methylmercury.* Although exposure to some forms of mercury can result in a decrease in immune activity or an autoimmune response (ATSDR, 1999), evidence for immunotoxic effects of methylmercury is limited (NAS Study).

*Other Mercury-Related Human Toxicity Data Including Potential Carcinogenicity.* The Mercury Study noted that methylmercury is not a potent mutagen but is capable of causing chromosomal damage in a number of experimental systems. The NAS Study indicated that the evidence that human exposure to methylmercury causes genetic damage is inconclusive; it noted that some earlier studies showing chromosomal damage in lymphocytes may not have controlled sufficiently for potential confounders. One study of adults living in the Tapajos River region in Brazil (Amorim *et al.,* 2000) [44] reported a relationship between methylmercury concentration in hair and DNA damage in lymphocytes, as well as effects on chromosomes. Long-term methylmercury exposures in this population were believed to occur through consumption of fish, suggesting that genotoxic effects (largely chromosomal aberrations) may result from dietary, chronic methylmercury exposures similar to and above those seen in the populations studied in the Faroe Islands and Republic of Seychelles. Since 2000, more recent studies have evaluated methylmercury genotoxicity *in vitro* in human and animal cell lines and *in vivo* in rats.

Based on limited human and animal data, methylmercury is classified as a ''possible human carcinogen'' by the International Agency for Research on Cancer (IARC, 1993) [45] and in IRIS (USEPA, 2001). However, a quantitative estimate of the carcinogenic risk of methylmercury has not been assessed under the IRIS program at this time. Multiple human epidemiological studies have found no significant association between methylmercury exposure and overall cancer incidence, although a few studies have shown an association between methylmercury exposure and specific types of cancer incidence (*e.g.,* acute leukemia and liver cancer) (NAS Study).

Some evidence of reproductive and renal toxicity in humans from methylmercury exposure exists. However, overall, human data regarding reproductive, renal, and hematological toxicity from methylmercury are very limited and are based on studies of the two high-dose poisoning episodes in Iraq and Japan or animal data, rather than epidemiological studies of chronic exposures at the levels of interest in this analysis.

b. Review of Health Effects for Non-Mercury HAP

As noted earlier, EGUs are the largest source of HCl, HF, and selenium emissions, and are a major source of metallic HAP emissions including arsenic, chromium, nickel, cobalt, and others. Exposure to these HAP, depending on exposure duration and levels of exposures, is associated with a variety of adverse health effects. These adverse health effects may include chronic health disorders (*e.g.,* irritation of the lung, skin, and mucus membranes; decreased pulmonary function, pneumonia, or lung damage; detrimental effects on the central nervous system; damage to the kidneys; and alimentary effects such as nausea and vomiting).

As of 2021, three of the key metal HAP emitted by EGUs (arsenic, chromium, and nickel) have been classified as human carcinogens, while three others (cadmium, selenium, and lead) are classified as probable human carcinogens. Overall (metal and non-metal), the EPA has classified four of the HAP emitted by EGUs as human carcinogens and five as probable human carcinogens. *See* 76 FR 25003–25005 (May 3, 2011) for a fuller discussion of the health effects associated with these pollutants.

As summarized in the *Supplement to the Non-Hg Case Study Chronic Inhalation Risk Assessment In Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units* (2011 Non-Hg HAP Assessment),[46] the EPA previously completed a refined chronic inhalation risk assessment for 16 EGU case studies in order to assess potential public health risk associated with non-mercury HAP. The 16 case studies included one unit that used oil and 15 that used coal. As noted in the 2015 Proposal, this set of case studies was designed to include those facilities with potentially elevated cancer and non-cancer risk based on an initial risk screening of prospective EGU units completed utilizing the Human Exposure Model paired with HAP emissions data obtained from the 2005 National Emissions Inventory. For each of the 16 case study facilities, we conducted refined dispersion modeling with the EPA's AERMOD (American Meteorological Society/Environmental Protection Agency Regulatory Model) system to calculate annual ambient concentrations (*see* 2011 Non-Hg HAP Assessment). Average annual concentrations were calculated at census block centroids. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, and 52 weeks per year for a 70-year period) exposure to the maximum concentration at the centroid of an inhabited census block, based on application of the unit risk estimate from the EPA's IRIS program. Based on estimated actual emissions, the highest estimated individual lifetime cancer risk from any of the 16 case study facilities was 20-in-1 million, driven by nickel emissions from the one case study facility with oil-fired EGUs. Of the facilities with coal-fired EGUs, five facilities had MIR greater than 1-in-1 million (the highest was 5-in-1 million), with the risk from four due to emissions of chromium VI and the risk from one due to emissions of nickel. There were also two facilities with coal-fired EGUs that had MIR equal to 1-in-1 million. Based on this analysis, the EPA concludes that cancer risks associated with these HAP emissions supports a finding that it is appropriate to regulate HAP emissions from EGUs.

c. Review of Other Adverse Environmental Effects Associated With EGU HAP Emissions

*Ecological Effects of Methylmercury.* Along with the human health hazards associated with methylmercury, it is well-established that birds and mammals are also exposed to methylmercury through fish consumption (Mercury Study). At higher levels of exposure, the harmful effects of methylmercury include slower growth and development, reduced reproduction, and premature mortality. The effects of methylmercury on wildlife are variable across species but have been observed in the environment

Environ Health Perspect. 2011 May;119(5):607–14. doi: 10.1289/ehp.1003012. Epub 2011 Jan 10.

[44] Amorim MI, Mergler D, Bahia MO, Dubeau H, Miranda D, Lebel J, Burbano RR, Lucotte M. *Cytogenetic damage related to low levels of methyl mercury contamination in the Brazilian Amazon.* An Acad Bras Cienc. 2000 Dec;72(4):497–507. doi: 10.1590/s0001–37652000000400004.

[45] International Agency for Research on Cancer (IARC) Working Group on the Evaluation of Carcinogenic Risks to Humans. *Beryllium, Cadmium, Mercury, and Exposures in the Glass Manufacturing Industry.* Lyon (FR): International Agency for Research on Cancer; 1993. (IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No. 58.) Mercury and Mercury Compounds. Available from: *https://www.ncbi.nlm.nih.gov/books/NBK499780.*

[46] U.S. EPA. 2011. *Supplement to the Non-Hg Case Study Chronic Inhalation Risk Assessment In Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units.* Office of Air Quality Planning and Standards. November. EPA–452/R–11–013. Docket ID Item No. EPA–HQ–OAR–2009–0234–19912.

for numerous avian species and mammals including polar bears, river otters, and panthers. These adverse effects can propagate into impacts on human welfare to the extent they influence economies that depend on robust ecosystems (*e.g.,* tourism).

*Ecological Effects of Acid Gas HAP.* Even after the ARP was largely implemented in 2005, EGU sources comprised 82 percent of all anthropogenic HCl (a useful surrogate for all acid gas HAP) emissions in the U.S. When HCl dissolves in water, hydrochloric acid is formed. When hydrochloric acid is deposited by rainfall into terrestrial and aquatic ecosystems, it results in acidification of those systems. The MATS rule was expected to result in an 88 percent reduction in HCl emissions. As part of a recent Integrated Science Assessment (EPA, 2020),[47] the EPA concluded that the body of evidence is sufficient to infer a causal relationship between acidifying deposition and adverse changes in freshwater biota. Affected biota from acidification of freshwater include plankton, invertebrates, fish, and other organisms. Adverse effects can include physiological impairment, as well as alteration of species richness, community composition, and biodiversity in freshwater ecosystems. This evidence is consistent and coherent across multiple species. More species are lost with greater acidification.

3. Post-2016 Screening-Level Risk Assessments of Methylmercury Impacts

This section of the preamble describes three screening-level risk assessments completed since the 2016 Supplemental Finding that further strengthen the conclusion that U.S. EGU-sourced mercury represents a hazard to public health. These ''screening-level'' assessments are designed as broad bounding exercises intended to illustrate the potential scope and public health importance of methylmercury risks associated with U.S. EGU emissions. In some cases, they incorporate newer peer-reviewed literature that was not available to the Agency previously. Remaining uncertainties, however, prohibit the EPA from generating a more precise estimate at this time. Two of the three risk assessments focus on the potential for methylmercury exposure to increase the risk of MI-related mortality in adults and for that reason, section III.A.3.a begins by describing the methodology used in the analyses, including discussion of the concentration response (CR) function[48] for MI-related mortality and the incorporation of confidence cutpoints designed to address uncertainty. Then, the EPA describes an extension of the original watershed-level subsistence fisher methylmercury risk assessment to evaluate the potential for elevated MI-mortality risk among subsistence fishers (section III.A.3.b). In addition, a separate risk assessment is presented for elevated MI mortality among all adults utilizing a bounding approach that explores potential risks associated with exposure of the general U.S. population to methylmercury (sourced from U.S. EGUs) through fish consumption (section III.A.3.c). Finally, focusing on neurodevelopmental outcomes, another bounding analysis is presented that focuses on the risk of IQ points loss in children exposed *in utero* through maternal fish consumption by the population of general U.S. fish consumers (section III.A.3.d). Each of these analyses quantify potential impacts on incidence of adverse health effects. Section III.A.4 provides illustrative examples of how these incidence estimates translate to monetized benefits.

a. Methodology for Estimating MI-Mortality

This section describes the methodology used in the new screening-level risk assessments related to mortality, including the EPA's application of a CR function characterizing the relationship between increased MI-mortality and methylmercury exposure. As discussed further in the 2021 Risk TSD,[49] which is contained in the docket for this action, the approach draws on recommendations provided by an expert panel convened by the EPA in 2010 to evaluate the cardiovascular effects associated with methylmercury exposure (the findings of the expert panel were summarized as a peer-reviewed paper, Roman *et al.,* 2011). The panel ''found the body of evidence exploring the link between [methylmercury] and acute myocardial infarction (MI) to be sufficiently strong to support its inclusion in future benefits analyses, based both on direct epidemiological evidence of [a methylmercury]–MI link and on [methylmercury's] association with intermediary impacts that contribute to MI risk.'' Given the likely mechanism of action associated with MI, the panel further recommended that either hair-mercury or toenail-mercury be used as an exposure metric because both reflect a longer-term pattern of exposure. Regarding the shape of the CR function, the panel noted that the EURAMIC study (Guallar *et al.,* 2002)[50] had identified a log-linear model form with log-of exposure providing the best fit using toenail mercury as the biomarker of exposure. The panel also discussed the issue of potential effect modification by cardioprotective compounds including polyunsaturated fatty acids (PUFA).[51] Kuopio Ischaemic Heart Disease Risk Factor Study (KIHD) and European Multicenter Case-Control Study on Antioxidants, Myocardial Infarction, and Cancer of the Breast Study (EURAMIC) datasets ''provide the strongest and most useful data sets for quantifying methylmercury-related incidence of MI.'' However, the panel did note the disconnect between typical levels of exposure to methylmercury in the U.S. population and the relatively higher levels of exposure reflected in the two recommended epidemiology studies (KIHD and EURAMIC). Therefore, the panel suggested that consideration be given to restricting modeling MI mortality to those with higher concentrations reflecting the levels of exposure found in the two key epidemiology studies (corresponding to roughly 75th to 95th percentile hair-mercury levels for U.S. women of child-bearing age, as characterized in National Health and Nutrition Examination

[47] U.S. EPA. *Integrated Science Assessment (ISA) for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter Ecological Criteria* (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–20/278, 2020.

[48] Concentration-response functions relate levels of exposure for the chemical of interest to the probability or rate of response for the adverse health outcome in the exposed individual or population. Typically these mathematical relationships are based on data obtained either from human epidemiology studies, clinical studies, or toxicological (animal) studies. In this case, CR functions for MI-related mortality are based on epidemiology studies as discussed further below.

[49] U.S. EPA. 2021. *National-Scale Mercury Risk Estimates for Cardiovascular and Neurodevelopmental Outcomes for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding; Notice of Proposed Rulemaking.*

[50] Guallar E, Sanz-Gallardo MI, van't Veer P, Bode P, Aro A, Gómez-Aracena J, Kark JD, Riemersma RA, Martín-Moreno JM, Kok FJ; Heavy Metals and Myocardial Infarction Study Group. *Mercury, fish oils, and the risk of myocardial infarction.* N Engl J Med. 2002 Nov 28;347(22):1747–54. doi: 10.1056/NEJMoa020157.

[51] Virtanen JK, Voutilainen S, Rissanen TH, Mursu J, Tuomainen TP, Korhonen MJ, Valkonen VP, Seppänen K, Laukkanen JA, Salonen JT. *Mercury, fish oils, and risk of acute coronary events and cardiovascular disease, coronary heart disease, and all-cause mortality in men in eastern Finland.* Arterioscler Thromb Vasc Biol. 2005 Jan;25(1):228–33. doi: 10.1161/01.ATV.0000150040.20950.61. Epub 2004 Nov 11.

Survey (NHANES) data and referenced by the panel).

In the intervening period since the release of the expert panel's findings in 2011 (Roman *et al.,* 2011), the EPA has continued to review literature characterizing the relationship between methylmercury exposure and cardiovascular effects. While the EPA has not yet conducted a systematic review, two recent studies are of particular interest for quantifying the potential relationship between U.S. EGU mercury emissions and acute MI that informed a modeling approach. Giang and Selin (2016) [52] presented an approach for modeling MI mortality reflecting a number of the recommendations presented in Roman *et al.,* 2011 including the use of the KIHD and EURAMIC studies as the basis for a CR function including both the log-linear functional form and the effect estimate derived from the KIHD study results. A second study, Hu *et al.* 2021,[53] presented a meta-analysis looking at the relationship between methylmercury exposure and mortality. That paper utilized eight studies each determined to be of good quality and reflecting at a minimum, adjustments for age, sex, and n-3 PUFA in specifying dose-response relationships. Historically, studies which account for n-3 PUFA have assumed a linear relationship between PUFAs and risk of MI (Roman *et al.,* 2011). However, the association between PUFA intake and cardiovascular risk may not be linear (Mozaffarian and Rimm, 2006).[54] The potential for confounding and effect modification by PUFA and selenium makes it difficult to interpret the relationship between methylmercury and MI, particularly at lower doses where there is potential for masking of methylmercury toxicity. The results of the meta-analysis by Hu *et al.,* 2021 illustrated this phenomenon with their J-shaped functions for both IHD and CVD, both of which showed an initial region of negative slope (diminishing net risk with methylmercury exposure) before reaching an inflection point (between 1 and 2 microgram per gram (µg/g) hair-mercury depending on the endpoint) where the function turns positive (increasing risk).

For the EPA's new screening-level assessment, we have considered the recommendations presented in Roman *et al.,* 2011, as well as the J-shaped functions presented in Hu *et al.,* 2021, and their implications for considering overall confidence in specifying the relationship between cardiovascular-related mortality and methylmercury exposure. In particular, the EPA has higher confidence in the log-linear relationship at levels of hair-mercury exposure above the selected confidence cutpoints. In specifying these confidence cutpoints (for modeling MI mortality) we have looked to recommendations presented in Roman *et al.,* 2011, specifically that we consider modeling risk for levels of exposure reflected in the EURAMIC and KIHD studies (with these equating to roughly 0.66 and 1.9 µg/g hair-mercury, respectively, or approximately the 75th-95th percentile of hair-mercury levels seen in women of childbearing age in available 1999–2000 NHANES survey data [55]). Further, we note that these confidence cutpoints roughly match the inflection point for IHD and CVD seen in the J-shaped plot presented in Hu *et al.,* 2021, which further supports their use in defining regions of methylmercury exposure above which we have increased confidence in modeling MI mortality. However, as noted earlier, we are not concluding here that there is an absence of risk below these cutpoints, as such conclusions would require a weight of the evidence analysis and subsequent independent peer review. Rather, we are less confident in our ability to specify the nature of the CR function in those lower exposure regions due to possible effect modification and/or confounding by PUFA and/or selenium. Therefore, in applying the CR function in modeling MI mortality, we included a set of three functions–two including the cutpoints described above and a third no-cutpoint version of the function reflecting the assumption that risk extends across the entire range of methylmercury exposure. In terms of the other elements of the CR function (shape and effect estimate), we have also followed the advice presented in Roman *et al.,* 2011, as further illustrated through the analysis published by Giang and Selin 2016, and utilized a log-linear form and an effect estimate of 0.10 for MI mortality obtained from the KIHD study (*see* 2021 Risk TSD). As with the other risk estimates presented for methylmercury, these estimates reflect the baseline for U.S. EGUs prior to implementation of MATS (*i.e.,* 29 tons).

b. Increased MI-Mortality Risk in Subsistence Fishers Exposed to Methylmercury

This screening-level analysis of MI-mortality risk is an extension of the female subsistence-fisher-based at-risk watershed analysis originally completed as part of the 2011 risk assessment supporting the appropriate and necessary determination (USEPA, 2011) and documented in the 2011 Final Mercury TSD. In that original analysis, a series of female subsistence fisher risk scenarios was evaluated for a subset of 3,141 watersheds within the continental U.S. for which there were sampled methylmercury fish tissue data (that fish tissue data allowing a higher-confidence empirically-based assessment of methylmercury risk to be generated for those watersheds). For each watershed, we used the fish tissue methylmercury data to characterize total mercury-related risk and then we estimated the portion of that total risk attributable to U.S. EGUs (based on the fraction of total mercury deposition to those watersheds associated with U.S. EGU emissions as supported by the Mercury Maps approach, USEPA, 2011).[56]

We have now extended the at-risk watershed analysis completed in 2011 for the subsistence fisher scenarios to include an assessment of the potential for increased MI mortality risk.[57] Specifically, we have utilized the U.S. EGU-attributable methylmercury exposure estimates (µg/kg-day methylmercury intake) generated for the subsistence fisher scenario in each

[52] Giang A, Selin NE. *Benefits of mercury controls for the United States.* Proc Natl Acad Sci U S A. 2016 Jan 12;113(2):286–91. doi: 10.1073/pnas.1514395113. Epub 2015 Dec 28.

[53] Hu XF, Lowe M, Chan HM. *Mercury exposure, cardiovascular disease, and mortality: A systematic review and dose-response meta-analysis.* Environ Res. 2021 Feb;193:110538. doi: 10.1016/j.envres.2020.110538. Epub 2020 Dec 5.

[54] Mozaffarian D, Rimm EB. *Fish intake, contaminants, and human health: Evaluating the risks and the benefits.* JAMA. 2006 Oct 18;296(15):1885–99. doi: 10.1001/jama.296.15.1885. Erratum in: JAMA. 2007 Feb 14;297(6):590.

[55] NHANES has not continued to collect hair-mercury data in subsequent years since the NHANES dataset referenced here. While NHANES has continued with total blood-mercury monitoring, hair mercury is a better biomarker for characterizing methylmercury exposure over time. Given that the CR functions based on the KIHD study (as well as observations presented in Roman *et al.* 2011 regarding cardio-modeling) were all based on hair-mercury, this was chosen as the anchoring analytical biometric. The potential for bias due to the use of the 1999–2000 NHANES data is further discussed in the 2021 Risk TSD.

[56] A detailed discussion of the Mercury Maps approach (establishing a proportional relationship between mercury deposition and methylmercury concentrations in fish at the watershed level) is presented in section 1.4.6.1 of the 2011 Final Mercury TSD which in turn references: *Mercury Maps—A Quantitative Spatial Link Between Air Deposition and Fish Tissue Peer Reviewed Final Report.* U.S. EPA, Office of Water, EPA–823–R–01–009, September, 2001.

[57] Note that while the 2011 Final Mercury TSD, in utilizing an RfD-based approach reflecting neurodevelopmental effects, focused on female subsistence fishers; the analysis focused on MI-mortality risk covers all adult subsistence fishers, and we use our cutpoint bounding analysis because there is not an RfD focused specifically on cardiovascular effects for methylmercury.

watershed to generate equivalent hair-mercury exposure estimates for that subsistence fisher scenario in each watershed (*see* 2021 Risk TSD for additional detail on the conversion of daily methylmercury intake rates into hair-mercury levels). We then compare those hair-mercury levels to the confidence cutpoints developed for the MI mortality screening-level risk assessment described above in section III.A.3.a. If the hair-mercury level for a particular watershed is above either the EURAMIC or KIHD confidence cutpoint (*i.e.,* above 0.66 and 1.9 μg/g hair-mercury, respectively), then we consider that watershed to be at increased risk for MI mortality exclusively due to that U.S. EGU-attributable methylmercury exposure.[58] Note, that this is not to suggest that exposures at watersheds where U.S. EGU-attributable contributions are below these cutpoints are without risk, but rather that when exposure levels exceed these cutpoints, we have increased confidence in concluding there is an increased risk of MI mortality for subsistence fishers active within that watershed. It is also important to note that in many cases, total methylmercury exposure (*i.e.,* EGU contribution plus contributions from other sources) may exceed these confidence cutpoints such that subsistence fishers active at those watersheds would be at increased risk of MI mortality at least in part due to EGU emissions. *See White Stallion,* 748 F.3d at 1242–43 (finding reasonable the EPA's decision to consider cumulative impacts of HAP from EGUs and other sources in determining whether HAP emissions from EGUs pose a hazard to public health under CAA section 112(n)(1)(A)); *see also* CAA section 112(n)(1)(B) (directing the EPA to study the cumulative impacts of mercury emissions from EGUs and other domestic stationary sources of mercury).

Table 3 of the 2021 Risk TSD presents the results of the analysis of risk for MI-mortality for the subsistence fisher scenarios. As with the original RfD-based risk estimates, these results are dimensioned on two key parameters (*self-caught fish consumption rate* and *the watershed percentile exposure level—hair-mercury* μ*g/g*). Those watershed percentile hair-mercury values that exceed the EURAMIC-based MI mortality confidence cutpoints (0.66 μg/g hair-mercury) are shaded in the table and those cells that also exceed the KIHD-based MI mortality confidence cutpoint (1.9 μg/g hair-mercury) are bolded. Once again, these thresholds identify levels of methylmercury exposure (hair-mercury) associated with a clear association with MI-related health effects (*i.e.,* increased risk). Unlike the RfD-based risk estimates, for MI-mortality estimates we only focus on U.S. EGU-attributable methylmercury (*i.e.,* whether U.S. EGU-attributable hair-mercury exceeds the cutpoints of interest).

Results for the typical subsistence fisher, representing high-end self-caught fish consumption in the U.S. population, suggest that up to 10 percent of the watersheds modeled are associated with hair-mercury levels (due to U.S. EGU mercury emissions alone) that exceed the lower EURAMIC cutpoint for MI-mortality risk, with 1 percent of modeled watersheds also exceeding the KIHD cutpoint (due to U.S. EGU-mercury emissions alone). For low-income Black subsistence fishers active in the Southeast, up to 25 percent of the watersheds exceed the lower EURAMIC confidence threshold (assuming the highest rate of fish consumption), with only the upper 1 percent of watersheds exceeding the KIHD threshold (again based only on U.S. EGU-sourced mercury exposure).

c. Characterization of MI-Mortality Risk for the General U.S. Population Resulting From the Consumption of Commercially-Sourced Fish

The second of the three new screening-level risk analyses estimates the incidence of MI mortality in the general U.S. population resulting from consumption of commercially-sourced fish containing methylmercury emitted from U.S. EGUs.[59] This is accomplished by first estimating the total burden of methylmercury-related MI mortality in the U.S. population and then estimating the fraction of that total increment attributable to U.S. EGUs. The task of modeling this health endpoint can involve complex mechanistic modeling of the multi-step process leading from U.S. EGU mercury emissions to mercury deposition over global/regional fisheries to bioaccumulation of methylmercury in fisheries stocks to exposure of U.S. fish consumers through consumption of those commercially-sourced fish (*e.g.,* Giang and Selin, 2016). However, in recognition of the uncertainty associated with attempting to model this more complex multi-step process, we have instead developed a simpler screening analysis approach intended to generate a range of risk estimates that reflects the impact of critical sources of uncertainty associated with this exposure scenario. Rather than attempting to generate a single high-confidence estimate of risk, which in our estimation is challenging given overall uncertainty associated with this exposure pathway, the goal with the bounding approach is simply to generate a range of risk estimates for MI mortality that furthers our understanding of the significant public health burden associated with EGU HAP emissions.

The bounding approach developed for this particular scenario is based on the assumption that fish sourced from global commercial fisheries are loaded by mercury deposited to those fisheries and that the fraction of that deposited mercury originating from U.S. EGUs will eventually be reflected as a fraction of methylmercury in those fish and subsequently as a fraction of MI mortality risk associated with those U.S. EGUs. One of the challenges associated with this screening analysis is how to attribute domestic EGU contributions to global fisheries and how that might vary from location to location. For simplicity, the bounding analysis includes two assumptions: (1) A potential lower-bound reflecting the assumption that U.S. fish consumption is largely sourced from global fisheries and consequently the U.S. EGU contribution to total global mercury emissions (anthropogenic and natural) can be used to approximate the U.S. EGU fractional contribution to MI mortality and (2) a potential upper-bound where we assume that fisheries closer to U.S. EGUs (*e.g.,* within the continental U.S. or just offshore and/or along the U.S. Atlantic and Pacific coastlines) supply most of the fish and seafood consumed within the U.S., and therefore U.S. EGU average deposition over the U.S. (as a fraction of total mercury deposition) can be used to approximate the U.S. EGU fractional contribution to MI mortality (*see* 2021 Risk TSD for more detail).[60] The EPA is

[58] Although we have used the MI-mortality CR function described in section III.A.3.a of this preamble to generate mortality incidence estimates for the general fish consuming population (*see* section III.A.3.c), this is not possible for subsistence fishers since we are not able at this point to enumerate them. Consequently, we use the confidence cutpoints associated with that CR function to identify exposures associated with MI mortality risk as described here.

