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Presidential Documents

Title 3—

The President

Proclamation 10372 of April 21, 2022

Earth Day, 2022

By the President of the United States of America

A Proclamation

Fifty-two years ago, millions of people gathered across our country in a rally to protect our planet. This collective action gave birth to a new movement and spurred the creation of landmark environmental laws that protect the air we breathe and the water we drink. Today, we must recapture that spirit and, as I said in my Inaugural Address, heed a cry for survival that comes from the planet itself.

In their most recent report, the Intergovernmental Panel on Climate Change provided yet another round of evidence that climate change is no longer in the distant future—it is here. Last year, extreme weather and climate disasters cost our communities $145 billion and claimed hundreds of lives. In the summer of 2021 alone, nearly 1 out of every 3 Americans experienced a weather disaster. The climate crisis is upending lives across the country and around the world. Environmental injustices continue to exact a toll on the health of communities of color, low-income communities, and Tribal and Indigenous communities. A number of wildlife species in the United States and around the world are facing an extinction crisis unparalleled in human history. The environmental challenges of our time call for historic action, and we intend to meet the moment.

That is why my Administration has launched the most ambitious environmental and climate agenda in history. We have made the bold commitment to reduce greenhouse gas emissions in the United States by 50 to 52 percent by 2030, reach 100 percent carbon pollution-free electricity by 2035, and achieve net zero emissions economy-wide by no later than 2050. To work toward these goals, we have taken action across every sector of the economy, including setting the strongest-ever standards for greenhouse gas emissions from passenger vehicles, tackling super-pollutants like methane and hydrofluorocarbons, investing billions in the deployment of clean technologies, and launching the American offshore wind industry.

In addition, I was proud to start the ''America the Beautiful'' initiative, our first-ever voluntary national conservation goal to conserve 30 percent of America's lands and waters by 2030.

The Bipartisan Infrastructure Law is a once-in-a-generation opportunity to build on these actions and accelerate our Nation's ability to confront the environmental and climate challenges we face. It will allow us to remediate and reclaim abandoned mine lands and oil wells leaking methane while putting Americans to work in good paying jobs; invest in coastal wetlands and habitats that can protect infrastructure and homes during storms; replace lead pipes that plague underserved communities and remove dangerous chemicals from our drinking water; restore watersheds and rivers; create fish passage to protect iconic species, such as salmon; restore forests as carbon sinks; build resilience to climate impacts including droughts, heat, floods, and wildfires; and build a national network of electric vehicle charging stations to accelerate our transition to electric mobility.

As my Administration implements this agenda, we are following through on our commitment to ensuring that our investments advance equity and

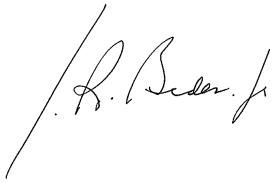
justice and reach communities across the country—including rural communities, communities of color, and low-income communities. We will be guided by the steadfast conviction of Earth Day founder Gaylord Nelson, my friend and former colleague, that ''every person has the inalienable right to a decent environment,'' including those who have long been shut out of decisions that directly affect their lives and who are most likely to bear the brunt of pollution and climate change.

The responsibility to confront the climate crisis is not solely on the United States. It requires leaders across the world committing to a clean energy future. On my first day in office, I fulfilled my promise to rejoin our Nation to the Paris Agreement to tackle the climate crisis at home and abroad.

For the future of our planet, for our health, and for our children and grandchildren, we must act now. Let us stand united in this effort to save our planet and, in the process, strengthen our economy and grow more connected to each other and the world we share.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 22, 2022, as Earth Day. I encourage all Americans to participate in programs and activities that will deepen their understanding of environmental protection, the urgency of climate change, and the need to create a healthier, safer, more equitable future for all people.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, 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.



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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

[Docket No. USDA–2021–0009]

RIN 0503–AA74

Production or Disclosure of Official Information in Legal Proceedings

AGENCY: Office of the Secretary, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On February 28, 2022, the U.S. Department of Agriculture published a direct final rule. The direct final rule notified the public of our intention to revise our regulations regarding the production or disclosure of official information in legal proceedings (referred to as *Touhy* regulations). We did not receive any substantive written adverse comments in response to the direct final rule.

DATES: The effective date of the direct final rule published February 28, 2022, at 87 FR 10925 is confirmed as April 29, 2022.

FOR FURTHER INFORMATION CONTACT: Karen Carrington Fletcher, Senior Counsel, Office of the General Counsel, USDA, 1400 Independence Ave. SW, Room 103–W, Washington, DC 20250; *karen.fletcher@usda.gov;* (202) 720–0944.

SUPPLEMENTARY INFORMATION: On February 28, 2022, the U.S. Department of Agriculture published a direct final rule. (87 FR 10925) The direct final rule notified the public of our intention to revise our regulations regarding the production or disclosure of official information in legal proceedings (referred to as *Touhy* regulations).

In the direct final rule, we stated that if we received no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of the direct final rule, the direct final rule would become effective 60 days following its publication.

During the comment period, we received three comments, two of which were submitted by the same commenter. These three comments suggested that the amended regulations had the potential to obstruct justice and therefore should be withdrawn. However, the comments provided no basis for that assertion or any details that would allow us to understand the commenters' rationale. Therefore, we have determined that the regulations should become effective as stated in the direct final rule.

Accordingly, we are confirming that the direct final rule published February 28, 2022, will become effective on April 29, 2022.

Authority: 5 U.S.C. 301, unless otherwise noted.

David Grahn,

Principal Deputy General Counsel, United States Department of Agriculture.

[FR Doc. 2022–08814 Filed 4–25–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0022; Project Identifier AD–2020–01264–A; Amendment 39–22033; AD 2022–09–13]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (Piper) Model PA–34–200 airplanes. This AD was prompted by the determination that the life limit for alternate bolts that attach the drag link to the nose gear were not listed as airworthiness limitations. This AD requires establishing a life limit for these bolts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 31, 2022.

ADDRESSES: For service information identified in this final rule, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 299–2141; website: *https://www.piper.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0022; 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: Fred Caplan, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5507; email: *frederick.n.caplan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Piper Model PA–34–200 airplanes. The NPRM published in the **Federal Register** on February 3, 2022 (87 FR 6089; corrected February 16, 2022, 87 FR 8752). The NPRM was prompted by a notification from Piper that prior revisions of the airworthiness limitations section (ALS) for certain Piper Model PA–34–200 airplanes did not contain a life limit for bolt part number (P/N) 693–215 (standard P/N NAS6207–50D). Bolt P/N 693–215 (NAS6207–50D) is an alternate part for P/N 400–274 (standard P/N AN7–35). These bolts attach the drag link to the nose gear trunnion on Piper Model PA–34–200 airplanes. Piper did not include an ALS revision for the P/N 693–215 (standard P/N NAS6207–50D) bolt to establish the same life limit as the P/N 400–274 (AN7–35). If bolt P/N 693–215 (standard P/N NAS6207–

50D) that attaches the drag link to the nose gear trunnion remains in service beyond its fatigue life, failure of the nose landing gear could occur, which could result in loss of airplane control during take-off, landing, or taxi operations.

In the NPRM, the FAA proposed to require establishing a 500-hour life limit for bolt P/N 693–215 and P/N NAS6207–50D. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from two individual commenters. The following presents the comments received on the NPRM and the FAA's response.

One individual supported the NPRM without change.

Another individual requested the FAA revise the proposed AD by requiring different assembly procedures and hardware as terminating action. The commenter stated that failure of the bolt results from the bolts not being tightened properly or loosening up in service. The commenter noted that this can be corrected with improved maintenance instructions to achieve the proper torque and hardware (thinner washers, a longer bushing, or a slightly longer bolt, for example) to provide sufficient lateral clearance on the bushing to avoid binding.

The FAA disagrees with the commenter's suggestion. This AD is not addressing potential failure of the bolt through maintenance practices but instead addresses the life limit for the subject bolt, which is part of the aircraft's type design. The life limit was inadvertently omitted from the ALS, and this AD simply corrects that omission. To the extent the commenter requested a terminating action, this request is unnecessary as this AD only requires a one-time change to the aircraft maintenance records.

The FAA did not change this AD based on this comment.

Conclusion

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

Related Service Information

The FAA reviewed Piper Seneca Service Manual, Airworthiness Limitations, 753–817, page 1–1, dated November 30, 2019. This service information specifies the life limits of the P/N 693–215 (standard P/N NAS6207–50D) bolt that attaches the drag link to the nose gear trunnion.

ADs Mandating Airworthiness Limitations

The FAA has previously mandated airworthiness limitations by issuing ADs that require revising the ALS of the existing maintenance manual or instructions for continued airworthiness to incorporate new or revised inspections and life limits. This AD, however, requires incorporating new or revised inspections and life limits into the maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2) for your airplane. The FAA does not intend this as a substantive change. Requiring incorporation of the new ALS requirements into the maintenance records, rather than requiring individual repetitive inspections and replacements, allows operators to record AD compliance once after updating the maintenance records, rather than recording compliance after every inspection and part replacement.

Costs of Compliance

The FAA estimates that this AD affects 187 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Revise the Airworthiness Limitations	1 work-hour × $85 per hour = $85	Not Applicable	$85	$15,895

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–09–13 Piper Aircraft, Inc.: Amendment 39–22033; Docket No.

FAA–2022–0022; Project Identifier AD–2020–01264–A.

(a) Effective Date

This airworthiness directive (AD) is effective May 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piper Aircraft, Inc. Model PA–34–200 airplanes, serial numbers 34–7250001 through 34–7450220, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 3220, Nose/Tail Landing Gear.

(e) Unsafe Condition

This AD was prompted by the determination that the life limit for alternate bolts that attach the drag link to the nose gear were not included as airworthiness limitations. The FAA is issuing this AD to establish a life limit on bolt part numbers 693–215 and NAS6207–50D that attach the drag link to the nose gear trunnion. The unsafe condition, if not addressed, could result in failure of the nose landing gear and lead to loss of airplane control during take-off, landing, or taxi operations.

(f) Compliance

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

(g) Actions

(1) Within 90 days after the effective date of this AD, incorporate into the maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2) for your airplane a life limit of 500 hours for bolt part numbers 693–215 and NAS6207–50D.

Note to paragraph (g)(1): Piper Seneca Service Manual, Airworthiness Limitations, 753–817, page 1–1, dated November 30, 2019, contains the life limit in paragraph (g)(1) of this AD.

(2) Thereafter, except as provided in paragraph (h)(1) of this AD, no alternative replacement times may be approved for these bolts.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD.

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

(i) Related Information

(1) For more information about this AD, contact Fred Caplan, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5507; email: *frederick.n.caplan@faa.gov.*

(2) For service information identified in this AD that is not incorporated by reference, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 299–2141; website: *https://www.piper.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(j) Material Incorporated by Reference

None.

Issued on April 21, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–08852 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0145; Project Identifier MCAI–2021–00522–R; Amendment 39–22027; AD 2022–09–07]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–11–05 for certain Bell Helicopter Textron Canada Limited (now Bell Textron Canada Limited) Model 429 helicopters. AD 2019–11–05 required inspecting the tail rotor (TR) pitch link assemblies, and replacing certain pitch link bearings. This AD was prompted by a report of a worn pitch link, and the FAA's determination that all TR pitch link assemblies are affected by the unsafe condition. This AD continues to require the actions specified in AD 2019–11–05, and revises the applicability and requires inspections of certain other TR pitch link assemblies. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 31, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 31, 2022.

ADDRESSES: For service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; phone: 1–450–437–2862 or 1–800–363–8023; fax: 1–450–433–0272; email: *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0145.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0145; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the Transport Canada Civil Aviation (TCCA) AD, 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: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–11–05, Amendment 39–19651 (84 FR 26546, June 7, 2019) (AD 2019–11–05). AD 2019–11–05 applied to certain Bell Helicopter Textron Canada Limited Model 429 helicopters. The NPRM published in the **Federal Register** on February 23, 2022 (87 FR 10107). In the NPRM, the FAA proposed to continue to require inspecting the TR pitch link assemblies, and replacing certain pitch link bearings, as well as proposed to revise the applicability and require inspections of certain other TR pitch link assemblies. The NPRM was prompted by TCCA AD CF–2015–16R3, dated April 30, 2021 (TCCA AD CF–

2015–16R3), issued by TCCA, which is the aviation authority for Canada, to correct an unsafe condition for certain Bell Helicopter Textron Canada Limited Model 429 helicopters. TCCA AD CF–2015–16R3 retains the requirements of TCCA AD CF–2015–16R2, dated April 3, 2017, and revises the applicability by specifying certain helicopter serial numbers to account for new production helicopters, which have already incorporated the new pitch link assemblies and corrected the unsafe condition. TCCA AD CF–2015–16R3 also specifies that installing a new pitch link assembly terminates the repetitive inspections. This condition, if not addressed, could result in pitch link failure and subsequent loss of control of the helicopter.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, TCCA, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bell Alert Service Bulletin No. 429–15–16, Revision C, dated October 16, 2020. This service information contains procedures for inspecting the TR pitch link assemblies, replacing certain pitch link bearings, and replacement of the pitch link assemblies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 120 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained inspections from AD 2019–11–05.	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle	$20,400 per inspection cycle.
New inspections	2 work-hours × $85 per hour = $170 per inspection cycle.	0	$170 per inspection cycle	$20,400 per inspection cycle.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Bearing replacements	3 work-hours × $85 per hour = $255	$3,340	$3,343	$401,160

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive (AD) 2019–11–05, Amendment 39–19651 (84 FR 26546, June 7, 2019); and
■ b. Adding the following new AD:

2022–09–07 Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited): Amendment 39–22027; Docket No. FAA–2022–0145; Project Identifier MCAI–2021–00522–R.

(a) Effective Date

This airworthiness directive (AD) is effective May 31, 2022.

(b) Affected ADs

(1) This AD replaces AD 2019–11–05, Amendment 39–19651 (84 FR 26546, June 7, 2019) (AD 2019–11–05).

(2) This AD affects AD 2020–17–10, Amendment 39–21215 (85 FR 49941, August 17, 2020) (AD 2020–17–10).

(c) Applicability

This AD applies to Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 429 helicopters, certificated in any category, serial numbers 57001 through 57401 inclusive.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6720, Tail Rotor Control System.

(e) Unsafe Condition

This AD was prompted by a report of a worn pitch link. The FAA is issuing this AD to address a worn pitch link, which if not corrected, could result in pitch link failure and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Retained Requirements

(1) For pitch link assembly part number (P/N) 429–012–112–101, 429–012–112–103, 429–012–112–101FM, and 429–012–112–103FM: Within 50 hours time-in-service (TIS) after July 12, 2019 (the effective date of AD 2019–11–05) and thereafter at intervals not to exceed 50 hours TIS:

(i) Perform a dimensional inspection of each inboard and outboard pitch link assembly for axial and radial bearing play. With a 10X or higher power magnifying glass, inspect the bearing liner for a crack, deterioration of the liner, and extrusion of the liner from the plane. If there is axial or radial play that exceeds allowable limits, or if there is a crack, deterioration of the liner, or extrusion of the liner, before further flight, replace the bearing.

(ii) Inspect the pitch link assembly sealant for pin holes and voids and to determine if the sealant thickness is 0.025 inch (0.64 mm) or less, extends over the roll staked lip by 0.030 inch (0.76 mm) or more, and is clear of the bearing ball. If there is a pin hole or void, or if the sealant exceeds 0.026 inch (0.66 mm), does not extend over the roll staked lip by 0.030 inch (0.76 mm) or more, or is not clear of the bearing ball, before further flight, replace the bearing.

(2) For pitch link assembly P/N 429–012–112–101, 429–012–112–103, 429–012–112–101FM, and 429–012–112–103FM, within 200 hours TIS following the initial inspection required by paragraph (g)(1) of this AD, or if the hours TIS of a pitch link assembly exceed 250 hours TIS or are unknown, at the next 50-hour-TIS inspection required by paragraph (g)(1) of this AD:

(i) Replace each bearing P/N 429–312–107–103 with a date of manufacture before January 13, 2015, with a bearing P/N 429–312–107–103 that was manufactured on or after January 13, 2015.

(ii) Using a white permanent fine point marker or equivalent, re-identify the pitch link assembly:

(A) Re-identify P/N 429–012–112–101 and 429–012–112–101FM as 429–012–112–111FM.

(B) Re-identify P/N 429–012–112–103 and 429–012–112–103FM as 429–012–112–113FM.

(iii) Apply a coating of DEVCON 2–TON (C–298) or equivalent over the new P/N.

(h) New Requirements

For pitch link assemblies other than P/N 429–012–112–101, 429–012–112–103, 429–012–112–101FM, and 429–012–112–103FM: Within 50 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 50 hours TIS:

(1) Perform a dimensional inspection of each inboard and outboard pitch link assembly for axial and radial bearing play. With a 10× or higher power magnifying glass, inspect the bearing liner for a crack, deterioration of the liner, and extrusion of the liner from the plane. If there is axial or radial play that exceeds allowable limits, or if there is a crack, deterioration of the liner, or extrusion of the liner, before further flight, replace the bearing.

(2) Inspect the pitch link assembly sealant for pin holes and voids and to determine if the sealant thickness is 0.025 inch (0.64 mm) or less, extends over the roll staked lip by 0.030 inch (0.76 mm) or more, and is clear of the bearing ball. If there is a pin hole or void, or if the sealant exceeds 0.026 inch (0.66 mm), does not extend over the roll staked lip by 0.030 inch (0.76 mm) or more, or is not clear of the bearing ball, before further flight, replace the bearing.

(i) Terminating Action for Certain Actions in AD 2020–17–10

Accomplishing the initial inspection required by paragraph (g)(1) or (h) of this AD constitutes terminating action for the inspections required by paragraph (f)(2) of AD 2020–17–10 for that pitch link assembly only.

(j) Optional Terminating Action

The repetitive inspections required by paragraph (h) of this AD are no longer required for helicopters that incorporate pitch link assemblies, P/N 429–012–212–105 or 429–012–212–107, in accordance with Part III of the Accomplishment Instructions of Bell Alert Service Bulletin No. 429–15–16, Revision C, dated October 16, 2020.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Related Information

(1) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: *hal.jensen@faa.gov.*

(2) The subject of this AD is addressed in Transport Canada Civil Aviation AD CF–2015–16R3, dated April 30, 2021. You may view the Transport Canada AD at *https://www.regulations.gov* in Docket No. FAA–2022–0145.

(m) Material Incorporated by Reference

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

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

(i) Bell Alert Service Bulletin No. 429–15–16, Revision C, dated October 16, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; phone: 1–450–437–2862 or 1–800–363–8023; fax: 1–450–433–0272; email: *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.*

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

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

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

Issued on April 15, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08797 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0102; Project Identifier MCAI–2021–00841–R; Amendment 39–22024; AD 2022–09–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding airworthiness directive (AD) for 2021–05–05 which applied to all Airbus Helicopters Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters. AD 2021–05–05 required modifying the helicopter by replacing the tail rotor gearbox (TGB) control shaft guide bushes; repetitive inspections (checks) of the oil level of the TGB and, if necessary, filling the oil to the maximum level; repetitive inspections of the TGB magnetic plug and corrective actions if necessary; repetitive replacements of a certain control rod double bearing (bearing); and modifying the helicopter by replacing the TGB. This AD was prompted by a report where during a landing phase, a helicopter lost tail rotor pitch control, which was caused by significant damage to the TGB bearing. This AD retains some of the requirements of AD 2021–05–05, and reduces the intervals of the magnetic plug inspection, revises the corrective actions if particles are detected, and revises the compliance time for replacement of the affected part, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 31, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 31, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* For Airbus Helicopters and Eurocopter service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. Service information that is IBRed is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0102.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0102; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, 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: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–05–05, Amendment 39–21448 (86 FR 13972, March 12, 2021) (AD 2021–05–05). AD 2021–05–05 applied to all Airbus Helicopters Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters. AD 2021–05–05 required repetitive checks of the oil level of the TGB and if necessary, filling the oil to the maximum level. AD 2021–05–05 also required modifying the helicopter by replacing the TGB control shaft guide bushes; repetitive inspections of the TGB magnetic plug and corrective actions if necessary; repetitive replacements of the bearing; and modifying the helicopter by replacing the TGB. The NPRM published in the **Federal Register** on February 18, 2022 (87 FR 9277). The NPRM was prompted by a report where during a landing phase, a helicopter lost tail rotor pitch control, which was caused by significant damage to the TGB bearing. The NPRM was also prompted by the determination that reduced inspection intervals, updated corrective actions, and a revised compliance time for replacement of affected parts are necessary to address the unsafe condition. Furthermore, the FAA determined that the magnetic plug inspection interval must be reduced based on additional testing of the affected part by the manufacturer, and the compliance time for replacement of the affected part must be reduced.

The NPRM proposed to retain certain actions in AD 2021–05–05; reduce the intervals of the magnetic plug inspection; revise the corrective actions if particles are detected; and revise the compliance time for replacement of the affected part. The NPRM also proposed to allow the oil level inspections (checks) to be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with the proposed AD in accordance with 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417 or 135.439.

The NPRM was prompted by EASA AD 2021–0171, dated July 19, 2021 (EASA AD 2021–0171), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter (EC), Eurocopter France, Aerospatiale, Sud Aviation, Model SA 365 N1, AS 365 N2, AS 365 N3, EC 155 B, and EC 155 B1 helicopters, all serial numbers.

The FAA is issuing this AD to prevent damage to the bearing, which if not addressed, could result in loss of yaw control of the helicopter. See EASA AD 2021–0171 for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0171 specifies procedures for modifying the helicopter by replacing TGB control shaft guide bushes, and specifies procedures for repetitive inspections of the oil level of the TGB, and if necessary, filling the oil to the maximum level. EASA AD 2021–0171 also describes procedures for repetitive inspections of the TGB magnetic plug for the presence of particles and updated corrective actions if necessary (corrective actions include removing the TGB; complying with certain work cards to address any particles found, and other conditions such as abrasions, scales, flakes, and splinters; placing the helicopter under close monitoring; and if required replacing any affected bearing); initial and repetitive replacements of the bearing with an improved part; and modifying the helicopter by replacing the TGB bearing or replacing the TGB. EASA AD 2021–0171 specifies replacing the TGB bearing is a terminating action for the repetitive inspections of the magnetic plug; and replacing the TGB is a terminating action for the repetitive inspections of the magnetic plug, and the repetitive replacements of the bearing. EASA AD 2021–0171 also prohibits installing a certain bearing or a certain TGB on any helicopter.

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

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin No. AS365–01.00.67 (ASB AS365–01.00.67 Rev 6) and Airbus Helicopters Alert Service Bulletin No. EC155–04A014 (ASB EC155–04A014 Rev 6), both Revision 6, and both dated June 14, 2021. ASB AS365–01.00.67 Rev 6 and ASB EC155–04A014 Rev 6 both specify procedures for replacement of the TGB bearing before mod 07 65B63 installation, inspection of the TGB magnetic plug, removing the control shaft/rod assembly to inspect the bearing, and maintaining the TGB operating oil at the maximum level, and specify the monitoring criteria of the bearing.

The FAA also reviewed Eurocopter Service Bulletin AS365 No. 65.00.17, and Eurocopter Service Bulletin EC155 No. 65–006, both Revision 1 and both dated February 23, 2011. Both service bulletins specify instructions for introducing Eurocopter (EC) mod 07 65B58.

Differences Between This AD and EASA AD 2021–0171

EASA AD 2021–0171 revises the applicability by removing the reference to Model SA 366 G1 helicopters because the EASA type certificate has been surrendered. However, Model SA–366G1 helicopters are still on the U.S. type certificate data sheet, even though there are no current U.S. operators. Therefore, this AD includes Model SA–366G1 helicopters.

Costs of Compliance

The FAA estimates that this AD affects 50 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR RETAINED REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. fleet
Replace guide bushes	4.00 work-hours × $85 per hour = $340	$1,586	$1,926 per replacement	$96,300
Daily oil level inspection	1.00 work-hour × $85 per hour = $85	0	$85 per inspection cycle	4,250
Recurring plug inspection	1.00 work-hour × $85 per hour = $85	0	$85 per inspection cycle	4,250
Inspect bearing	8.00 work-hours × $85 per hour = $680	0	$680 per inspection	34,000
Replace bearing	48.00 work-hours × $85 per hour = $4,080	377	$4,457 per replacement	222,850
Replace TGB	8.00 work-hours × $85 per hour = $680	155,302	$155,982 per replacement	7,799,100

This AD does not add new required actions; however, the compliance times for certain actions have been reduced and a certain on-condition action has been revised.

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 4 work-hours $85 per hour = $340	Up to $1,395	Up to $1,735.

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

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–05–05, Amendment 39–21448 (86 FR 13972, March 12, 2021); and

■ b. Adding the following new AD:

2022–09–04 Airbus Helicopters: Amendment 39–22024; Docket No. FAA–2022–0102; Project Identifier MCAI–2021–00841–R.

(a) Effective Date

This airworthiness directive (AD) is effective May 31, 2022.

(b) Affected ADs

This AD replaces AD 2021–05–05, Amendment 39–21448 (86 FR 13972, March 12, 2021) (AD 2021–05–05).

(c) Applicability

This AD applies to Airbus Helicopters Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 6500, Tail Rotor Drive System.

(e) Unsafe Condition

This AD was prompted by a report where during a landing phase, a helicopter lost tail rotor pitch control, which was caused by significant damage to the tail rotor gearbox (TGB) control rod double bearing (bearing). This AD was also prompted by the determination that reduced inspection intervals, updated corrective actions, and increased compliance time for replacement of affected parts are necessary to address the unsafe condition. The FAA is issuing this AD to prevent damage to the bearing, which if not addressed, could result in loss of yaw control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) For Model SA–365N1, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0171, dated July 19, 2021 (EASA AD 2021–0171).

(2) For Model SA–366G1 helicopters: Before further flight after the effective date of this AD, accomplish the actions (*e.g.,* modify the helicopter by replacing the TGB control shaft guide bushes, do repetitive inspections of the TGB magnetic plug and applicable corrective actions; do repetitive replacements of a certain bearing; and modify the helicopter by replacing the TGB) specified in paragraph (g)(l) of this AD using a method approved by the FAA.

(h) Exceptions to EASA AD 2021–0171

(1) Where EASA AD 2021–0171 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2021–0171 refers to flight hours (FH), this AD requires using hours time-in-service.

(3) Where EASA AD 2021–0171 requires action after the last flight of the day or ''ALF,'' this AD requires those actions before the first flight of the day.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0171.

(5) Where paragraph (2) of EASA AD 2021–0171 requires inspections (checks) to be done ''in accordance with the instructions of Paragraph 3.B.1 of the applicable inspection ASB,'' for this AD, those instructions are for reference only and are not required for the actions in paragraph (2) of EASA AD 2021–0171. The inspections (checks) required by paragraph (2) of EASA AD 2021–0171 may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417 or 135.439.

(6) Where paragraph (5) of EASA AD 2021–0171 specifies ''if any discrepancy is detected, as defined in the applicable inspection ASB, before next flight, accomplish the applicable corrective action(s) in accordance with the instructions of Paragraph 3.B.1 of the applicable inspection ASB,'' for this AD, a qualified mechanic must add oil to the TGB to the ''max'' level if the oil level is not at maximum. The instructions are for reference only and are not required for the actions in paragraph (5) of EASA AD 2021–0171.

(7) Where paragraph (6) of EASA AD 2021–0171 refers to ''any discrepancy,'' for this AD, discrepancies include the presence of particles and other conditions such as abrasions, scales, flakes, and splinters.

(8) Where the service information referred to in EASA AD 2021–0171 specifies to perform a metallurgical analysis and contact the manufacturer if collected particles are not clearly characterized, this AD does not require contacting the manufacturer to determine the characterization of the particles collected.

(9) Although service information referenced in EASA AD 2021–0171 specifies to scrap parts, this AD does not include that requirement.

(10) Although service information referenced in EASA AD 2021–0171 specifies reporting information to Airbus Helicopters, filling in a ''particle detection'' follow-up sheet, and returning a ''bearing monitoring sheet'' to Airbus Helicopters, this AD does not include those requirements.

(11) Although service information referenced in EASA AD 2021–0171 specifies returning certain parts to an approved workshop and returning certain parts to Airbus Helicopters, this AD does not include those requirements.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0171 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 provided that there are no passengers onboard.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector,

or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(l) Related Information

For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0171, dated July 19, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0171, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0102.

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

Issued on April 14, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08803 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1164; Project Identifier MCAI–2021–00975–E; Amendment 39–22019; AD 2022–08–16]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce Plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–20–07 for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, Trent 1000–R3, Trent 7000–72, and Trent 7000–72C model turbofan engines. AD 2020–20–07 required initial and repetitive borescope inspections (BSIs) or visual inspections of the intermediate-pressure compressor (IPC) shaft assembly and, depending on the results of the inspection, replacement of the IPC shaft assembly. This AD was prompted by the manufacturer providing optional terminating actions for the required repetitive inspections and alternative inspection instructions. This AD continues to require initial and repetitive BSIs but allows modification of the engine in accordance with RRD service information as a terminating action to these inspections, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 31, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 31, 2022.

ADDRESSES: For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1164.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1164; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, 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: Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7116; email: *nicholas.j.paine@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0282R1, dated August 25, 2021 (EASA AD 2019–0282R1), to address an unsafe condition for all RRD Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, Trent 1000–R3, Trent 7000–72, and Trent 7000–72C model turbofan engines. The EASA AD includes exceptions that limit the applicability for certain engines.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–20–07, Amendment 39–21263 (85 FR 62975, October 6, 2020), (AD 2020–20–07). AD 2020–20–07 applied to all RRD Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, Trent 1000–R3, Trent 7000–72, and Trent 7000–72C model turbofan engines. The NPRM published in the **Federal Register** on December 28, 2021 (86 FR 73690). The NPRM was prompted by a report of crack findings in the front air seal on the IPC shaft assembly during the stripping of a flight test engine. The NPRM was also prompted by the manufacturer's publication of service information that provides optional terminating actions for the required repetitive inspections and alternative inspection instructions. In the NPRM, the FAA proposed to continue to require initial and repetitive BSIs of the IPC shaft assembly. In the NPRM, the FAA also proposed to require compliance with the required actions from November 10, 2020, the effective date of AD 2020–20–07. In the NPRM, the FAA also proposed to allow modification of the engine in accordance with Rolls-Royce service information as a terminating action to the initial and repetitive BSIs of the IPC shaft assembly. In the NPRM, the FAA also proposed to require accomplishing

the actions specified in EASA AD 2019–0282R1, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD. The FAA is issuing this AD to address the unsafe condition on these products. See EASA AD 2019–0282R1 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from two commenters. The commenters were Delta Air Lines, Inc. (DAL), and The Boeing Company (Boeing). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Reevaluate the Need for This FAA AD

DAL requested that the FAA reevaluate the need for the proposed AD. DAL noted that after EASA revised EASA AD 2019–0282, RRD requested, and the FAA granted, a global Alternative Methods of Compliance (AMOC) that includes the changes in EASA AD 2019–0282R1. DAL reasoned that the regulatory requirements in the proposed NPRM are captured by AD 2020–20–07 and the global AMOC.

The FAA disagrees with withdrawing the NPRM. Issuing this AD addresses the unsafe condition, incorporates an optional terminating action, and incorporates by reference the required actions and compliance times specified in EASA AD 2019–0282R1. The FAA did not change the AD as a result of this comment.

Request To Recognize AMOCs Approved for AD 2020–20–07

DAL requested that the FAA update paragraph (i) of this AD to recognize AMOCs previously approved under AD 2020–20–07. DAL received an FAA-approved AMOC to AD 2020–20–07 for deviations in the on-wing inspection procedure, material, and tooling as specified in Rolls-Royce Trent 1000 Alert NMSB 72–AK451, Initial Issue, dated November 14, 2019. DAL used this AMOC to comply with AD 2020–20–07 and will need to continue to use the provisions in this AMOC to comply with this AD. DAL reasoned that since the AD retains all the requirements of AD 2020–20–07, AMOCs granted for AD 2020–20–07 should also be applicable to this AD.

The FAA agrees and has revised paragraph (i) of this AD to include that AMOCs approved previously for AD 2020–20–07 are approved as AMOCs for the corresponding provisions of this AD.

Support for the AD

Boeing expressed support for the AD as written.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2019–0282R1. EASA AD 2019–0282R1 describes actions for initial and repetitive BSIs of the IPC shaft assembly. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed Rolls-Royce Trent 1000 Alert Non-Modification Service Bulletin (NMSB) 72–AK451, Revision 1, dated July 15, 2021 (Rolls-Royce Trent 1000 Alert NMSB 72–AK451); Rolls-Royce Trent 1000 SB 72–K570; and Rolls-Royce Trent 1000 SB 72–K571.

Rolls-Royce Trent 1000 Alert NMSB 72–AK451 describes procedures for initial and repetitive BSIs of the IPC shaft assembly. Rolls-Royce Trent 1000 SB 72–K570 and Rolls-Royce Trent 1000 SB 72–K571, differentiated by engine model, describe procedures for the modification of the engine as a terminating action to the initial and repetitive BSIs of the IPC shaft assembly.

Costs of Compliance

The FAA estimates that this AD affects 22 engines installed on airplanes of U.S. Registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
BSI or visual inspection of IPC shaft assembly.	3.5 work-hours × $85 per hour = $297.50	$0	$297.50	$6,545

The FAA estimates the following costs to do any necessary replacement that is required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace IPC shaft assembly	1,080 work-hours × $85 per hour = $91,800	$1,365,219	$1,457,019

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020–20–07, Amendment 39–21263 (85 FR 62975, October 6, 2020); and

■ b. Adding the following new airworthiness directive:

2022–08–16 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–22019; Docket No. FAA–2021–1164; Project Identifier MCAI–2021–00975–E.

(a) Effective Date

This airworthiness directive (AD) is effective May 31, 2022.

(b) Affected ADs

This AD replaces AD 2020–20–07, Amendment 39–21263 (85 FR 62975, October 6, 2020) (AD 2020–20–07).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, Trent 1000–R3, Trent 7000–72, and Trent 7000–72C model turbofan engines installed as identified in European Union Aviation Safety Agency (EASA) AD 2019–0282R1, dated August 25, 2021 (EASA AD 2019–0282R1).

(d) Subject

Joint Aircraft Service Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a report of crack findings in the front air seal on the intermediate-pressure compressor (IPC) shaft assembly during the stripping of a flight test engine. The FAA is issuing this AD to prevent failure of the IPC shaft assembly. The unsafe condition, if not addressed, could result in loss of thrust control and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, EASA AD 2019–0282R1.

(h) Exceptions to EASA AD 2019–0282R1

(1) Where EASA AD 2019–0282R1 requires compliance from November 27, 2019, the effective date of EASA AD 2019–0282, this AD requires compliance from November 10, 2020, the effective date of FAA AD 2020–20–07.

(2) Where EASA AD 2019–0282R1 requires contacting Rolls-Royce for approved corrective actions if a crack is detected during any on-wing inspection and in-shop inspection, this AD requires removing the IPC shaft assembly and replacing it with a part eligible for installation before further flight.

(3) Where EASA AD 2019–0282R1 defines a serviceable part as an IPC shaft assembly which is not an affected part; or an affected part which is new (never previously installed on an engine); or an affected part that, before (re)installation, has passed (no crack detected) an inspection in accordance with the instructions of the NMSB, this AD also includes in that definition an IPC shaft assembly that, before (re)installation, has passed a visual inspection (no crack detected) of the exposed part using FAA-approved maintenance procedures.

(4) Where EASA AD 2019–0282R1 references on-wing inspections, this AD allows for a visual inspection of the IPC shaft assembly using FAA-approved maintenance procedures as a substitute for any on-wing borescope inspection if the affected part is exposed, provided that the compliance times specified in this AD are not exceeded.