[59] Although the analysis presented here focuses on methylmercury exposure associated with fish consumption which, as noted earlier, is the primary source of methylmercury exposure for the U.S. population, EGU mercury deposited to land can also impact other food sources including those associated with agricultural production (*e.g.,* rice). In the context of fish consumption, commercially-sourced fish refers to fish consumed in restaurants or from food stores.

[60] Another way of stating this is that the lower-bound estimate reflects an assumption that U.S. EGU mercury is diluted as part of a global pool and impacts commercial fish sourced from across the globe (with lower levels of methylmercury contribution) while the upper-bound estimate

Continued

continuing to review the literature (including consideration of research by FDA) to better define the relative contributions for sources of fish consumed within the U.S. Note that the bounding analysis also includes consideration for another key source of uncertainty, namely, the specification of the CR function linking methylmercury exposure to increased MI mortality and, in particular, efforts to account for increased confidence in specifying the CR function for higher levels of methylmercury exposure through the use of confidence cutpoints (section III.A.3.a). Additional detail on the stepwise process used to first generate the total U.S. burden of MI-mortality related to total methylmercury exposure and then apportion that total risk estimate to the fraction contributed by U.S. EGUs is presented the 2021 Risk TSD. Based on the 29 tons of mercury emitted by U.S. EGUs prior to implementation of MATS, the bounding estimates from the fraction of total mercury deposition attributable to U.S. EGUs at the global scale is 0.48 percent (lower bound) and 1.8 percent (upper bound). These estimated bounding percentages are important since they have a significant impact on the overall incidence of MI mortality ultimately attributable to U.S. EGU-sourced mercury.

Reflecting both the spread in the apportionment of U.S. EGU-sourced mercury (as described above) and application of the three possible applications of the CR function for MI mortality (no confidence-cutpoint, KIHD cutpoint, EURAMIC cutpoint), the estimated MI-mortality attributable to U.S. EGU-sourced mercury for the general U.S. population associated primarily with consumption of commercially-sourced fish ranges from 5 to 91 excess deaths each year.[61] For those Americans with high levels of methylmercury in their body (*i.e.,* above certain cutpoints), the science suggests that any additional increase in methylmercury exposure will raise the risk of fatal heart attacks. Based on this screening analysis, even after imposition of the ARP and other CAA criteria pollutant requirements that also reduce HAP emissions from domestic EGU sources, we find that mercury emissions from EGUs pose a risk of premature mortality due to MI.

d. Characterization of IQ Loss for Children Born to Mothers in the General U.S. Population Resulting From the Consumption of Commercially Sourced Fish (and Other Food Items Containing Methylmercury)

The third new screening-level risk analysis estimates the incidence of IQ loss in children in the general U.S. population resulting from maternal consumption of commercially sourced fish containing methylmercury attributable to U.S. EGUs (resulting in subsequent prenatal exposure to methylmercury). The approach used in estimating incidence of this adverse health effect shares several elements with the approach described above for modeling MI mortality in the general U.S. population, including in particular, the method used to apportion the total methylmercury-related health burden to the fraction associated with U.S. EGU mercury emissions (*e.g.,* use of lower and upper bound estimates of the fractional contribution of domestic EGU sources). Other elements of the modeling approach, including the specification of the number of children born annually in the U.S., the specification of maternal baseline hair-mercury levels (utilizing NHANES data) and the characterization of the linkage between methylmercury exposure (*in utero*) and IQ loss, are based on methods used in the original 2011 benefits analysis completed for MATS (USEPA, 2011) and are documented in the 2021 Risk TSD.

As with the MI-mortality estimates described earlier, the two bounding estimates for the fraction of total mercury deposition attributable to U.S. EGUs at the global and regional scales (0.48 percent and 1.8 percent, respectively) have a significant impact on the overall magnitude of IQ points lost (for children born to the general U.S. population) which are ultimately attributable to U.S. EGUs. However, the EPA has relatively high confidence in modeling this endpoint due to greater confidence in the IQ loss CR function. The range in IQ points lost annually due to U.S. EGU-sourced mercury is estimated at 1,600 to 6,000 points, which is distributed across the population of U.S. children covered by this analysis.[62] Given variation in key factors related to maternal methylmercury exposure, it is likely that modeled IQ loss will not be uniformly distributed across the population of exposed children and may instead, display considerable heterogeneity.[63] The bounding analysis described here was not designed to characterize these complex patterns of heterogeneity in IQ loss across the population of children simulated and we note that such efforts would be subject to considerable uncertainty. However, it does provide evidence of specific adverse outcomes with real implications to those affected. Even small degradations in IQ in the early stages of life are associated with diminished future outcomes in education and earnings potential.

4. Most HAP Benefits Cannot Be Quantified or Monetized

Despite the array of adverse health and environmental risks associated with HAP emissions from U.S. coal- and oil-fired EGUs documented above, as the above discussion demonstrates, it can be technically challenging to estimate the extent to which EGU HAP emissions will result in adverse effects quantitively across the U.S. population absent regulation. In fact, the vast majority of the post-control benefits of reducing HAP cannot be quantified or monetized with sufficient quality to inform regulatory decisions due to data gaps, particularly with respect to sensitive populations. But that does not mean that these benefits are small, insignificant, or nonexistent. There are numerous unmonetized effects that contribute to additional benefits realized from emissions reductions. These include additional reductions in neurodevelopmental and cardiovascular effects from exposure to methylmercury, adverse ecosystem effects including mercury-related impacts on recreational and commercial fishing, health risks from exposure to non-mercury HAP, and health risks in EJ subpopulations that face disproportionally high exposure to EGU HAP.

Congress well understood the challenges in monetizing risks. As discussed in section II.B above, the statutory language in CAA section 112 clearly supports a conclusion that the intended benefit of HAP regulation is a reduction in the volume of HAP emissions to reduce assumed and

reflects a focus on more near-field regional impacts by U.S. EGU mercury to fish sourced either within the continental U.S. or along its coastline (with greater relative contribution to methylmercury levels).

[61] Inclusion of 95th percentile confidence intervals for the effect estimate used in modeling MI mortality extends this range to from 3 to 143 deaths (reflecting the 5th percentile associated with the 5 lower bound estimate to the 95th percentile for the upper bound estimate of 91).

[62] Inclusion of 95th percentile confidence intervals for the effect estimate used in modeling this endpoint extends this range to from 80 to 12,600 IQ points lost (reflecting the 5th and 95th percentiles).

[63] Maternal exposure (and hence IQ impacts to children) from U.S. EGU-sourced mercury can display considerable variation due to (a) spatial patterns of U.S. EGU mercury fate and transport (including deposition and methylation) which affects impacts on fish methylmercury and (b) variations in fish consumption by mothers (including differences in daily intake, types of fish consumed and geographical origins of that fish).

identified risks from HAP with the goal of protecting even the most exposed and most sensitive members of the population. The statute requires the EPA to move aggressively to quickly reduce and eliminate HAP, placing high value on doing so in the face of uncertainty regarding the full extent of harm posed by hazardous pollutants on human health and welfare. The statute also clearly places great value on protecting even the most vulnerable members of the population, by instructing the EPA, when evaluating risk in the context of a determination of whether regulation is warranted, to focus on risk to the most exposed and most sensitive members of the population. *See, e.g.,* CAA sections 112(c)(9)(B), 112(f)(2)(B), and 112(n)(1)(C). For example, in evaluating the potential for cancer effects associated with emissions from a particular source category under CAA section 112(f)(2), the EPA is directed by Congress to base its determinations on the maximum individual risk (MIR) to the most highly exposed individual living near a source. Similarly, in calculating the potential for non-cancer effects to occur, the EPA evaluates the impact of HAP to the most exposed individual and accounts for sensitive subpopulations.

Notably, Congress in CAA section 112 did not require the EPA to quantify risk across the entire population, or to calculate average or ''typical'' risks. The statutory design focusing on maximum risk to individuals living near sources acknowledges the inherent difficulty in enumerating HAP effects, given the large number of pollutants and the uncertainties associated with those pollutants, as well as the large number of sources emitting HAP. However, this does not mean that these effects do not exist or that society would not highly value these reductions, despite the fact that the post-control effects of the reductions generally cannot be quantified. The EPA has long acknowledged the difficulty of quantifying and monetizing HAP benefits. In March 2011, the EPA issued a report on the post-control benefits and costs of the CAA. This Second Prospective Report [64] is the latest in a series of EPA studies that estimate and compare the post-control benefits and costs of the CAA and related programs over time. Notably, it was the first of these reports to include any attempt to quantify and monetize the impacts of reductions in HAP, and it concentrated on a small case study for a single pollutant, entitled ''Air Toxics Case Study—Health Benefits of Benzene Reductions in Houston, 1990–2020.'' As the EPA summarized in the Second Prospective Report, ''[t]he purpose of the case study was to demonstrate a methodology that could be used to generate human health benefits from CAAA controls on a single HAP in an urban setting, while highlighting key limitations and uncertainties in the process. . . . Benzene was selected for the case study due to the availability of human epidemiological studies linking its exposure with adverse health effects.'' (pg. 5–29). In describing the approach, the EPA noted: ''[b]oth the Retrospective analysis and the First Prospective analysis omitted a quantitative estimation of the benefits of reduced concentrations of air toxics, citing gaps in the toxicological database, difficulty in designing population-based epidemiological studies with sufficient power to detect health effects, limited ambient and personal exposure monitoring data, limited data to estimate exposures in some critical microenvironments, and insufficient economic research to support valuation of the types of health impacts often associated with exposure to individual air toxics.'' (pg. 5–29). These difficulties have long hindered the Agency's ability to quantify post-control HAP impacts and estimate the monetary benefits of HAP reductions.

In preparing the benzene case study for inclusion in the Second Prospective Report, the Agency asked the Advisory Council on Clean Air Compliance Analysis (the Council) to review the approach. In its 2008 consensus advice to the EPA after reviewing the benzene case study,[65] the Council noted that ''Benzene . . . has a large epidemiological database which OAR used to estimate the health benefits of benzene reductions due to CAAA controls. The Council was asked to consider whether this case study provides a basis for determining the value of such an exercise for HAP benefits characterization nationwide.'' They concluded:

> As recognized by OAR, the challenges for assessing progress in health improvement as a result of reductions in emissions of hazardous air pollutants (HAPs) are daunting. Accordingly, EPA has been unable to adequately assess the economic benefits associated with health improvements from HAP reductions due to a lack of exposure-response functions, uncertainties in emissions inventories and background levels, the difficulty of extrapolating risk estimates to low doses and the challenges of tracking health progress for diseases, such as cancer, that have long latency periods. . . .
>
> The benzene case study successfully synthesized best practices and implemented the standard damage function approach to estimating the benefits of reduced benzene, however the Council is not optimistic that the approach can be repeated on a national scale or extended to many of the other 187 air toxics due to insufficient epidemiological data. With some exceptions, it is not likely that the other 187 HAPs will have the quantitative exposure-response data needed for such analysis. Given EPA's limited resources to evaluate a large number of HAPs individually, the Council urges EPA to consider alternative approaches to estimate the benefits of air toxics regulations.

In addition to the difficulties noted by the Council, there are other challenges that affect the EPA's ability to fully characterize post-control impacts of HAP on populations of concern, including sensitive groups such as children or those who may have underlying conditions that increase their risk of adverse effects following exposure to HAP. Unlike for criteria pollutants such as ozone and PM, the EPA lacks information from controlled human exposure studies conducted in clinical settings which enable us to better characterize dose-response relationships and identify subclinical outcomes. Also, as noted by the Council and by the EPA itself in preparing the benzene case study, the almost universal lack of HAP-focused epidemiological studies is a significant limitation. Estimated risks reported in epidemiologic studies of fine PM ($PM_{2.5}$) and ozone enable the EPA to estimate health impacts across large segments of the U.S. population and quantify the economic value of these impacts. Epidemiologic studies are particularly well suited to supporting air pollution health impact assessments because they report measures of population-level risk that can be readily used in a risk assessment.

However, such studies are infrequently performed for HAP. Exposure to HAP is typically more uneven and more highly concentrated among a smaller number of individuals than exposure to criteria pollutants. Hence, conducting an epidemiologic study for HAP is inherently more challenging; for starters, the small population size means such studies often lack sufficient statistical power to detect effects. For example, in the case of mercury, the most exposed and most sensitive members of the population

[64] U.S. EPA Office of Air and Radiation, April 2011. *The Benefits and Costs of the Clean Air Act from 1990 to 2020,* Final Report—Rev. A. Available at *https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf.*

[65] U.S. EPA Advisory Council on Clean Air Act Compliance Analysis, Review of the Benzene Air Toxics Health Benefits Case Study. July 11, 2008. Available at *https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000ZYP.PDF?Dockey=P1000ZYP.PDF.*

may be both small and highly concentrated, such as the subsistence fishers that the EPA has identified as likely to suffer deleterious effects from U.S. EGU HAP emissions. While it is possible to estimate the potential risks confronting this population in a case-study approach (an analysis that plays an important role in supporting the public health hazard determination for mercury as discussed above in sections III.A.2 and III.A.3), it is not possible to translate these risk estimates into post-control quantitative population-level impact estimates for the reasons described above.

Further, for many HAP-related health endpoints, the Agency lacks economic data that would support monetizing HAP impacts, such as willingness to pay studies that can be used to estimate the social value of avoided outcomes like heart attacks, IQ loss, and renal or reproductive failure. In addition, the absence of socio-demographic data such as the number of affected individuals comprising sensitive subgroups further limits the ability to monetize HAP-impacted effects. All of these deficiencies impede the EPA's ability to quantify and monetize post-control HAP-related impacts even though those impacts may be severe and/or impact significant numbers of people.

Though it may be difficult to quantify and monetize most post-control HAP-related health and environmental benefits, this does not mean such benefits are small. The nature and severity of effects associated with HAP exposure, ranging from lifelong cognitive impairment to cancer to adverse reproductive effects, implies that the economic value of reducing these impacts would be substantial if they were to be quantified completely. By extension, it is reasonable to expect both that reducing HAP-related incidence affecting individual endpoints would yield substantial benefits if fully quantified, and moreover that the total societal impact of reducing HAP would be quite large when evaluated across the full range of endpoints. In judging it appropriate to regulate based on the risks associated with HAP emissions from U.S. EGUs, the EPA is placing weight on the likelihood that these effects are significant and substantial, as supported by the health evidence. The EPA's new screening-level analyses laid out in the Risk TSD for this proposal illustrate this point. Specifically, in exploring the potential for MI-related mortality risk attributable to mercury emissions from U.S. EGUs, the EPA's upper bound estimate is that these emissions may contribute to as many as 91 additional premature deaths each year. The value society places on avoiding such severe effects is very high; as the EPA illustrates in the valuation discussion in the 2021 Risk TSD, the benefit of avoiding such effects could approach $720 million per year. Similarly, for IQ loss in children exposed *in utero* to U.S. EGU-sourced mercury, our upper bound estimate approaches 6,000 IQ points lost which could translate into a benefit approaching $50 million per year.

These estimates are intended to illustrate the point that the HAP impacts are large and societally meaningful, but not to suggest that they are even close to the full benefits of reducing HAP. There are many other unquantified effects of reducing EGU HAP that would also have substantial value to society. As described above, mercury alone is associated with a host of adverse health and environmental effects. The statute clearly identifies this basket of effects as a significant concern in directing the EPA to study them specifically. If the EPA were able to account for all of these post-control effects in our quantitative estimates, the true benefits of MATS would be far clearer. However, available data and methods currently preclude a full quantitative accounting of the post-control impacts of reducing HAP emissions from U.S. EGUs and a monetization of these impacts.

There are other aspects of social willingness to pay that are not accounted for in the EPA's quantitative estimate of benefits either. For example, in previous MATS-related rulemakings and analysis, the EPA has not estimated what individuals would be willing to pay in order to reduce the exposure of *others* who are exposed (even if they are not experiencing high levels of HAP exposure themselves). These may be considered and quantified as benefits depending on whether it is the health risks to others in particular that is motivating them.[66] For example, Cropper *et al.* (2016) found that focus group participants indicated a preference for more equitable distribution of health risks than for income, which indicates that it is specifically the risks others face that was important to the participants.[67] This result is particularly important as exposure to HAP is often disproportionately borne by underserved and underrepresented communities (Bell and Ebisu, 2012).[68] Unfortunately, studies to quantify the willingness to pay for a more equitable distribution of HAP exposures are limited, so quantification of this benefit likely cannot be performed until new research is conducted.

The HAP-related legislative history for the 1990 Amendments includes little discussion of the monetized benefits of HAP, perhaps due to these attendant difficulties. When such monetized benefits were estimated in several outside reports submitted to Congress before passage of the 1990 Amendments, the estimates were based on reduced cancer deaths and the value of the benefits that are quantified were estimated to be small as compared to the estimated costs of regulating HAP emissions under CAA section 112. *See, e.g., A Legislative History of the Clean Air Act Amendments of 1990,* Vol. I at 1366–67 (November 1993) (estimating the total annual cost of CAA section 112 to be between $6 billion and $10 billion per year and the estimated annual benefits to be between $0 and $4 billion per year); *id.* at 1372–73 (estimating the total annual cost of CAA section 112 to be between $14 billion and $62 billion per year and the estimated annual benefits to be between $0 and $4 billion per year). Despite the apparent disparity of estimated costs and monetized benefits, Congress still enacted the revisions to CAA section 112. Thus, it is reasonable to conclude that Congress found HAP emissions to be worth regulating even without evidence that the monetized benefits of doing so were greater than the costs. The EPA believes this stems from the value that the statute places on reducing HAP regardless of whether the post-control benefits of doing so can be quantified or monetized, and the statute's purpose of protecting even the most exposed and most sensitive members of the population.

5. Characterization of HAP Risk Relevant to Consideration of Environmental Justice

In assessing the adverse human health effects of HAP pollution from EGUs, we note that these effects are not borne equally across the population, and that some of the most exposed individuals and subpopulations—protection of whom is, as noted, of particular concern under CAA section 112—are minority and/or low-income populations. Executive Order 12898 (59 FR 7629;

[66] Jones-Lee, M.W. *Paternalistic Altruism and the Value of Statistical Life.* The Economic Journal, vol. 102, no. 410, 1992, pp. 80–90.

[67] Cropper M., Krupnick A., and W. Raich, *Preferences for Equality in Environmental Outcomes,* Working Paper 22644 *http://www.nber.org/papers/w22644* National Bureau of Economic Research, September 2016.

[68] Bell, Michelle L., and Keita Ebisu. *Environmental inequality in exposures to airborne particulate matter components in the United States.* Environmental Health Perspectives 120.12 (2012): 1699–1704.

February 16, 1994) establishes Federal executive policy on EJ issues. That Executive Order's main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make 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. 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.'' That Executive Order 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.'' Under Executive Order 13563, Federal agencies may consider equity, human dignity, fairness, and distributional considerations, where appropriate and permitted by law.

In the context of MATS, exposure scenarios of clear relevance from an EJ perspective include the full set of subsistence fisher scenarios included in the watershed-level risk assessments completed for the rule. Subsistence fisher populations are potentially exposed to elevated levels of methylmercury due to their elevated levels of self-caught fish consumption which, in turn, are often driven either by economic need (*i.e.,* poverty) and/or cultural practices. In the context of MATS, we completed watershed-level assessments of risks for a broad set of subsistence fisher populations covering two health endpoints of clear public health significance including: (a) Neurodevelopmental effects in children exposed prenatally to methylmercury (the methylmercury-based RfD analysis described in the 2011 Final Mercury TSD) and (b) potential for increased MI-mortality risk in adults due to methylmercury exposure (section III.A.3.b above).

The general subsistence fisher population that was evaluated nationally for both analyses was not subdivided by socioeconomic status, race, or cultural practices.[69] Therefore, the risk estimates derived do not fully inform our consideration of EJ impacts, although the significantly elevated risks generated for this general population are clearly relevant from a public health standpoint. However, the other, more differentiated subsistence fisher populations, which are subdivided into smaller targeted communities, are relevant in the EJ context and in some instances were shown to have experienced levels of risk significantly exceeding those of the general subsistence fisher population, as noted earlier in section III.A.3.b.

In particular, for the watershed analysis focusing on the methylmercury RfD-based analysis (*i.e.,* neurodevelopmental risk for children exposed prenatally), while the general female fisher scenario suggested that modeled exposures (from U.S. EGU-sourced mercury alone) exceeded the methylmercury RfD in approximately 10 percent of the watersheds modeled (2011 Final Mercury TSD, Table 2–6), for low-income Black subsistence fisher females in the Southeast, modeled exposures exceeded the RfD in approximately 25 percent of the watersheds. These results suggest a greater potential for adverse effects in low-income Black populations in the Southeast. Similarly, while the general subsistence fisher had exposure levels suggesting an increased risk for MI-mortality risk in 10 percent of the watersheds modeled, two sub-populations were shown to be even further disadvantaged. Low-income Black and white populations in the Southeast and tribal fishers active near the Great Lakes had the potential for increased risk in 25 percent of the watersheds modeled.[70] Both of these results (the neurodevelopmental RfD-based analysis and the analysis of increased MI-mortality risk) suggest that subsistence fisher populations that are racially or culturally, geographically, and income-differentiated could experience elevated risks relative to not only the general population but also the population of subsistence fishers generally. We think these results are relevant in considering the benefits of regulating EGU HAP.

6. Overview of Health and Environmental Effects Associated With Non-HAP Emissions From EGUs

Alongside the HAP emissions enumerated above, U.S. EGUs also emit a substantial quantity of criteria pollutants, including direct $PM_{2.5}$, nitrogen oxides ($NO_X$) (including $NO_2$), and $SO_2$, even after implementation of the ARP and numerous other CAA requirements designed to control criteria pollutants. In the 2011 RIA, for example, the EPA estimated that U.S. EGUs would emit 3.4 million tons of $SO_2$ and 1.9 million tons of $NO_X$ in 2015 prior to implementation of any controls under MATS (*see* Table ES–2). These EGU $SO_2$ emissions were approximately twice as much as all other sectors combined (EPA $SO_2$ Integrated Science Assessment, 2017).[71] These pollutants contribute to the formation of $PM_{2.5}$ and ozone criteria pollutants in the atmosphere, the exposure to which is causally linked with a range of adverse public health effects. $SO_2$ both directly affects human health and is a precursor to $PM_{2.5}$. Short-term exposure to $SO_2$ causes respiratory effects, particularly among adults with asthma. $SO_2$ serves as a precursor to $PM_{2.5}$, the exposure to which increases the risk of premature mortality among adults, lung cancer, new onset asthma, exacerbated asthma, and other respiratory and cardiovascular diseases. Likewise, EGU-related emissions of $NO_X$ will adversely affect human health in the form of respiratory effects including exacerbated asthma. $NO_X$ is a precursor pollutant to both $PM_{2.5}$ and ground-level ozone. Exposure to ozone increases the risk of respiratory-related premature death, new onset asthma, exacerbated asthma, and other outcomes. Fully accounting for the human health impacts of reduced EGU emissions under MATS entails quantifying both the direct impacts of HAP as well as the avoided premature deaths and illnesses associated with reducing these co-emitted criteria pollutants. Similarly,

[69] Note that the RfD-based analysis described in the 2011 Final Mercury TSD and referenced here addressed the potential for neurodevelopmental effects in children and therefore focused on the ingestion of methylmercury by female subsistence fishers. By contrast, the analysis focusing on increased MI-mortality risk for subsistence fishers described in the 2021 Risk TSD and referenced here was broader in scope and encompassed all adult subsistence fishers.

[70] Recognizing challenges in obtaining high-end consumption rates for tribal populations active in areas of high U.S. EGU impact (*e.g.,* Ohio River valley, areas of the central Southeast such as northern Georgia, northern South Carolina, North Carolina and Tennessee) there is the potential for our analysis of tribal-associated risk to have missed areas of elevated U.S. EGU-sourced mercury exposure and risk. In that case, estimates simulated for other subsistence populations active in those areas (*e.g.,* low-income whites and Blacks in the Southeast as reported here and in Table 3 of the 2021 Risk TSD) could be representative of the ranges of risk experienced by tribal populations to the extent that cultural practices result in similar levels of increased fish consumption.