(5) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2019–0282R1.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously for AD 2020–20–07 are approved as AMOCs for the corresponding provisions of this AD.

(j) Related Information

(1) For more information about this AD, contact Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7116; email: *nicholas.j.paine@faa.gov.*

(2) For service information identified in this AD that is not incorporated by reference, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424 fax: +44 (0)1332 249936; website: *https://www.rolls-royce.com/contact-us.aspx.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0282R1, dated August 25, 2021.

(ii) [Reserved]

(3) For more information about EASA AD 2019–0282R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1164.

(5) You may view this material that is incorporated by reference at the National

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

Issued on April 8, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08837 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0090; Project Identifier MCAI–2021–00399–T; Amendment 39–22021; AD 2022–09–01]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. This AD was prompted by a report of smoke in the aft cabin during a maintenance activity, which an investigation determined was caused by a faulty drain line ribbon heater. This AD requires a general visual inspection of all affected potable water-line ribbon heater installations and corrective actions and other specified actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 31, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 31, 2022.

ADDRESSES: For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com*; internet *http://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0090.

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–2022–0090; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI) any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–13, dated April 1, 2021 (TCCA AD CF–2021–13) (also referred to as the MCAI), to correct an unsafe condition for Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes, equipped with any Cox & Co. 3043 or 3044 series (potable water-line) ribbon heater. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0090.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. The NPRM published in the **Federal Register** on February 8, 2022 (87 FR 7056). The NPRM was prompted by a report of smoke in the aft cabin during a maintenance activity, which an investigation determined was caused by a faulty drain line ribbon heater. The NPRM proposed to require a general visual inspection of all affected potable water-line ribbon heater installations and corrective actions and other specified actions. The FAA is issuing this AD to address faulty potable water-line ribbon heaters, which, if not corrected, could lead to an onboard fire. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 601–0644, Revision 1, dated January 29, 2019; and Service Bulletin 604–30–007, Revision 1, dated January 29, 2019. This service information describes procedures for a general visual inspection of all affected potable water-line ribbon heater installations for any discrepancy and applicable corrective actions and other specified actions. Discrepancies include discoloration, blistering or cracking of insulation, signs of wear, or heat damage. Corrective actions include replacement of discrepant insulation and ribbon heaters. Other specified actions include identifying the potable water-line ribbon heater pigtail wire configuration, installing a fuse to the ribbon heater power lead, and testing the potable water-line heater system of each ribbon heater. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 585 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 30 work-hours × $85 per hour = Up to $2,550	$268	Up to $2,818	Up to $1,648,530.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 30 work-hours × $85 per hour = $2,550	Up to $39,552 *	$42,102

* The parts cost for a single potable water-line ribbon heater and associated material is $4,944. The estimated cost above assumes the worst case scenario of replacing all eight ribbon heaters on an airplane configured with eight ribbon heaters.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–09–01 Bombardier, Inc.: Amendment 39–22021; Docket No. FAA–2022–0090; Project Identifier MCAI–2021–00399–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., airplanes certificated in any category, identified in paragraphs (c)(1) through (3) of this AD and equipped with any Cox & Co. 3043 or 3044 series (potable water-line) ribbon heater.

(1) Model CL–600–1A11 (600) airplanes.

(2) Model CL–600–2A12 (601) airplanes.

(3) Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 3070, Ice and Rain Protection; Code 3810, Potable Water System.

(e) Unsafe Condition

This AD was prompted by a report of smoke in the aft cabin during a maintenance activity, which an investigation determined was caused by a faulty drain line ribbon heater. The FAA is issuing this AD to address faulty potable water-line ribbon heaters, which, if not corrected, could lead to an onboard fire.

(f) Compliance

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

(g) Inspection of Potable Water-line Ribbon Heater Installation and Insulation, Applicable Corrective Actions, and Other Specified Actions

For airplanes with a serial number listed in Section 1.A of the applicable service information specified in figure 1 to paragraph (g) of this AD: Within 6 years after the effective date of this AD, do an inspection of the potable water-line ribbon heater installation and insulation to detect any discrepancy, and, before further flight, do all applicable corrective actions and other specified actions in accordance with the Accomplishment Instructions of the service information specified in figure 1 to paragraph (g) of this AD, as applicable.

Figure 1 to paragraph (g) – *Service Information References*

Airplane Model	Service Information
Model CL-600-2A12	Bombardier Service Bulletin 601-0644, Revision 1, dated January 29, 2019
Model CL-600-2B16	Bombardier Service Bulletin 601-0644, Revision 1, dated January 29, 2019; or Bombardier Service Bulletin 604-30-007, Revision 1, dated January 29, 2019

(h) Required Actions for Airplanes Not Listed in the Service Information

For airplanes with a serial number that is not listed in section 1.A of the service information specified in figure 1 to paragraph (g) of this AD, and for Bombardier Model CL–600–1A11 airplanes: Within 6 years after the effective date of this AD, do applicable actions including an inspection for discrepancies of the potable water-line ribbon heater and repair of any discrepant potable water-line ribbon heaters using a method approved in accordance with the procedures specified in paragraph (i)(2) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Transport Canada AD CF–2021–13, dated April 1, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0090.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 601–0644, Revision 1, dated January 29, 2019.

(ii) Bombardier Service Bulletin 604–30–007, Revision 1, dated January 29, 2019.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.*

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

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

Issued on April 11, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08824 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0918; Airspace Docket No. 21–ACE–11]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–251; Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T–251 in the central United States due to the decommissioning of the Malden, MO, (MAW) VHF Omnidirectional Range Tactical Air Navigation (VORTAC). This amendment supports the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) program for improved efficiency of the National Airspace System (NAS) while reducing the dependency on ground based navigational systems.

DATES: Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence

Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0918, in the **Federal Register** (86 FR 60185; November 1, 2021), amending T–251. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One person submitted two comments, but no specifics pertaining to the proposal were included.

United States RNAV T-routes are published in paragraph 6011 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 RNAV routes listed in this document would be subsequently published in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends 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 Rule

This action amends 14 CFR part 71 by amending RNAV route T–251 to extend the route further south in the central United States expanding the availability of RNAV routing in the NAS.

T–251: T–251 currently extends from the Farmington, MO, (FAM) VORTAC, north to the KOETZ, WI, waypoint (WP). This amendment extends T–251 by 69 nautical miles to the south of the Farmington, MO, VORTAC, to the new FRNIA, MO, WP. The FRNIA WP replaces the Malden, MO, VORTAC, which is scheduled to be decommissioned. As amended, T–251 extends between the FRNIA, MO, WP, and the KOETZ, WI, WP.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending RNAV route T–251, in support of efforts transitioning the NAS from ground-based to satellite-based navigation, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–251 FRNIA, MO to KOETZ, WI [Amended]

FRNIA, MO	WP	(Lat. 36°33′18.69″ N, long. 089°54′40.47″ W)
Farmington, MO (FAM)	VORTAC	(Lat. 37°40′24.46″ N, long. 090°14′02.62″ W)
Foristell, MO (FTZ)	VORTAC	(Lat. 38°41′39.60″ N, long. 090°58′16.57″ W)
RIVRS, IL	Fix	(Lat. 39°25′21.41″ N, long. 090°55′56.70″ W)
KAYUU, MO	WP	(Lat. 40°19′05.81″ N, long. 091°41′36.59″ W)
MERKR, IA	WP	(Lat. 40°49′16.02″ N, long. 092°08′26.88″ W)
AGENS, IA	Fix	(Lat. 41°01′43.78″ N, long. 092°20′50.25″ W)

PICRA, IA	WP	(Lat. 41°35′00.72″ N, long. 092°32′34.29″ W)
HAVOS, IA	WP	(Lat. 42°04′16.32″ N, long. 092°28′29.38″ W)
Waterloo, IA (ALO)	VOR/DME	(Lat. 42°33′23.39″ N, long. 092°23′56.13″ W)
ZEZDU, IA	Fix	(Lat. 42°49′29.02″ N, long. 092°04′58.05″ W)
FALAR, MN	Fix	(Lat. 43°34′26.04″ N, long. 091°30′18.32″ W)
KOETZ, WI	WP	(Lat. 44°13′15.00″ N, long. 091°28′14.00″ W)

* * * * *

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08786 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1235

[Docket No. CPSC–2016–0023]

Safety Standard for Baby Changing Products

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In June 2018, the U.S. Consumer Product Safety Commission (CPSC or Commission) published a consumer product safety standard for baby changing products under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the 2018 ASTM International (ASTM) voluntary standard for baby changing products that was in effect at the time. The CPSIA sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when a voluntary standards organization revises the standard. Consistent with the CPSIA update process, this direct final rule updates the mandatory standard for baby changing products to incorporate by reference ASTM's 2021 version of the voluntary standard.

DATES: The rule is effective on July 31, 2022, unless CPSC receives a significant adverse comment by May 26, 2022. If CPSC receives such a comment, it will publish a notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 31, 2022.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2016–0023, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov*, and as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/hand delivery/courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. Alternatively, as a temporary option during the COVID–19 pandemic, you may email such submissions to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number for this direct final rule. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2016–0023, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–6820; email: *KWalker@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for those products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be ''substantially the same as'' the voluntary standard, or it may be ''more stringent than'' the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Section 104(b)(4)(B) of the CPSIA specifies the process for updating the Commission's rules when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of receiving notice of the revision, that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take this action to reject the revised standard, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision or on a later date specified by the Commission in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B).

2. Safety Standard for Baby Changing Products

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for baby changing products, codified in 16 CFR part 1235. The rule incorporated by reference ASTM F2388–18, *Standard Consumer Safety Specification for Baby Changing Products for Domestic Use,* with no modifications. 83 FR 29672 (June 26, 2018). At the time the Commission published the final rule, ASTM F2388–18 was the current version of the voluntary standard.

On February 1, 2022, ASTM notified CPSC that it had revised the voluntary standard for baby changing products, approving ASTM F2388–21 on November 15, 2021.[1] As discussed below, based on CPSC staff's review of

[1] ASTM published ASTM F2388–21 in January 2022.

ASTM F2388–21,[2] the Commission will allow the revised voluntary standard to become the mandatory standard because the revised requirements in the voluntary standard either improve the safety of baby changing products, or are neutral with respect to safety.[3] Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2388–21 will become the mandatory consumer product safety standard for baby changing products on July 31, 2022. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1235 to incorporate by reference the revised voluntary standard, ASTM F2388–21.

B. Revisions to ASTM F2388

The ASTM standard for baby changing products includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to children associated with baby changing products, including structural integrity, stability, barriers, retention of contoured changing pads and add-on changing units, entrapment, self-closing steps, and restraints. This section describes the changes in ASTM F2388–21, as compared to ASTM F2388–18, which is the current mandatory standard, and includes an assessment of those changes. ASTM F2388–21 contains substantive revisions, as well as editorial, non-substantive revisions.

1. Substantive Revisions

ASTM F238–21 includes two substantive changes. The first revision is in Figure 9, *Webbing Tension Pull Device,* which is in section 7 of the standard. Section 7 specifies test methods to address hazards associated with baby changing products. Section 7.8 provides tests to assess restraint systems, which include components of the baby changing product that contribute to the capability to restrict upward or lateral movement of an occupant's torso within the product. Part of the restraint system test involves using a webbing tension pull device to adjust the restraint before applying a specified pull force to the restraint. Figure 9 depicts the webbing tension pull device that must be used. In ASTM F2388–21, two notes have been added to Figure 9 to provide the overall width and length dimensions for the tool, and a metric equivalent dimension has been added for one of the dimensions shown in the figure. CPSC staff considers these revisions neutral with respect to the safety of baby changing products because they provide dimension notes and equivalent metric measurements, which clarify how to fabricate the test tool, but do not change the test tool or test procedure. Moreover, the revisions are consistent with figures of similar webbing tension devices used in other ASTM standards, such as ASTM F833–21, *Standard Consumer Safety Performance Specification for Carriages and Strollers.*

The second revision is in section 9.5 of the standard, which provides warning statements that must be addressed on product labels and requires that the warnings align with the format and text requirements illustrated in the standard. The warning statements provided in section 9.5.1 address fall hazards, including the hazard statement, ''Fall Hazard,'' at the beginning of the warning statement. In ASTM F2388–21, this hazard statement has been revised to be capitalized as ''FALL HAZARD.'' Likewise, the warning statements provided in section 9.5.3 address suffocation hazards, including the hazard statement, ''Suffocation Hazard,'' at the beginning of the warning statement. In ASTM F2388–21, this warning statement has also been revised to be capitalized as ''SUFFOCATION HAZARD.'' CPSC staff considers these revisions an improvement to the safety of baby changing products because capitalization emphasizes the hazard statements and makes them more conspicuous, thereby increasing the likelihood that a caregiver will pay attention to the warning statements.

2. Non-Substantive Revisions

ASTM F2388–21 also includes minor revisions that are editorial and do not alter any substantive requirements in the standard. These changes are as follows:

- Footnote 1 has been revised to include ''baby changing products,'' instead of ''changing tables,'' as part of the correct name for the subcommittee that developed the standard and has been revised to include the approval and publication dates of the revised standard.
- Figure 11, which provides examples of left-aligned warning label text, has been renumbered as Figure X1.1 and relocated from section 9, *Marking and Labeling,* to section X1, *Rationale.* This revision has not changed the figure content or illustration. Although section 9 is a mandatory portion of the standard and section X1 is not mandatory, moving Figure 11 is a non-substantive change because the figure merely provides examples of the mandatory message panel text layout specified in section 9.4.6.1, and already was not mandatory.
- ASTM F2388–21 includes minor wording changes and grammatical corrections, including changing ''example warning labels'' to ''example warning statements'' (section 9.4.7); changing the warning label statement regarding fall hazards from ''stay within arms reach'' to ''stay in arm's reach of your child'' (section 9.5.1); and correcting the title of updated Figure X1.1 from ''Example of Left Aligned Text'' to ''Example of Left-aligned Text.''
- In section 9, *Marking and Labeling,* and section 10, *Instructional Literature,* several figure names have been revised, including changing ''sample label'' to ''example warning statements'' (revised Figures 11 through 15), and changing ''Sample Warning in Instructions—for example, Changing Table'' to ''Example Warning Statement in Instructions—*e.g.,* Changing Table'' (updated Figure 16). These revisions are consistent with wording that was already in the standard, which describes these figures as ''examples'' (sections 9.4.7 and 10.4).

Because these revisions do not change any substantive requirements, they are neutral with respect to the safety of baby changing products.

C. Incorporation by Reference

Section 1235.2 of the direct final rule incorporates by reference ASTM F2388–21. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section B. Revisions to ASTM F2388 of this preamble summarizes the major provisions of ASTM F2388–21 that the Commission here incorporates by reference into 16 CFR part 1235. The standard is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F2388–21 is available for viewing, at no cost, on ASTM's website at: *https://www.astm.org/CPSC.htm.* Once the rule

[2] CPSC staff's briefing memorandum regarding ASTM F2388–21 is available at: *https://www.cpsc.gov/s3fs-public/ASTMs-Revised-Safety-Standard-for-Baby-Changing-Products.pdf?VersionId=AzvKHXTe8uo1ZNrug1TLhQ_3kyp0lWhc.*

[3] The Commission voted 3–0–1 to approve this document. Chair Hoehn-Saric, Commissioner Baiocco, and Commissioner Feldman voted to approve this document. Commissioner Trumka abstained from the vote.

takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.* Interested parties can purchase a copy of ASTM F2388–21 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; telephone: (610) 832–9585; *www.astm.org.*

D. Certification

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) requires manufacturers of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA, such as the present rule on baby changing products, are ''consumer product safety standards.'' Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because baby changing products are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1235 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,[4] the phthalates prohibitions in section 108 of the CPSIA [5] and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,[6] and the consumer registration form requirements in section 104(d) of the CPSIA.[7]

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing baby changing products. 83 FR 29672 (June 26, 2018). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing baby changing products to 16 CFR part 1235. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies,'' codified in 16 CFR part 1112. *Id.*

ASTM F2388–21 includes revised requirements for baby changing products. However, these revisions do not require additional equipment or test protocols beyond those that already exist in the standard. The revisions to the figure depicting the webbing tension pull device clarify the test equipment dimensions, without changing the specifications of the test tool or test method. The change to the capitalization of warning text does not necessitate a change in the way that third party conformity assessment bodies test products. Accordingly, the revisions do not change the way that third party conformity assessment bodies test these products for compliance with the safety standard for baby changing products. Laboratories will begin testing to the new standard when ASTM F2388–21 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2388–18 to be capable of testing to ASTM F2388–21 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditations to reflect the revised standard in the normal course of renewing their accreditations.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency, ''for good cause finds,'' that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM standard that the Commission incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Specifically, under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product and so notifies ASTM. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F2388–21 to become CPSC's new standard because its provisions either improve product safety or are neutral with respect to safety. The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F2388–21 takes effect as the new CPSC standard for baby changing products, even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and that are not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective, by operation of law, on July 31, 2022. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be ''one where the commenter explains why the rule would be inappropriate,'' including an assertion challenging ''the rule's underlying premise or approach,'' or a claim that

[4] 15 U.S.C. 1278a.

[5] 15 U.S.C. 2057c.

[6] 15 U.S.C. 2063(a)(5).

[7] 15 U.S.C. 2056a(d).

the rule ''would be ineffective or unacceptable without a change.'' 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute, and public comments should address this specific action.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section F. Direct Final Rule Process of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

H. Paperwork Reduction Act

The current mandatory standard for baby changing products includes requirements for marking, labeling, and instructional literature that constitute a ''collection of information,'' as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). The revised mandatory standard does not alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1235, including obtaining approval and a control number. Because the information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision ''consumer product safety standards.'' Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

K. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission notifies the standards organization that it has determined that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for baby changing products. Therefore, ASTM F2388–21 will take effect as the new mandatory standard for baby changing products on July 31, 2022, 180 days after February 1, 2022, when the Commission received notice of the revision.

L. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a ''major rule.''

Pursuant to the CRA, this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1235

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1235—SAFETY STANDARD FOR BABY CHANGING PRODUCTS

■ 1. Revise the authority citation for part 1235 to read as follows:

Authority: 15 U.S.C. 2056a; Sec 3, Pub. L. 112–28, 125 Stat. 273.

■ 2. Revise § 1235.2 to read as follows:

§ 1235.2 Requirements for baby changing products.

Each baby changing product shall comply with all applicable provisions of ASTM F2388–21, *Standard Consumer Safety Specification for Baby Changing Products for Domestic Use,* approved on November 15, 2021. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A read-only copy of the standard is available for viewing on the ASTM website at *https://www.astm.org/READINGLIBRARY/.* You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone (610) 832–9585; *www.astm.org.* You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email *cpsc-os@cpsc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–08804 Filed 4–25–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

[Docket No. FR–6309–F–01]

Adjustment of Civil Monetary Penalty Amounts for 2022

AGENCY: Office of the General Counsel, HUD.

ACTION: Final rule.

SUMMARY: This rule provides for 2022 inflation adjustments of civil monetary penalty amounts required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This rule also makes a technical amendment to the penalty provision related to false claims by updating a cross reference.

DATES: This rule is effective May 26, 2022.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Office of the General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20024; telephone number 202–402–5138 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

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

This annual adjustment is for 2022. The annual adjustment is based on the percent change between the U.S. Department of Labor's Consumer Price Index for All Urban Consumers (''CPI–U'') for the month of October preceding the date of the adjustment, and the CPI–U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2022 is 1.06222.[1] Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.[2]

II. This Final Rule

This final rule makes the required 2022 inflation adjustment of HUD's civil money penalty amounts. Since HUD is not applying these adjustments retroactively, the 2022 increases apply to violations occurring on or after this rule's effective date. HUD provides a table showing how, for each component, the penalties are being adjusted for 2022 pursuant to the 2015 Act. In the first column (''Description''), HUD provides a description of the penalty. In the second column (''Statutory Citation''), HUD provides the United States Code statutory citation providing for the penalty. In the third column (''Regulatory Citation''), HUD provides the Code of Federal Regulations citation under Title 24 for the penalty. In the fourth column (''Previous Amount''), HUD provides the amount of the penalty pursuant to the rule implementing the 2021 adjustment (86 FR 14370, March 16, 2021). In the fifth column (''2022 Adjusted Amount''), HUD lists the penalty after applying the 2022 inflation adjustment.

Description	Statutory citation	Regulatory citation (24 CFR)	Previous amount	2022 adjusted amount
False Claims	Omnibus Budget Reconciliation Act of 1986; (31 U.S.C. 3802(a)(1)).	§ 28.10(a)	$11,803	$12,537.
False Statements	Omnibus Budget Reconciliation Act of 1986; (31 U.S.C. 3802 (a)(2)).	§ 28.10(b)	$11,803	$12,537.
Advance Disclosure of Funding	Department of Housing and Urban Development Act; (42 U.S.C. 3537a(c)).	§ 30.20	$20,731	$22,021.
Disclosure of Subsidy Layering	Department of Housing and Urban Development Act; (42 U.S.C. 3545(f)).	§ 30.25	$20,731	$22,021.
FHA Mortgagees and Lenders Violations.	HUD Reform Act of 1989; (12 U.S.C. 1735f–14(a)(2)).	§ 30.35	Per Violation: $10,366; Per Year: $2,073,133.	Per Violation: $11,011; Per Year: $2,202,123.
Other FHA Participants Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2)).	§ 30.36	Per Violation: $10,366; Per Year: $2,073,133.	Per Violation: $11,011; Per Year: $2,202,123.
Indian Home Loan Guarantee Lender or Holder Violations.	Housing Community Development Act of 1992 (12 U.S.C. 1715z–13a(g)(2)).	§ 30.40	Per Violation: $10,366; Per Year: $2,073,133.	Per Violation: $11,011; Per Year: $2,202,123.
Multifamily & Section 202 or 811 Owners Violations.	HUD Reform Act of 1989 (12 U.S.C. 1735f–15(c)(2)).	§ 30.45	$51,827	$55,052.
Ginnie Mae Issuers & Custodians Violations.	HUD Reform Act of 1989 (12 U.S.C. 1723i(a)).	§ 30.50	Per Violation: $10,366; Per Year: $2,073,133.	Per Violation: $11,011; Per Year: $2,202,123.
Title I Broker & Dealers Violations	HUD Reform Act of 1989 (12 U.S.C. 1703).	§ 30.60	Per Violation: $10,366; Per Year: $2,073,133.	Per Violation: $11,011; Per Year: $2,202,123.
Lead Disclosure Violation	Title X—Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d(b)(1)).	§ 30.65	$18,364	$19,507.
Section 8 Owners Violations	Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437z–1(b)(2)).	§ 30.68	$40,282	$42,788.

[1] Office of Management and Budget, M–22–07–, Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. (*https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-07.pdf*). (October 2021 CPI–U (276.589)/October 2020 CPI–U (260.388) = 1.06222.)

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

Description	Statutory citation	Regulatory citation (24 CFR)	Previous amount	2022 adjusted amount
Lobbying Violation	The Lobbying Disclosure Act of 1995 (31 U.S.C. 1352).	§ 87.400	Min: $20,731; Max: $207,314	Min: $22,021; Max: $220,213.
Fair Housing Act Civil Penalties	Fair Housing Act (42 U.S.C. 3612(g)(3)).	§ 180.671(a)	No Priors: $21,663; One Prior: $54,157; Two or More Priors: $108,315.	No Priors: $23,011; One Prior: $57,527; Two or More Priors: $115,054.
Manufactured Housing Regulations Violation.	Housing Community Development Act of 1974 (42 U.S.C. 5410).	§ 3282.10	Per Violation: $3,011; Per Year: $3,763,392.	Per Violation: $3,198; Per Year: $3,997,550.

Additionally, this final rule makes a technical revision to correct an inadvertent error in 24 CFR 28.10(b)(1)(ii). Section 28.10(b)(1)(ii) cross-references § 28.10(b)(1)(A)(ii) which does not exist. This error was made in the original drafting of this language and codification via the 2008 amendments to this section. 73 FR 76831. The original language located at § 28.10(a)(1)(ii) has since been separated into § 28.10(b)(1)(i)(B) and § 28.10(b)(1)(ii). *Compare* 24 CFR (a)(1)(ii) in 61 FR 50213, Sept. 24, 1996, *with* 24 CFR 28.10(b)(1) (2022). In order to maintain the original meaning of this subsection, the cross reference in § 28.10(b)(1)(ii) should refer to § 28.10(b)(1)(i)(B).

III. Justification for Final Rulemaking for the 2022 Adjustments

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

Section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that any HUD regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days. This rule does not authorize the imposition of a civil money penalty—rather, it makes a standard inflation adjustment to penalties that were previously authorized. As noted above, the 2022 inflation adjustments are made in accordance with a statutorily prescribed formula that does not provide for agency discretion. This rule also makes one technical amendment that merely replaces a cross reference to a paragraph that does not exist with a corrected cross reference and leaves the requirements of the false claims provision unchanged.

Accordingly, a delay in the effectiveness of the 2022 inflation adjustments in order to provide the public with an opportunity to comment is unnecessary because the 2015 Act exempts the adjustments from the need for delay, the rule does not authorize the imposition of a civil money penalty or alter the requirements in any way, and, in any event, HUD would not have the discretion to make changes as a result of any comments.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

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

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform

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

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') (64 FR 43255) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local

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

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

governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Environmental Review

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

List of Subjects

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

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

24 CFR Part 87

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 180

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

24 CFR Part 3282

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

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

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

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

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

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

§ 28.10 Basis for civil penalties and assessments.

(a) * * *

(1) A civil penalty of not more than $12,537 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:

* * * * *

(b) * * *

(1) A civil penalty of not more than $12,537 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that:

(i)(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B)(*1*) Omits a material fact; and

(*2*) Is false, fictitious, or fraudulent as a result of such omission;

(ii) In the case of a statement described in (b)(1)(i)(B) of this section, is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

(iii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

* * * * *

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

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

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

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

§ 30.20 Ethical violations by HUD employees.

* * * * *

(b) *Maximum penalty.* The maximum penalty is $22,021 for each violation.

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

§ 30.25 Violations by applicants for assistance.

* * * * *

(b) *Maximum penalty.* The maximum penalty is $22,021 for each violation.

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

§ 30.35 Mortgagees and lenders.

* * * * *

(c)(1) * * * The maximum penalty is $11,011 for each violation, up to a limit of $2,202,123 for all violations committed during any one-year period. * * *

* * * * *

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

§ 30.36 Other participants in FHA programs.

* * * * *

(c) * * * The maximum penalty is $11,011 for each violation, up to a limit of $2,202,123 for all violations committed during any one-year period. * * *

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

§ 30.40 Loan guarantees for Indian housing.

* * * * *

(c) * * * The maximum penalty is $11,011 for each violation, up to a limit of $2,202,123 for all violations committed during any one-year period. * * *

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

§ 30.45 Multifamily and section 202 or 811 mortgagors.

* * * * *

(g) *Maximum penalty.* The maximum penalty for each violation under paragraphs (c) and (f) of this section is $55,052.

* * * * *

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

§ 30.50 GNMA issuers and custodians.

* * * * *

(c) * * * The maximum penalty is $11,011 for each violation, up to a limit of $2,202,123 during any one-year period. * * *

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

§ 30.60 Dealers or sponsored third-party originators.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $11,011 for each violation, up to a limit for any particular person of $2,202,123 during any one-year period.

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

§ 30.65 Failure to disclose lead-based paint hazards.

* * * * *

(b) *Amount of penalty.* The maximum penalty is $19,507 for each violation.

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

§ 30.68 Section 8 owners.

* * * * *

(c) *Maximum penalty.* The maximum penalty for each violation under this section is $42,788.

* * * * *

PART 87—NEW RESTRICTIONS ON LOBBYING

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

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

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

§ 87.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $22,021 and not more than $220,213 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B of this part) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $22,021 and not more than $220,213 for each such failure.

* * * * *

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of $22,021, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $22,021 and $220,213 as determined by the agency head or his or her designee.

* * * * *

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

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

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

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

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(1) $23,011, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local governmental agency, to have committed any prior discriminatory housing practice.

(2) $57,527, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the 5-year period preceding the date of filing of the charge.

(3) $115,054, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any State or local fair housing law, or in any licensing or regulatory proceeding conducted by a Federal, State, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the 7-year period preceding the date of filing of the charge.

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

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

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

■ 19. Revise § 3282.10 to read as follows:

§ 3282.10 Civil and criminal penalties.

Failure to comply with these regulations may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410. The maximum amount of penalties imposed under section 611 of the Act shall be $3,198 for each violation, up to a maximum of $3,997,550 for any related series of violations occurring within one year from the date of the first violation.

Damon Y. Smith,

General Counsel.

[FR Doc. 2022–08768 Filed 4–25–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0272]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone—Cleveland National Air Show; Correction

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

ACTION: Notification of enforcement of regulation; correction.

SUMMARY: The Coast Guard is correcting a notification of enforcement of regulation that appeared in the **Federal Register** on April 20, 2022. That notification is entitled ''Safety Zones; Annual Events in the Captain of the Port Buffalo Zone—Cleveland National Air Show.'' This correction applies to the docket number.

DATES: This correction is effective April 26, 2022.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Spencer Phillips, Coast Guard; telephone 202–372–3854, email *spencer.phillips@uscg.mil.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–08432, appearing on page 23444 in the **Federal Register** of Wednesday, April 20, 2022, the following correction is made:

1. On page 23444, in the third column, in the headings, ''[Docket No. USCG–0270]'' is corrected to read ''[Docket No. USCG–2022–0272]''.

Dated: April 21, 2022.

James E. McLeod,

Deputy Chief, Office of Regulations and Administrative Law.

[FR Doc. 2022–08886 Filed 4–25–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AR44

Presumptive Service Connection for Rare Respiratory Cancers Due to Exposure to Fine Particulate Matter

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to amend its adjudication regulations to establish presumptive

service connection for nine rare respiratory cancers in association with presumed exposure to fine particulate matter. These presumptions would apply to Veterans with a qualifying period of service, *i.e.,* who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War (hereinafter Gulf War), as well as in Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001, during the Gulf War. This amendment is necessary to implement a decision by the Secretary of Veterans Affairs that determined there is sufficient evidence to support these cancers as presumptive based on exposure to fine particulate matter during service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: Squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung. The intended effect of this amendment is to ease the evidentiary burden of this population of Veterans who file claims with VA for these nine rare respiratory cancers.

DATES:

Effective date: This interim final rule is effective April 26, 2022.

Comment date: Comments must be received on or before June 27, 2022.

Applicability date: The provisions of this interim final rule shall apply to all applications for service connection for squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung based on service in the Southwest Asia theater of operations during the Gulf War, as well as Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001, during the Gulf War, that are received by VA on or after the effective date of this interim final rule or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of this interim final rule.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments received will be available at *regulations.gov* for public viewing, inspection, or copies.

FOR FURTHER INFORMATION CONTACT: Jane Allen, Regulations Analyst; Robert Parks, Chief, Regulations Staff (211), Compensation Service (21C), 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Challenges With Rare Cancers

For the purposes of this rulemaking, VA defines rare cancers as cancers with an annual U.S. incidence rate of fewer than 6 cases per 100,000 individuals. This standard was adopted by an American Cancer Society paper [1] that includes the nine rare respiratory cancers that are being presumptively service connected. The standard has also been adapted internationally; a consortium from the European Union, Surveillance of Rare Cancer in Europe (RARECARE), described the burden of rare cancers in Europe using a revised definition of rare cancers as those with fewer than 6 cases per 100,000 people per year.[2]

Due to low incidence rates, individuals diagnosed with rare cancers face challenges not shared by those diagnosed with more common forms of cancer. Diagnosis often occurs when the cancer has metastasized to other areas of the body. Rare cancers are also more difficult to treat based on limited preclinical research and fewer clinical trials. Prevalence rates are so low that it is unlikely that any epidemiologic or other study will elucidate a cause as may occur with more common cancers. Furthermore, once diagnosed, individuals often struggle to locate information about their cancer, and treatment options are often less effective than for common cancers. As a result of these challenges, five-year relative survival is lower for patients with a rare cancer compared with those diagnosed with a more common cancer among both males (55% vs 75%) and females (60% vs 74%).[3]

[1] DeSantis CE, Kramer JL, Jemal A. The burden of rare cancers in the United States. CA Cancer J Clin. 2017 Jul 8;67(4):261–272.

[2] Gatta G, van der Zwan JM, Casali PG, et al. Rare cancers are not so rare: The rare cancer burden in Europe. Eur J Cancer. 2011;47: 2493–2511.

[3] Carol E. DeSantis MPH, Joan L. Kramer MD, Ahmedin Jemal DVM, Ph.D. (2017) ''The Burden of Rare Cancers in America,'' CA: A Cancer Journal for Clinicians, 67:4, 261–272, available at *https://doi.org/10.3322/caac.21400.*

II. Presumptive Service Connection Based on Presumed Exposure to Fine Particulate Matter ($PM_{2.5}$)

Particulate matter (PM) (also called particle pollution) is a form of air pollution consisting of solid particles and liquid droplets. PM is comprised of particles of various sizes, with fine particles ($PM_{2.5}$, particles that have a mean aerodynamic diameter ≤2.5 microns) posing the greatest health concern because they can be inhaled, get deep into the lungs, and potentially enter the bloodstream where they can affect the heart and other organ systems resulting in serious health problems.[4] VA published an interim final rule (86 FR 42724) on August 5, 2021, that established presumptive service connection for asthma, sinusitis, and rhinitis due to presumed exposure to $PM_{2.5}$ during the Gulf War (38 CFR 3.320). VA defines the Gulf War as beginning on August 2, 1990 and there is currently no prescribed end date for the Gulf War (38 CFR 3.2). The interim final rule included a description of several studies by the National Academies of Science, Engineering, and Medicine (NASEM) and National Research Council (NRC) examining the possible contribution of air pollution to adverse health effects among U.S. military personnel serving in the Middle East or their descendants.[5]

Based on studies that described particulates in Southwest Asia,[6] VA

[4] See US EPA, Particulate Matter (PM) Basics, *https://www.epa.gov/pm-pollution/particulate-matter-pm-basics.*

[5] NASEM, Gulf War and Health Series: Volume 3: Fuels and Products of Combustion (2005), *https://doi.org/10.17226/11180* and Volume 11: Generational Health Effects of Serving in the Gulf War (2018), *https://doi.org/10.17226/25162.* National Research Council, Review of the Department of Defense Enhanced Particulate Matter Surveillance Program Report (2010), *https://doi.org/10.17226/12911* (examining Department of Defense Enhanced Particulate Matter Surveillance Program (EPMSP) Final Report (2008), *https://apps.dtic.mil/sti/pdfs/ADA605600.pdf.*) NASEM, Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan (2011), *https://doi.org/10.17226/13209.* NASEM, Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations (2020), *https://doi.org/10.17226/25837.*

[6] *E.g., Summary—Review of the Department of Defense Enhanced Particulate Matter Surveillance Program Report—NCBI Bookshelf* (*nih.gov*); *Lindsay T. McDonald et. al, Physical and elemental analysis of Middle East sands from recent combat zones, Am J Ind Med. 2020;63:980–987. Inhalation Toxicology, 2020, VOL. 32, NO. 5, 189–199. https://doi.org/10.1080/08958378.2020.1766602; Johann P. Engelbrecht et al., Characterizing Mineral Dusts and Other Aerosols from the Middle East—Part 1: Ambient Sampling and Part 2: Grab Samples and Re-Suspensions, Inhalation Toxicology, International Forum for Respiratory Research 2009:4:297–326 and 327–336, https://www.tandfonline.com/doi/full/10.1080/08958370802464273 and https://*

determined that exposures to such particulate matter could present a health risk to service members. In its prior rulemaking, VA acknowledged the challenges associated with conducting exposure-assessment/health surveillance studies in times of conflict and that that precise or specific information on individual veterans' exposures that would be needed to support more granular policy is generally not available.