[71] U.S. EPA. *Integrated Science Assessment for Sulfur Oxides—Health Criteria* (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–17–451, December 2017.

U.S. EGUs emit substantial quantities of $CO_2$, a powerful greenhouse gas (GHG): The EPA estimated these emissions at 2.23 million metric tpy in 2015 (2011 RIA, Table ES–2). The environmental impacts of GHG emissions are accounted for through the social cost of carbon,[72] which can be used to estimate the benefits of emissions reductions due to regulation.

Not all of the non-HAP benefits of MATS were quantified or monetized in the 2011 RIA. However, the EPA thoroughly documented these potential effects and identified those for which quantification and/or monetization was possible. Specifically, the EPA calculated the number and value of avoided $PM_{2.5}$-related impacts, including 4,200 to 11,000 premature deaths, 4,700 nonfatal heart attacks, 2,600 hospitalizations for respiratory and cardiovascular diseases, 540,000 lost work days, and 3.2 million days when adults restrict normal activities because of respiratory symptoms exacerbated by $PM_{2.5}$ (2011 RIA, p. ES–3). We also estimated substantial additional health improvements for children from reductions in upper and lower respiratory illnesses, acute bronchitis, and asthma attacks. In addition, we included in our monetized co-benefits estimates the effect from the reduction in $CO_2$ emissions resulting from this rule, based on the interagency SC–$CO_2$ estimates. These benefits stemmed from imposition of MATS and would be coincidentally realized alongside the HAP benefits.

7. Summary of Public Health Hazards Associated With Emissions From EGUs

The EPA is proposing to find that the evidence provided in this section of the preamble, informed where possible with new scientific evidence available since the publication of the 2016 Supplemental Finding, once again demonstrates that HAP released from U.S. EGUs represent a significant public health hazard absent regulation under CAA section 112. As noted earlier, the EPA found that even after imposition of the other requirements of the CAA, EGUs were the largest domestic source of mercury, HF, HCl, and selenium and among the largest domestic contributors of arsenic, chromium, cobalt, nickel, hydrogen cyanide, beryllium, and cadmium. The EPA has documented a wide range of adverse health effects in children and adults associated with mercury including, in particular, neurodevelopmental effects in children exposed prenatally (*e.g.,* IQ, attention, fine motor-function, language, and visual spatial ability) and a range of cardiovascular effects in adults including fatal MI and non-fatal IHD. Non-mercury HAP have also been associated with a wide range of chronic health disorders (*e.g.,* irritation of the lung; decreased pulmonary function, pneumonia, or lung damage; detrimental effects on the central nervous system; and damage to the kidneys). Furthermore, three of the key metal HAP emitted by EGUs (arsenic, chromium, and nickel) have been classified as human carcinogens and there is evidence to suggest that, prior to MATS, emissions from these sources had the potential to result in cancer risks greater than 1-in-1 million.

Further, this section describes the results from several new screening-level risk assessments considering mercury from domestic EGU sources. These risk assessments focused on two broad populations of exposure: (a) Subsistence fishers exposed to mercury through self-caught fish consumption within the continental U.S. and (b) the general U.S. population exposed to mercury through the consumption of commercially-sourced fish (*i.e.,* purchased from restaurants and food stores). The results of these screening-level risk assessments are useful for informing our understanding about the potential scope and public health importance of these impacts, but remaining uncertainties prohibit precise estimates of the size of these impacts currently. For example, numerous studies considering multiple, large cohorts have shown that people exposed to high amounts of mercury are at higher risk of fatal and non-fatal CVD. While U.S. EGUs are only one of multiple global sources that contribute to this mercury exposure, the EPA's screening analysis suggests the potential for U.S. EGU emissions of mercury to contribute to premature mortality in the general U.S. population.

Furthermore, as part of the subsistence fisher analyses, we included scenario modeling for a number of EJ-relevant populations showing that several populations (including low-income Blacks and whites in the Southeast and tribal populations near the Great Lakes) had risk levels that were significantly above the general subsistence fisher population modeled for the entire U.S. As noted earlier, the EPA believes that Congress intended in CAA section 112 to address risks to the most exposed and most sensitive members of the public. These additional risk assessments suggest that there are populations that are particularly vulnerable to EGU HAP emissions, including populations of concern from an EJ standpoint.

MATS plays a critical role in reducing the significant volume and risks associated with EGU HAP emissions discussed above. Mercury emissions have declined by 86 percent, acid gas HAP by 96 percent, and non-mercury metal HAP by 81 percent since 2010 (pre-MATS). *See* Table 4 at 84 FR 2689 (February 7, 2019). MATS is the only Federal requirement that guarantees this level of HAP control from EGUs. At the same time, the concomitant reductions in $CO_2$, $NO_X$, and $SO_2$, also provide substantial public health and environmental benefits. Given the numerous and important public health and environmental risks associated with EGU emissions, the EPA again concludes that the advantages of regulating HAP emissions from this sector are significant. Acknowledging the difficulties associated with characterizing risks from HAP emissions discussed earlier in this section, we solicit comments about the health and environmental hazards of EGU HAP emissions discussed in this section and the appropriate approaches for quantifying such risks, as well any information about additional risks and hazards not discussed in this proposal.

*B. Consideration of Cost of Regulating EGUs for HAP*

1. Introduction

In evaluating the costs and disadvantages of MATS, we begin with the costs to the power industry of complying with MATS. This assessment uses a sector-level (or system-level) accounting perspective to estimate the cost of MATS, looking beyond just pollution control costs for directly affected EGUs to include incremental costs associated with changes in fuel supply, construction of new capacity, and costs to non-MATS units that were also projected to adjust operating decisions as the power system adjusted to meet MATS requirements. Such an approach is warranted due to the nature of the power sector, which is a large, complex, and interconnected industry.

[72] *See https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon_.html:* ''EPA and other federal agencies use estimates of the social cost of carbon (SC–$CO_2$) to value the climate impacts of rulemakings. The SC–$CO_2$ is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide ($CO_2$) emissions in a given year. This dollar figure also represents the value of damages avoided for a small emission reduction (*i.e.,* the benefit of a $CO_2$ reduction). The SC–$CO_2$ is meant to be a comprehensive estimate of climate change damages and includes changes in net agricultural productivity, human health, property damages from increased flood risk, and changes in energy system costs, such as reduced costs for heating and increased costs for air conditioning. However, given current modeling and data limitations, it does not include all important damages.''

This means that while the MATS requirements are directed at a subset of EGUs in the power sector, the compliance actions of the MATS-regulated EGUs can affect production costs and revenues of other units due to generation shifting and fuel and electricity price changes. Thus, the EPA's projected compliance cost estimate represents the incremental costs to the entire power sector to generate electricity, not just the compliance costs projected to be incurred by the coal- and oil-fired EGUs that are regulated under MATS. Limiting the cost estimate to only those expenditures incurred by EGUs directly regulated by MATS would provide an incomplete estimate of the costs of the rule.

Using this broad view, in the 2011 RIA we projected that the compliance cost of MATS would be $9.6 billion per year in 2015.[73] This estimate of compliance cost was based on the change in electric power generation costs between a base case without MATS and a policy case where the sector complies with the HAP emissions limits in the final MATS. The EPA generated this cost estimate using the Integrated Planning Model (IPM).[74] This model is designed to reflect electricity markets as accurately as possible using the best available information from utilities, industry experts, natural gas and coal market experts, financial institutions, and government statistics. Notably, the model includes cost and performance estimates for state-of-the-art air pollution control technologies with respect to mercury and other HAP controls. But there are inherent limits to what can be predicted *ex ante.* And because the estimate was made 5 years prior to full compliance with MATS, stakeholders, including a leading power sector trade association, have indicated that our initial cost projection significantly overestimated actual costs expended by industry. There are significant challenges to producing an *ex post* cost estimate that provides an apples-to-apples comparison to our initial cost projections, due to the complex and interconnected nature of the industry. However, independent analyses provided to the EPA indicate that we may have overestimated the cost of MATS by billions of dollars per year. Moreover, there have been significant changes in the power sector in the time since MATS was promulgated that were not anticipated in either EPA or U.S. Energy Information Administration (EIA) projections at the time.[75] Entirely outside of the realm of EPA regulation, there were dramatic shifts in the cost of natural gas and renewables, state policies, and Federal tax incentives, which have also further encouraged construction of new renewables. These have led to significantly faster and greater than anticipated retirement of coal capacity and coal-fired generation.

While there are significant limitations to producing an *ex post* cost estimate, we have endeavored, where possible, to approximate the extent of our overestimate. The unexpected shifts in the power sector, including the rapid increase in natural gas supplies that occurred after promulgation of MATS, resulted in our projected estimates of natural gas prices to be approximately double what they were in actuality. Incremental natural gas expenditures accounted for approximately 25 percent of the $9.6 billion compliance cost estimate for 2015 in the 2011 RIA. The market trends of the power sector also had major impacts on the number of controls installed and operated on coal-fired EGUs in the years following promulgation of MATS. With respect to just pollution control installation and operation, we project that we overestimated annual compliance costs by at least $2.2 to 4.4 billion per year, simply as a result of fewer pollution controls being installed than were estimated in the 2011 RIA. Though this range of an overestimate is limited to costs associated with pollution controls and operation, those costs made up 70 percent of the projected $9.6 billion figure.

We additionally find that the controls that were installed at MATS-regulated EGUs were likely both less expensive and more effective in reducing pollution than originally projected, resulting in our estimate likely being too high for these reasons as well. Lastly, since completing the 2011 RIA, we have updated several assumptions in our modeling that would also have resulted in a lower cost estimate had they been incorporated into our modeling at the time of the rule. Taking into account the above considerations, we believe we overestimated the cost of MATS by billions of dollars.

We next examine the projected cost of MATS—both total cost and specific types of costs—using sector-level metrics that put those cost estimates in context with the economics of the power sector. The reason we examine these metrics is to better understand the disadvantages that expending these costs had on the EGU industry and the public more broadly, just as on the benefits side we look beyond the volume of pollution reductions to the health and environmental advantages conferred by the reductions.

For purposes of these analyses, we use the 2011 RIA projections, keeping in mind our newer analyses, which indicated that those projections were almost certainly overestimated. Specific to the power sector, we evaluate the projected costs of the rule to revenues from electricity sales across nearly 20 years, and we compare the projected expenditures required under the rule with historic expenditures by the industry over the same time period. We additionally evaluate broader impacts on the American public by looking at projected effects of MATS on retail electricity prices and our analyses of whether the power sector could continue to provide adequate and reliable electricity after imposition of the rule. We find that, when viewed in context, the projected costs of MATS to both the power sector and the public were small relative to these metrics and well within the range of historical variability. Moreover, experience has borne out our projection that the EGU sector could continue to provide adequate, reliable, and affordable electricity to the American public after the imposition of the rule.

Section III.B.2 contains our discussion of the ways in which the compliance costs for MATS were likely overestimated. Section III.B.3 expands upon and re-evaluates the cost metrics used in the 2016 Supplemental Finding by adding post-promulgation information to our analysis, and we discuss impacts on power sector generating capacity. In section III.B.4, we propose to reaffirm additional cost considerations regarding the availability and cost of control technologies discussed in earlier rulemakings, and in section III.B.5, we provide our proposed conclusions regarding the costs, or disadvantages, of regulating HAP from EGUs.

[73] All costs were reported in 2007 dollars.

[74] IPM, developed by ICF International, is a state-of-the-art, peer-reviewed, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. IPM provides forecasts of least-cost capacity expansion, electricity dispatch, and emission control strategies while meeting electricity demand and various environmental, transmission, dispatch, and reliability constraints. The EPA has used IPM for over 2 decades to understand power sector behavior under future business-as-usual conditions and to evaluate the economic and emission impacts of prospective environmental policies.

[75] In 2009, coal-fired generation was by far the most important source of utility scale generation, providing more power than the next two sources (natural gas and nuclear) combined. By 2016, natural gas had passed coal-fired generation as the leading source of generation in the U.S. While natural gas-fired generation, nuclear generation and renewable generation have all increased since 2009, coal-fired generation has significantly declined.

2. Compliance Cost Projections in the 2011 RIA Were Likely Significantly Overestimated

In issuing this proposal, the EPA finds itself in a position Congress was not likely to have contemplated when it promulgated the 1990 Amendments. The statute contemplated that the EPA would have completed the required studies and presumably made its determination more than 20 years ago. Due to litigation and multiple changes of administration following *Michigan,* we are, at this point, nearly 10 years after promulgation of the regulation about which we are making a threshold determination, and 5 years after full implementation of that regulation. The vast majority of MATS-affected sources were required to be in compliance with the rule's requirements by April 2016, and installation of new controls–or upgrades to existing controls–were in place by 2017.[76] This means we now have on hand unit-level data regarding installations, a clearer picture about market trends, and updated, more accurate assumptions that, taken together, produce a very different picture of the actual costs of MATS than what we projected when we reaffirmed the appropriate and necessary determination and promulgated the rule in 2012. Therefore, while the Agency considers that the information that was available at the time of MATS promulgation provided a valid analytical basis for the threshold appropriate and necessary determination, because many years have elapsed since then, the EPA believes it is reasonable to examine how the power sector has evolved since MATS was finalized and, with the benefit of hindsight, compare important aspects of the 2011 RIA projections with what actually happened since MATS was promulgated. Because our obligation under CAA section 112(n)(1)(A) is to fully consider the advantages and disadvantages of regulating a large, critically important industry, whose role impacts the lives of every American, we think it is important to evaluate and consider the best, currently available information, even if, as discussed in sections III.B.3 and 4, the pre-existing record supports the same conclusion. This *ex post* examination demonstrates that the EPA almost certainly significantly overestimated compliance costs in the 2011 RIA, which further supports the determination that regulation is appropriate and necessary after considering cost. We also do not view this updated, post-hoc evaluation of what happened post-promulgation as undermining the record we established in 2012. Models are not invalidated ''solely because there might be discrepancies between those predictions and the real world. That possibility is inherent in the enterprise of prediction.'' *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 135–36 (D.C. Cir. 2015).

In an ideal world, with perfect information, we would be able to generate an *ex post* analysis of regulatory costs that could be compared to our *ex ante* cost estimate prepared at the time MATS was issued. However, it is extremely challenging to produce rigorous retrospective estimates of regulatory costs. A literature review and series of case studies performed by EPA staff provides insights on how analysts can perform retrospective cost analysis.[77] Kopits *et al.* (2015) identifies several challenges associated with *ex post* cost assessments, including data limitations with respect to how facilities chose to comply with regulations and comprehensive facility-level pollution abatement costs. A key component to a rigorous retrospective analysis noted by the authors that can be particularly difficult to achieve is an accurate definition of the counterfactual, that is, what would have occurred absent the rule. It is this counterfactual that provides the baseline against which the incremental costs of regulation are estimated.

In the case of MATS, to construct an estimate of *ex post* implementation costs that is directly comparable to the *ex ante* 2011 RIA cost estimate, we would first need to accurately attribute changes in the power sector that were due to MATS requirements rather than to market and technological changes, other regulations, or, importantly, combinations of these factors (*i.e.,* properly specify the counterfactual). Second, we would need actual information of the incremental costs that had been associated with facility-level operational changes due to MATS, such as observed changes in dispatch, actual fuel consumption, and how controls in MATS-affected units were actually operated. Even the operation of non-MATS affected units would be relevant to such an analysis, because operational decisions are interconnected on the grid via dispatch decisions as well as through fuel markets. While there may be approaches such as econometric analysis, simulation modeling, and event study analysis that could capture and estimate components of the problem identified above and derive an estimate of *ex post* MATS costs, the approach would very likely require different methods and assumptions than the 2011 RIA estimates which were based on the comparison of two forward-looking sets of projections. Even if we undertook such additional analysis or modeling, ultimately we would still only be able to provide a new *estimate* of regulatory costs, not an *actual* cost. Given how challenging it is to produce rigorous retrospective estimates of regulatory costs, particularly at a system-level, an *ex post* analysis is better suited to comparing particular aspects of the analysis, which can help us understand whether costs in the 2011 RIA were over- or under-estimated and can yield a general sense of how much reality diverged from the projection, than to attempting to generate a new and precise ''actual'' total compliance cost estimate for MATS.

Estimating retrospective costs for a rule of the magnitude of MATS is an especially significant challenge because the rule regulates hundreds of units within a complex, interdependent, and dynamic economic sector. Units within the power sector are also subject to many regulatory requirements and other economic drivers. While we can observe the decisions of the sector and individual units in terms of decisions on controls, fuels, and retirement, we cannot pinpoint the reason(s) behind each unit-level decision. With respect to identifying the counterfactual against which to evaluate retrospective compliance costs, several unforeseen factors since MATS promulgation have driven changes in the power sector that have led to the composition of the current fleet being different than the fleet projected in the 2011 RIA. For example, dramatic increases in the supply of natural gas, along with advances in cost and performance of renewable generation technologies and low electricity demand growth, none of which were fully anticipated in the 2011 RIA, have made strong contributions to shifts away from coal-fired generation.[78] [79] Additionally, other

[76] Affected sources were required to be in compliance with the requirements in MATS within 3 years after the effective date of the rule (*i.e.,* by April 2015). However, sources were allowed to request an additional year to comply with the rule and the vast majority of sources were required to be in compliance with the rule's requirements by April 2016. We therefore think 2017 is a reasonable year in which to analyze installed controls on the EGU fleet.

[77] Kopits, E., A. McGartland, C. Morgan, C. Pasurka, R. Shadbegian, N. B. Simon, D. Simpson and A. Wolverton (2015). *Retrospective cost analyses of EPA regulations: a case study approach.* Journal of Benefit-Cost Analysis 5(2): 173–193.

[78] Linn, J. and K. McCormack (2019). *The Roles of Energy Markets and Environmental Regulation in Reducing Coal-Fired Plant Profits and Electricity*

EPA regulations such as the Disposal of Coal Combustion Residuals from Electric Utilities final rule, the Steam Electric Power Generating Effluent Guidelines—2015 Final Rule, and the 2020 Steam Electric Reconsideration Rule, were promulgated after MATS.[80] While the compliance periods of these rules all postdate the MATS compliance date, utilities are likely to consider multiple regulations simultaneously when making planning decisions, a likelihood that also complicates the identification of the counterfactual scenario of a world without MATS that is needed to generate an *ex post* incremental cost estimate of MATS that would be directly comparable to the *ex ante* 2011 RIA cost estimate.

Even though it is extremely challenging to produce the type of *ex post* incremental cost estimate discussed above, several stakeholders have conducted analyses, focusing on different components of the regulation's cost, to assess actual costs of compliance. While none of these estimates can be precisely compared against the EPA *ex ante* estimates because they use different methods than the power sector modeling the EPA used in the 2011 RIA, all of the independent analyses suggested that the actual compliance costs expenditures were significantly lower—by billions of dollars—than the EPA estimated in the 2011 RIA.

First, a 2015 analysis by Andover Technology Partners focused on the capital and operating costs associated with the actual installation and operation of pollution control equipment at MATS-regulated units and made two key findings: the number of installed controls was significantly lower than the number of controls that was projected in the 2011 RIA and the cost of the installed controls was generally lower than the control costs that the EPA assumed in the 2011 RIA modeling. Based on these findings, the study estimated that the EPA's projected cost of compliance was over-estimated by approximately $7 billion.[81] [82] In other words, the Andover Technology Partners estimated that the EPA's projected cost was approximately four times higher than their retrospective estimate of cost, which they estimated to be approximately $2 billion per year.

Second, a 2017 study performed by M.J. Bradley & Associates (MJB&A) used information from the EIA and estimated that owners and operators of coal-fired EGUs incurred total capital expenditures on environmental retrofits of $4.45 billion from December 2014 to April 2016.[83] To the EPA's understanding, the MJB&A cost estimate represents total upfront capital costs (not ongoing operating and maintenance expenditures), and is not annualized as was the capital expenditure in the 2011 RIA-based projected cost estimate. For comparison, the estimated total upfront (not annualized) capital expenditures underpinning the 2011 RIA annual compliance cost estimate is about $36.5 billion, which is more than eight times higher than the MJB&A estimates. This result suggests that the capital cost component of the 2011 RIA cost projections was significantly overestimated, potentially by a factor of more than eight.

Third, the Edison Electric Institute (EEI), the association that represents all U.S. investor-owned electric companies, estimated that by April 2019, owners and operators of coal- and oil-based EGUs incurred *cumulative* (not annual) compliance costs of more than $18 billion to comply with MATS, including both capital and operations and maintenance costs since MATS became effective in April 2012.[84] In order to provide a simple comparison between the EEI figure, which was incurred over 7 years, and the annualized amount presented in the 2011 RIA ($9.6 billion), we can divide the EEI figure by 7 to estimate an average annual amount of approximately $2.6 billion, which is similar to the Andover Technology Partners estimate of approximately $2 billion. Also in line with the Andover Technology Partners estimate, EEI's estimate suggests that the annual costs related to MATS compliance were overestimated in the 2011 RIA by approximately $7 billion. While there is some uncertainty in the amount of time over which those costs were incurred, as well as the exact nature of those expenditures, it is clear that the information provided by EEI supports a conclusion that the costs of compliance with MATS were significantly lower than the Agency's projections.

In summary, it is the EPA's understanding that two of these studies indicate that the 2011 RIA may have overestimated annual compliance costs by approximately $7 billion, and the third study finds that the projected total upfront capital costs may have been overestimated by a factor of more than eight. While each of these retrospective cost estimates is developed from bases that are dissimilar from one another and, in particular, from how the EPA developed the prospective cost estimates in the 2011 RIA, each of the independent analyses indicate that the costs of MATS are likely significantly less than the EPA estimated in the 2011 RIA.

For this proposal, the EPA has evaluated whether the *ex ante* estimates in the 2011 RIA were likely accurate, overestimated, or underestimated, and the details of the EPA's new analysis are contained in the docketed TSD (referred to herein as the ''Cost TSD'').[85] Consistent with our systems-level approach, we begin our analysis with an evaluation of natural gas expenditures during the relevant time period. The rapid decrease in the price of natural gas during this time period affected U.S. power generation profoundly, including U.S. EGU fuel expenditures; this has significant implications for our *ex post* analysis because natural gas expenditures constituted approximately 25 percent of the projected 2015 compliance costs in the 2011 RIA.[86] These market shifts in the industry also impacted expenditures associated with the installation and operation of pollution control equipment at MATS-affected facilities. Those costs constituted a majority—about 70 percent—of the projected annual compliance costs in 2015. The following

*Sector Emissions.* RAND Journal of Economics 50: 733–767.

[79] Coglianese, J., *et al.* (2020). *The Effects of Fuel Prices, Environmental Regulations, and Other Factors on U.S. Coal Production, 2008–2016.* The Energy Journal 41(1): 55–82.

[80] 85 FR 53516 (August 28, 2020), 80 FR 67838 (November 3, 2015), and 85 FR 64650 (October 13, 2020), respectively.

[81] Declaration of James E. Staudt, Ph.D., CFA, at 3, *White Stallion Energy Center* v. *EPA,* No. 12–1100 (DC Cir., December 24, 2015). Also available at Docket ID Item No. EPA–HQ–OAR–2009–0234–20549.

[82] In addition to the 2015 study, Andover Technology Partners produced two other analyses in 2017 and 2019, respectively, that estimated the ongoing costs of MATS. The 2017 report estimated that the total annual operating cost for MATS-related environmental controls was about $620 million, an estimate that does not include ongoing payments for installed environmental capital. The 2019 report estimates the total annual ongoing incremental costs of MATS to be about $200 million; again, this estimate does not include ongoing MATS-related capital payment. The 2017 report is available in Docket ID Item No. EPA–HQ–OAR–2018–0794–0794. The 2019 report is available in Docket ID Item No. EPA–HQ–OAR–2018–0794–1175.

[83] Available in Docket ID Item No. EPA–HQ–OAR–2018–0794–1145.

[84] Available in Docket ID Item No. EPA–HQ–OAR–2018–0794–2267.

[85] U.S. EPA. 2021. *Supplemental Data and Analysis for the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Revocation of the 2020 Reconsideration, and Affirmation of the Appropriate and Necessary Supplemental Finding; Notice of Proposed Rulemaking (''Cost TSD'').*

[86] We projected that regulation of coal- and oil-fired EGUs under MATS would induce units to switch to natural gas, which in turn would increase the price of natural gas and the cost of those expenditures.

sections closely examine these two components of the compliance cost and use available information to evaluate whether the projected compliance costs reported in the 2011 RIA were likely higher or lower than actual costs. We also review important cost assumptions used in the 2011 RIA. Taken together, this suite of quantitative and qualitative evaluations indicates that the projected costs in the 2011 RIA were almost certainly significantly overestimated. We find that the 2011 RIA's estimate of the number of installations alone led to an overestimate of about $2.2 to $4.4 billion, and that if recent updates to the cost and performance assumption for pollution controls had been reflected in the 2011 RIA modeling, the projected compliance costs would likely have been even lower (suggesting the overestimate could be greater than $4.4 billion).

a. Natural Gas Supply

The natural gas industry has undergone significant change in recent years. Starting in the mid-2000s, technological changes in natural gas drilling and extraction initiated major market changes that resulted in significant increases to domestic supplies of natural gas. As these technologies have continued to advance, they have had a lasting impact on natural gas markets, resulting in major shifts in the economics of electric sector operations given the abundant supply of natural gas at relatively low costs. This section summarizes these changes and the implications for the cost projection presented in the 2011 RIA.