Prior to establishment of 38 CFR 3.320, VA conducted a supplemental literature review focused on $PM_{2.5}$.[7] The focus on $PM_{2.5}$ was intentional for the following reasons: (1) $PM_{2.5}$ is generated by a variety of sources including smoke from open burn pits, (2) the DoD's Enhanced Particulate Matter Surveillance Program objectively measured in-theater concentrations and documented concentrations of $PM_{2.5}$ that may have exceeded military and national exposure guidelines at deployment locations, and (3) its small diameter facilitates greater deposition deep into the lung with known harmful effects. As discussed further below, VA also conducted a review of claims data in conjunction with the supplemental review.

a. 2010 NRC Report, Review of the Department of Defense (DoD) Enhanced Particulate Matter Surveillance Program

In February 2008 the DoD issued the Department of Defense Enhanced Particulate Matter Surveillance Program (EPMSP) Final Report.[8] The purpose of the study was to provide information on the chemical and physical properties of dust collected at deployment locations. Aerosol and bulk soil samples were collected during a period of approximately one year at 15 military sites—including Djibouti, Afghanistan (Bagram, Khowst), Qatar, United Arab Emirates, Iraq (Balad, Baghdad, Tallil, Tikrit, Taji, Al Asad), and Kuwait (Northern, Central, Coastal, and Southern regions). The EPMSP report found that exposures in the region may have exceeded military/national exposure guidelines, including EPA's 24-hr NAAQS for $PM_{2.5}$ (see p.4 and p. 8, Figure 4–1).

The NRC independently reviewed DoD's final report in Review of the Department of Defense Enhanced Particulate Matter Surveillance Program Report in 2010.[9] The NRC committee highlighted that the EPMSP was one of the first large-scale efforts to characterize particulate matter exposure in deployed military personnel. Despite the practical challenges of conducting this effort in an austere deployment environment, the NRC report found the results of the EMPSP can be viewed as providing sufficient evidence that deployed military personnel endured occupational exposure to a potential hazard to justify implementation of a comprehensive medical-surveillance program to assess particulate matter-related health effects in military personnel deployed to the Southwest Asia theater of operations.

The NRC committee noted the EPMSP's approach and methodological techniques preclude comparison to existing literature on air sampling and limit a full understanding of particulate matter chemical composition. The study also describes the challenges associated with conducting exposure-assessment/health surveillance studies, including related to: The need to have co-deployed medical/public health experts to conduct sampling; limitations in monitoring technologies in harsh environments for which they have not been validated and where they may overestimate concentrations due to bounce-off problems, limitations in DoD's health effects studies, difficulties in characterization of exposure of troops to multiple sources (dust storms, vehicle emissions, and emissions from burn pits), and potential confounding factors (such as smoking). This along with the infrequency of sampling as well as the lack of consideration of other ambient pollutants in the deployment environment make it challenging to fully ascertain the relationship between exposure data and health effects.

Despite these limitations, the NRC committee found that the EPMSP results clearly documented that service members deployed to the Southwest Asia theater of operations ''are exposed to high concentrations of particulate matter and that the particle composition varies considerably over time and space.'' Further, the NRC Report committee concluded that ''it is indeed plausible that exposure to ambient pollution in the Middle East theater is associated with adverse health outcomes.'' The health outcomes noted may occur both during service (acute) as well as manifest years after exposure (chronic).

b. 2011 NASEM Report, Long-Term Consequences of Exposure to Burn Pits in Iraq and Afghanistan

To further address and investigate service member exposures, VA requested that NASEM examine the long-term health consequences of service members' exposure to open burn pits while serving in Iraq and Afghanistan. In NASEM's report, Long-Term Consequences of Exposure to Burn Pits in Iraq and Afghanistan, published in 2011, NASEM concluded that particulate matter from regional sources was of potential importance.[10] The report also recommended that VA expand its research studies beyond burn pits to explore the role of a broader range of possible airborne hazards.

c. 2020 NASEM Report: Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations

In September 2018, the VA Post Deployment Health Services (PDHS), now called Health Outcomes Military Exposures (HOME), asked NASEM to study the respiratory health effects of airborne hazards exposures in Southwest Asia. On September 11, 2020, NASEM published its findings and recommendations in the report, Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations.[11] According to the report, ''[b]ased on the epidemiologic studies of military personnel and veterans reviewed in this and previous National Academies reports, the committee concludes that there is inadequate or insufficient evidence of an association between airborne hazards exposures in the Southwest Asia theater and the subsequent development of respiratory cancers. While data exist on 1990–1991 Gulf War veterans, the committee notes that no studies have been published concerning those who participated in the post-9/11 conflicts and that—even if such studies were available—the amount of time since exposure may only now be long enough to justify new incidence studies of respiratory cancers in this cohort.''

More generally, the 2020 NASEM report identified that existing studies were limited in the available data for

www.tandfonline.com/doi/full/10.1080/08958370802464299.

[7] See US EPA, Particulate Matter (PM) Basics, *https://www.epa.gov/pm-pollution/particulate-matter-pm-basics.*

[8] Department of Defense Enhanced Particulate Matter Surveillance Program (EPMSP) Final Report (2008), *https://apps.dtic.mil/sti/pdfs/ADA605600.pdf.*

[9] National Research Council, Review of the Department of Defense Enhanced Particulate Matter Surveillance Program Report (2010), *https://doi.org/10.17226/12911.*

[10] NASEM, Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan (2011), *https://doi.org/10.17226/13209.*

[11] NASEM, Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations (2020), *https://doi.org/10.17226/25837.*

exposure estimation; the availability of pertinent health, physiologic, behavioral, and biomarker data, especially data collected both pre- and post-deployment; the amount of time that passed since exposure; and use of additional or alternate sources of data that might enrich analyses. The NASEM committee, noting that the limitations in data quality prevented scientific determinations regarding health outcomes, recommended that a new approach was needed to allow researchers to better examine and respond to whether specific respiratory outcomes are associated with deployment.

III. VA's Identification of Nine Rare Respiratory Cancers Through a Review of Data From NIH/Office of Rare Disease Research

Following publication of the interim final rule (86 FR 42724) mentioned above, VA began a focused review of the scientific and medical evidence related to exposure to $PM_{2.5}$ and the subsequent development of rare respiratory cancers. VA initiated this review to address the needs of veterans diagnosed with rare cancers.

VA's HOME office obtained publicly available data on rare cancers from the Office of Rare Disease Research, National Center for Advancing Translational Sciences (NCATS), in the National Institute of Health (NIH). The data was then cross-referenced with data from the 2017 publication, *The Burden of Rare Cancers in America.* This 2017 study analyzed rare cancers in the United States using invasive cancers found on the RARECARE list. The RARECARE list is a rare cancer surveillance list based in Europe that is often used by US researchers.[12] The HOME office found 181 rare cancers with less than 6/100,000 incidence and 13 very rare cancers with less than 25 cases in 5 years. The incidence data came from the North American Association of Central Cancer Registries and the Surveillance, Epidemiology, and End Results (SEER) program, both resources from the National Cancer Institute within NIH. A secondary source were data from the Office of Rare Disease Research, NCATS; NIH. These data listed 275 rare diseases and includes mainly cancers with available genetic data. This information matches closely with a public list of rare diseases on the NIH's The Genetic and Rare Diseases Information Center (GARD) website.[13] Rare cancers present in pediatric populations, or that are developmental, genetic, syndromic, or congenital were excluded. This reduced the list to 153 rare cancers after duplicates were removed.

VA noted then that there were nine rare cancers of the respiratory tract: Squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung. These nine respiratory cancers are exceptionally rare and therefore definitive literature demonstrating an etiology, or lack thereof, is not available and it is not anticipated that it will become available. The HOME office then performed a supplemental literature review of the nine identified rare cancers. Scientific literature on these cancers is extremely limited. The HOME office located and reviewed at least one peer-reviewed source on each rare respiratory cancer (available for download under the ''Supporting/Related Materials'' section). This literature search demonstrated the paucity of other supporting epidemiological or etiologic information from which to derive conclusions on the associations between exposures and the development of these rare respiratory cancers. This does not indicate that there is no connection, it indicates there is not data or published literature to definitively establish a connection.

IV. The Environmental Protection Agency's (EPA) 2019 Integrated Science Assessment (ISA) for Particulate Matter

The EPA is responsible for establishing and periodically reviewing National Air Ambient Quality Standards (NAAQS) for six principal criteria pollutants, which include particulate matter, carbon monoxide, nitrogen dioxide, lead, ozone, and sulfur dioxide to protect public health and welfare. To support this mission, the EPA develops Integrated Science Assessments (ISAs) as part of the periodic review of the NAAQS for each criteria pollutant. The ISAs provide comprehensive reviews of the policy-relevant scientific literature related to the health and welfare effects of a criteria pollutant and form the scientific foundation for each NAAQS review.

The EPA's 2019 ISA for Particulate Matter (2019 p.m. ISA) provides a thorough evaluation of the scientific evidence pertaining to the relationship between PM exposure, including exposure to $PM_{2.5,}$ and multiple health outcomes, including cancer. Within the discussion of long-term $PM_{2.5}$ exposure and cancer, the 2019 p.m. ISA evaluates and characterizes the scientific evidence that supports a biologically plausible mechanism by which long-term $PM_{2.5}$ exposure could lead to the development of cancer, such as lung cancer. As noted in Section 10.2 of the 2019 p.m. ISA: ''$PM_{2.5}$ exhibits several key characteristics of carcinogens (Smith et al., 2016), as shown in toxicological studies demonstrating genotoxic effects, oxidative stress, electrophilicity, and epigenetic alterations, with supportive evidence provided by epidemiologic studies. Furthermore, $PM_{2.5}$ has been shown to act as a tumor promoter in a rodent model of urethane-initiated carcinogenesis.'' [14] The body of scientific evidence indicating that $PM_{2.5}$ exhibits multiple characteristics of a carcinogen provides biological plausibility for the generally consistent, positive associations between long-term $PM_{2.5}$ exposure and lung cancer mortality and incidence reported in epidemiologic studies,[15] resulting in the 2019 p.m. ISA concluding that there is a ''likely to be causal'' relationship between long-term $PM_{2.5}$ exposure and cancer.

V. Biological Plausibility of Rare Respiratory Cancers

Drawing on conclusions from EPA's 2019 p.m. ISA for cancer and their evaluation of the evidence for lung cancer incidence and mortality, VA has determined that it is biologically plausible that the mechanisms by which $PM_{2.5}$ may lead to the development of lung cancer can be applied to the development of rare cancers in the lung and can also be applied to development of rare cancers of the respiratory tract. Scientific evidence provides a biologically plausible link by which exposure to $PM_{2.5}$, which often includes some known human carcinogens (*e.g.,* hexavalent chromium, nickel, arsenic, and PAHs), can lead to respiratory tract inflammation as well as genotoxicity (*i.e.,* DNA damage) and epigenetic effects that can result in dysregulated cell growth and ultimately cancer.[16]

VA acknowledges that the epidemiological studies evaluated in the

[12] RARECARENet, *http://rarecarenet.istitutotumori.mi.it/rarecarenet/.*

[13] GARD, Genetic and Rare Disease Information Center, *https://rarediseases.info.nih.gov/.*

[14] 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, available at *http://www.epa.gov/isa.*

[15] *Id.* at Figure 10–3 and 10–60.

[16] *Id.*

2019 p.m. ISA that report generally consistent and positive associations between long-term $PM_{2.5}$ exposures and lung cancer mortality and incidence are not appropriate to extend to the rare cancers under consideration here. As discussed further below, epidemiological data for rare cancers is extremely limited.

Additionally, VA's HOME office and Compensation Service analyzed rare respiratory cancer related claims data for Veterans who were deployed to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. VA's HOME office and Compensation Service also compared the VBA claims data to data for a similar cohort of Veterans who served during the same period but who had never deployed. Comparison of cohorts showed no meaningful difference between the number of claims received and also no meaningful difference between grant and denial rates. As of September 30, 2021, the VA had received a total of 151 claims for the nine rare respiratory cancers identified by the HOME office from Veterans with Gulf War service.

Although claims data did not demonstrate a significant difference between cohorts, which could be informative with respect to considering a presumption of service connection, VA notes the potential for biological plausibility between airborne hazards, specifically $PM_{2.5}$, and carcinogenesis of the respiratory tract. VA utilized the Bradford Hill criteria to conclude that there were possible relationships with these nine rare cancers and exposure to $PM_{2.5}$. The Bradford Hill criteria are used widely in public health research to establish epidemiologic evidence of a causal relationship between a presumed cause and an observed effect.[17] While there are limited claims data available to suggest otherwise, the nine rare respiratory system cancers were identified as meeting the minimum standard for the Bradford Hill principle of biological plausibility. The remaining Bradford Hill criteria were applied and the nine rare respiratory cancers additionally met the criteria of analogy. VA is employing the analogy of the demonstrable effects of $PM_{2.5}$ on the development of lung cancers to these nine respiratory cancers.

To inform application of these criteria for the nine rare respiratory cancers, VA references analogy between the link between $PM_{2.5}$ and lung cancer. In 2013, the International Agency for Research on Cancer (IARC) classified outdoor air pollution and one of its major components, PM, as carcinogenic. In its evaluation, the IARC identified sufficient evidence showing that exposure to outdoor air pollution and PM causes lung cancer.[18] EPA's 2019 PM ISA also supports the link between particulate matter and lung cancer [19] The VA experts maintain that the Veterans deployed to the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, and Uzbekistan can reasonably infer exposure to $PM_{2.5}$ can be an etiology for respiratory cancers.

Although VA's HOME office reviewed a number of resources related to rare respiratory cancers (available for download under the ''Supporting/Related Materials'' section), the literature supporting a link between $PM_{2.5}$ and malignant transformation of cells in other organ systems is as limited as the link to these nine rare respiratory cancers. Thus, based on the scientific evidence providing biological plausibility for lung cancer, VA concluded that it is only biologically plausible that $PM_{2.5}$ exposure could lead to the nine rare respiratory cancers. However, VA is continuing its scientific review of other malignancies, both rare and more common. VA remains committed to cancer surveillance, research and review of peer reviewed science, and plans to review the more robust body of research that exists for more common types of cancers to evaluate the relationship between these cancers and military environmental exposures.

VI. Gulf War Service

In its recent rulemaking, VA established a presumption of exposure to $PM_{2.5}$ for Veterans deployed in the Southwest Asia theater of operations, as defined in 38 CFR 3.317(e)(2), including Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, and the Red Sea during the Gulf War.[20] VA acknowledges that there are important differences between potential exposures experienced by deployed service members and the populations in the studies relied upon by the 2019 PM ISA, and that there are limitations in evidence specific to deployed service members, as discussed above, as well as in the body of evidence surrounding rare respiratory cancers. In the context of regulating potential service connection related to presumed exposure and benefits there is a strong role for policy decisions.[21] The Secretary's broad discretion weighs more strongly here than it would if the science related to the composition and duration of actual particulate matter and airborne hazard exposures of service members were more robust. As discussed further below, an important consideration in establishing these new presumptions for nine rare respiratory cancers is that additional investment in studying these rare cancers is unlikely to fully resolve scientific uncertainty related to service connection due to the small size of the impacted population.

Based on presumed $PM_{2.5}$ exposures and its findings above, VA is establishing a presumption of service connection for the nine rare respiratory cancers, for the service periods and manifestation timelines that follow.

VII. Service in Afghanistan, Syria, and Djibouti on or After September 19, 2001

The presumption of exposure to $PM_{2.5}$ also applies to Afghanistan, Syria, and Djibouti for those deployed there on or after September 19, 2001, the earliest date when service members were deployed in these locations.[22] As discussed in the preamble to the interim final rule that established section 3.320, the literature and studies overwhelmingly show the prevalence of $PM_{2.5}$ due to the nature of the arid climate in these locations as well.[23] VA

[17] Kristen M. Fedak, Autumn Bernal, Zachary A. Capshaw, Sherilyn Gross, ''Applying the Bradford Hill criteria in the 21st century: How data integration has changed causal inference in molecular epidemiology,'' *Emerging Themes in Epidemiology,* 12, 14 (2015): *doi:10.1186/s12982-015-0037-4.*

[18] International Agency for Research on Cancer. *IARC monographs on the evaluation of carcinogenic risks to humans, volume 109. Outdoor Air Pollution.* Lyon, France: IARC; 2013 Available from: *https://publications.iarc.fr/Book-And-Report-Series/Iarc-Monographs-On-The-Identification-Of-Carcinogenic-Hazards-To-Humans/Outdoor-Air-Pollution-2015.*

[19] 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, available at *http://www.epa.gov/isa.*

[20] *See* VA, Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter, 86 FR 42724.

[21] *See, e.g.,* VA, Diseases Associated With Exposure to Certain Herbicide Agents (Hairy Cell Leukemia and Other Chronic B-Cell Leukemias, Parkinson's Disease and Ischemic Heart Disease), 75 FR 53202 (where there was only limited/suggestive evidence of an association between Ischemic Heart Disease and service and the Secretary exercised his discretionary authority to grant a presumption of service connection).

[22] *See id.*

[23] See Lindsay T. McDonald, Steven J. Christopher, Steve L. Morton & Amanda C. LaRue (2020) ''Physical and elemental analysis of Middle East sands from recent combat zones,'' Inhalational Toxicology, 32:5, 189–199, available at *https://doi.org/10.1080/08958378.2020.1766602.* See UNEP, WMO, UNCCD (2016) ''Global Assessment of Sand and Dust Storms,'' United Nations Environment Programme, Nairobi, 1–15, 21–24,

Continued

determined that the Southwest Asia theater of operations, Afghanistan, Syria, and Djibouti had similar arid or semi-arid climates with periods of high winds to suspend geologic dusts and regional pollutants, adhered to or a part of these dusts, though the composition of $PM_{2.5}$ varies in different regions. Therefore, VA included Afghanistan, Syria, and Djibouti as qualifying locations for presumption of service connection based on presumed exposure to $PM_{2.5}$.

As the literature and studies overwhelmingly demonstrate the prevalence of $PM_{2.5}$ in these locations, VA included Afghanistan, Syria, and Djibouti in addition to the Southwest Asia theater of operations, as qualifying locations for the presumption of exposure to $PM_{2.5}$ for purposes of service connection for the nine rare respiratory cancers.

VIII. Service in Uzbekistan on or After September 19, 2001

As discussed in the preamble to the interim final rule that established section 3.320, in March 2020, the Army Public Health Center issued, *Environmental Conditions at Karshi Khanabad (K–2) Air Base, Uzbekistan,* to provide information to service members and Veterans on environmental exposures at the K–2 Air Base and the risk of potential long-term adverse health effects related to such deployment.[24] It noted that service members, mostly Army, Air Force, and some Marines, were stationed at the air base Camp Stronghold Freedom from October 2001 to November 2005. This fact sheet referenced the results of three declassified assessments conducted by the DoD, namely the Environmental Site Characterization and an Operational Health Risk Assessment completed in 2001 and follow-up Post-Deployment Occupational and Environmental Health Site Assessments completed in 2002 and 2004. The collective findings of these assessments found the K–2 Air Base often had high levels of dust and other particulate matter in the air, depending upon the season and weather conditions, but also noted significantly high levels of dust during dust storms. The fact sheet concluded that there was inconclusive evidence that there is an increased risk of chronic respiratory conditions associated with military deployment to K–2 Air Base. It was noted that DoD was collaborating with VA and independent researchers to further evaluate the potential long-term health risks related to deployment exposures.

Based on these findings regarding particulate matter exposure at the K–2 Air Base, VA established a presumption of exposure to $PM_{2.5}$ for those service members who were deployed to Uzbekistan on or after September 19, 2001. VA acknowledged that this presumption covers a greater geographic area and time frame than the other studies annotated in this document. However, VA believes this is a Veteran-centric approach that enhances its operational efficiencies by simplifying the decision making necessary for claims adjudication.

IX. Manifestation Period

When VA established presumptions of service connection for asthma, rhinitis, and sinusitis, to include rhinosinusitis, it imposed a requirement that for such diseases to be presumptively service connected, they must have become manifest to any degree, including non-compensable, within 10 years from the date of separation from military service that includes a qualifying period of service. As explained in the preamble to that rule, that requirement was based on a review of the available scientific and medical evidence, including human and epidemiological studies that showed the manifestation of those conditions did not exceed 10 years.

However, VA is not imposing a manifestation period requirement with respect to the nine rare respiratory cancers. Unlike asthma, rhinitis, and sinusitis, cancers may have varying latency periods and also have longer latency periods, even up to decades. Given the uncertain and potential long latency period between exposure and malignant transformation of these rare cancers, there is no time limit between the Veteran's service and the development of disease for the purpose of this presumption. Thus, VA will presume that the nine rare respiratory cancers are service connected if manifested to any degree (including non-compensable) at any time following separation from a qualifying period of military service.

X. Statutory Provisions

The Persian Gulf War Veterans Act of 1998, Public Law 105–277, (codified at 38 U.S.C. 1118), and the Veterans Programs Enhancement Act of 1998, Public Law 105–368, directed the Secretary of Veterans Affairs to enter into an agreement with NASEM to review and evaluate available scientific evidence regarding associations between illnesses and agents, hazards, or medicine or vaccine to which service members may have been exposed during the Gulf War. NASEM provided biennial reports to VA assessing whether a statistical association exists between exposure to an agent, hazard, or medicine or vaccine and the onset of diseases. Based on the NASEM reports and all other sound medical and scientific information and analysis available, VA would then determine whether a positive association exists between certain exposures and the occurrence of any disease. 38 U.S.C. 1118 defines ''positive association'' to mean that the credible evidence for an association is equal to or outweighs the credible evidence against an association. If a positive association existed, VA would publish regulations establishing presumptive service connection for that illness.

The statutory provision at 38 U.S.C. 1118 that outlined the procedure for establishing presumptions based on Gulf War service expired on October 1, 2018. However, 38 U.S.C. 501(a)(1) provides that ''[t]he Secretary has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by [VA] and are consistent with those laws, including . . . regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws.'' The Secretary may create presumptions for conditions based on exposure to particulate matter under Congress' broad delegation of general regulatory authority in 38 U.S.C. 501(a)(1), provided there is a rational basis for the presumptions. *NOVA* v. *Sec'y of Veterans Affairs,* 669 F.3d 1340, 1348 (Fed. Cir. 2012) (''A regulation is not arbitrary or capricious if there is a 'rational connection between the facts found and the choice made.' '' (quoting *Motor Vehicle Mfrs. Ass'n. of the U.S.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983)).''

XI. Effective Dates

This rule applies to claims received by VA on or after the effective date of the rule and to claims pending before VA, the United States Court of Appeals for Veterans Claims, and the United States Court of Appeals for the Federal Circuit on that date. This rule will not apply retroactively to claims previously adjudicated. This will ensure that VA

available at *https://uneplive.unep.org/redesign/media/docs/assessments/global_assessment_of_sand_and_dust_storms.pdf.*

[24] Army Public Health Center, Environmental Conditions at Karshi Khanabad (K–2) Air Base, Uzbekistan, Fact Sheet 64–038–0617, *https://phc.amedd.army.mil/PHC%20Resource%20Library/EnvironmentalConditionsatK-2AirBaseUzbekistan_FS_64-038-0617.pdf.* (accessed July 30, 2021).

adheres to the provisions of its change of law regulation, 38 CFR 3.114, provides that when pension, compensation, dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase will be fixed in accordance with the facts found, and will not be earlier than the effective date of the act or administrative issue. *See also* 38 U.S.C. 5110(g).

Additionally, VA will maintain its consistent historical practice of making new presumptions effective on a prospective basis, both to avoid tension with the legal principles discussed above and for the sake of fairness to other veteran cohorts.

XII. Regulatory Amendment

The Secretary of Veterans Affairs has determined that the available scientific and medical evidence is sufficient to warrant a presumption of service connection for nine rare respiratory cancers due to presumed exposure to $PM_{2.5}$ during the Gulf War. Based on presumed exposure to $PM_{2.5}$, VA is recognizing a presumption of service connection for squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung.

The principles guiding the Secretary's determination include the rarity of the conditions, catastrophic nature of the diseases, biological plausibility, analogy to lung cancer, and the reality that these conditions present a situation where it may not be possible to develop additional evidence one way or another. With respect to the nine rare cancers, the Secretary's determination is supported by the biological plausibility between airborne hazards, specifically $PM_{2.5}$, and carcinogenesis of the respiratory tract. This determination also took into consideration the debilitating nature of these rare cancers, and the unique challenges faced by Veterans with a rare respiratory cancer diagnosis.

Additionally, the Secretary found that further research is unlikely to provide more conclusive evidence due to disease rarity. Due to the extremely low incidence rates, rare cancers defy both epidemiologic study and the study of pathophysiologic and potential environmental mechanisms. Published exposure studies are typically case reports. Faced with the challenges posed by conditions that are rare, devastating, and for which there is an argument for biological plausibility, but due to that same rarity may defy the timely development of clearer evidence, the Secretary of Veterans Affairs has opted to resolve the issue in favor of making sure VA does all it can for vulnerable veterans.

Therefore, under the general rulemaking authority at 38 U.S.C. 501(a), the Secretary of Veterans Affairs is establishing presumptive service connection for Veterans who were deployed to the Southwest Asia theater of operations as well as Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and who subsequently develop any of the following rare respiratory cancers at any time after discharge from military service: Squamous cell carcinoma (SCC) of the larynx, SCC of trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung.

To accomplish these changes, VA is renumbering existing paragraphs (a)(3) and (a)(4) as (a)(4) and (a)(5) respectively. VA is inserting a new paragraph (a)(3), which addresses the rare cancers associated with exposure to fine particulate matter as explained in the preamble. New paragraph (a)(3) states that the listed rare cancers will be service connected if manifested to any degree (including non-compensable) at any time following separation from a qualifying period of military service and lists the nine noted rare cancers. Additionally, because the rare cancers are not subject to a manifestation period, but the chronic diseases listed in paragraph (a)(2) are still subject to the 10-year manifestation period as described in current paragraph (a)(1), VA is moving that 10-year manifestation period requirement from paragraph (a)(1) to paragraph (a)(2). Finally, VA is correcting a clerical error in the introductory text of paragraph (b). The text refers incorrectly refers to diseases listed in paragraph (a)(1), but is being corrected to refer to diseases listed in paragraphs (a)(2) and (3).

VA is committed to improving the delivery of health care and benefits to Veterans affected by exposure to airborne hazards during military service and will continue all cancer surveillance and literature review regarding possible associations of other cancers and respiratory hazards in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, and Uzbekistan.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), VA finds that there is good cause to publish this rule without prior opportunity for public comment and good cause to publish this rule with an immediate effective date. Section 553(b)(B) provides that a regulation may be issued without prior opportunity for public comment when an agency for good cause finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' It is necessary to immediately implement this interim final rule to carry out the Secretary of Veterans Affairs' decision to address the needs of soon-to-be discharged service members and Veterans who have been exposed to airborne hazards, *i.e.,* $PM_{2.5}$, due to their service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan, and who subsequently develop squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, or typical and atypical carcinoid of the lung. Delay in the implementation of this rule would be impracticable, unnecessary, and contrary to public interest, particularly to Veterans.

It would be impracticable to provide opportunity for prior notice and comment for this rulemaking because a delay in implementation would require VA to delay disability compensation benefits for Gulf War Veterans claiming these nine respiratory cancers that could be granted under these presumptions. It would be contrary to the public interest because a delay in creation of a presumption of service connection for these nine new diseases (which lowers the evidentiary burden for Veterans who are claiming benefits) would delay access to health care, services, and benefits. Furthermore, Veterans diagnosed with rare respiratory cancers have lower survival rates than those diagnosed with more common cancers and may not be receiving adequate health care due to their lack of service-connected status for their disability. Additionally, with the exception of typical and atypical carcinoid of the lung, which have a better prognosis than other pulmonary malignancy and may have a survival rate of 10 years if diagnosed without delay, all these rare respiratory cancers have a median

survival timeframe of well under 5 years. Delays in the diagnosis of these rare cancers may occur due to the fact that these cancers have a wide array of symptoms and due to challenges of diagnostic tests and screening for these cancers, which may affect up to 90% of diagnostic errors for these cancers.[25] Even if diagnosed as early as possible the survival timeframes are grim and the quality of life is universally poor. Due to the catastrophic nature of these rare cancers and the associated short survival periods for people suffering from them, preventing the presumption from going into effect while the public comment process is completed would be extremely detrimental to veterans who are currently afflicted with these rare cancers.

In addition, the new presumptions are entirely pro-claimant in nature. And because VA has a sufficient scientific basis to support the new presumptions, continuing to delay claims that could be granted under the presumption while rulemaking is ongoing would unnecessarily deprive veterans and beneficiaries of benefits to which they would otherwise be entitled and prolong their inability to receive benefits. Additionally, this could create risks to beneficiaries' welfare and health that would be exacerbated by any additional delay in implementation. Due to the complexity and the historical scientific uncertainty surrounding both these issues of airborne hazard exposures and rare respiratory cancers, many veterans who will be affected by this rule have long borne the burden and expense of their disabilities while awaiting the results of research and investigation. Under these circumstances, imposing further delay on their receipt of benefits, potentially at the risk of their welfare and health, is contrary to the public interest.

Finally, the Secretary's decision to pursue presumptions of service connection to ease access to VA benefits for veterans who have been exposed to airborne hazards, *i.e.,* particulate matter, requires immediate effect in light of the COVID–19 pandemic. The economic consequences of the pandemic may have strained the personal resources of many who may benefit from these presumptions. For veterans that are not otherwise eligible for health care, these presumptions could result in needed health care eligibility based on service connection. For this reason, delay in implementation of this rule would be contrary to the public interest.

5 U.S.C. 553(d) also requires a 30-day delayed effective date following publication of a rule, except for ''(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.'' Pursuant to section 553(d)(3), the Secretary of Veterans Affairs finds for the reasons noted above that there is good cause to make the rule effective upon publication in order to provide benefits and health care to Veterans suffering from these nine rare respiratory cancers without delay.

For the foregoing reasons, and as explained in further detail above, the Secretary of Veterans Affairs is issuing this rule as an interim final rule with an immediate effective date. However, the Secretary of Veterans Affairs will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

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 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 interim final rule will 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). The certification is based on the fact that no small entities or businesses determine service connection, the rating criteria, or assign evaluations for disability claims. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of sections 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 the 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 interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act (PRA)

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Assistance Listing

The Assistance Listing numbers and titles for this rule are 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.105, Pension to Veterans, Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 28, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication

[25] Del Ciello, Annemilia et al. ''Missed lung cancer: when, where, and why?.'' Diagnostic and interventional radiology (Ankara, Turkey) vol. 23,2 (2017): 118–126. doi:10.5152/dir.2016.16187

electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension Compensation and Dependency and Indemnity Compensation

■ 1. The authority citation for subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a).

■ 2. Revise § 3.320 to read as follows:

§ 3.320 Claims based on exposure to fine particulate matter.

(a) *Service connection based on presumed exposure to fine particulate matter*—(1) *General.* Except as provided in paragraph (b) of this section, a disease listed in paragraphs (a)(2) and (a)(3) of this section shall be service connected even though there is no evidence of such disease during the period of military service.

(2) *Chronic diseases associated with exposure to fine particulate matter.* The following chronic diseases will be service connected if manifested to any degree (including non-compensable) within 10 years from the date of separation from a qualifying period of military service as defined in paragraph (a)(5) of this section.

(i) Asthma.

(ii) Rhinitis.

(iii) Sinusitis, to include rhinosinusitis.

(3) *Rare cancers associated with exposure to fine particulate matter.* The following rare cancers will be service connected if manifested to any degree (including non-compensable) at any time following separation from a qualifying period of military service as defined in paragraph (a)(5) of this section.

(i) Squamous cell carcinoma of the larynx.

(ii) Squamous cell carcinoma of the trachea.

(iii) Adenocarcinoma of the trachea.

(iv) Salivary gland-type tumors of the trachea.

(v) Adenosquamous carcinoma of the lung.

(vi) Large cell carcinoma of the lung.

(vii) Salivary gland-type tumors of the lung.

(viii) Sarcomatoid carcinoma of the lung.

(ix) Typical and atypical carcinoid of the lung.

(4) *Presumption of exposure.* A Veteran who has a qualifying period of service as defined in paragraph (a)(5) of this section shall be presumed to have been exposed to fine, particulate matter during such service, unless there is affirmative evidence to establish that the veteran was not exposed to fine, particulate matter during that service.

(5) *Qualifying period of service.* The term *qualifying period of service* means any period of active military, naval, or air service in:

(i) The Southwest Asia theater of operations, as defined in § 3.317(e)(2), during the Persian Gulf War as defined in § 3.2(i).

(ii) Afghanistan, Syria, Djibouti, or Uzbekistan on or after September 19, 2001 during the Persian Gulf War as defined in § 3.2(i).

(b) *Exceptions.* A disease listed in paragraph (a)(2) and (3) of this section shall not be presumed service connected if there is affirmative evidence that:

(1) The disease was not incurred during or aggravated by a qualifying period of service; or

(2) The disease was caused by a supervening condition or event that occurred between the Veteran's most recent departure from a qualifying period of service and the onset of the disease; or

(3) The disease is the result of the Veteran's own willful misconduct.

[FR Doc. 2022–08820 Filed 4–25–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0395; FRL–9563–02–R4]

Air Plan Approval; Kentucky; Emissions Statement Requirements for the 2015 8-Hour Ozone Standard Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Kentucky State Implementation Plan (SIP) submitted to EPA by the Commonwealth of Kentucky through the Kentucky Division for Air Quality (KDAQ) on October 15, 2020. The SIP revision was submitted by KDAQ to address the emissions statement requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS) for Kentucky counties in the Cincinnati, Ohio-Kentucky 2015 8-hour ozone NAAQS nonattainment area (Cincinnati, OH-KY Area), and for some of the Kentucky counties in the Louisville, Kentucky-Indiana 2015 8-hour ozone NAAQS nonattainment area (Louisville, KY-IN Area). Specifically, EPA is approving the emissions statement requirements for portions of Boone, Campbell, and Kenton Counties in the Cincinnati, OH-KY Area, and Bullitt and Oldham Counties in the Louisville, KY-IN Area. EPA will consider and take action, or has considered and taken action, on submissions addressing the emissions statement requirements for the remaining counties in these two nonattainment areas, including the Jefferson County, Kentucky portion of the Louisville, KY-IN Area, in a separate rulemaking. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective May 26, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2021–0395. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 electronically through *www.regulations.gov* or in hard copy at the 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. EPA requests that, if at all possible, you contact the person 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 Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised 8-hour primary and secondary ozone NAAQS, strengthening both from 0.075 parts per million (ppm) to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).[1] Upon promulgation of a new or revised ozone NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. On June 4, 2018 (effective August 3, 2018), EPA designated the 7-county Cincinnati, OH-KY Area as a Marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS.[2] Also on June 4, 2018 (effective August 3, 2018), EPA designated the 5-county Louisville, KY-IN Area as a Marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS.[3] The Cincinnati, OH-KY Area and the Louisville, KY-IN Area were designated nonattainment for the 2015 8-hour Ozone NAAQS using 2014–2016 ambient air quality data. *See* 83 FR 25776.

Based on the nonattainment designation, Kentucky was required to develop a SIP revision addressing certain CAA requirements for an area designated nonattainment, including, pursuant to satisfying, among other things, CAA section 182(a)(3)(B). On October 15, 2020,[4] Kentucky submitted a SIP revision addressing the emissions statement requirements related to the 2015 8-hour ozone NAAQS for the Kentucky portion of the Cincinnati, OH-KY Area and for Bullitt and Oldham Counties in the Kentucky portion of the Louisville, KY-IN Area.