In 2005, the EIA estimated that proved reserves of natural gas were 213 trillion cubic feet (tcf).[87] In 2019, the estimate of proved reserves was 495 tcf, an increase of 132 percent. The market effects of this major supply shift were profound across the economy, but especially for the power sector. By the end of 2019, aided by advances in drilling and hydraulic fracturing techniques, natural gas production from tight and shale gas formations was the major source of domestic production (*see* Table 1 below) and had increased three-fold from 2005 production levels.

TABLE 1—U.S. NATURAL GAS PRODUCTION, BY SOURCE

[Trillion cubic feet]

| Year | Tight/shale gas | Other lower 48 onshore | Lower 48 offshore | Other |
|---|---|---|---|---|
| 2005 | 7.2 | 5.1 | 3.4 | 2.3 |
| 2006 | 8.0 | 5.1 | 3.2 | 2.3 |
| 2007 | 9.0 | 4.9 | 3.1 | 2.3 |
| 2008 | 10.3 | 4.9 | 2.6 | 2.4 |
| 2009 | 11.1 | 4.5 | 2.7 | 2.4 |
| 2010 | 12.4 | 4.2 | 2.5 | 2.2 |
| 2011 | 14.8 | 4.0 | 2.0 | 2.1 |
| 2012 | 16.7 | 3.7 | 1.6 | 2.0 |
| 2013 | 17.6 | 3.5 | 1.4 | 1.7 |
| 2014 | 19.5 | 3.4 | 1.3 | 1.6 |
| 2015 | 21.0 | 3.2 | 1.4 | 1.5 |
| 2016 | 21.1 | 2.8 | 1.3 | 1.4 |
| 2017 | 22.2 | 2.7 | 1.1 | 1.3 |
| 2018 | 25.7 | 2.7 | 1.0 | 1.3 |
| 2019 | 29.3 | 2.4 | 1.0 | 1.2 |
| 2020 | 29.2 | 2.3 | 1.2 | 1.2 |

Source: U.S. EIA, *https://www.eia.gov/energyexplained/natural-gas/where-our-natural-gas-comes-from.php,* accessed July 25, 2021.

**Note:** ''Other'' includes production from Alaska and Coalbed Methane sources.

As a result, the natural gas market underwent a long period of sustained low prices (*see* Table 2 below). These market shifts were not fully anticipated or predicted by observers, as indicated by natural gas futures prices at the time of MATS promulgation. Although these changes took root in the mid-2000s, the lasting market disruption would take more time to cement itself. From 2010 through 2019, the U.S became one of the world's leading producers of natural gas, breaking domestic production records year-on-year through the decade, while maintaining record-low prices. During this timeframe, the U.S. shifted from a *total* net energy importer to an exporter,[88] while maintaining some of the lowest relative natural gas prices globally.[89]

TABLE 2—NATURAL GAS PRICES

| Year | NYMEX natural gas Henry Hub natural gas futures ($/MMBtu), annual average, as of: 2011–03–16 | NYMEX natural gas Henry Hub natural gas futures ($/MMBtu), annual average, as of: 2011–12–21 | Henry Hub spot natural gas index annual average price ($/MMBtu) |
|---|---|---|---|
| 2005 | | | 8.63 |
| 2006 | | | 6.74 |
| 2007 | | | 6.96 |

[87] *U.S. Crude Oil and Natural Gas Proved Reserves, Year-end 2019* (Table 9: U.S. proved reserves of natural gas). EIA, January 11, 2021 release available at *https://www.eia.gov/naturalgas/crudeoilreserves.* Accessed July 23, 2021.

[88] *Monthly Energy Review,* EIA (June 24, 2021) and *Today in Energy* (''U.S. total energy exports exceed imports in 2019 for the first time in 67 years''), EIA (April 20, 2020) available at *https://www.eia.gov/todayinenergy/detail.php?id=43395.* Accessed July 23, 2021.

[89] BP, *Statistical Review of World Energy 2021* available at *https://www.bp.com/en/global/corporate/energy-economics/statistical-review-of-world-energy.html.* Accessed July 23, 2021.

TABLE 2—NATURAL GAS PRICES—Continued

| Year | NYMEX natural gas Henry Hub natural gas futures ($/MMBtu), annual average, as of: 2011–03–16 | NYMEX natural gas Henry Hub natural gas futures ($/MMBtu), annual average, as of: 2011–12–21 | Henry Hub spot natural gas index annual average price ($/MMBtu) |
|---|---|---|---|
| 2008 | | | 8.90 |
| 2009 | | | 3.94 |
| 2010 | | | 4.37 |
| 2011 | 4.24 | | 4.00 |
| 2012 | 4.91 | 3.43 | 2.75 |
| 2013 | 5.31 | 4.07 | 3.73 |
| 2014 | 5.67 | 4.43 | 4.37 |
| 2015 | 6.04 | 4.66 | 2.63 |
| 2016 | 6.36 | 4.90 | 2.51 |
| 2017 | 6.67 | 5.16 | 2.98 |
| 2018 | 6.97 | 5.43 | 3.16 |
| 2019 | 7.25 | 5.70 | 2.56 |
| 2020 | 7.50 | 5.96 | 2.03 |
| 2021 | 7.76 | 6.23 | |
| 2022 | 8.02 | 6.50 | |
| 2023 | 8.28 | 6.78 | |
| 2024 | | 7.06 | |

Source: Annual Average Henry Hub Price, EIA. NYMEX price, from S&P Global data. 2015 data from 2011 RIA, Chapter 3.

The EPA projected a 2015 natural gas price of roughly $5/MMBtu when MATS was finalized in December 2011, which was a reasonable expectation based on prevailing market conditions at that time. However, natural gas prices post-MATS promulgation ended up being considerably lower than anticipated, which resulted in major shifts in the economics of fossil fuel-fired electric generating technologies (*see* Table 2 above and Chart A–1 in the Cost TSD). From 2005 through 2010, annual average natural gas prices (at Henry Hub) averaged about $6.60/MMBtu. Several years later, as MATS compliance began, prices averaged roughly $2.75/MMBtu for the years 2015 through 2019. This market shift greatly changed the economics of power plant operation for fossil fuel-fired facilities, with the electric sector surpassing the industrial sector to become the largest consumer of natural gas (38 percent of the total in 2020),[90] and gas-fired generators becoming the leading source of electric generation in the electric sector, representing 40 percent of total generation in 2020.[91]

The modeling supporting the 2011 RIA did not anticipate this major change in natural gas supply, which has clearly had a significant impact on the electric power sector and those sources covered by MATS. While we do not quantify the impact this change would have on the projected compliance costs associated with incremental changes in natural gas use and price (about 25 percent of the total projected compliance cost in the 2011 RIA), we note that any closures of covered units that occurred as a result of the changed relative economics of fuel prices would decrease the MATS-related compliance costs for the sector. These closures reduced the amount of control capacity necessary for compliance with MATS, and we estimate below a range of costs associated with the overestimation of control installations in the 2011 RIA.

Several researchers have investigated the role of relative fuel prices as a factor in decisions that were made regarding closures of coal-fired units around 2015. Generally, these studies attribute closures primarily to the decrease in natural gas prices, and they also note smaller factors such as advances in the cost and performance of renewable generating sources, lower-than-anticipated growth in electricity demand, and environmental regulations.

For example, Linn and McCormack (2019) developed a simulation model of the U.S. Eastern Interconnection that reproduced unit operation, emissions, and retirements over the 2005–2015 period. The authors use this model to explain the relative contributions of demand, natural gas prices, wind generation, and environmental regulations, including MATS, to the changes in the share of coal in electricity generation. The results showed that lower electricity consumption and natural gas prices account for a large majority of the declines in coal plant profitability and resulting retirements. The authors found that the environmental regulations they modeled, $NO_X$ emissions caps and MATS, played a relatively minor role in declines of coal plant profitability and retirements.

Additionally, Coglianese *et al.* (2020) developed a statistical modeling approach to enable the decomposition of changes in U.S. coal production from 2008–2016 into changes due to a variety of factors, including changes in electricity demand, natural gas prices relative to coal, renewable portfolio standards, and environmental regulations that affect coal-fired plants. The results indicated that declines in natural gas prices explained about 92 percent of the decrease in coal production between 2008 and 2016. Air regulations, including MATS, explained about 6 percent of the drop in coal production. The study attributed about 5.2 GW of coal-fired EGU retirements to MATS.

These studies both demonstrate that the decrease in natural gas prices played a significant role in closures of coal-fired EGUs. While we do not quantify the impact this change had on the projected costs included in the 2011 RIA, we note that any closures of covered units that occurred as a result of the dramatically changed relative economics of fuel prices would decrease the MATS-related compliance costs for the sector.

[90] Table 4.3, *Monthly Energy Review,* EIA, April 2021, available at *https://www.eia.gov/totalenergy/data/monthly/archive/00352104.pdf.*

[91] EIA, Electricity Data Browser, Net generation, United States, all sectors, annual, available at *https://www.eia.gov/electricity/data/browser/.*

b. Projected Versus Observed Pollution Control Installations

The 2011 RIA reported a sector-level compliance cost of $9.6 billion annually in 2015. The majority of those costs—about 70 percent—represented the incremental annualized capital and annual operation and maintenance (O&M) costs associated with installation and operation of pollution controls for compliance with MATS at coal steam units. Given the time that has passed, we can now compare the incremental projected pollution control capacity reported in the 2011 RIA with available information regarding actual (observed) control installations. For this proposal, therefore, the EPA has compared observed installations and costs over 2013–2016 to unit-level estimates of the control installation capacity and associated costs presented in the 2011 RIA. This analysis demonstrates, subject to the caveats and uncertainty discussed below, that the 2011 RIA likely overestimated total pollution control retrofit capacity that would occur in response to MATS and, thus, likely overestimated MATS compliance costs. For example, the analysis that follows demonstrates that fabric filter (FF) systems—which are an expensive and capital-intensive control technology—were only installed on less than one-third of the capacity anticipated in the 2011 RIA analysis.

This comparison of projected to observed control capacity installations relies on the simplifying assumption that all dry scrubbers (*e.g.,* dry FGD systems), dry sorbent injection (DSI) systems, activated carbon injection (ACI) systems, and FF systems installed during the 2013–2016 period were installed for compliance with the MATS emissions limits. This assumption is necessitated by the absence of comprehensive data on the specific reasons EGUs installed pollution control equipment. While assuming pollution controls of these types that were installed in this period are singularly attributable to MATS requirements is a reasonable assumption for this analysis, it is a highly conservative assumption given that some of the observed installations likely occurred in response to other regulations to control criteria air pollutants (*e.g.,* Cross-State Air Pollution Rule, Regional Haze, Federal implementation plans, or state implementation plans) or enforcement actions (*e.g.,* consent decrees). Because some of the observed installations in this analysis likely resulted from non-MATS requirements, the approach potentially over-attributes the amount of pollution controls built specifically for MATS compliance, thereby leading to an overestimate of the control costs associated with MATS.

Table 3 presents the findings of this analysis in capacity terms. The total capacity projected to retrofit with each control in the 2011 RIA is reported for the base case (*i.e.,* projected future conditions absent MATS) and under MATS. The difference is presented in the 'Projected Incremental Controls' column. So, for example, in the 2011 RIA the EPA projected that there would be an incremental 20.3 GW of capacity retrofitting with dry FGD that is attributable to MATS. We compare the projected incremental controls capacity value to the observed installations capacity value. Note that we are unable to estimate the total capacity of observed upgrades to electrostatic precipitators (ESP) and scrubbers due to a lack of available data regarding such upgrades. For additional information, *see* the docketed Cost TSD.

TABLE 3—PROJECTED VS. OBSERVED CAPACITY

[Gigawatts (GW)]

| Pollution control retrofit | Base case | MATS | Projected incremental controls | Observed installations (2013–2016) | Difference: Observed minus projected (2013–2016) | Percent difference: Observed minus projected (2013–2016) |
|---|---|---|---|---|---|---|
| Dry FGD | 4.6 | 24.8 | 20.3 | 16.0 | −4.3 | −21 |
| DSI | 8.6 | 52.5 | 43.9 | 15.8 | −28.1 | −64 |
| ACI | 0 | 99.3 | 99.3 | 96.1 | −3.2 | −3 |
| FF | 12.7 | 114.7 | 102 | 31.4 | −70.6 | −69 |
| ESP Upgrade | 0 | 33.9 | 33.9 | N/A | N/A | N/A |
| Scrubber Upgrade | 0 | 63.1 | 63.1 | N/A | N/A | N/A |

Source: Projected Controls: 2011 RIA; Observed Installations: NEEDS v.5.16.

**Note:** FF installations include installations specifically related to PM control, as well as installations included with dry scrubber, DSI, and some ACI retrofits in the modeling. Totals may not sum due to rounding.

This analysis demonstrates that projected incremental capacity of dry FGD, DSI, ACI, and FF was likely significantly overestimated in the 2011 RIA. The capacities of actual installed control technologies are lower, often significantly lower, than projected (and again, this analysis attributes *all* control installations of certain types during this time period to MATS, even though some portion of those installations were likely made in whole or in part due to other regulations). For example, the installed DSI capacity is about two-thirds lower than was projected. The difference between observed installed control capacities and what we projected those incremental control capacities would be translates directly into significantly lower costs than estimated. Because the vast majority of compliance costs in the 2011 RIA were related to the installation and operation of pollution controls, and because significant deployment of any higher-cost compliance strategies did not occur, the large differences observed in Table 3 suggest that the projected compliance costs were likely significantly overestimated as well. For example, approximately $2 billion was estimated to be attributable to the installation and operation of DSI controls (21 percent of the total annual projected costs of MATS), when in actuality, only one-third of those installations occurred (and some were likely attributable to regulations other than MATS).

We also conduct an analysis of the approximate costs related to the overestimate of projected incremental pollution controls. This analysis is discussed in detail in the Cost TSD. Specifically, we compared observed installations over 2013–2016 to unit-level estimates of the control installation capacity and associated costs presented in the 2011 RIA to develop a range of the potential overestimate of compliance costs related

to projected control installations that did not occur.

As result of this analysis, we find that based on this one variable—the number of control technology installations—the 2011 RIA overestimated control costs by about $2.2 to $4.4 billion (or 2.7 times). If recent updates to the cost and performance assumptions for pollution controls had been reflected in the 2011 RIA modeling, the projected compliance costs would likely have been even lower (suggesting the overestimate could be greater than $4.4 billion). The EPA did not quantify advances in cost and performance of control technology between the time of the EPA's modeling and implementation of the rule due to uncertainty. We note that this may be one reason that the Andover Technology Partners' overestimate for control costs of $7 billion exceeds the EPA's range of overestimates ($2.2–4.4 billion) for the same control and operation costs. The next section helps explain some of the difference quantified above, and provides further qualitative evidence supporting the EPA's conclusion that the 2011 RIA likely significantly overestimated the compliance costs associated with meeting MATS requirements.

c. 2011 RIA Modeling Assumptions

Since promulgation of MATS, the EPA has found it necessary to update some of the modeling assumptions used in the IPM modeling that informed the RIA cost estimate, in order to capture the most recently available information and best reflect the current state of the power sector. Several of these recent updates are directly related to pollution control retrofits that were projected to be installed for MATS in the 2011 RIA. Had these updates been reflected in our modeling, it likely would have projected fewer controls needing to be installed and therefore a lower cost estimate overall.

The full suite of assumptions utilized in the IPM modeling are reported in the model documentation, which provides additional information on the assumptions discussed here as well as all other assumptions and inputs to the model.[92] Updates specific to MATS modeling are also in the IPM 4.10 Supplemental Documentation for MATS.[93] As was included in the 2011 RIA discussion regarding uncertainty and limitations of the power sector modeling analysis (Section 3.15), the cost and emissions impact projections did not take into account the potential for advances in the capabilities of pollution control technologies or reductions in their costs over time. EPA modeling cannot anticipate in advance the full spectrum of compliance strategies that the power sector may innovate to achieve required emission reductions, and experience has shown that regulated industry often is able to comply at lower costs through innovation or efficiencies. Where possible, the EPA designs regulations to assure environmental performance while preserving flexibility for affected sources to design their own solutions for compliance. Industry will employ an array of responses, some of which regulators may not fully anticipate and will generally lead to lower costs associated with the rule than modeled in *ex ante* analysis. *See, e.g.,* section III.D of this preamble, discussing how the actual cost of the ARP was up to 70 percent less than what had been estimated.

A first example regards the assumptions of HCl removal for certain types of coal. When lignite and subbituminous coals are combusted, the chemistry of coal ash alkalinity removes HCl emissions. The 2011 RIA modeling assumed a 75 percent reduction of HCl emissions from lignite and subbituminous coals.[94] Upon subsequent review of available data, the EPA updated this assumption to 95 percent HCl removal.[95] This revised assumption regarding improved HCl removal from coal ash alkalinity effectively lowers uncontrolled HCl emissions rates in the projections and is a better reflection of actual removal rates observed by EGUs combusting subbituminous and/or lignite coal. This updated assumption, had it been used in the 2011 RIA modeling, would have significantly decreased the incremental capacity of acid gas controls (*e.g.,* DSI, dry FGD) that the model projected to be needed for compliance with the MATS acid gas limits.[96] The lower projection for controls would in turn have resulted in a lower cost estimate.

For a second example, the EPA updated the DSI retrofit cost methodology used in our power sector modeling. The 2011 RIA compliance cost projections assumed an $SO_2$ removal rate of 70 percent and a corresponding HCl removal effect of 90 percent[97] based on a technical report, developed by Sargent and Lundy in August 2010.[98] These assumptions have been updated to reflect an $SO_2$ removal rate of 50 percent and a corresponding HCl removal effect of 98 percent for units with FF in the EPA's recent modeling,[99] based on an updated technical report from Sargent and Lundy.[100]

These revised assumptions, which better reflect the actual cost and performance of DSI, would reduce the variable costs significantly, by about one-third at a representative plant,[101] because less sorbent is required to achieve the same amount of HCl reduction. If the EPA had been able to use this new information in the 2011 RIA modeling, the projected compliance costs would have been lower, reflecting the reduced sorbent necessary to achieve the MATS emission limits. Furthermore, we note that while these modeling assumptions are based on a single sorbent (trona), alternative sorbents are available, potentially at a lower cost for some units.

A third example relates to the assumed cost of ESP upgrades. In the 2011 RIA modeling, the EPA assumed that a range of upgrades would be necessary at units with existing ESP controls in order to meet the MATS PM standard. The EPA assumed the cost of these upgrades ranged from $55/kilowatt (kW) to $100/kW (in 2009 dollars). However, new evidence suggests that many ESP upgrades were installed and are available at less than $50/kW.[102]

These examples highlight the uncertainty inherent in *ex ante* compliance cost projections, and contribute additional evidence that the projected compliance costs presented in

[92] *See https://www.epa.gov/airmarkets/ipm-analysis-proposed-mercury-and-air-toxics-standards-mats.* Accessed July 23, 2021.

[93] *See https://www.epa.gov/airmarkets/documentation-supplement-base-case-v410mats.* Accessed July 23, 2021.

[94] *Id.*

[95] *See https://www.epa.gov/sites/default/files/2019-03/documents/chapter_5.pdf.* Accessed July 23, 2021.

[96] While we are unable to quantify precisely the impact that updating this assumption would have on the projected compliance costs, we can observe that most incremental DSI capacity (about 40 GW) would not require DSI controls in the 2011 RIA modeling, holding all else constant.

[97] *See https://www.epa.gov/sites/production/files/2015-07/documents/updates_to_epa_base_case_v4.10_ptox.pdf.* Accessed July 23, 2021.

[98] *See Dry Sorbent Injection Cost Development Methodology* at *https://www.epa.gov/sites/production/files/2015-07/documents/append5_4.pdf.* Accessed July 23, 2021.

[99] *See https://www.epa.gov/airmarkets/documentation-epa-platform-v6-november-2018-reference-case-chapter-5-emission-control.* Accessed July 23, 2021.

[100] *See Dry Sorbent Injection for $SO_2$/HCl Control Cost Development Methodology* at *https://www.epa.gov/sites/production/files/2018-05/documents/attachment_5-5_dsi_cost_development_methodology.pdf.* Accessed July 23, 2021.

[101] Based on a 500 MW plant with a heat rate of 9,500 Btu/kWh burning bituminous coal.

[102] *Analysis of PM and Hg Emissions and Controls from Coal-Fired Power Plants.* Andover Technology Partners (August 19, 2021), available in the rulemaking docket.

the 2011 RIA were likely overestimated and that actual compliance costs for MATS in 2015 were likely significantly less than the $9.6 billion estimate.

d. Conclusion That the 2011 RIA Costs Were Overestimated

After reviewing this suite of quantitative and qualitative updates and considering studies that were performed by outside entities, the EPA concludes that the available *ex post* evidence points to significantly lower costs of compliance for the power sector under MATS than suggested by the *ex ante* projections in the 2011 RIA. There are numerous reasons for this, and chief among them is the fact that the natural gas industry has undergone profound change in recent years. Following the promulgation of MATS, natural gas supply increased substantially, leading to dramatic price decreases that resulted in major shifts in the economics of fossil fuel-fired electric generating technologies. The 2011 RIA modeling did not fully anticipate this historic change in natural gas supply and the related decrease in natural gas prices. As a result of this and other fundamental changes in the industry, we see a very different pattern of control installations than was projected: [103]

- 21 percent less capacity of dry FGD than projected;
- 64 percent less capacity of DSI than projected;
- 3 percent less capacity of ACI than projected;
- 69 percent less capacity of FF than projected; and
- Likely fewer ESP and scrubber control upgrades than projected.

These controls were responsible for approximately 70 percent of the projected annual compliance costs in the 2011 RIA. Because so many projected controls were not installed, we know that the control-related costs were almost certainly significantly overestimated. By simply comparing between projected and installed controls, we now find that the projected control-related costs for 2015 of about $7 billion were likely overestimated by $2.2 to $4.4 billion, and possibly more.

In addition, we have updated some of the modeling assumptions that supported the 2011 RIA. Specifically:

- HCl emissions for EGUs burning subbituminous and lignite coals are much lower than originally modeled, reducing the number of controls necessary for compliance in the model;
- DSI controls require less sorbent than originally assumed, lower the operating cost of these controls, and other lower-cost sorbents are likely available; and
- The assumed cost of ESP upgrades in the modeling was likely much higher than the actual cost of these upgrades.

While not quantified here, the advances in cost and performance of control technology between the time of the EPA's modeling and implementation of the rule would, if quantified, likely add to the $2.2 to $4.4 billion overestimate.

Furthermore, the three studies submitted to the EPA during earlier rulemakings support this finding that the 2011 RIA cost projection was significantly overestimated:

- Andover Technology Partners estimated that the actual costs of compliance with MATS were approximately $2 billion, and that the 2011 RIA may have overestimated compliance costs by approximately $7 billion.
- MJB&A estimated that the total upfront capital expenditures of pollution controls installed for compliance with the rule were overestimated in the 2011 RIA by a factor of more than eight.
- EEI, the association that represents all U.S. investor-owned electric companies, estimated cumulative costs incurred by the industry in response to MATS, and that estimate suggests an annual amount about $7 billion less than the 2011 RIA projected.

Taken together, this information indicates that the projected costs in the 2011 RIA were almost certainly significantly overestimated. We solicit comment on data resource and methods such as econometric, simulation, and event study approaches that may aid the EPA in better characterizing the *ex post* regulatory costs of MATS for consideration before we issue the final rule.

3. Evaluation of Metrics Related to MATS Compliance

In the next four sections, we place the costs that we estimated in 2011, and which, as just explained, were likely significantly overestimated, in the context of the EGU industry and the services the EGU industry provides to society. The purpose of these comparisons is to better understand the disadvantages conferred by expending this money, both in terms of their scale and distribution, in order to weigh cost as a factor in our preferred methodology for making the appropriate determination. While we recognize the projected cost estimate from the 2011 RIA in absolute terms is perceived as a large number, our findings demonstrate that, for example, the (overestimated) projected cost estimate is less than 3 percent of the power sector's revenues from electricity sales, even when compared against data from 2019 (which had the lowest electricity sale revenues in a nearly 20 year period). As we did in 2016, we first contextualize the costs of MATS against power sector data for the years 2000 to 2011, *i.e.,* the information that was available to the Agency when we were promulgating MATS in 2012 and reaffirming the appropriate and necessary determination. For purposes of this proposal, we also expand our assessment to compare the 2011 cost estimates to the most recent years of data available regarding, for example, industry revenue and electricity prices. The intent of expanding the years of analysis is to update our assessments from the 2016 Supplemental Finding considering power sector trends with the newest information. We continue to use projections developed for the 2011 RIA for purposes of these evaluations, because as discussed in section III.B.2, we are unable to generate new, bottom-line actual cost projections. However, in section III.D, we consider these evaluations in light of the EPA's finding that the projected costs were almost certainly significantly overestimated.

a. Compliance Costs as a Percent of Power Sector Sales

The first metric examined here (as in 2016) is a comparison of the annual compliance costs of MATS to electricity sales at the power sector-level (*i.e.,* revenues), often called a sales test. The sales test is a frequently used indicator of potential impacts from compliance costs on regulated industries.[104] Incorporating updated information from the EIA, Section 2.a and Table A–4 of the Cost TSD present the value of retail electricity sales from 2000 to 2019, as well as net generation totals for the electric power sector for the same period.

This information indicates that the $9.6 billion in annual compliance costs of MATS projected for 2015 would have represented about 2.7 percent of 2008 power sector revenues from retail electricity sales, the peak year during

[103] As discussed above, although we attributed all controls of these types to MATS in this analysis, even those controls that were installed were likely due in part or in whole for reasons other than MATS.

[104] For example, the sales test is often used by the EPA when evaluating potential economic impacts of regulatory actions on small entities. In the context of a small entity analysis, an evaluation of the change in profits to owners is likely the best approach to assessing the economic burden to owners from a regulatory action. Data limitations prevent solely analyzing profit changes to EGU owners as a result of MATS in this proposal.

the 2000 to 2019 period. The $9.6 billion in projected compliance costs would constitute about 2.9 percent of 2019 sales, which was the lowest sales level observed in the post-2011 period. These projected compliance costs are a very small percentage of total EGU revenues from electricity sales in both robust or lean years, and newer data confirms the findings of the 2016 record. Moreover, if we account for the fact that the $9.6 billion figure likely significantly overestimated the actual cost of compliance, the percentage of compliance costs to revenues would be even smaller.

b. Compliance Expenditures Compared to the Power Sector's Annual Expenditures

The next metrics we examine are a comparison of the annual capital expenditures projected in the 2011 RIA to be needed for MATS compliance to historical power sector-level overall capital expenditures, followed by a comparison of projected annual capital and production expenditures related to MATS compliance to historical power sector-level overall capital and production expenditures.

First, we evaluate capital expenditures. Capital costs represent largely irreversible investments for firms that must be paid off regardless of future economic conditions, as opposed to other important variable costs, such as fuel costs, that may vary according to economic conditions and generation needs. Section 2.b and Table A–5 of the Cost TSD present two sets of estimates for trends in annual capital expenditures by the electric power sector through 2019. The first set of information is based on data compiled by S&P Global, a private sector firm that provides data and analytical services. The second set of information is from the U.S. Census Bureau's Annual Capital Expenditures Survey. While each dataset has limitations, the estimates from each correspond to one another reasonably well.

The 2011 RIA modeling estimated the incremental capital expenditures associated with MATS compliance to be $4.2 billion for 2015. As discussed in section III.B.2, the 2011 RIA likely significantly overestimated compliance costs. This conclusion also applies to the capital cost component of the overall cost because, as detailed earlier, fewer pollution controls were installed during the 2013–2016 timeframe than were projected in the 2011 RIA. While the EPA is not able to produce an alternative capital cost estimate directly comparable to the estimates from the 2011 RIA, the analysis discussed in section III.B.2 and the Cost TSD indicated the annualized capital expenditures at units that installed controls under MATS might be as low as $0.7 billion ($3.5 billion lower than projected in 2011 RIA, or less than one-fifth).

Even using the significantly overestimated figure of $4.2 billion in our comparison shows that the projected capital expenditures associated with MATS represent a small fraction of the power sector's overall capital expenditures in recent years. Specifically, the $4.2 billion estimate represents about 3.6 or 3.7 percent of 2019 (*i.e.,* most recent) power sector level capital expenditures based on the S&P Global and U.S. Census information, respectively. Compared against 2004 power sector level capital expenditures (*i.e.,* the 20-year low), the $4.2 billion figure represents 10.4 or 9.3 percent of sector level capital expenditures (using the two respective data sets). Additionally, the projected $4.2 billion in incremental capital costs is well within the range of annual variability associated with capital expenditures for the sector over the 2000–2019 period. During this period, based on the Census information, for example, the largest year-to-year decrease in power sector-level capital expenditures was $19.5 billion (from 2001 to 2002) and the largest year-to-year increase in power sector-level capital expenditures was $23.4 billion (from 2000 to 2001). This wide range (−$19.5 to +$23.4 billion) indicates substantial year-to-year variability in industry capital expenditures, and the projected $4.2 billion increase in capital expenditures in 2015 projected under MATS falls well within this variability. Similar results are found using the S&P Global information. If a $4.2 billion increase in capital expenditures in 2015 projected under MATS falls well within the variability of historical trends, then a capital expenditure of less than $4.2 billion would also fall within this variability.

Next, in order to provide additional perspective to the projected cost information, we look at a broader set of costs faced by industry, including both capital and production expenditures together. Section 2.b and Table A–6 of the Cost TSD present two sets of estimates through 2019 for trends in annual total (capital and production) expenditures by the electric power sector using the same two data sets as above, which we then compare with the projected annual total expenditures required by MATS.

We find that even the overestimated $9.6 billion compliance cost projection from the 2011 RIA represents a small fraction of the power sector's annual capital and production expenditures compared to historical data, and is well within annual variability in total costs over the 2000 to 2011 and the 2012 to 2019 periods. Compared to 2008 data (*i.e.,* the historic high for total industry expenditures), the projected $9.6 billion estimate represents about 4.2 to 4.3 percent of total expenditures. The MATS projected compliance cost represents 6.2 to 6.6 percent of total expenditures in 2003 (which was the lowest year for total industry expenditures during the studied time period). Additionally, the EPA notes that, similar to the capital expenditures analysis set forth in the 2015 Proposal, the projected $9.6 billion in incremental capital plus production costs is well within the range of annual variability in costs in general over the 2000 to 2019 period. For example, during this period, the largest year-to-year decrease in power sector-level capital and production expenditures ranged from $30.5 billion to $32.8 billion. The largest year-to-year increase in power sector-level capital and production expenditures in this period ranged from $27.5 billion to $28.7 billion. If a $9.6 billion increase in expenditures falls well within the variability of historical trends, then an expenditure substantially less than $9.6 billion would also fall within this variability.

c. Impact on Retail Price of Electricity

We are cognizant that, for an industry like the power sector, costs and disadvantages to regulation are not solely absorbed by regulated sources. Many firms in the industry are assured cost-recovery for expenditures, so there is considerable potential for EGUs to pass through the costs of compliance to consumers via increases in retail electricity prices. This is especially true given that the demand for electricity is not particularly price-responsive. That is, because people are dependent on electricity for daily living, they are not likely to reduce their consumption of electricity even when the price goes up but will instead pay the higher price, thus absorbing the costs of compliance incurred by the industry. Notably, average retail electricity prices have fallen since the promulgation of MATS.

While we analyze these aspects of cost separately, control costs and electricity prices are not separate economic indicators. Electricity price increases are generally related to increases in the capital and operating expenditures by the power sector. Therefore, the electricity price impacts and the associated increase in electricity

bills by consumers are not costs that are additional to the compliance costs described earlier in this section. In fact, to the extent the compliance costs are passed on to electricity consumers, the costs to the EGU owners in the power sector are reduced. Therefore, in order to further assess the disadvantages to regulation, in this case to consumers of electricity in all sectors (residential, commercial, industrial, transportation, and other sectors), we evaluate as we did in 2016 the projected effect MATS was anticipated to have on retail electricity prices, as measured against the variations in electricity prices from year to year. For this proposal, we expanded that analysis using updated data from the EIA, as presented in section 2.c and Table A–7 of the Cost TSD.

Looking at 2000–2019 data, we find that the projected 0.3 cents per kilowatt-hour projected increase in national average retail electricity price under MATS is well within the range of annual variability over the 2000–2019 period. During that time period, the largest year-to-year decrease in national average retail electricity price was −0.2 cents per kilowatt-hour (from 2001 to 2002) and the largest year-to-year increase was 0.5 cents per kilowatt-hour (from 2005 to 2006). For the newer data analyzed, we also found that average retail electricity prices have generally decreased since 2011, from 9.33 cents per kilowatt-hour in 2011 to 8.68 cents per kilowatt-hour in 2019, or by nearly 7 percent.

After considering the potential impacts of MATS on retail electricity prices, the EPA concludes that the projected increase in electricity prices is within the historical range. In addition, any increase in electricity prices would not be additive to the overall compliance costs of MATS. Rather, such price impacts would in part reflect the ability of many EGUs to pass their costs on to consumers, thereby reducing the share of MATS compliance costs borne by owners of EGUs. Given the relationship between compliance costs and electricity prices, we would also therefore expect the significant overestimate of compliance costs reflected in the $9.6 billion figure to translate into overestimates in our projections for electricity price increases. Therefore, incorporating this newer data into our analysis, we find that MATS did not result in increases in electricity prices for American consumers that were outside the range of normal year-to-year variability, and during the period when MATS was implemented, electricity prices generally decreased.

d. Impact on Power Sector Generating Capacity

We recognize that the power sector plays a role of critical importance to the American public. A potential disadvantage to regulation that we consider to be a relevant factor in our consideration under CAA section 112(n)(1)(A) is how such regulation would impact the provision of adequate and reliable electricity throughout the country.[105] Therefore, we analyzed, as part of the 2012 record, projected net changes in generation capacity under MATS, as compared to the base case, that is, what expected generation capacity would have been absent the rule.[106] We also conducted an analysis of the impacts of projected retirements on electric reliability. *Id.* And finally, in parallel with finalizing MATS, the EPA's Office of Enforcement and Compliance Assurance issued a policy memorandum describing an approach for units that were reliability critical that could demonstrate a need to operate in noncompliance with MATS for up to a year.[107]

Our analysis indicated that the vast majority of the generation capacity in the power sector directly affected by the requirements of MATS would remain operational following MATS. Specifically, our model projected that operational capacity with MATS in place would be reduced by less than 1 percent nationwide. *See* Resource Adequacy and Reliability TSD at 2. With respect to reliability, our modeling indicated that coal retirements would be distributed throughout the power grid, and that there would only be small impacts at the regional level, and that in those regions, we anticipated small decreases in overall adequacy of resources and robust remaining reserve margins. *Id.* These analyses therefore found that the power sector would be able to continue to provide adequate and reliable electricity even with regulation of the EGU sector for HAP.

Additionally, since MATS was promulgated, the EPA has not been made aware of reliability or resource adequacy problems attributable to MATS. As noted, the EPA's enforcement office concurrently issued a policy memorandum to work with sources that faced demonstrated reliability concerns, and five administrative orders were issued in connection with the policy.[108] We think this small number of sources obtaining relief due to their reliability critical status provides some confirmation of the EPA's projections that regulation would not cause widespread resource and reliability problems.

4. Other Cost Considerations

We also propose to reaffirm our previous findings regarding the costs of mercury controls, consistent with the instruction from the statute to study the availability and cost of such controls in CAA section 112(n)(1)(B). 80 FR 75036–37 (December 1, 2015). We similarly propose to reaffirm our previous records and findings regarding the cost of controls for other HAP emissions from EGUs, and the cost of implementing the utility-specific ARP, which Congress wrote into the 1990 CAA Amendments and implementation of which Congress anticipated could result in reductions in HAP emissions. *Id.* With respect to the costs of technology for control of mercury and non-mercury HAP, the record evidence shows that in 2012 controls were available and routinely used and that control costs had declined considerably over time. *Id.* at 75037–38. With regard to the ARP, industry largely complied with that rule by switching to lower-sulfur coal, and subsequently the actual costs of compliance were substantially lower than projected. Though the reasons for discrepancies between projected and actual costs are different for MATS, as discussed in section III.B.2, the newer information examined as part of this proposal demonstrates that the projected cost estimates for MATS were also likely significantly overestimated.

5. Summary of Consideration of Cost of Regulating EGUs for HAP

In this section, the EPA noted several studies performed by outside entities suggesting that costs of MATS may have been overestimated in the 2011 RIA. We discussed the dramatic impacts to the power sector over the last 10 years due to increasing supplies and decreasing price of natural gas and renewables, and

[105] The EPA generally uses the term ''reliability'' to refer to the ability to deliver the resources to the projected electricity loads so the overall power grid remains stable, and the term ''resource adequacy'' generally refers to the provision of adequate generating resources to meet projected load and generating reserve requirements in each region.

[106] U.S. EPA. 2011. *Resource Adequacy and Reliability in the Integrated Planning Model Projections for the MATS Rule* (Resource Adequacy and Reliability TSD), *http://www3.epa.gov/ttn/atw/utility/revised_resource_adequacy_tsd.pdf,* Docket ID Item No. EPA–HQ–OAR–2009–0234–19997.

[107] U.S. EPA. 2011. *The Environmental Protection Agency's Enforcement Response Policy For Use of Clean Air Act Section 113(a) Administrative Orders In Relation To Electric Reliability And The Mercury and Air Toxics Standard, https://www.epa.gov/sites/default/files/documents/mats-erp.pdf,* Docket ID Item No. EPA–HQ–OAR–2009–0234–20577.

[108] *https://www.epa.gov/enforcement/enforcement-response-policy-mercury-and-air-toxics-standard-mats.*

we conducted a suite of quantitative and qualitative updates to the information available in the 2011 RIA. Based on this information, we propose to conclude that the available *ex post* evidence points to a power sector that incurred significantly lower costs of compliance obligations under MATS than anticipated based on the *ex ante* projections when the rule was finalized in 2012. This overestimate was significant—for just one part of the original compliance cost estimate, the EPA was able to quantify a range of at least $2.2 to $4.4 billion in projected costs related to the installation, operation, and maintenance of controls which were not expended by industry. This projected overestimation is limited to these costs; it does not account for other ways in which the rule's costs were likely overestimated, such as advances in control technologies that made control applications less expensive or more efficient at reducing emissions. The other studies conducted by stakeholders asserted there were even greater differences between projected and actual costs of MATS.

We next examined the 2011 projected costs, which were almost certainly significantly overestimated, in the context of the EGU industry and the services the EGU industry provides to society. The purpose of these comparisons was to better understand the disadvantages imposed by these costs, in order to weigh cost as a factor in our preferred methodology for making the appropriate determination. Even though the cost estimates we used in this analysis were almost certainly significantly overestimated, we noted they were relatively small when placed in the context of the industry's revenues and expenditures, and well within historical variations.

Based on the 2011 RIA, the total projected cost of the MATS rule to the power sector in 2015 represented between 2.7 and 3.0 percent of annual electricity sales when compared to years from 2000 to 2019, a small fraction of the value of overall sales (and even smaller when one takes into account that the 2011 RIA projections were likely significantly overestimated). Looking at capital expenditures, the EPA demonstrated that the projected MATS capital expenditures in 2015 represented between 3.6 and 10.4 percent of total annual power sector capital expenditures when compared to years surrounding the finalization of the MATS rule. Such an investment by the power sector would comprise a small percentage of the sector's historical annual capital expenditures on an absolute basis and also would fall within the range of historical variability in such capital expenditures. Similarly, the EPA demonstrated that the projected capital and operating expenditures in 2015 represented between 4.3 and 6.2 percent of total annual power sector capital and operating expenditures over 2000 to 2019, and is well within the substantial range of annual variability. This proposal's analysis indicating that the far fewer controls were installed than the EPA had projected would be required is particularly relevant to considering our findings as to this metric; with the overestimation of capital expenditures in mind, actual investments by the power sector to comply with MATS would have comprised an even smaller percentage of historical annual capital expenditures.

With respect to impacts on the wider American public, the EPA examined impacts on average retail electricity prices and found the modest increases—which, like overall compliance costs, are also likely to have been significantly overestimated—to be within the range of historical variability. Experience has also shown that national average retail electricity prices in years after MATS promulgation have declined. Finally, previous analysis indicated that the vast majority of the generation capacity in the power sector would remain operational and that the power sector would be able to continue to provide adequate and reliable electricity after implementation of the rule, and we have seen no evidence to contradict those findings.

The EPA proposes that each of these analyses are appropriate bases for evaluating the disadvantages to society conferred by the MATS-related projected compliance expenditures. As we note above, even though the projected costs we use in this analysis are almost certainly significantly overestimated, we find that they are still relatively small when placed in the context of the economics of the industry, and well within historical variations. We solicit comments on all aspects of this proposed consideration of costs.

### *C. Revocation of the 2020 Final Action*

We are proposing to revoke the 2020 Final Action because we find that the framework used to consider cost in 2020, which centered the Agency's mandated determination under CAA section 112(n)(1)(A) on a comparison of costs to monetized HAP benefits, was an approach ill-suited to making the appropriate and necessary determination in the context of CAA section 112(n)(1)(A) specifically and the CAA section 112 program generally. Moreover, the statutory text and legislative history do not support a conclusion that the 2020 framework is required under CAA section 112(n)(1)(A), and we exercise our discretion to adopt a different approach. We also disagree with the conclusions presented in the 2020 Final Action as to the 2016 Supplemental Finding's two approaches.

The 2020 Final Action established the following framework for making the appropriate and necessary determination. It stated:

> ''The Administrator has concluded that the following procedure provides the appropriate method under which the EPA should proceed to determine whether it is appropriate and necessary to regulate EGUs under CAA section 112(n)(1)(A). First, the EPA compares the monetized costs of regulation against the subset of HAP benefits that could be monetized. . . . Second, the EPA considers whether unquantified HAP benefits may alter that outcome. . . . Third, the EPA considers whether it is appropriate, notwithstanding the above, to determine that it is ''appropriate and necessary'' to regulate EGUs under CAA section 112(n)(1)(A) out of consideration for the PM co-benefits that result from such regulation.'' 85 FR 31302 (May 22, 2020).

Applying the first part of the framework, the Agency noted that the costs of regulation estimated in the 2011 RIA were disproportionately higher—by three orders of magnitude—than the monetized HAP benefits, and concluded ''[t]hat does not demonstrate 'appropriate and necessary.' '' *Id.* Under the framework's second inquiry, the EPA determined that the unquantified HAP benefits, even if monetized, were unlikely to alter its conclusion under the first part of the framework. *Id.; see also* 85 FR 31304 (noting that ''valuing HAP-related morbidity outcomes would not likely result in estimated economic values similar to those attributed to avoiding premature deaths''). Finally, applying the third part of its framework, the EPA noted that nearly all of the monetized benefits of MATS as reflected in the 2011 RIA were derived from PM benefits. *See* 85 FR 31302–03 (May 22, 2020). The EPA then posited that, ''[h]ad the HAP-specific benefits of MATS been closer to the costs of regulation, a different question might have arisen as to whether the Administrator could find that co-benefits legally form part of the justification for determination that regulation of EGUs under CAA section 112(d) is appropriate and necessary.'' *See* 85 FR 31303 (May 22, 2020). However, because of the factual scenario presented in the record, the Agency in the 2020 Final Action stated that ''[t]he

EPA does not need to, and does not, determine whether that additional step would be appropriate . . . given that the monetized and unquantified HAP-specific benefits do not come close to a level that would support the prior determination.'' *Id.* In conclusion, the EPA stated that ''[u]nder the interpretation of CAA section 112(n)(1)(A) that the EPA adopts in this action, HAP benefits, as compared to costs, must be the primary question in making the 'appropriate and necessary' determination.'' *Id.*

We note that the three-step framework employed by the 2020 Final Action is not a BCA conforming to recognized principles (*see, e.g.,* OMB Circular A–4, EPA Economic Guidelines). BCA is a specific tool developed by economists to assess total society-wide benefits and costs, to determine the economic efficiency of a given action. Instead of conforming to this comprehensive approach, the three-step framework focused primarily on comparing the rule's total costs to a very small subset of HAP benefits that could be monetized. The Agency gave secondary weight to the vast majority of the benefits of regulating HAP emissions from stationary sources that cannot be quantified, and completely ignored the non-HAP monetized benefits directly attributable to the MATS rule.

We propose to find that this three-step framework is an unsuitable approach to making the appropriate and necessary determination under CAA section 112(n)(1)(A) because it places undue primacy on those HAP benefits that have been monetized, and fails to consider critical aspects of the inquiry posed to the EPA by Congress in CAA section 112(n)(1). The 2020 three-step framework also did not in any meaningful way grapple with the bases upon which the EPA had relied to design the 2016 preferred approach, as discussed above, including the broad statutory purpose of CAA section 112 to reduce the volume of HAP emissions with the goal of reducing the risk from HAP emissions to a level that is protective of even the most exposed and most sensitive subpopulations; the fact that we rarely can fully characterize or quantify risks, much less benefits, at a nationwide level; and the fact that except for one of the many health endpoints for only one of the many HAP emitted from EGUs, the EPA lacked the information necessary to monetize any post-control benefit of reductions in HAP emissions. The sole rationale provided in the 2020 Final Action for rejecting the relevance of the statute's clear purpose as evinced in the broader CAA section 112 program and reflected in the provisions of CAA section 112(n)(1) was that CAA section 112(n)(1)(A) is a separate provision and threshold determination. *See* 85 FR 31293–94 (May 22, 2020). But we do not think it is sensible to view the statute's direction to the EPA to make a separate determination as to EGUs as an invitation to disregard the statutory factors of CAA section 112(n)(1) and the greater statutory context in which that determination exists, and we do not think that the 2020 Final Action provided an adequately reasoned basis for abandoning the interpretation and assessment provided in the 2016 Supplemental Finding. And in any event, we believe the methodology we propose today is better suited to making the statutory finding than the 2020 framework.

In the 2020 rulemaking, the EPA did not explain its rationale for its decision to anchor the appropriate and necessary determination at step one as a comparison between the monetized costs of regulation and *monetized* HAP specific benefits. Rather, the proposed and final rules repeatedly state that the ''primary'' inquiry in the determination should be a comparison of costs and HAP benefits, but did not explain why only *monetized* HAP benefits should be given primacy. *See, e.g.,* 85 FR 31286, 31288, 31303 (May 22, 2020). Given the Agency's recognition of the broad grant of discretion inherent in the phrase ''appropriate and necessary,'' *see* 81 FR 24430–31 (April 25, 2016), its acknowledgement of Congress' ''particularized focus on reducing HAP emissions and addressing public health and environmental risks from those emissions'' in CAA section 112, *see* 85 FR 31299 (May 22, 2020), and its knowledge and recognition that the dollar value of one of its points of comparison represented but a small subset of the advantages of regulation, *see* 85 FR 31302 (May 22, 2020), we now believe it was inappropriate to adopt a framework that first and foremost compared dollar value to dollar value. Nothing in the CAA required the Agency's decision in 2020 to hinge its framework on monetized HAP benefits. The consideration of the non-monetized benefits of MATS *(i.e.,* dozens of endpoints, including virtually all of the HAP benefits associated with this rule) occurred only at step two, where the Agency considered whether the unquantified benefits, if monetized, were ''likely to overcome the imbalance between the monetized HAP benefits and compliance costs in the record.'' *See* 85 FR 31296 (May 22, 2020). This approach discounts the vast array of adverse health and environmental impacts associated with HAP emissions from coal- and oil-fired EGUs that have been enumerated by the EPA [109] and discounts the social value (benefit) of avoiding those impacts through regulation, simply because the Agency cannot assign a dollar value to those impacts. Further, the three-step framework gave no consideration to the important statutory objective of protecting the most at-risk subpopulations. As noted above, in CAA section 112(n)(1)(C) Congress directed the EPA to establish threshold levels of exposure under which no adverse effect to human health would be expected to occur, even considering exposures of sensitive populations, and throughout CAA section 112, Congress placed special emphasis on regulating HAP from sources to levels that would be protective of those individuals most exposed to HAP emissions and most sensitive to those exposures. The rigid and narrow approach to making the appropriate and necessary determination in the 2020 Final Action is at odds with the text and purpose of CAA section 112, and is certainly not required under the express terms of CAA section 112 or CAA section 112(n)(1)(A).

Commenters on the 2019 Proposal objected strenuously to the Agency's revised framework for making the appropriate and necessary determination, arguing that the 2019 Proposal's interpretation ''fails to meaningfully address factors that are 'centrally relevant' to the inquiry of whether it is appropriate and necessary to regulate HAP from EGUs,'' and that the Agency's new interpretation must fall because the EPA failed to provide a reasoned explanation for its change in policy, as required by *Motor Vehicle Mfrs. Ass'n of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.,* 463 U.S. 29 (1983), and *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009). *See* 85 FR 31294 (May 22, 2020). Among the factors that commenters argued had been inadequately addressed under the new framework were the ''hazards to public health reasonably anticipated to occur'' that had not been monetized; the non-monetizable benefits of HAP regulation such as preservation of tribal social practices; the latency, persistence in the environment, and toxicity of HAP as recognized by Congress; and the distributional impacts on particular communities and individuals most

[109] *See, e.g.,* 65 FR 79829–30 (December 20, 2000); 76 FR 24983–85, 24993–97, 24999–25001, 25003–14, 25015–19 (May 3, 2011).

impacted by HAP emitted from power plants. In responses to these comments, the EPA claimed that it was not ''disregarding'' or ''dismissing'' the concerns raised by the commenters, but rather simply weighing them differently, and explained that the Administration's changed priorities provided the ''reasoned basis'' for its changed interpretation. *See* 85 FR 31296–97 (May 22, 2020).