On February 28, 2022, EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve the October 15, 2020, SIP revision as meeting the emissions statement requirements of section 182(a)(3)(B) of the CAA and EPA's SIP Requirements Rule.[5] *See* 87 FR 10998. The February 28, 2022, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the February 28, 2022, NPRM were due on or before March 30, 2022. EPA received no comments on the February 28, 2022, NPRM.

II. Final Action

EPA is approving the aforementioned October 15, 2020, Kentucky SIP revision addressing the emissions statement requirements for the 2015 8-hour Ozone NAAQS for portions of Boone, Campbell, and Kenton Counties in the Cincinnati, OH-KY Area, and Bullitt and Oldham Counties in the Louisville, KY-IN Area. EPA has determined that Kentucky's SIP revision meets the requirements of CAA sections 110 and 182.

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 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 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).

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.

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

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 June 27, 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

[1] The 2015 8-hour Ozone NAAQS was promulgated on October 1, 2015, published on October 26, 2015, and effective December 28, 2015.

[2] The Cincinnati, OH-KY Area consists of the following counties: Boone (Partial), Campbell (Partial), Kenton (Partial), in Kentucky and the entire counties of Butler, Clermont, Hamilton, and Warren in Ohio. EPA has taken action on the 2015 8-hour ozone NAAQS nonattainment area emissions statement requirements for the entire counties of Butler, Clermont, Hamilton, and Warren in Ohio in a separate action. *See* 86 FR 12270 (March 3, 2021).

[3] The Louisville, KY-IN Area consists of Bullitt, Jefferson, and Oldham Counties in Kentucky and Clark and Floyd Counties in Indiana. EPA took final action on the 2015 8-hour ozone NAAQS emissions statement requirements for the Jefferson County, Kentucky portion of the Louisville, KY-IN Area in a separate rulemaking, *see* 87 FR 13177 (March 9, 2022), and will take action on the emissions statement requirements for Clark and Floyd Counties in Indiana in a separate rulemaking.

[4] KDAQ's transmittal letter for the October 15, 2020, SIP revision was dated October 15, 2020, and submitted to EPA on October 16, 2020.

[5] On December 6, 2018, EPA finalized a rule titled ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements'' (SIP Requirements Rule) that establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. *See* 83 FR 62998.

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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 19, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart S—Kentucky

■ 2. In § 52.920(e), amend the table by adding a new entry for ''Emissions Statement Requirements for the 2015 Ozone 8-hour NAAQS'' at the end of the table.

The addition reads as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
*	*	*	*	*
Emissions Statement Requirements for the 2015 8-hour Ozone NAAQS.	Boone, Campbell, and Kenton Counties (partial) in Kentucky portion of Cincinnati, OH-KY Area, and Bullitt and Oldham Counties (entire) in Kentucky portion of Louisville, KY-IN Area.	10/15/2020	4/26/2022, [Insert citation of publication].	

[FR Doc. 2022–08867 Filed 4–25–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 371 and 375

[Docket No. FMCSA–2020–0205]

RIN 2126–AC35

Implementation of Household Goods Working Group Recommendations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends the Transportation of Household Goods regulations to incorporate recommendations from the Household Goods Consumer Protection Working Group (Working Group) contained in the *Recommendations to the U.S. Department of Transportation to Improve Household Goods Consumer Education, Simplify and Reduce Paperwork, and Condense FMCSA Publication ESA 03005* (Recommendations Report). The Agency amends the regulations to reflect those aspects of the Recommendations Report which require a rulemaking to implement and are within the Agency's authority. The Agency is also making additional minor changes to the Transportation of Household Goods regulations and the Brokers of Property regulations which are intended to increase clarity and consistency. The updates will result in an aggregate reduction in costs for household goods motor carriers and provide clarity for individual shippers.

DATES: This final rule is effective June 27, 2022.

The guidance documents published at 76 FR 50537, Aug. 15, 2011, and 78 FR 25782, May 2, 2013, are rescinded as of June 27, 2022.

Comments on the information collection must be received on or before May 26, 2022.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than May 26, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Monique Riddick, Commercial Enforcement Division, Office of Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–0073; *Monique.riddick@dot.gov.*

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. Availability of Rulemaking Documents
II. Comments on the Information Collection
III. Executive Summary
  A. Purpose of the Amendments
  B. Summary of the Major Provisions
  C. Costs and Benefits
IV. Abbreviations
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VI. Discussion of Proposed Rulemaking and Comments
VII. Changes from the NPRM
VIII. Section-by-Section Analysis
IX. Regulatory Analyses
  A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
  B. Congressional Review Act
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  D. Assistance for Small Entities
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  G. E.O. 13132 (Federalism)
  H. Privacy
  I. E.O. 13175 (Indian Tribal Governments)
  J. National Environmental Policy Act of 1969

I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2020-0205/document* and choose the document to review. To view comments, click this final rule, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Comments on the Information Collection

Written comments and recommendations for the information collection discussed in this final rule should be sent within 30 days of publication to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by clicking the link that reads ''Currently under Review—Open for Public Comments'' or by entering OMB control number 2126–0025 in the search bar and clicking on the last entry to reach the ''comment'' button.

III. Executive Summary

A. Purpose of the Amendments

FMCSA incorporates certain recommendations from the Working Group's Recommendations Report into the regulations at 49 CFR part 375 and makes additional minor changes to the regulations in 49 CFR parts 371 and 375. These changes will streamline documentation requirements, increase efficiency for the transportation of household goods by interstate household goods motor carriers improve consumer education and protection for individual shippers, and combat fraud. The Working Group was established and provided recommendations pursuant to section 5503 of the Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94, 129 Stat. 1312, 1551 (Dec. 4, 2015).

B. Summary of the Major Provisions

This rule implements 10 of the Working Group's 11 recommendations that require a rulemaking.[1] These recommendations update a variety of regulatory requirements under 49 CFR part 375. This final rule implements the recommendations to revise appendix A to part 375 with an updated version of the *Your Rights and Responsibilities When You Move* booklet (*Rights and Responsibilities*) and to require motor carriers to provide the *Rights and Responsibilities* booklet at the same time as the estimate instead of at the time of the order for service, as previously required.

This rule also implements the recommendation to require the preparation of a new binding estimate or new non-binding estimate when the individual shipper tenders additional items or requests additional services. This incorporates into the regulations certain provisions from the FMCSA guidance titled *Regulatory Guidance Concerning Household Goods Carriers Requiring Shippers To Sign Blank or Incomplete Documents* (76 FR 50537, Aug. 15, 2011) (2011 guidance). FMCSA is also incorporating other provisions from the 2011 guidance that clarify that an individual shipper may never be required to sign a blank document, and that the shipper may be required to sign an incomplete document only when it is missing certain information that cannot be determined before the document must be signed.

The other Working Group recommendations being implemented in this final rule include: Allowing for virtual surveys of household goods; requiring motor carriers to conduct surveys beyond a 50-mile radius; removing the requirement for an order for service; updating the requirements in the bill of lading; requiring the bill of lading to be provided earlier in the moving process; replacing the requirement for a freight bill with an invoice; and requiring all motor carriers that have a website to display prominently a link to either *Ready to Move?* on the FMCSA website or to a true and accurate copy of *Ready to Move?* on their own websites. In addition to implementing the Working Group's recommendations, FMCSA is making additional minor changes to the regulations in 49 CFR parts 371 and 375 which are intended to increase clarity and consistency. The recommendations and changes made in this rulemaking are discussed in greater detail in the NPRM (86 FR 43818, Aug. 10, 2021).

C. Costs and Benefits

This final rule affects household goods motor carriers and individual shippers. Some provisions in this rule will result in costs for motor carriers (*i.e.,* providing the *Rights and Responsibilities* booklet earlier in the process, and providing either in-person or virtual surveys at locations beyond 50 miles from the motor carrier agent's location), and some provisions will result in negative costs, or cost savings (*i.e.,* allowing virtual surveys in place of in-person surveys, and eliminating the order for service document by including its information in the bill of lading). The motor carrier efficiencies discussed will not negatively impact shippers, as the services and information received today would not change under the final rule. FMCSA does not anticipate that shippers will incur costs as a result of this final rule. FMCSA estimates the total 10-year costs of this rule at −$1.6 million (or $1.6 million in cost savings) discounted at 3 percent, and −$1.3 million (or $1.3 million in cost savings) discounted at 7 percent. Expressed on an annualized basis, this equates to −$188,000 in costs (or $188,000 in cost savings) at both a 3 and 7 percent discount rate.

FMCSA does not expect this rule to impact safety. FMCSA does expect that it will result in benefits related to consumer protection and potentially motor carrier fuel savings. The final rule will result in shippers receiving accurate and clear information earlier in the process, enabling them to make more informed and better decisions regarding which household goods motor carrier to hire. Additionally, the final rule will aid in obtaining more accurate estimates of moving fees based on physical surveys for those interstate moves that are beyond 50 miles from a motor carrier agent's location.

IV. Abbreviations

AMSA American Moving and Storage Association
ATA American Trucking Associations
ATRI American Transportation Research Institute
CAGR Compound Average Growth rate
CE Categorical Exclusion
CFR Code of Federal Regulations
DOT Department of Transportation
E.O. Executive Order
FAST Act Fixing America's Surface Transportation Act
FMCSA Federal Motor Carrier Safety Administration
FOIA Freedom of Information Act
FR Federal Register
HHG Household goods
ICC Interstate Commerce Commission
MAP–21 Moving Ahead for Progress in the 21st Century Act
MCSAP Motor Carrier Safety Assistance Program
NAICS North American Industry Classification System
OMB Office of Management and Budget
PIA Privacy Impact Assessment
PII Personally Identifiable Information
PTA Privacy Threshold Assessment
RFA Regulatory Flexibility Act
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SBA Small Business Association
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
Secretary Secretary of Transportation
STB Surface Transportation Board
U.S.C. United States Code

V. Legal Basis for the Rulemaking

The purpose of this rulemaking is to amend in the regulations in 49 CFR parts 371 and 375 applicable to the transportation of household goods for

[1] The Recommendations Report contained 19 recommendations, but only 11 of those recommendations require a rulemaking. As discussed in the notice of proposed rulemaking (NPRM), FMCSA is not implementing recommendation 15 from the Recommendations Report. Recommendation 15 from the Recommendations Report suggested that FMCSA require movers to provide FMCSA publication ESA 03005 (Ready to Move?) when the physical survey is either scheduled or waived by the consumer. FMCSA did not include that recommendation in the NPRM because it exceeds the Agency's statutory authority (86 FR 43822, Aug. 10, 2021).

individual shippers in interstate commerce. Most of the changes involve FMCSA's implementation of the recommendations of the Working Group, which was established pursuant to section 5503 of the FAST Act, Public Law 114–94, 129 Stat. 1312, 1551 (Dec. 4, 2015). Additional changes are being made by FMCSA to update provisions in part 375 and its appendix A.

FMCSA's authority to provide protection for individual shippers of household goods is found in several sections of 49 U.S.C. subtitle IV, part B. The sections primarily involved in this rulemaking are 49 U.S.C. 13704, 13707, and 14104. They govern guaranteed service and charges for transportation, payment of rates, and surveys, estimates, and weighing of shipments, respectively. The Secretary of Transportation (the Secretary) has specific authority to issue regulations, including regulations protecting individual shippers, in order to carry out 49 U.S.C. subtitle IV, part B with respect to the transportation of household goods by motor carriers (49 U.S.C. 14104(a)). The Secretary also has broad authority to prescribe regulations to carry out 49 U.S.C. subtitle IV, part B. 49 U.S.C. 13301(a). This authority has been delegated by the Secretary to FMCSA (49 CFR 1.87(a)).

VI. Discussion of Proposed Rulemaking and Comments

A. Proposed Rulemaking

On August 10, 2021, FMCSA published in the **Federal Register** (Docket No. FMCSA–2020–0205, 86 FR 43814) an NPRM titled ''Implementation of Household Goods Working Group Recommendations.'' The NPRM proposed to revise 49 CFR part 375 to implement the 10 recommendations contained in the Recommendations Report that required a rulemaking and FMCSA had authority to implement. In addition to proposing to implement the Working Group's recommendations, FMCSA proposed additional minor changes to the regulations which are intended to increase clarity and consistency. The proposed changes affected multiple sections of 49 CFR parts 371 and 375 and are discussed in detail in the NPRM (86 FR 43818).

Issuance of the NPRM and this final rule satisfies the requirements of Section 23013 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (H.R. 3684, Nov. 15, 2021) (IIJA). Section 23013(b) directed the Agency within 1 year after the date of enactment to ''issue a notice of proposed rulemaking to amend, as the Secretary determines to be appropriate, regulations relating to the interstate transportation of household goods.'' Because FMCSA issued an NPRM satisfying all the subsequent statutory requirements before the enactment of the IIJA, it is not necessary to issue a new NPRM. Section 23013(c)(1)–(7) directed the Secretary to consider, in the NPRM required by paragraph (b), amendments to the regulations in 49 CFR part 375 in accordance with several recommendations set out in the statute. All seven of the recommendations listed in the statute in paragraph (c) were among the recommendations made by the Working Group's Recommendations Report. They were set out in the NPRM, public comment was sought, and the agency considered the amendments recommended. In some cases, as explained in this preamble and final rule, the recommendations were appropriately modified either to conform to the controlling statutory language or for policy reasons.

FMCSA is rescinding the guidance documents titled *Guidance on FMCSA's Publication: Your Rights and Responsibilities When You Move* (78 FR 25782, May 2, 2013) and *Regulatory Guidance Concerning Household Goods Carriers Requiring Shippers To Sign Blank or Incomplete Documents* (76 FR 50537, Aug. 15, 2011) for the reasons discussed in the NPRM (86 FR 43818–19). The rescission will take effect on the effective date of this final rule.

B. Comments and Responses

FMCSA solicited comments concerning the NPRM for 60 days ending October 12, 2021. By that date, four comments were received from the following parties: American Trucking Associations, Inc. Moving and Storage Conference; International Association of Movers; MoveRescue/Mayflower Transit LLC (Mayflower)/United Van Lines LLC (United); and one private citizen.

All commenters were generally supportive of the NPRM.

The Moving and Storage Conference and MoveRescue/Mayflower/United stated that the *Rights and Responsibilities* booklet and appendix A to part 375 can be further condensed and streamlined to reduce the length of the booklet and remove information that is not relevant for consumers. MoveRescue/Mayflower/United stated that the proposed requirement for motor carriers that have a website to display prominently either a link to the *Ready to Move?* document on the FMCSA website or a true and accurate copy of that document on their own websites should also apply to brokers.

The Moving and Storage Conference and MoveRescue/Mayflower/United stated the proposed update to the definition of *physical survey* to include live video surveys was too limited. These commenters stated that the Working Group did not have a requirement for live video in their recommendations to FMCSA and FMCSA should revise the definition to reflect the Working Group's initial recommendation for a definition of *visual survey* and to allow for pre-recorded visual surveys that allow for follow-up discussion between the mover and customer. MoveRescue/Mayflower/United stated that FMCSA should add a definition of *physical survey* to 49 CFR 371.103 that mirrors the definition in § 375.103 to ensure consistency between the requirements for motor carriers and brokers.

The Moving and Storage Conference and MoveRescue/Mayflower/United stated that FMCSA should remove the requirement that the bill of lading include information about additional motor carriers involved in the move. These commenters explained that this change would remove confusion about who is actually performing the move and whom to contact with complaints. These commenters also stated that there is confusion about who is a broker and who is a mover and that removing the additional motor carriers' information from the bill of lading and issuing clear guidance on what a household goods broker is would eliminate this confusion.

The Moving and Storage Conference and MoveRescue/Mayflower/United stated that there should be an exception to the requirement to provide the bill of lading 3 days prior to the move in a situation where the move is scheduled less than 3 days in advance.

MoveRescue/Mayflower/United stated that the proposed revision to § 375.403(a)(6)(ii) requiring shippers to ''maintain a record of the date, time, and manner that the new [binding] estimate was prepared'' should also be added to § 375.405(b)(7)(ii) for consistency between binding and nonbinding estimates. MoveRescue/Mayflower/United also stated that §§ 375.403 and 375.405 should be revised to distinguish between changes requested before loading commences and those requested after loading commences. The commenters questioned whether § 375.403(a)(9) should be revised to explicitly state that its provisions apply after loading has commenced and if similar revisions should be made to §§ 375.403(a)(8) and 375.405(b)(9) and (10) to distinguish between those requirements necessary prior to loading

and those necessary after loading commences.

One private citizen stated that the requirement to prepare a new estimate every time there is a change could result in mistakes stemming from constant preparation of new documents. The commenter stated that allowing revisions on one estimate would reduce this risk and questioned whether there are policies in place to maintain oversight of requests for new estimates.

MoveRescue/Mayflower/United questioned whether the Agency's proposal to replace a freight bill with an invoice was inconsistent with the Working Group's recommendations. These commenters stated that the requirements would be the same, and only the title of the document would change.

MoveRescue/Mayflower/United stated that any remaining requirement that the motor carrier receive a consumer's written agreement to receive electronic documents should be removed and requested that FMCSA complete a further review of the regulations in part 375 to remove any additional requirements that prevent use of electronic documents.

FMCSA Response

The *Rights and Responsibilities* booklet and appendix A to part 375 have already been significantly condensed due to the edits made in preparing the NPRM. Commenters requesting further edits to the booklet and appendix did not provide specific recommendations on how to further condense the material. Accordingly, FMCSA is not making further revisions to the *Rights and Responsibilities* booklet or appendix A to part 375 in this final rule.

FMCSA is updating the requirements in 49 CFR 371.111 in response to the comment from MoveRescue, Mayflower, and United recommending that brokers with a website be required to display prominently either a link to the *Ready to Move?* document on the FMCSA website or a true and accurate copy of that document. The Agency adds a new paragraph (e) to § 371.111 which mirrors the language in § 375.213(e). This change ensures that individual shippers have the same opportunity to access to the *Ready to Move?* document through the websites of brokers and motor carriers.