Agencies do have broad discretion to re-evaluate policies and change their ''view of what is in the public interest,'' *State Farm,* 463 U.S. at 57, but such re-evaluations must still adhere to principles of reasoned decision-making. The 2020 Final Action did not aver that the concerns identified by commenters were factors that the statute does not instruct the Agency to consider in making its appropriate and necessary determination. Instead, the EPA stated that it was permitted to pick its decisional framework and admitted that its decisional framework might undervalue certain factors. For example, with respect to commenters' concerns that the revised appropriate and necessary framework did not adequately account for adverse impacts on tribal culture or undue concentration of public health risks on certain population subgroups or individuals, the EPA stated,

> ''In a cost-benefit comparison, the overall amount of the benefits stays the same no matter what the distribution of those benefits is. The EPA, therefore, believes it is reasonable to conclude that those factors to which the EPA previously gave significant weight–including qualitative benefits, and distributional concerns and impacts on minorities–will not be given the same weight in a comparison of benefits and costs for this action under CAA section 112(n)(1)(A).'' 85 FR 31297 (May 22, 2020).

The decisional framework in the 2020 Final Action, however, did not give ''less weight'' to these factors—it gave them none. In both the selection and application of its framework, the EPA in the 2020 Final Action effectively ignored these factors altogether, and we do not agree that the inability to monetize a factor should render it unimportant. *Cf. Am. Trucking Ass'ns, Inc.* v. *EPA,* 175 F.3d 1027, 1052–53 (D.C. Cir. 1999), reversed in part on other grounds in *Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001) (holding that the EPA was not permitted to ignore information ''because the . . . benefits are difficult, if not impossible, to quantify reliably and because there is 'no convincing basis for concluding that any such effects . . . would be significant' ''); *Pub. Citizen* v. *Fed. Motor Carrier Safety Admin.,* 374 F.3d 1209, 1219 (D.C. Cir. 2004) (''The mere fact that the magnitude of . . . effects is *uncertain* is no justification for *disregarding* the effect entirely.'') (emphasis in original). The mere mention and summary dismissal of factors does not constitute meaningful consideration of those factors.

In the 2020 Final Action, like the 2016 Supplemental Finding before it, the EPA maintained that there is more than one permissible way to interpret the Agency's obligation to consider cost in the appropriate and necessary determination. Given the Agency's knowledge of the significant risks and often irreversible impacts of HAP exposure on vulnerable populations like developing fetuses, the disproportionate impact of EGU HAP emissions on communities who subsist on freshwater fish due to cultural practices and/or economic necessity, and the record of data demonstrating risks to public health amassed over decades, and, perhaps more importantly, the overwhelming quantity of advantages to regulation that could not be monetized, we do not think that selecting a framework that compared first and foremost monetized HAP benefits with costs was appropriate. And even if the framework ultimately addressed the statutorily relevant factors because at the second step the EPA stated that it was considering non-monetized HAP benefits, we think that the application of that second step fell short. The secondary consideration of non-monetized HAP benefits in the three-step framework only considered post-control HAP-related impacts of regulation insofar as the EPA speculated about what the monetized value of those benefits might be (*see* 85 FR 31296 (May 22, 2020), asserting that monetized value of avoiding morbidity effects such as neurobehavioral impacts is ''small'' compared to monetized value associated with avoided deaths). The Agency did not, at this second step, grapple with the existing risk analyses, including those stemming from the statutorily mandated studies in CAA section 112(n)(1). Those analyses demonstrated substantial public health and environmental hazards, even if the hazards were not translated into post-control monetized benefits. *See White Stallion,* 748 F.3d at 1245. The Agency also did not explain why other attributes of risk—such as impacts on vulnerable populations and the reality that HAP pollution from EGUs is not distributed equally across the population but disproportionately impacts some individuals and communities far more than others—were unimportant, stating only that the selected framework did not accommodate consideration of those factors.

As noted, the Agency did not point to anything in the CAA as supporting the use of its three-step framework. This is in stark contrast to the 2016 Supplemental Finding rulemaking, in which the EPA examined CAA section 112(n)(1)(A) and the other section 112(n)(1) provisions, and the rest of CAA section 112 generally, and D.C. Circuit case law on CAA cost considerations to inform the EPA's interpretation of CAA section 112(n)(1)(A). *See* 80 FR 75030 (December 1, 2015); 2015 Legal Memorandum. In the 2020 Final Action, the EPA merely asserted that a comparison of benefits to costs is ''a traditional and commonplace way to assess costs'' and claimed that the Supreme Court's holding in *Entergy Corp.* v. *Riverkeeper,* 556 U.S. 208 (2009) supported the EPA's 2020 position that, absent an unambiguous prohibition to use a BCA, an agency may generally rely on a BCA as a reasonable way to consider cost. *See* 85 FR 31293 (May 22, 2020). The 2020 Final Action also pointed out ''many references comparing'' costs and benefits from the *Michigan* decision, including: ''EPA refused to consider whether the costs of its decision outweighed the benefits'' (576 U.S. at 743); ''[o]ne would not say that it is rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits'' (*Id.* at 752); and ''[n]o regulation is 'appropriate' if it does more harm than good'' (*Id.*).

But while we agree that a comparison of benefits to costs is a traditional way to assess costs, the 2020 framework was *not* a BCA. There is no economic theory or guidance of which we are aware that endorses the version of BCA presented in the 2020 Final Action, in which total costs are compared against a small subset of total benefits. *See* section III.E for further discussion. Moreover, general support for weighing costs and benefits does not justify placing undue weight on monetized HAP benefits, with secondary consideration for all other benefits, and only valuing those other benefits to the extent of their speculative monetized effects. As noted in Justice Breyer's concurrence in *Entergy Corp.,* the EPA has the ability ''to describe environmental benefits in non-monetized terms and to evaluate both costs and benefits in accordance with its expert judgment and scientific knowledge,'' and to engage in this balancing outside of ''formal cost-

benefit proceedings and futile attempts at comprehensive monetization.'' 556 U.S. at 235 (Breyer, J., concurring). Benefits—the advantages of regulation—can encompass outcomes that are not or cannot be expressed in terms of dollars and cents, just as the Court found that '' 'cost' includes more than the expense of complying with regulations; any disadvantage could be termed a cost.'' *Michigan,* 576 U.S. at 752. And the Court faulted the EPA's interpretation for ''preclud[ing] the Agency from considering *any* type of cost—including, for instance, harms that regulation might do to human health or the environment. . . . No regulation is 'appropriate' if it does significantly more harm than good.'' *Id.* The constricted view of benefits that the Agency adopted in 2020 was ill-suited to the statutory inquiry as interpreted in *Michigan.*

The primary basis in the 2020 action upon which the EPA relied to find that the 2016 preferred approach was flawed was that the preferred approach failed to ''satisf[y] the Agency's obligation under CAA section 112(n)(1)(A) as interpreted by the Supreme Court in *Michigan.*'' *See* 84 FR 2674 (February 7, 2019). The 2019 Proposal claimed that the chief flaw of the preferred approach was the Agency's failure to ''meaningfully consider cost within the context of a regulation's benefits,'' asserting that the *Michigan* Court contemplated that a proper consideration of cost would be relative to benefits. *See* 84 FR 2675 (February 7, 2019). But that is not an accurate characterization of the 2016 preferred approach, wherein the Agency weighed the existing record from 2012 demonstrating that HAP emissions from EGUs pose a number of identified hazards to both public health and the environment remaining after imposition of the ARP and other CAA requirements against the cost of MATS. *See* 81 FR 24420 (April 25, 2016) (''After evaluating cost reasonableness using several different metrics, the Administrator has, in accordance with her statutory duty under CAA section 112(n)(1)(A), weighed cost against the previously identified advantages of regulating HAP emissions from EGUs—including the agency's prior conclusions about the significant hazards to public health and the environment associated with such emissions and the volume of HAP that would be reduced by regulation of EGUs under CAA section 112.''). The 2020 Final Action further stated that the preferred approach was an ''unreasonable'' interpretation of CAA section 112(n)(1)(A) and impermissibly de-emphasized the importance of the cost consideration in the appropriate and necessary determination. *See* 85 FR 31292 (May 22, 2020). It is a decisional framework which rests primarily upon a comparison of the costs of a regulation and the small subset of HAP benefits which could be monetized that does not ''meaningfully consider[s] cost within the context of a regulation's benefits,'' because such a narrow approach relegates as secondary (and in application appeared to ignore altogether) the vast majority of that rule's HAP benefits and other advantages. We therefore propose to revoke the 2020 three-step approach and determination because we do not think it is a suitable way to assess the advantages and disadvantages of regulation under CAA section 112(n)(1)(A) and in applying it, the Agency failed to meaningfully address key facts in the existing record. Even if the Agency's selection of the 2020 framework could be considered a permissible interpretation of the broad ''appropriate and necessary'' determination in CAA section 112(n)(1)(A), we exercise our discretion under the statute and as described in *Michigan,* to approach the determination differently.

### *D. The Administrator's Proposed Preferred Framework and Proposed Conclusion*

The EPA is proposing a preferred, totality-of-the-circumstances approach as a reasonable way to ''pay attention to the advantages *and* disadvantages of [our] decision,'' *Michigan,* 576 U.S. at 753, in determining whether it is appropriate to regulate coal- and oil-fired EGUs under section 112 of the CAA. This approach, including which factors we consider and how much weight we give them, is informed by Congress' design of CAA section 112(n)(1) specifically, and CAA section 112 generally.

Specifically, under this approach we first consider and weigh the advantages of reducing EGU HAP via regulation. We focus on the public health advantages of reducing HAP emissions because in CAA section 112(n)(1)(A), Congress specifically directed the EPA to regulate EGUs under CAA section 112 after considering the results of the ''study of hazards to public health reasonably anticipated to occur as a result of emissions'' by EGUs. We also consider the other studies commissioned by Congress in CAA sections 112(n)(1)(B) and (C) and the types of information the statute directed the EPA to examine under those provisions—the rate and mass of EGU mercury emissions, the health and environmental effects of such emissions, and the threshold level of mercury concentrations in fish tissue which may be consumed (even by sensitive populations) without adverse effects to public health.[110] We place considerable weight on the factors addressed in the studies required in the other provisions of CAA section 112(n)(1) because that provision is titled ''Electric utility steam generating units,'' so it is reasonable to conclude that the information in those studies is important and relevant to a determination of whether HAP emissions from EGUs should be regulated under CAA section 112.[111] *See Michigan,* 576 U.S. at 753–54 (citing CAA sections 112(n)(1)(B) and (C), its caption, and the additional studies required under those subparagraphs as relevant statutory context for the appropriate and necessary determination).

Notably, the studies of CAA section 112(n)(1) place importance on the same considerations that are expressed in the terms and overall structure of CAA section 112. For example, CAA section 112(n)(1)(A) and section 112(n)(1)(B) both show interest in the amount of HAP emissions from EGUs—section 112(n)(1)(A) by requiring the EPA to estimate the risk remaining after imposition of the ARP and other CAA requirements and section 112(n)(1)(B) by requiring the EPA to study the rate and mass of mercury emissions; therefore, we believe it is reasonable to conclude that we should consider and weigh the volume of toxic pollution EGUs contributed to our air, water, and land absent regulation under CAA section 112, in total and relative to other domestic anthropogenic sources, and the potential to reduce that pollution, thus reducing its grave harms. In addition, the clear goal in CAA section 112(n)(1)(C) and elsewhere to consider risks to the most exposed and susceptible populations supports our decision to place significant weight on reducing the risks of HAP emissions from EGUs to the most sensitive members of the population (*e.g.,* developing fetuses and children), and communities that are reliant on self-

[110] CAA section 112(n)(1)(B) also directs the EPA to study available technologies for controlling mercury and the cost of such controls, and we consider those in our assessment of cost.

[111] The statute directed the EPA to complete all three CAA section 112(n)(1) studies within 4 years of the 1990 Amendments, expressing a sense of urgency with regard to HAP emissions from EGUs on par with addressing HAP emissions from other stationary sources. *See* CAA section 112(e) (establishing schedules for setting standards on listed source categories as expeditiously as practicable, but no later than between 2–10 years).

caught local fish for their survival. Finally, we also consider the identified risks to the environment posed by mercury and acid-gas HAP, consistent with CAA section 112(n)(1)(B) and the general goal of CAA section 112 to address adverse environmental effects posed by HAP emissions. *See* CAA section 112(a)(7) (defining ''adverse environmental effect'').

We next examine the disadvantages of regulation, principally in the form of the costs incurred to capture HAP before they enter the environment. As with the advantages side of the equation, where we consider the consequences of reducing HAP emissions to human health and the environment, we consider the consequences of these expenditures for the electricity generating sector and society. We therefore consider compliance costs comprehensively, placing them in the context of the effect those expenditures have on the economics of power generation more broadly, the reliability of electricity, and the cost of electricity to consumers. These metrics are relevant to our weighing exercise because they give us a more complete picture of the disadvantages to society imposed by this regulation, and because our conclusion might change depending on how this burden affects the ability of the industry to thrive and provide reliable, affordable electricity to the benefit of all Americans. Consistent with CAA section 112(n)(1)(B), we further consider relevant control costs for EGUs and the relationship of control costs expected and experienced under the ARP and MATS.

Below, consistent with this framework, we consider and weigh the advantages to regulation against the costs of doing so, giving particular weight to our examination of the public health hazards we reasonably anticipate to occur as a result of HAP emissions from EGUs, and the risks posed by those emissions to exposed and vulnerable populations. We note as well that had we found regulation under CAA section 112 to impose significant barriers to provision of affordable and reliable electricity to the American public, this would have weighed heavily in our decision.

We acknowledge, as we recognized in the 2016 preferred approach, that this approach to making the appropriate and necessary determination is an exercise in judgment, and that ''[r]easonable people, and different decision-makers, can arrive at different conclusions under the same statutory provision,'' (81 FR 24431; April 25, 2016), but this type of weighing of factors and circumstances is an inherent part of regulatory decision-making. As noted in then-Judge Kavanaugh's dissent in *White Stallion,* ''All regulations involve tradeoffs, and . . . Congress has assigned EPA, not the courts, to make many discretionary calls to protect both our country's environment and its productive capacity.'' 748 F.3d at 1266 (noting as well that ''if EPA had decided, in an exercise of its judgment, that it was 'appropriate' to regulate electric utilities under the MACT program because the benefits outweigh the costs, that decision would be reviewed under a deferential arbitrary and capricious standard of review''). Bright-line tests and thresholds are not required under the CAA's instruction to determine whether regulation is ''appropriate and necessary,'' nor have courts interpreted broad provisions similar to CAA section 112(n)(1)(A) in such manner. In *Catawba Cty.* v. *EPA,* the D.C. Circuit held that ''[a]n agency is free to adopt a totality-of-the-circumstances test to implement a statute that confers broad authority, even if that test lacks a definite 'threshold' or 'clear line of demarcation to define an open-ended term.' '' 571 F.3d 20, 37 (D.C. Cir. 2009).

In undertaking this analysis, we are cognizant that, while the Agency has been studying the science underlying this determination for decades, the understanding of risks, health, and environmental impacts associated with toxic air pollution continues to evolve. In this notice, we explained the additional information that has become available to the Agency since we performed our national risk assessments, and explained why, despite the certainty of the science demonstrating substantial health risks, we are unable at this time to quantify or monetize many of the effects associated with reducing HAP emissions from EGUs.[112] We continue to think it is appropriate to give substantial weight to these public health impacts, even where we lack information to precisely quantify or monetize those impacts. As the D.C. Circuit stated in *Ethyl Corp.* v. *EPA,*

> ''Where a statute is precautionary in nature, the evidence difficult to come by, uncertain, or conflicting because it is on the frontiers of scientific knowledge, the regulations designed to protect public health, and the decision that of an expert administrator, we will not demand rigorous step-by-step proof of cause and effect. . . . [I]n such cases, the Administrator may assess risks. . . . The Administrator may apply his expertise to draw conclusions from suspected, but not completely substantiated, relationships between facts, from trends among facts, from theoretical projections from imperfect data, from probative preliminary data not yet certifiable as 'fact,' and the like.''

541 F.2d 1, 28 (D.C. Cir. 1976). *See also Lead Industries Ass'n* v. *EPA,* 647 F.2d 1130, 1155 (D.C. Cir. 1980) (''[R]equiring EPA to wait until it can conclusively demonstrate that a particular effect is adverse to health before it acts is inconsistent with both the [Clean Air] Act's precautionary and preventive orientation and the nature of the Administrator's statutory responsibilities.'').

The EPA is not alone in needing to make difficult judgments about whether a regulation that has a substantial economic impact is ''worth it,'' in the face of uncertainty such as when the advantages of the regulation are hard to quantify in monetary terms. The Transportation Security Administration (TSA), when determining whether to require Advanced Imaging Technology at certain domestic airports, faced assertions that the high cost of widespread deployment of this type of screening was ''not worth the cost.'' TSA acknowledged that it did not ''provide monetized benefits'' or ''degree of benefits'' to justify the use of the screening, but noted that the agency ''uses a risk-based approach . . . in order to try to minimize risk to commercial air travel.'' *See* 81 FR 11364, 11394 (March 3, 2016). The agency pointed out that it could not consider ''only the most easily quantifiable impacts of a terrorist attack, such as the direct cost of an airplane crashing,'' but rather that it had an obligation to ''pursue the most effective security measures reasonably available so that the vulnerability of commercial air travel to terrorist attacks is reduced,'' noting that some commenters were failing to consider the more difficult to quantify aspects of the benefits of avoiding terrorist attacks, such as ''substantial indirect effects and social costs (such as fear) that are harder to measure but which must also be considered by TSA when deciding whether an investment in security is cost-beneficial.'' *Id.*

In reviewing Agency decisions like these, courts do ''not to substitute [their] judgment[s] for that of the agenc[ies],'' *State Farm,* 463 U.S. at 43 (1983), and ''[t]his is especially true when the agency is called upon to weigh the costs and benefits of alternative policies,'' *Center for Auto Safety* v. *Peck,* 751 F.2d 1336, 1342 (D.C. Cir. 1985). *See also*

[112] Unquantified effects include additional neurodevelopmental and cardiovascular effects from exposure to methylmercury, ecosystem effects, health risks from exposure to non-mercury HAP, and effects in EJ relevant subpopulations that face disproportionally high risks.

*United Church of Christ* v. *FCC,* 707 F.2d 1413, 1440 (D.C. Cir. 1983) (''[C]ost benefit analyses epitomize the types of decisions that are most appropriately entrusted to the expertise of an agency.''). Agencies are entitled to this deference even where, or perhaps particularly where, costs or benefits can be difficult to quantify. For example, in *Consumer Elecs. Ass'n* v. *FCC,* the D.C. Circuit upheld the FCC's mandate to require digital tuners, finding reasonable the Commission's identification of benefits, that is, ''principally speeding the congressionally-mandated conversion to DTV and reclaiming the analog spectrum,'' coupled with the FCC's ''adequate[ ] estimate[ of] the long-range costs of the digital tuner mandate within a range sufficient for the task at hand . . . and [its finding of] the estimated costs to consumers to be 'within an acceptable range.''' 347 F.3d 291, 303–04 (D.C. Cir. 2003) (''We will not here second-guess the Commission's weighing of costs and benefits.'').

Similarly, the Food and Drug Administration, in weighing the costs and benefits of deeming electronic cigarettes to be ''tobacco products,'' described the benefits qualitatively, '' 'potentially coming from' . . . premarket review [*i.e.,* the statutory consequence of deeming], which will result in fewer harmful or additive products from reaching the market than would be the case in the absence of the rule; youth access restrictions and prohibitions on free samples, which can be expected to constrain youth access to tobacco products and curb rising uptake; health warning statements, which will help consumers understand and appreciate the risks of using tobacco products; prohibitions against false or misleading claims and unsubstantiated modified risk claims; and other changes [such as monitoring and ingredient listings].'' *Nicopure Labs, LLC* v. *FDA,* 266 F. Supp. 3d 360, 403–404 (D.D.C. 2017), *aff'd,* 944 F.3d 267 (D.C. Cir. 2019). Plaintiffs challenging the rule claimed that because the FDA had not quantified the benefits of the rule, it ''cannot realistically determine that a rule's benefits justify its costs,'' because ''it does not have . . . a general grasp of the rule's benefits.'' *Id.* at 406. The court disagreed, finding the agency's statement of benefits to have ''provided substantial detail on the benefits of the rule, and the reasons why quantification was not possible'' and in any case agreeing with the agency that there was no obligation to quantify benefits in any particular way. *Id.*

We think the inquiry posed to the Agency by CAA section 112(n)(1)(A) has similarities to these other decisions, in which agencies tasked with protecting and serving the American public elected to take actions that would impose significant costs in order to achieve important benefits that could not be precisely quantified or were in some cases uncertain—protection from terrorist attacks, speeding the advancement of digital technology, and subjecting a new product to marketing and safety regulation. In those cases, the framework for decision-making was to make a judgment after a weighing of advantages against disadvantages, considering qualitative factors as well as quantified metrics. Here, we employ a similar totality-of-the-circumstances approach to the CAA section 112(n)(1)(A) inquiry as to whether it is appropriate to regulate HAP emissions from EGUs.

Earlier sections of this preamble (sections III.A. and III.B.) discuss in detail the EPA's evaluation of the public health and environmental advantages of regulating HAP from U.S. EGUs and the reasons it is not possible to quantify or monetize most of those advantages, as well as the EPA's comprehensive assessment of the costs of doing so. We will not in this section repeat every detail and data point, but we incorporate all of that analysis here and highlight only a few of the considerations that weighed heavily in our application of the preferred totality-of-the-circumstances approach.

Under our preferred approach, we first consider the public health advantages to reducing HAP from EGUs, and the other focuses for study identified by Congress in CAA section 112(n)(1). As noted, we give particular weight in our determination to the information related to the statutory factors identified for the EPA's consideration by the studies—namely, the hazards to public health reasonably anticipated to occur as a result of EGU HAP emissions (112(n)(1)(A)), the rate and mass of mercury emissions from EGUs (112(n)(1)(B)), the health and environmental effects of such emissions (112(n)(1)(B)), and the levels of mercury exposure below which adverse human health effects are not expected to occur as well as the mercury concentrations in the tissue of fish which may be consumed (including by sensitive populations) without adverse effects to public health (112(n)(1)(C)).

The statutorily mandated studies are the foundation for the Agency's finding that HAP emissions from U.S. EGUs represent a clear hazard to public health and the environment, but as documented in section III.A., the EPA has continued to amass an extensive body of evidence related to the original study topics that only furthers the conclusions drawn in the earlier studies. As discussed in section III.A, the EPA completed a national-scale risk assessment focused on mercury emissions from U.S. EGUs as part of the 2011 Final Mercury TSD. That assessment specifically examined risk associated with mercury released from U.S. EGUs that deposits to watersheds within the continental U.S., bioaccumulates in fish as methylmercury, and is consumed when fish are eaten by female subsistence fishers of child-bearing age and other freshwater self-caught fish consumers. We focused on the female subsistence fisher subpopulation because there is increased risk for *in utero* exposure and adverse outcomes in children born to female subsistence fishers with elevated exposure to methylmercury.[113] Our analysis estimated that 29 percent of the watersheds studied would lead to exposures exceeding the methylmercury RfD for this population, based on *in utero* effects, due in part to the contribution of domestic EGU emissions of mercury. We also found that deposition of mercury emissions from U.S. EGUs alone led to potential exposures that exceed the RfD in up to 10 percent of modeled watersheds.

We have also examined impacts of prenatal methylmercury exposure on unborn children of recreational anglers consuming self-caught fish from inland freshwater lakes, streams, and rivers, and found significant IQ loss in the affected population of children. Our analysis, which we recognized did not cover consumption of recreationally caught seafood from estuaries, coastal waters, and the deep ocean, nevertheless indicated significant health harm from methylmercury exposure. Methylmercury exposure also leads to adverse neurodevelopmental effects such as performance on neurobehavioral tests, particularly on tests of attention, fine motor function, language, and visual spatial ability. *See* section III.A.2.a.

The population that has been of greatest concern with respect to methylmercury exposure is women of childbearing age because the developing fetus is the most sensitive to the effects of methylmercury. *See* 85 FR 24995 (May 3, 2011). In the Mercury Study, the EPA estimated that, at the time of the study, 7 percent of women of childbearing age in the continental U.S.

[113] The NAS Study had also highlighted this population as one of particular concern due to the regular and frequent consumption of relatively large quantities of fish. *See* 65 FR 79830 (December 20, 2000).

(or about 4 million women) were exposed to methylmercury at levels that exceeded the RfD and that about 1 percent of women of childbearing age (or about 580,000 women) had methylmercury exposures three to four times the RfD. *See* 65 FR 79827 (December 20, 2000). We also performed a new bounding analysis for this proposal that focuses on the potential for IQ points lost in children exposed *in utero* through maternal fish consumption by the population of general U.S. fish consumers (section III.A.3.d).

Another important human health impact documented by the EPA over the last 2 decades includes cardiovascular impacts of exposure to methylmercury—including altered blood-pressure and heart-rate variability in children as a result of infant exposure in the womb and higher risk of acute MI, coronary heart disease, and cardiovascular heart disease in adults, due to dietary exposure. Studies that have become available more recently led the EPA to perform new quantitative screening analyses (as described in section III.A.3) to estimate the incidence of MI (heart attack) mortality that may be linked to U.S. EGU mercury emissions. The new analyses performed include an extension of the original watershed-level subsistence fisher methylmercury risk assessment to evaluate the potential for elevated MI-mortality risk among subsistence fishers (section III.A.3.b; 2021 Risk TSD) and a separate risk assessment examining elevated MI mortality among all adults that explores potential risks associated with exposure of the general U.S. population to methylmercury from domestic EGUs through commercially-sourced fish consumption (section III.A.3.c; 2021 Risk TSD). The updated subsistence fisher analysis estimated that up to 10 percent of modeled watersheds are associated with exposures linked to increased risk of MI mortality, but for some populations such as low-income Black subsistence fishers active in the Southeast, that number is approximately 25 percent of the watersheds modeled. The bounding analysis results estimating MI-mortality attributable to U.S. EGU-sourced mercury for the general U.S. population range from 5 to 91 excess deaths annually. As noted, we give significant weight to these findings and analyses examining public health impacts associated with methylmercury, given the statutory focus in CAA section 112(n)(1)(B) and 112(n)(1)(C) on adverse effects to public health from EGU mercury emissions and the directive to develop an RfD (''threshold level of mercury exposure below which adverse human health effects are not expected to occur''), and in particular one that is designed to assess ''mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations).'' *See* CAA section 112(n)(1)(C).

Because of CAA section 112(n)(1)(A)'s broader focus on hazards to public health from all HAP, not just mercury, we also give considerable weight to health effects associated with non-mercury HAP exposure (*see* section III.A.2.b for further detail), including chronic health disorders such as irritation of the lung, skin, and mucus membranes; decreased pulmonary function, pneumonia, or lung damage; detrimental effects on the central nervous system; damage to the kidneys; and alimentary effects such as nausea and vomiting). The 2011 Non-Hg HAP Assessment, performed as part of the EPA's 2012 reaffirmation of the appropriate and necessary determination, expanded on the original CAA section 112(n)(1)(A) Utility Study by examining further public health hazards reasonably anticipated to occur from EGU HAP emissions after imposition of other CAA requirements. This study included a refined chronic inhalation risk assessment that was designed to assess how many coal- and oil-fired EGUs had cancer and non-cancer risks associated with them, and indicated that absent regulation, a number of EGUs posed cancer risks to the American public (*see* section III.A.2.b).

As discussed in section II.B, the statutory design of CAA section 112 quickly secured dramatic reductions in the volume of HAP emissions from stationary sources. CAA section 112(n)(1)(B) also directs the EPA to study, in the context of the Mercury Study, the ''rate and mass'' of mercury emissions. We therefore think it is reasonable to consider, in assessing the advantages to regulating HAP emissions from EGUs, what the volume of emissions was from that sector prior to regulation—as an absolute number and relative to other sources—and what the expected volume of emissions would be with CAA section 112(d) standards in place. Prior to the EPA's promulgation of MATS in 2012, the EPA estimated that in 2016, without MATS, coal-fired U.S. EGUs above 25 MW would emit 29 tons of mercury per year. While these mercury emissions from U.S. EGUs represented a decrease from 1990 and 2005 levels (46 tons and 53 tons, respectively), they still represented nearly half of all anthropogenic mercury emissions in 2011 (29 out of 64 tons total). Considered on a proportional basis, the relative contribution of U.S. EGUs to all domestic anthropogenic mercury emissions was also stark. The EGU sector emitted more than six times as much mercury as any other sector (the next highest being 4.6 tons). *See* Table 3 at 76 FR 25002 (May 3, 2011). Prior to MATS, U.S. EGUs were estimated to emit the majority of HCl and HF nationally, and were the predominant source of emissions nationally for many metal HAP as well, including antimony, arsenic, chromium, cobalt, and selenium. *Id.* at 25005–06. In 2012, the EPA projected that MATS would result in an 88 percent reduction in hydrogen chloride emissions, a 75 percent reduction in mercury emissions, and a 19 percent reduction in PM emissions (a surrogate for non-mercury metal HAP) from coal-fired units greater than 25 MW in 2015 alone. *See* 77 FR 9424 (February 16, 2012). In fact, actual emission reductions since MATS implementation have been even more substantial. In 2017, by which point all sources were required to have complied with MATS, the EPA estimated that acid gas HAP emissions from EGUs had been reduced by 96 percent, mercury emissions had been reduced by 86 percent, and non-mercury metal HAP emissions had been reduced by 81 percent compared to 2010 levels. *See* 84 FR 2689 (February 7, 2019). Retaining the substantial reductions in the volume of toxic pollution entering our air, water, and land, from this large fleet of domestic sources reduces the substantial risk associated with this pollution faced by all Americans.

Even though reducing HAP from EGUs would benefit all Americans by reducing risk and hazards associated with toxic air pollution, it is worth noting that the impacts of EGU HAP pollution in the U.S. have not been borne equally nationwide. Certain communities and individuals have historically borne greater risk from exposure to HAP emissions from EGUs prior to MATS, as demonstrated by the EPA's risk analyses. The individuals and communities that have been most impacted have shouldered a disproportionate burden for the energy produced by the power sector, which in turn benefits everyone—*i.e.,* these communities are subject to a greater share of the externalities of HAP pollution that is generated by EGUs producing power for everyone. A clear example of these disproportionately impacted populations are subsistence fishers who live near U.S. EGUs

experiencing increased risk due to U.S. EGU mercury deposition at the watersheds where they are active (2011 Final Mercury TSD). CAA section 112(n)(1)(C) directed the EPA to examine risks to public health experienced by sensitive populations as a result of the consumption of mercury concentrations in fish tissue, which we think includes fetuses and communities that are reliant on local fish for their survival, and CAA section 112 more generally is drafted in order to be protective of small cohorts of highly exposed and susceptible populations. We therefore weigh heavily the importance of reducing risks to particularly impacted populations, including those who consume large amounts of self-caught fish reflecting cultural practice and/or economic necessity, including tribal populations, specific ethnic communities and low-income populations including Black persons living in the southeastern U.S.

Consistent with CAA section 112(n)(1)(B) and the general goal of CAA section 112 to reduce risks posed by HAP to the environment, we also consider the ecological effects of methylmercury and acid gas HAP (*see* section III.A.2.c). Scientific studies have consistently found evidence of adverse impacts of methylmercury on fish-eating birds and mammals, and insect-eating birds. These harmful effects can include slower growth and development, reduced reproduction, and premature mortality. Adverse environmental impacts of emissions of acid gas HAP, in particular HCl, include acidification of terrestrial and aquatic ecosystems. In the EPA's recent *Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter—Ecological Criteria* (2020), we concluded that the body of evidence is sufficient to infer a causal relationship between acidifying deposition and adverse changes in freshwater biota like plankton, invertebrates, fish, and other organisms. Adverse effects on those animals can include physiological impairment, loss of species, changes in community composition, and biodiversity. Because EGUs contribute to mercury deposition in the U.S., we conclude that EGUs are contributing to the identified adverse environmental effects, and consider the beneficial impacts of mitigating those effects by regulating EGUs.

We turn next in our application of the preferred approach to the consideration of the disadvantages of regulation, which in this case we measure primarily in terms of the costs of that regulation. As discussed in section III.B, for purposes of this preferred totality-of-the-circumstances approach, we start with the sector-level estimate developed in the 2011 RIA. Given the complex, interconnected nature of the power sector, we think it is appropriate to consider this estimate, which represents the incremental costs to the entire power sector to generate electricity, not just the compliance costs projected to be borne by regulated EGUs. We explain in section III.B that while a precise *ex post* estimate of this sector-level figure is not possible, we update those aspects of the cost estimate where we can credibly do so (*see* section III.B.2), and our consideration of the cost of regulation therefore takes into account the fact that new analyses performed as part of this proposal demonstrate that the 2011 RIA cost estimate was almost certainly significantly overestimated. We propose to conclude that regulation is appropriate and necessary under either cost estimate.

As with the benefits side of the ledger, where we look comprehensively at the effects of reducing the volume of HAP, we also comprehensively assess costs in an attempt to evaluate the economic impacts of the regulation as a whole. We situate the cost of the regulation in the context of the economics of power generation, as we did in 2016, because we think examining the costs of the rule relative to three sector-wide metrics provides a useful way to evaluate the disadvantages of expending these compliance costs to this sector beyond a single monetary value. For each of these metrics, we use our 2011 estimate of compliance costs, which, as is discussed in section III.B.2 and the Cost TSD, was likely to have been significantly overestimated by a figure in the billions of dollars. We first evaluate the 2011 projected annual compliance costs of MATS as a percent of annual power sector sales, also known as a ''sales test.'' A sales test is a frequently used indicator of potential impacts from compliance costs on regulated industries, and the EPA's analysis showed that projected 2015 compliance costs, based on the 2011 estimate, represented between 2.7–3.5 percent of power sector revenues from historical annual retail electricity sales. *See* section III.B.3; Cost TSD; 80 FR 75033 (December 1, 2015). We also examine the annual capital expenditures that were expected for MATS compliance as compared to the power sector's historical annual capital expenditures. We conclude that projected incremental annual capital expenditures of MATS would be a small percentage of 2011 power sector-level capital expenditures, and well within the range of historical year-to-year variability on industry capital expenditures. *Id.* Finally, we consider the annual operating or production expenses in addition to capital expenditures because we were encouraged during the 2016 rulemaking to use this broader metric of power industry costs to provide perspective on the cost of MATS relative to total capital and operational expenditures by the industry historically. Consistent with our other findings, we conclude that, even when using the likely overestimated cost of MATS based on the 2011 RIA, the total capital and operational expenditures required by MATS are in the range of about 5 percent of total historical capital and operational expenditures by the power sector during the period of 2000–2011. *See* section III.B.3; Cost TSD; 81 FR 24425 (April 25, 2016). In this proposal, we re-analyze all of these metrics using updated data to reflect more recent information (as of 2019), and took into consideration the fact that the 2011 RIA cost estimate was almost certainly significantly overestimated. All of this new analysis further supports our findings as to the cost of MATS relative to other power sector economics based on the record available to the Agency at the time we were making the threshold determination (*i.e.,* the 2012 record).

Consistent with the *Michigan* Court's instruction to consider all advantages and disadvantages of regulation, we also assess, as we did in 2016, disadvantages to regulation that would flow to the greater American public. Specifically, we examine whether regulation of EGUs would adversely impact the provision of reliable, affordable electricity to the American public, because had regulation been anticipated to have such an effect, it would have weighed heavily on our decision as to whether it was appropriate to require such regulation. The CAA tasks the EPA with the purpose of protecting and enhancing air quality in the U.S., but directs that in doing so we promote public health and welfare *and* the productive capacity of the U.S. population. CAA section 101(b)(1). As noted, we also think examining these potential impacts is consistent with the ''broad and all-encompassing'' nature of the term ''appropriate,'' as characterized by the Supreme Court. *Michigan,* 576 U.S. at 752. We were particularly interested in examining the expected impact of MATS implementation on the retail price of electricity, because in electricity markets, utility expenditures can be fully or partially passed to consumers. It was therefore reasonable to assume

that the cost of MATS could result in increased retail electricity prices for consumers, although we emphasize, as we did in 2016, that the electricity price impacts examined under this metric do not reflect *additional* compliance costs on top of the estimate produced in the 2011 RIA but rather reflect the passing on of a share of those costs to consumers (and ultimately reducing the costs EGU owners would otherwise bear). However, even though the impacts on electricity prices are reflected in the total cost estimate to the sector as a whole, we think, for the reasons stated above, that electricity price impacts are worthy of special attention because of the potential effect on the American public.

We therefore estimate the percent increase in retail electricity prices projected to result from MATS compared to historical levels of variation in electricity prices. *See* section III.B.3; 80 FR 75035 (December 1, 2015). We estimate that retail electricity prices for 2015 would increase by about 0.3 cents per kilowatt-hour, or 3.1 percent with MATS in place. Between 2000 and 2011, the largest annual year-to-year decrease in retail electricity price was –0.2 cents per kilowatt-hour and the largest year-to-year increase during that period was +0.5 cents per kilowatt-hour. The projected 0.3 cents increase due to MATS was therefore well within normal historical fluctuations. *Id.* As with the other metrics examined, as the increase in retail electricity prices due to MATS was within the normal range of historical variability, a substantially lower estimate for impacts on electricity prices would only further support the EPA's determination. We also note in section III.B.3 that the year-to-year retail electricity price changes in the new information we examined (*i.e.,* years 2011–2019) were within the same ranges observed during the 2000–2011 period, and that in fact, during that period when MATS was implemented, retail electricity prices have generally decreased (9.3 cents per kilowatt-hour in 2011 to 8.7 cents per kilowatt-hour in 2019). Consistent with these observed trends in retail electricity prices, as discussed in section III.B.2 and further below, our *ex post* analysis of MATS indicates that the projected compliance costs in the 2011 RIA—and, as a corollary, the projected increases in retail electricity prices—were likely significantly overestimated. Certainly, we have observed nothing in the data that suggests the regulation of HAP from EGUs resulted in increases in retail electricity prices for the American public that would warrant substantial concern in our weighing of this factor.

Similar to our reasoning for examining impacts on electricity prices for American consumers, in assessing the potential disadvantages to regulation, we elected to also look at whether the power sector would be able to continue to provide reliable electricity to all Americans after the imposition of MATS. We think this examination naturally fits into our assessment of whether regulation is ''appropriate,'' because had MATS interfered with the provision of reliable electricity to the American public, that would be a significant disadvantage to regulation to weigh in our analysis. In examining this factor, we looked at both resource adequacy and reliability—that is, the provision of generating resources to meet projected load and the maintenance of adequate reserve requirements for each region (resource adequacy) and the sector's ability to deliver the resources to the projected electricity loads so that the overall power grid remains stable (reliability). *See* section III.B.3; U.S. EPA 2011, Resource Adequacy and Reliability TSD; 80 FR 75036 (December 1, 2015). Our analysis indicated that the power sector would have adequate and reliable generating capacity, while maintaining reserve margins over a 3-year MATS compliance period. *Id.* We did not in this proposal update the Resource Adequacy and Reliability Study conducted in 2011, but we note that the EPA, as a primary regulator of EGUs, is keenly aware of adequacy and reliability concerns in the power sector and in particular the relationship of those concerns to environmental regulation. We have not seen evidence in the last decade to suggest that the implementation of MATS caused power sector adequacy and reliability problems, and only a handful of sources obtained administrative orders under the enforcement policy issued with MATS to provide relief to reliability critical units that could not comply with the rule by 2016.

In addition to the cost analyses described above, the EPA revisited its prior records examining the costs of mercury controls consistent with the requirement in CAA section 112(n)(1)(B), the cost of controls for other HAP emissions from EGUs, and the cost of implementing the utility-specific ARP, which Congress wrote into the 1990 CAA Amendments and implementation of which Congress anticipated could result in reductions in HAP emissions. 80 FR 75036–37 (December 1, 2015). The ARP, like MATS, was expected to have a significant financial impact on the power sector, with projections of its cost between $6 billion to $9 billion per year (in 2000 dollars), based on the expectation that many utilities would elect to install FGD scrubbers in order to comply with the ARP. *Id.* at 75037. The actual costs of compliance were much less (up to 70 percent lower than initial estimates), in large part because of the utilities' choice to comply with the ARP by switching to low sulfur coal instead of installing scrubbers.[114] This choice also resulted in far fewer reductions in HAP emissions than would have occurred if more EGUs had installed $SO_2$ scrubbers. We believe the considerable reduction in the implementation cost of the ARP is important because of the economic benefit that accrued from delaying the large capital costs of controls by almost 25 years. With respect to the costs of technology for control of mercury and non-mercury HAP, the record evidence shows that in 2012 controls were available and routinely used and that control costs had declined considerably over time. *Id.* at 75037–38. We also note that, as explained at length in section III.B.2, the actual compliance costs of MATS, with respect to capital and operating expenditures associated with installing and operating controls, were significantly lower than what we projected at the time of the rule. In addition, the newer information examined as part of this proposal demonstrates that actual control costs were much lower than we projected, which weighs further in favor of a conclusion that it is appropriate to impose those costs in order to garner the advantages of regulation.

Our review of the record and application of the preferred totality-of-the-circumstances approach has demonstrated that we have, over the last 2 decades, amassed a voluminous and scientifically rigorous body of evidence documenting the significant hazards to public health associated with HAP emissions from EGUs, particularly to certain vulnerable populations that bear greater risk from these emissions than the general public. We have looked at the volume of emissions coming from these sources and what the impact of regulation would be on that volume. We examined the cost of regulation to industry (even using an estimate of cost that we know to be higher than what was expended), and the potential

[114] U.S. EPA Clean Air Markets Div., 2011, *National Acid Precipitation Assessment Program Report to Congress 2011: An Integrated Assessment,* National Science and Technology Council, Washington, DC.

adverse impacts that could be felt by the American public via increased electricity prices and access to reliable electricity. And, consistent with the statute, we have also considered adverse impacts of EGU pollution on the environment as well as availability of controls and the costs of those controls.

Even based solely on the record available to us at the time we issued the regulation and made the threshold determination in 2012, we find that the benefits of regulation are manifold, and they address serious risks to vulnerable populations that remained after the implementation of the ARP and other controls imposed upon the power sector that were required under the CAA. We have placed considerable weight on these benefits, given the statutory directive to do so in CAA section 112(n)(1)(A) and Congress' clear purpose in amending CAA section 112 in 1990. In contrast, the costs, while large in absolute terms, were shown in our analyses to be within the range of other expenditures and commensurate with revenues generated by the sector, and our analysis demonstrated that these expenditures would not and did not have any significant impacts on electricity prices or reliability. After considering and weighing all of these facts and circumstances, in an exercise of his discretion under the Act, the Administrator proposes to conclude that the substantial benefits of reducing HAP from EGUs, which accrue in particular to the most vulnerable members of society, are worth the costs. Consequently, we propose to find after weighing the totality of the circumstances, that regulation of HAP from EGUs is appropriate after considering cost.

The newer information examined as part of this proposal regarding both benefits and costs is directionally consistent with all of the findings the EPA has made in the 2016 administrative record. The robust and long-standing scientific foundation regarding the adverse health and environmental risks from mercury and other HAP is fundamentally unchanged since the comprehensive studies that Congress mandated in the CAA were completed decades ago. But in this proposal, we completed screening level risk assessments, informed by newer meta-analyses of the dose-response relationship between methylmercury and cardiovascular disease, which indicate that a segment of the American public is at increased risk of prematurely dying by heart attack due to methylmercury exposure with as many as 91 deaths per year (and possibly more) being attributable to mercury emissions from EGUs.[115] Further, analyses show that some populations (*e.g.,* low-income Blacks in the Southeast and certain tribal communities engaging in subsistence fishing activity) likely bear a disproportionately higher risk from EGU HAP emissions than the general populace.

The new cost information analyzed by the EPA, discussed in section III.B, indicates that the cost projection used in the 2016 Supplemental Finding (*i.e.,* the 2011 RIA cost estimate) likely significantly overestimated the actual costs of compliance of MATS. Specifically, the EGU sector installed far fewer controls to comply with the HAP emissions standards than projected; certain modeling assumptions, if updated with newer information, would have resulted in a lower cost estimate; unexpected advancements in technology occurred; and the country experienced a dramatic increase in the availability of comparatively inexpensive natural gas. All of these factors likely resulted in a lower actual cost of compliance than the EPA's projected estimates in 2011. We therefore find that when we consider information available to the Agency after implementation of the rule, our conclusion that it was appropriate to regulate this sector for HAP is further strengthened. The costs projected in the 2011 RIA were almost certainly overestimated by an amount in the billions of dollars.

We note as well that during prior rulemaking processes related to the appropriate and necessary determination, stakeholders suggested that undermining the threshold finding in order to pave the way to rescinding MATS would have grave economic and health consequences. Utilities reported that they rely upon the mandated status of MATS in order to recoup expenditures already made to comply with the rule before Public Utility Commission proceedings.[116] States asserted that they rely upon the Federal protections achieved by the rule in state implementation planning and other regulatory efforts.[117] And other industries, such as pollution control companies, have made business decisions based on the existence of MATS.[118] We think these reliance interests, nearly all of which are aligned, also weigh in favor of retaining the appropriate and necessary determination, particularly given the fact that a significant portion of compliance costs have already been spent.

Finally, while we focus on the HAP benefits, we note that the *Michigan* court directed that ''any disadvantage could be termed a cost.'' *Michigan,* at 752. The corollary is that any advantage could be termed a benefit. And so, while it is not necessary to our conclusion that regulation is appropriate, we also consider, under our totality-of-the-circumstances approach, whether there are additional advantages or disadvantages to the specific controls imposed under MATS. Specifically, we note that because the controls required to reduce HAP from U.S. EGUs resulted in substantial reductions in co-emitted pollutants, including direct $PM_{2.5}$ as well as $SO_2$ and $NO_X$, which are both precursors to ozone and fine particle formation, the Administrator's proposed conclusion is further supported by the ramifications of the regulatory requirements in MATS for these pollutants. We propose that the benefits associated with such reductions may be appropriate to consider where the framework for making the CAA section 112(n)(1)(A) determination is a totality-of-the-circumstances approach, and we take comment on that approach. Therefore, while we conclude that the benefits associated with regulating HAP alone outweigh the costs without consideration of non-HAP benefits, we also propose that, to the extent we consider benefits attributable to reductions in co-emitted pollutants as a concomitant advantage, these benefits act to confirm that regulation is

[115] This estimate of premature mortality is for the EGU sector after imposition of the ARP and other CAA requirements, but before MATS implementation.

[116] *See, e.g.,* Comment Letter from Edison Electric Institute, Docket ID Item No. EPA–HQ–OAR–2018–0794–2267; Comment Letter from Edison Electric Institute, NRECA, American Public Power Association, The Clean Energy Group, Class of '85 Regulatory Response Group, Large Public Power Council, Global Energy Institute, International Brotherhood of Electrical Workers, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, and the Laborers' International Union of North America, Docket ID Item No. EPA–HQ–OAR–2018–0794–0577.

[117] *See, e.g.,* Comment Letter from Attorneys General of Massachusetts, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia, the Maryland Department of the Environment, the City Solicitor of Baltimore, the Corporation Counsels of Chicago and New York City, the County Attorney of the County of Erie, NY, and the County Counsel for the County of Santa Clara, CA, Docket ID Item No. EPA–HQ–OAR–2018–0794–1175.

[118] *See, e.g.,* Comment Letter from ADA Carbon Solutions, LLC, Docket ID Item No. EPA–HQ–OAR–2018–0794–0794; Comment Letter from Advanced Emissions Solutions, Inc., Docket ID Item No. EPA–HQ–OAR–2018–0794–1181; Comment Letter from Exelon Corporation, Docket ID Item No. EPA–HQ–OAR–2018–0794–1158.

appropriate under a totality-of-the-circumstances approach. Specifically, we note that reductions in co-emissions of direct $PM_{2.5}$, $SO_2$ and $NO_X$ will have substantial health benefits in the form of decreased risk of premature mortality among adults, and reduced incidence of lung cancer, new onset asthma, exacerbated asthma, and other respiratory and cardiovascular diseases. In the 2011 RIA, the EPA estimated the number and value of avoided $PM_{2.5}$-related impacts, including 4,200 to 11,000 premature deaths, 4,700 nonfatal heart attacks, 2,600 hospitalizations for respiratory and cardiovascular diseases, 540,000 lost work days, and 3.2 million days when adults restrict normal activities because of respiratory symptoms exacerbated by $PM_{2.5}$. We also estimated substantial additional health improvements for children from reductions in upper and lower respiratory illnesses, acute bronchitis, and asthma attacks. In addition, we estimated the benefit of reductions in $CO_2$ emissions under MATS. Although the EPA only partially monetized the benefits associated with these reductions in co-emitted pollutants in the 2011 RIA, the Agency estimated that—due in particular to the strong causal relationship between $PM_{2.5}$ and premature mortality—these reductions could result in as much as $90 billion (in 2016 dollars) in additional public health benefits annually. Therefore, if these non-HAP benefits are considered in the totality-of-the-circumstances approach, we take note of the fact that regulating EGUs for HAP emissions results in substantial other health benefits accruing to the American public by virtue of regulating HAP from EGUs.

*E. The Administrator's Proposed Benefit-Cost Analysis Approach and Proposed Conclusion*

In addition to the preferred approach, we separately put forward an alternative approach, as we did in 2016, to support a determination that it is appropriate and necessary to regulate HAP from EGUs when looking at the results of a formal BCA. The formal BCA we conducted for purposes of meeting Executive Order 12866 using established BCA practices also demonstrates that the benefits estimated for MATS far exceed the estimated costs, as reported in the 2011 RIA.[119] In its net benefits projection, the 2011 RIA monetized only one post control benefit from regulating HAP emissions from EGUs because the Agency did not and does not have the information necessary to monetize the many other benefits associated with reducing HAP emissions from EGUs. *See* section III.A.4. However, the 2011 RIA properly accounted for all benefits by discussing qualitatively those that could not be quantified and/or monetized. While some of the impacts on particularly impacted populations—such as the children of recreational anglers experiencing IQ loss—were reflected in the net benefits calculation, that accounting does not really grapple with the equitable question of whether a subset of Americans should continue to bear disproportionate health risks in order to avoid the increased cost of controlling HAP from EGUs. We continue to prefer a totality-of-the-circumstances approach to making the determination under CAA section 112(n)(1)(A), but we think that if a BCA is to be used, it should, consistent with economic theory and principles, account for all costs and all benefits.

BCA has been part of executive branch rulemaking for decades. Over the last 50 years, Presidents have issued Executive Orders directing agencies to conduct these analyses as part of the rulemaking development process. Executive Order 12866, currently in effect, requires a quantification of benefits and costs to the extent feasible for any regulatory action that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way certain facets of society. Executive Order 12866, at section 3(f)(1).

The EPA performed a formal BCA to comport with Executive Order 12866 as part of the 2012 MATS rulemaking process (referred to herein as the 2011 RIA). In the 2016 Supplemental Finding, the EPA relied on the BCA it had performed for Executive Order 12866 purposes as an alternative basis upon which to make the appropriate and necessary determination. That BCA, which reflected in its net benefits calculation only certain categories of benefits that could be confidently monetized, estimated that the final MATS would yield annual *net* monetized benefits (in 2007 dollars) of between $37 billion to $90 billion using a 3-percent discount rate and $33 billion to $81 billion using a 7-percent discount rate. *See* 80 FR 75040 (December 1, 2015). These estimates included the portion of the HAP benefits described in section III.A that could be monetized at the time, along with additional health benefits associated with the controls necessary to control the HAP emissions from U.S. EGUs. Specifically, as noted, the net benefits estimates included only one of the many HAP benefits associated with reduction of HAP. Nonetheless, the monetized benefits of MATS outweighed the estimated $9.6 billion in annual monetized costs by between 3-to-1 or 9-to-1 depending on the benefit estimate and discount rate used. The implementation of control technologies to reduce HAP emissions from EGU sources also led to reductions in emissions of $SO_2$, direct $PM_{2.5}$, as well as other precursors to $PM_{2.5}$ and ozone. In the 2011 RIA, the EPA did not quantify the benefits associated with ozone reductions resulting from the emissions controls under MATS, but we did include estimates of the projected benefits associated with reductions in $PM_{2.5}$. These benefits were quite substantial and had a large economic value. Newer scientific studies strengthen our understanding of the link between $PM_{2.5}$ exposure to a variety of health problems, including: premature death, lung cancer, non-fatal heart attacks, new onset asthma, irregular heartbeat, aggravated asthma, decreased lung function, and respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing. Furthermore, since the RIA was completed in 2011, the EPA has updated its conclusions about how $PM_{2.5}$ emissions can adversely affect the environment through acidic deposition, materials damage, visibility impairment, and exacerbating climate change (EPA, 2019).[120] In its most recent review of the effects of ozone pollution, the EPA concluded that ozone is associated with a separate but similarly significant set of adverse outcomes including respiratory-related premature death, increased frequency of asthma attacks, aggravated lung disease, and damage to vegetation (EPA, 2020).[121]

BCAs are a useful tool to ''estimate the *total* costs and benefits to society of an activity or program,'' and ''can be thought of as an accounting framework of the overall social welfare of a program.'' EPA Economic Guidelines, Appendix A, A–6 (emphasis in

[119] We use the term ''formal benefit-cost analysis'' to refer to an economic analysis that attempts to quantify all significant consequences of an action in monetary terms in order to determine whether an action increases economic efficiency. Assuming that all consequences can be monetized, actions with positive net benefits (*i.e.,* benefits exceed costs) improve economic efficiency.

[120] U.S. EPA. *Integrated Science Assessment (ISA) for Particulate Matter* (Final Report, Dec 2019). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–19/188, 2019.

[121] U.S. EPA. *Integrated Science Assessment (ISA) for Ozone and Related Photochemical Oxidants* (Final Report, Apr 2020). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–20/012, 2020.

original).[122] In a BCA, ''[t]he favorable effects of a regulation are the benefits, and the foregone opportunities or losses in utility are the costs. Subtracting the total costs from the total monetized benefits provides an estimate of the regulation's net benefits to society.'' *Id.* Importantly, however, ''[t]he key to performing BCA lies in the ability to measure both benefits and costs in monetary terms so that they are comparable.'' *Id.; see also* OMB Circular A–4 (''A distinctive feature of BCA is that both benefits and costs are expressed as monetary units, which allows you to evaluate different regulatory options with a variety of attributes using a common measure.'').[123]

In the 2020 Final Action, the EPA rescinded the 2016 alternative approach on the basis that it was ''fundamentally flawed'' because it applied ''a formal cost-benefit analysis'' to the CAA section 112(n)(1)(A) determination. The Agency's objection at the time to the use of ''a formal cost-benefit analysis'' in the context of this determination was that doing so ''implied that an equal weight was given to the non-HAP co-benefit emission reductions and the HAP-specific benefits of the regulation.'' *See* 85 FR 31299 (May 22, 2020). The Agency concluded that it was not appropriate to use a formal BCA in this situation because ''to give equal weight to the monetized $PM_{2.5}$ co-benefits would permit those benefits to become the driver of the regulatory determination, which the EPA believes would not be appropriate.'' *Id.* The EPA reiterated in the 2020 Final Action that ''HAP benefits, as compared to costs, must be the primary question in making the 'appropriate and necessary' determination'' and ''the massive disparity between co-benefits and HAP benefits on this record would mean that that alternative approach clearly elevated co-benefits beyond their permissible role.'' *Id.* at 31303. ''To be valid, the EPA's analytical approach to [CAA section 112(n)(1)(A)] must recognize Congress' particular concern about risks associated with HAP and the benefits that would accrue from reducing those risks.'' *Id.* at 31301.

We agree that the analytical framework for the appropriate and necessary determination should first and foremost be one that is focused on ''Congress' particular concern about risks associated with HAP and the benefits that would accrue from reducing those risks.'' *Id.* It is for this reason, as discussed in section III.C of this preamble, that we propose to revoke the analytical framework advanced for the appropriate and necessary determination by the 2020 Final Action, as being insufficiently attentive to the public health advantages of regulation. However, if the decisional framework is going to be one that considers advantages to regulation primarily in terms of potential monetized outcomes (*see* 85 FR 31296–97; May 22, 2020), a formal BCA that estimates net outcomes (*i.e.,* by comparing total losses and gains) and conforms to established economic best practices and accounts for *all* of the effects of the rule that can be quantified should be used.[124]

Consistent with scientific principles underlying BCA, both OMB Circular A–4 and the EPA's Guidelines for Preparation of Economic Analyses direct the Agency to include all benefits in a BCA. Per Circular A–4, OMB instructs ''Your analysis should look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks. An ancillary benefit is a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking.'' Circular A–4 at 26. Similarly, the Guidelines state, ''An economic analysis of regulatory or policy options should present all identifiable costs and benefits that are incremental to the regulation or policy under consideration. These should include directly intended effects and associated costs, as well as ancillary (or co-) benefits and costs.'' Guidelines at 11–2. As discussed in prior MATS rulemakings (*see, e.g.,* 80 FR 75041; December 1, 2015), installing control technologies and implementing the compliance strategies necessary to reduce the HAP emissions directly regulated by the MATS rule also results in reductions in the emissions of other pollutants such as directly emitted $PM_{2.5}$ and $SO_2$ (a $PM_{2.5}$ precursor). A particularly cost-effective control of emissions of particulate-bound mercury and non-mercury metal HAP is through the use of PM control devices that indiscriminately collect PM along with the metal HAP, which are predominately present as particles. Similarly, emissions of the acid gas HAP are reduced by acid gas controls that are also effective at reducing emissions of $SO_2$ (also an acid gas, but not a HAP). *Id.* While these $PM_{2.5}$ and $SO_2$ emission reductions are not the objective of the MATS rule, the reductions are, in fact, a direct consequence of regulating the HAP emissions from EGUs. Specifically, controls on direct $PM_{2.5}$ emissions are required to reduce non-mercury metal HAP, while $SO_2$ emissions reductions come from controls needed to reduce acid gas emissions from power plants.

However, we recognize that there are significant reasons to question whether a formal BCA is the best way to interpret the Agency's mandate in CAA section 112(n)(1)(A), and we take comment on whether the Agency should continue to rely on this alternative basis for making its determination. We have consistently taken the position that a formal BCA is not required under CAA section 112(n)(1)(A). *See* 80 FR 75039 (December 1, 2015). As set forth above, in *Michigan,* the Supreme Court declined to hold that CAA section 112(n)(1)(A) required such an assessment, stating, ''We need not and do not hold that the law unambiguously required the Agency, when making this preliminary estimate, to conduct a formal cost-benefit analysis in which each advantage and disadvantage is assigned a monetary value.'' *Michigan,* 576 U.S. at 759. However, the Court did note that ''[c]onsideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* disadvantages of agency decisions.'' *Id.* at 2707. Moreover, in finding the EPA's decision not to

[122] U.S. EPA. 2014. *Guidelines for Preparing Economic Analyses.* EPA–240–R–10–001. National Center for Environmental Economics, Office of Policy. Washington, DC. December. Available at *https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses,* accessed July 23, 2021. Docket ID Item No. EPA–HQ–OAR–2009–0234–20503.

[123] U.S. OMB. 2003. *Circular A–4 Guidance to Federal Agencies on Preparation of Regulatory Analysis.* Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf,* accessed July 23, 2021.

[124] In addition, CAA section 112(n)(1)(A) directs the EPA to evaluate the hazards to public health from EGU HAP emissions that a reasonably anticipated ''after imposition of the other requirements of the [CAA].'' The direction to consider the impacts of non-CAA section 112 requirements on HAP emissions from EGUs demonstrates that Congress understood that criteria pollutant controls would achieve HAP reductions. Given this understanding, it is reasonable for the EPA to consider the consequent criteria pollutant reductions attributable to CAA section 112 standards if a BCA is used to evaluate cost in the context of the appropriate finding. Furthermore, CAA section 112 legislative history not specifically directed at EGUs also supports the consideration of criteria pollutant benefits attributable to the regulation of HAP emissions. Specifically, the Senate report for the 1990 CAA amendments states: ''When establishing technology-based [MACT] standards under this subsection, the Administrator may consider the benefits which result from control of air pollutants that are not listed but the emissions of which are, nevertheless, reduced by control technologies or practices necessary to meet the prescribed limitation.'' A Legislative History of the Clean Air Act Amendments of 1990 (CAA Legislative History), Vol. 5, pp. 8512 (CAA Amendments of 1989; p. 172; Report of the Committee on Environment and Public Works S. 1630).

consider cost irrational, the Court suggested that unintended disadvantages of a regulation could be considered costs as well, implying that such disadvantages should be accounted for. *Id.* at 2707 (''The Government concedes that if the Agency were to find that emissions from power plants do damage to human health, but that the technologies needed to eliminate these emissions do even more damage to human health, it would still deem regulation appropriate. No regulation is 'appropriate' if it does significantly more harm than good.'').

In the 2015 Proposal, we identified several policy reasons for preferring to apply a totality-of-the-circumstances approach to weighing costs and benefits over using a formal BCA as our decisional framework under CAA section 112(n)(1)(A). *See* 80 FR 75025 (December 1, 2015). We recognized that benefits like those associated with reduction of HAP can be difficult to monetize, and this incomplete quantitative characterization of the positive consequences can underestimate the monetary value of net benefits. *See* 80 FR 75039 (December 1, 2015). This is well-established in the economic literature. As noted in OMB Circular A–4, ''[w]here all benefits and costs can be expressed as monetary units, BCA provides decision makers with a clear indication of the most efficient alternative.'' Circular A–4 at 2. However, ''[w]hen important benefits and costs cannot be expressed in monetary units, BCA is less useful, and it can even be misleading, because the calculation of net benefits in such cases does not provide a full evaluation of all relevant benefits and costs.'' Circular A–4 at 10. The EPA's Guidelines for Preparation of Economic Analyses also recognizes the limitations of BCA, noting that ''[m]ost important, [BCA] requires assigning monetized values to non-market benefits and costs. In practice it can be very difficult or even impossible to quantify gains and losses in monetary terms (*e.g.,* the loss of a species, intangible effects).'' Guidelines, Appendix A at A–7.

We also pointed out in the 2015 Proposal that national level BCAs may not account for important distributional effects, such as impacts to the most exposed and most sensitive individuals in a population. *See* 80 FR 75040 (December 1, 2015). These distributional effects and equity considerations are often considered outside of (or supplementary to) analyses like BCAs that evaluate whether actions improve economic efficiency (*i.e.,* increase net benefits). For example, children near a facility emitting substantial amounts of lead are at significantly greater risk of neurocognitive effects (including lost IQ) and other adverse health effects. One perspective on the costs and benefits of controlling lead pollution would be to aggregate those costs and benefits across society, as in a BCA net benefits calculation. However, neither costs nor benefits are spread uniformly across society and failing to take account of that can overlook significant health risks for sensitive subpopulations, such as children exposed to lead pollution. Similarly, in the context of this determination, where we have found disproportionate risk for certain highly exposed or sensitive populations, such considerations are also particularly relevant. *See* section II.B; section III.A.

We note too that OMB Circular A–4 highlights the special challenges associated with the valuation of health outcomes for children and infants, because it is ''rarely feasible to measure a child's willingness to pay for health improvement'' and market valuations such as increased ''wage premiums demanded by workers to accept hazardous jobs are not readily transferred to rules that accomplish health gains for children.'' Circular A–4 at 31. We take comment on whether a BCA, on its own, is an appropriate tool to make a determination of whether to regulate under CAA section 112(n)(1)(A), given that it may not meaningfully capture all the societal interests the statute intends the EPA to consider. *See* Guidelines, Appendix A at A–7 (''In some cases a policy may be considered desirable even if the benefits do not outweigh the costs, particularly if there are ethical or equity concerns.'').

With those caveats, we propose to reaffirm using a BCA approach, based on the 2011 RIA performed as part of the original MATS rulemaking, as another way to make the CAA section 112(n)(1)(A) determination of whether it is appropriate to regulate HAP emissions from EGUs.

Applying the alternative approach, based on the 2011 RIA, we propose to find that it is appropriate to regulate EGUs for HAP under CAA section 112(n)(1)(A). In the 2011 RIA, the total benefits of MATS were estimated to vastly exceed the total costs of the regulation. As we found when applying the 2016 alternative approach, the formal BCA that the EPA performed for the 2012 MATS Final Rule estimated that the final MATS rule would yield annual monetized total benefits (in 2007 dollars) of between $37 billion to $90 billion using a 3-percent discount rate and between $33 billion to $81 billion using a 7-percent discount rate; this compares to projected annual compliance costs of $9.6 billion. This estimate of benefits was limited to those health outcomes the EPA was able to monetize. Despite the fact that these estimates captured only a portion of the benefits of the rule, excluding many important HAP and criteria pollutant-related endpoints which the Agency was unable to monetize (*see* section III.A.4) and instead discussed qualitatively in the 2011 RIA, it was clear that MATS was projected to generate overwhelmingly net positive effects on society. We continue to think that the BCA approach independently supports the conclusion that regulation of HAP emissions from EGUs is appropriate.

Although as discussed in section III.B.2 it was not possible for the EPA to update the entire comprehensive cost estimate found in the 2011 RIA, we think the new information presented in sections III.A and III.B directionally supports the net benefits calculation of the 2016 alternative approach. That is, we have attempted to quantify additional risks, including risks of premature death from heart attacks that result from exposure to methylmercury associated with domestic EGU emissions, and we believe the 2011 RIA's projected cost was almost certainly significantly overestimated. Therefore, we propose that if BCA is a reasonable tool to use in the context of the EPA's determination under CAA section 112(n)(1)(A), newer data collected since 2011 overwhelmingly support an affirmative determination. Further, that both analytical approaches to addressing the inquiry posed by *Michigan* lead to the same result reinforces the reasonableness of the EPA's ultimate decision that it is appropriate and necessary to regulate HAP emissions from EGUs after considering cost.

In this proposal, the EPA has re-examined the extensive record, amassed over 2 decades, identifying the advantages of regulating HAP from EGUs and evaluating the costs of doing so. We have, for purposes of this proposal, also updated information on both benefits and costs. Of note, we find that new scientific literature indicates that methylmercury exposure from EGUs, absent regulation, poses cardiovascular and neurodevelopmental risks to all Americans and particularly those most exposed to this pollution. With respect to costs, we explain the combination of factors that occurred since the promulgation of MATS that leads us to believe that the projected, sector-level $9.6 billion estimate of the cost of compliance of the rule in 2015

was almost certainly significantly overestimated. We propose two different approaches to considering all of this information, applying first a totality-of-the-circumstances methodology weighing of benefits and costs and focusing particularly on those factors that we were instructed by the statute to study under CAA section 112(n)(1), and next using a formal benefit-cost approach consistent with established guidance and economic principles. Under either approach, whether looking at only the information available at the time of our initial decision to regulate or at all currently available information, we propose to conclude that it remains appropriate and necessary to regulate EGUs for HAP. Substantial emission reductions have occurred after implementation of MATS, the emission limits established pursuant to the Agency's 2012 affirmative appropriate and necessary determination, and these limits provide the only Federal guarantee of these emission reductions from EGUs, which, absent regulation, were the largest domestic anthropogenic source of a number of HAP. Finalizing this affirmative threshold determination would provide important certainty about the future of MATS for regulated industry, states, other stakeholders, and the American public. We take comment on the information relied upon in this proposal and the EPA's proposed approaches to considering that information for this determination.

## IV. Summary of Cost, Environmental, and Economic Impacts

The EPA estimates that there are 557 existing EGUs located at 265 facilities that are subject to the MATS rule. Because the EPA is not proposing any amendments to the MATS rule, there would not be any cost, environmental, or economic impacts as a result of the proposed action.

## V. Request for Comments and for Information To Assist With Review of the 2020 RTR

On January 20, 2021, President Biden signed Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'' (86 FR 7037; January 25, 2021). That order, among other things, instructs the EPA to consider publishing a proposed rule suspending, revising, or rescinding the May 22, 2020 final action, ''National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review.'' The 2020 Final Action contained two distinct, but related, final actions—(1) a reconsideration of the 2016 Supplemental Finding and (2) the RTR. This notice fulfills the Agency's obligation to address the first action. We solicit comments on all aspects of this proposed action.

Separate from this proposal, the EPA has initiated a review of the RTR, taking into account the latest information available on the experience of EGUs in complying with MATS and implementing measures to reduce HAP emissions. As previously noted, since MATS was promulgated in 2012, power sector emissions of mercury, acid gas HAP, and non-mercury metal HAP have decreased by about 86 percent, 96 percent, and 81 percent, respectively, as compared to 2010 emissions levels (Table 4 at 84 FR 2689, February 7, 2019). While EGUs remain the largest domestic emitter of mercury (and other HAP), their emissions and contribution to total mercury in the environment is significantly less now than before MATS implementation. The EPA is seeking input into how both of these facts should factor into its review of the RTR.

In this notice, the EPA is soliciting information to allow for a more thorough review of the 2020 MATS RTR. The EPA is soliciting broadly for any data or information—including risk-related information—that will assist in the review of the RTR. The EPA is also soliciting specifically for any information on performance or cost of new or additional control technologies, improved methods of operation, or other practices and technologies that may result in cost-effective reductions of HAP emissions from coal- or oil-fired EGUs. In addition, the EPA is interested in receiving information on improvements or upgrades to existing controls that may result in cost-effective reductions of HAP emissions from coal- or oil-fired EGUs. The EPA also seeks information on the cost or performance of technologies and practices relating to monitoring of HAP emissions, and control of HAP emissions during startup and shutdown events, that could result in cost-effective reductions in HAP or assure improved operation of existing controls. We are seeking input from all interested stakeholders, including states, owners of EGUs, technology vendors and developers, and communities impacted by the emissions from EGUs.

## VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is a significant regulatory action that was submitted to OMB for review under Executive Order 12866. Any changes made in response to OMB recommendations have been documented in the docket. The EPA does not project any incremental costs or benefits associated with this action because it does not impose standards or other requirements on affected sources.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0567. This action does not impose an information collection burden because the EPA is not proposing any changes to the information collection requirements.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The EPA does not project any incremental costs or benefits associated with this action because it does not impose standards or other requirements on affected sources.

### *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. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive

Order 13175. The executive order defines tribal implications as ''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.'' Revocation of the 2020 determination that it is not appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs under CAA section 112 and reaffirmation of the 2016 Supplemental Finding that it remains appropriate and necessary to regulate HAP emissions from EGUs after considering cost would not have a substantial direct effect on one or more tribes, change the relationship between the Federal Government and tribes, or affect the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because this action does not impose new regulatory requirements that might present a disproportionate risk to children. This action reaffirms the 2016 Supplemental Finding that it is appropriate and necessary to regulate HAP emissions from U.S. EGUs, but does not impose control requirements, which were implemented through MATS (77 FR 9304; February 16, 2012). While this action does not impose or change any standards or other requirements, it addresses the underpinning for the HAP emission standards in MATS. The EPA believes the reductions in HAP emissions achieved under MATS have provided and will continue to provide significant benefits to children in the form of improved neurodevelopment and respiratory health and reduced risk of adverse outcomes. Analyses supporting the 2012 MATS Final Rule estimated substantial health improvements for children in 2016 in the form of 130,000 fewer asthma attacks, 3,100 fewer emergency room visits due to asthma, 6,300 fewer cases of acute bronchitis, and approximately 140,000 fewer cases of upper and lower respiratory illness. *See* 77 FR 9441 (February 16, 2012). Reaffirming the appropriate and necessary determination assures those benefits will continue to accrue among children.

*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 is not anticipated to have impacts on emissions, costs, or energy supply decisions for the affected electric utility industry as it does not impose standards or other requirements on affected sources.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action will not have 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), because it does not impose standards or other requirements on affected sources and is limited in scope to only consider whether it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs. While this action does not impose or modify any standards or other requirements, it provides the underpinning for the emission standards regulating HAP from EGUs. As documented in both the NAS Study and Mercury Study, fish and seafood consumption is the primary route of human exposure to methylmercury originating from U.S. EGUs, with populations engaged in subsistence-levels of consumption being of particular concern. As shown in section III.A.5 of this preamble, certain minority, low-income, and indigenous populations are more likely to experience elevated exposures, thus higher health risks relative of the general population due to subsistence fishing. Furthermore, subpopulations with the higher exposure tend to overlap with those subpopulations that are particularly vulnerability to small changes in health risk because of other social determinants of health (*e.g.,* lack of access to health care and access to strong schooling), thereby compounding the implications of the implications of mercury exposure. Reaffirming the appropriate and necessary determination assures that the reduction in risks achieved by MATS continue.

**Michael S. Regan,**

*Administrator.*

[FR Doc. 2022–02343 Filed 2–8–22; 8:45 am]

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# FEDERAL REGISTER

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Part IV

## The President

Notice of February 7, 2022—Continuation of the National Emergency With Respect to the Situation in and in Relation to Burma

Federal Register
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# Presidential Documents

**Title 3—**

## The President

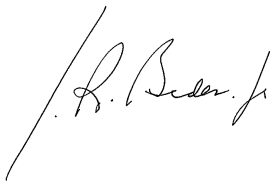
**Notice of February 7, 2022**

## Continuation of the National Emergency With Respect to the Situation in and in Relation to Burma

On February 10, 2021, by Executive Order 14014, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to Burma.

The situation in and in relation to Burma, and in particular the February 1, 2021 coup, in which the military overthrew the democratically elected civilian government of Burma and unjustly arrested and detained government leaders, politicians, human rights defenders, journalists, and religious leaders, thereby rejecting the will of the people of Burma as expressed in elections held in November 2020 and undermining the country's democratic transition and rule of law, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on February 10, 2021, must continue in effect beyond February 10, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) I am continuing for 1 year the national emergency declared in Executive Order 14014 with respect to the situation in and in relation to Burma.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
*February 7, 2022.*

[FR Doc. 2022–02934
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