In response to commenters stating that the live video requirement in the proposed definition of *physical survey* would be too limited, FMCSA revises the definition in this final rule. The definition is revised to allow for either live or pre-recorded video. As discussed in the NPRM (86 FR 43819–21), the intention behind the live video component was to allow the individual shipper and motor carrier to interact and address any questions regarding the household goods to be moved in a way that is similar to how an in-person survey would be conducted. Therefore, any physical survey that utilizes pre-recorded video should include an opportunity for follow-up to address any questions about the goods to be moved to ensure that the prepared estimate is as accurate as one that would be prepared following an in-person physical survey. FMCSA also adds a definition of *physical survey* to § 371.103 referencing the definition in § 375.103, in response to commenters stating that the definition should be incorporated into part 371 to ensure consistency between the requirements for motor carriers and brokers.

Retaining the requirement for the bill of lading to include the information about additional motor carriers involved in the move provides the individual shipper with information that is necessary to understand which motor carriers are involved in the shipment of their household goods. This information also allows individual shippers to know the identity of the motor carrier they may bring a legal action against in the event of damage to, delay of, or loss of the shipment, since they may bring a civil suit to hold liable any motor carrier involved in a move that causes such loss, delay, or damage to the shipment (49 U.S.C. 14706(a)(1) and (d)). For these reasons, FMCSA finalizes the updates to the bill of lading requirements as proposed.

At this time, FMCSA finds that the requirement to provide the bill of lading 3 days prior to the move does not need an exception in a situation where the move is scheduled less than 3 days in advance. Interstate moves are very rarely scheduled within 3 days of the move date, and an exception from the 3-day requirement may allow for bad faith efforts to get around the requirement altogether.

FMCSA agrees with the comment that the language in § 375.403(a)(6)(ii) stating, ''You should maintain a record of the date, time, and manner that the new estimate was prepared'' should also be added to § 375.405(b)(7)(ii) for consistency between binding and nonbinding estimates and makes that change in this final rule.

FMCSA finds that §§ 375.403 and 375.405 are clear and do not need to be revised to distinguish between changes requested before loading commences and those requested after loading commences. Sections 375.403(a)(8) and (9) and 375.405(b)(9) and (10) apply to additional services after the bill of lading has been issued.

FMCSA does not believe there is any increased risk of mistakes being made when preparing a new estimate instead of revising an estimate. It is still the responsibility of both the motor carrier and the individual shipper to verify that the new estimate is accurate before signing it.

FMCSA is implementing recommendation 12 from the Working Group which requests that FMCSA replace the term ''freight bill'' in 49 CFR part 375, subpart G, with the term ''invoice.'' The Working Group did not detail any other changes to the requirements of subpart G be made with respect to this recommendation.

As stated in the NPRM (86 FR 43819), in a separate rulemaking FMCSA has already removed requirements that a motor carrier obtain a consumer's written agreement to receive electronic documents. This rulemaking removes the remaining related requirement in 49 CFR part 375 by no longer requiring that a motor carrier obtain a waiver to send electronic consumer protection documents to an individual shipper under § 375.213.

VII. Changes From the NPRM

The Agency is making four changes to this final rule from the NPRM, in response to the comments. First, the Agency adds a definition of *physical survey* to § 371.103, which references the definition in § 375.103.

Second, the Agency adds paragraph (e) to § 371.111, which requires brokers that have a website to display prominently either a link to the *Ready to Move?* document on the FMCSA website or a true and accurate copy of that document on their own websites.

Third, the Agency revises the definition of *physical survey* in § 375.103 to allow for virtual surveys through live and pre-recorded video.

Finally, the Agency adds ''You should maintain a record of the date, time, and manner that the new estimate was prepared'' to § 375.405(b)(7)(ii).

VIII. Section-by-Section Analysis

This section-by-section analysis describes the changes to the regulatory text in numerical order.

A. Section 371.103 What are the definitions of terms used in this subpart?

In this section, a definition for *physical survey* is added to reference the definition in § 375.103.

B. Section 371.111 Must I provide individual shippers with Federal consumer protection information?

A new paragraph (e) is added, which requires brokers that have a website to display prominently either a link to the *Ready to Move?* document on the FMCSA website or a true and accurate copy of that document on their own websites.

C. Section 371.113 May I provide individual shippers with a written estimate?

Paragraph (a) of this section is revised to remove the requirement for household goods to be within 50 miles of the motor carrier agent's location before a physical survey is required.

D. Section 375.103 What are the definitions of terms used in this part?

In this section, a definition for *bill of lading* is added to clarify the role of the bill of lading as both a contract and a receipt in the transportation of household goods. The definition for *order for service* is removed. A definition for *physical survey* is also added, which allows for virtual surveys. The definition for *reasonable dispatch* is revised to remove the reference to the order for service. The definition for *Surface Transportation Board* is updated to reflect that the Surface Transportation Board is no longer an agency within DOT but is instead an independent agency.

E. Section 375.211 Must I have an arbitration program?

In paragraph (a)(2), the term ''order for service'' is removed and replaced with ''bill of lading.''

F. Section 375.213 What information must I provide to a prospective individual shipper?

In this section, the introductory text of paragraph (a) is revised and paragraphs (a)(1) and (2) are added. The new paragraph (a) requires both *Ready to Move?* and the *Rights and Responsibilities* booklet to be provided to the individual shipper along with the estimate. Paragraphs (a)(1) and (2) include a requirement for motor carriers providing a hyperlink for either of the documents to the individual shipper to provide a hyperlink directly to those documents on the FMCSA website.

In the introductory text of paragraph (b), the term ''order for service'' is removed and replaced with ''bill of lading'' and the word ''five'' is removed and replaced with ''four.'' Paragraph (b)(1) is deleted and paragraphs (b)(2) through (5) are renumbered as paragraphs (b)(1) through (4).

Paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added, which requires motor carriers that have a website to display prominently either a link to the *Ready to Move?* document on the FMCSA website or a true and accurate copy of that document on their own websites.

G. Section 375.215 How must I collect charges?

In this section, the requirement for a freight or expense bill in the first sentence is replaced with a requirement for an invoice.

H. Section 375.217 How must I collect charges upon delivery?

In paragraph (b), the language regarding an order for service is removed.

I. Section 375.221 May I use a charge or credit card plan for payments?

In paragraph (c), the phrase ''for a freight or expense bill'' is removed and replaced with the phrase ''an invoice.''

J. Section 375.401 Must I estimate charges?

In this section, the introductory text of paragraph (a) is revised to require a physical survey for all shipments unless waived, and to state that the only way to waive the physical survey of household goods is through a written agreement between an individual and a motor carrier. Additionally, paragraph (a) is further revised by redesignating paragraphs (a)(2)(i) through (iii) as paragraphs (a)(1) through (3).

Paragraph (b) is revised by removing the phrase ''an order for service'' and replacing it with ''a bill of lading.'' In paragraph (f), the phrase ''the order for service and'' is removed in both places it appears.

K. Section 375.403 How must I provide a binding estimate?

In this section, paragraph (a)(1) is revised to reflect that 49 CFR 375.401(a) will allow for only one waiver procedure under the changes discussed above. Paragraphs (a)(6)(ii) and (a)(9) are revised to no longer allow for a revised binding estimate and instead require the preparation of a new binding estimate when an individual shipper tenders additional household goods or requires additional services related to the transportation of the household goods.

L. Section 375.405 How must I provide a non-binding estimate?

In this section, paragraph (b)(7)(ii) is revised to no longer allow for a revised non-binding estimate and instead requires the preparation of a new non-binding estimate when an individual shipper tenders additional household goods or requires additional services related to the transportation of the household goods.

In paragraph (c) the language regarding an order for service is removed.

M. Section 375.501 Must I write up an order for service?

This section is deleted in its entirety.

N. Section 375.505 Must I write up a bill of lading?

In this section, paragraph (a) is revised to clarify that a motor carrier must prepare and issue a bill of lading at least 3 days before receiving a shipment of household goods to transport for an individual shipper. In addition, the last three sentences in the paragraph are removed. Removing these sentences will delete a discussion of incomplete bills of lading, which will be addressed under paragraph (h), as well as a reference to an order for service.

Paragraph (b) is revised to require a bill of lading to contain 17 items, instead of the 14 items a bill of lading is currently required to contain. The additional three items, as well as updates to the other items listed in paragraph (b)(1) through (17), incorporate requirements currently found in 49 CFR 375.501(a).

In paragraph (d), the word ''bills'' is removed and replaced with ''a bill of lading.''

New paragraph (e), which mirrors current 49 CFR 375.501(b), is added to this section.

New paragraph (f), which mirrors current 49 CFR 375.501(c), is added to this section with updates to replace all references to an order for service with language regarding a bill of lading.

New paragraphs (g)(1) through (3) are added to this section. Paragraphs (g)(1) and (2) mirror current 49 CFR 375.501(d)(1) and (2) with updates to remove the reference to an order for service in paragraph (g)(1) and replacing ''at origin'' with ''before the shipment is loaded'' in paragraph (g)(2). Paragraph (g)(3) is added to state that a motor carrier cannot require an individual shipper to sign a blank document.

A new paragraph (h) is added to this section to require the motor carrier to provide the bill of lading to the individual shipper at least 3 days before loading and provide the individual shipper with the opportunity to rescind the bill of lading without any penalty for a 3-day period after the individual shipper signs the bill of lading. Paragraph (h) also states that, if a new estimate is prepared under

§ 375.403(a)(6)(ii) or § 375.405(b)(7)(ii), ''the corresponding changes to the bill of lading from the new estimate do not require a new 3-day period as otherwise required in this paragraph (h).''

O. Section 375.605 How must I notify an individual shipper of any service delays?

In paragraph (a), the term ''order for service'' is removed and replaced with the term ''bill of lading.''

P. Section 375.801 What types of charges apply to subpart H?

The heading of this section is changed to read ''What types of charges are subject to this subpart?'' to clarify that 49 CFR 375.801 discusses which types of charges are subject to the requirements of subpart H. Additionally, the term ''invoice'' replaces the term ''freight bill'' in paragraph (a).

Q. Section 375.803 How must I present my freight or expense bill?

In this section, the term ''invoice'' replaces the term ''freight bill'' everywhere it appears, including in the section heading. The new heading reads ''How must I present my invoice?''

R. Section 375.805 If I am forced to relinquish a collect-on-delivery shipment before the payment of ALL charges, how do I collect the balance?

The term ''invoice'' replaces the term ''freight bill.''

S. Section 375.807 What actions may I take to collect the charges upon my freight bill?

In this section, the term ''invoice'' replaces the term ''freight bill'' everywhere it appears, including in the section heading. The new heading reads ''What actions may I take to collect the charges upon my invoice?''

T. Appendix A to Part 375—Your Rights and Responsibilities When You Move

This appendix is replaced in its entirety with the text of the updated *Your Rights and Responsibilities When You Move* booklet, which conforms with the other revisions to part 375 discussed in this proposal.

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

Under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review, this final rule does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under those orders.

Affected Entities

This final rule affects household goods motor carriers covered by the 49 CFR part 375 regulations. These regulations are based on the commercial statutes with special provisions for household goods carriers that authorize States, at their discretion, to enforce Federal rules, but only for interstate household goods transportation. The motor carrier safety assistance program (MCSAP) statutes do not require MCSAP grant recipients to adopt compatible commercial regulations for intrastate transportation not related to safety.[2] Therefore, FMCSA anticipates that this rule will affect interstate household goods motor carriers, and does not include intrastate household goods motor carriers in the counts of affected entities.

FMCSA obtained motor carrier count information from the Motor Carrier Management Information System, which includes information submitted to FMCSA by motor carriers the first time they apply for a USDOT number, and then biennially thereafter. The table below shows the counts of household goods motor carriers in 2019 and estimates of the number of carriers that will be affected by this rule annually during the analysis period of 2022 to 2031.

FMCSA estimated the future baseline number of motor carriers by developing a compound average growth rate (CAGR) using historical counts from 2014 through 2019. There were 3,472 active household goods motor carriers in 2014 and 4,297 active household goods motor carriers in 2019, resulting in a CAGR of 4.36 percent.

This rule will also affect shippers, or consumers who hire household goods motor carriers which, as described below, is estimated to be 20 percent of all interstate moves. The U.S. Census Bureau estimates that approximately 7.4 million people moved interstate during 2018, and that the average household contained 2.63 people. Therefore, we can estimate that approximately 2.8 million households participated in interstate moves during 2018 (7,443,306 ÷ 2.63 = 2,830,154).[3] However, most interstate moves do not involve a for-hire mover, and thus will not be affected by this rule. As discussed below, the American Moving and Storage Association (AMSA) estimated that approximately 20 percent of interstate household good moves are completed by for-hire movers.[4]

TABLE 1—INTERSTATE HOUSEHOLD GOODS (HHG) MOTOR CARRIERS

Year	Interstate HHG motor carriers
2019	4,297
2020	4,484
2021	4,680
2022	4,884
2023	5,097
2024	5,319
2025	5,551
2026	5,793
2027	6,046
2028	6,309
2029	6,584
2030	6,871
2031	7,171

Analysis Inputs

Motor Carrier Profit per Hour

Broadly speaking, the opportunity cost to the motor carrier (the firm) of a given regulatory action is the value of the best alternative that the firm must forgo in order to comply with the regulatory action. In this analysis, FMCSA follows the methodology used in the Entry-Level Driver Training rulemakings published in 2016 and 2018 and values the change in time spent in nonproductive activity as the opportunity cost to the firm, which is represented by the now attainable profit, using three variables: The marginal cost of operating a CMV, an estimate of a typical average motor carrier profit margin, and the change in nonproductive time.

The American Transportation Research Institute (ATRI) report, *An Analysis of the Operational Costs of Trucking: 2019 Update,* found that marginal operating costs were $71.78 per hour in 2018.[5] These marginal costs

[2] See 49 U.S.C. 31102(c)(2)(Q).

[3] U.S. Census Bureau. 2018: ACS 5-Year Estimates Data Profiles. Available at: *https://data.census.gov/cedsci/table?d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP02&tid=ACSDP5Y2018.DP02&vintage=2018&hidePreview=true* (accessed Oct. 6, 2020).

[4] The AMSA has become a conference of the ATA. ATA, AMSA Join Forces for Conference, New Council (Dec. 13, 2021), available at *https://www.truckinginfo.com/10123193/ata-amsa-join-forces-for-conference-new-council.*

[5] ATRI. An Analysis of the Operational Costs of Trucking: 2019 Update. October 2019. Table 10, pg. 19. Available at: *https://truckingresearch.org/wp-content/uploads/2019/11/ATRI-Operational-Costs-of-Trucking-2019-1.pdf* (accessed Dec. 14, 2021). Source data are assumed to be presented in 2018 dollar terms.

include vehicle-based costs (*e.g.,* fuel costs, insurance premiums, etc.), and driver-based costs (*i.e.,* wages and benefits).

Next, the Agency estimated the profit margin for motor carriers. Profit is a function of revenue and operating expenses, and the American Trucking Associations (ATA) defines the operating ratio of a motor carrier as a measure of profitability based on operating expenses as a percentage of gross revenues.[6] Armstrong & Associates, Inc. (2009) states that trucking companies that cannot maintain a minimum operating ratio of 95 percent (calculated as operating costs ÷ net revenue) will not have sufficient profitability to continue operations in the long run.[7] Therefore, Armstrong & Associates states that trucking companies need a minimum profit margin of 5 percent of revenue to continue operating in the future. Transport Topics publishes data on the ''Top 100'' for-hire carriers, ranked by revenue.[8] For 2014, 39 of these Top 100 carriers also have net income information reported by Transport Topics. FMCSA estimates that the 39 carriers with both revenue and net income information have an average profit margin of approximately 4.3 percent for 2014. For 2018, 33 of these Top 100 carriers have net income information reported by Transport Topics, with an average profit margin of approximately 6 percent for 2018.[9] The higher profit margin experienced in 2018 is reinforced by a Forbes article that found net profit margin for freight trucking companies ''expanded to 6 percent in 2018, compared with an annual average of between 2.5 percent and 4 percent each year since 2012.'' [10] In 2019, the data provided by Transport Topics shows a similar pattern based on the 28 companies that provided net income information, with an average profit margin of 5.8 percent.[11] However, in 2020 the 30 companies that provided income information had an average profit margin of 4.0 percent.[12] Due to uncertainty around the impacts of the COVID–19 pandemic and its effect on trucking operations, FMCSA continues to assume a profit margin of 5 percent for motor carriers for purposes of this analysis.

Using the assumed profit margin of 5 percent for motor carriers, FMCSA estimated the revenue gained per hour for motor carriers by multiplying the marginal cost per hour by the profit margin. This calculation resulted in a profit per hour of $3.59.

Number of Interstate Moves per Year

FMCSA estimates the number of interstate moves by for-hire movers using U.S. Census Bureau data based on the number of people moving interstate, the average number of people per household, and an AMSA estimate of the number of moves that involved for-hire moving services. The U.S. Census Bureau estimates that approximately 7.4 million people moved interstate during 2018, and that the average household contained 2.63 people. Therefore, we can estimate that approximately 2.8 million households participated in interstate moves during 2018 (7,443,306 ÷ 2.63 = 2,830,154).[13] FMCSA estimates the growth in interstate moves using the same Census data from 2010 through 2018 and finds an annual average growth rate of 0.08 percent.[14] AMSA estimated that 550,000, or approximately 20 percent, of the interstate household goods moves in 2017 were completed by for-hire movers.[15]

Some impacts of the final rule will be based on the distance of the shipper's location from the motor carrier. For instance, moves that are within 50 miles of the motor carrier agent's location must receive a physical survey unless the shipper signs a waiver. The information collection request (ICR) supporting statement, published in November 2019, estimated that the motor carrier agent is within 50 miles of the shipper's location for 95 percent of interstate moves, and beyond 50 miles for 5 percent of moves. The table below shows the number of household interstate moves by for-hire movers, and those that are within and beyond 50 miles of the motor carrier agent's location.

TABLE 2—NUMBER OF INTERSTATE MOVES BY: HOUSEHOLDS, FOR-HIRE MOVERS, WITHIN AND BEYOND 50 MILES OF THE MOTOR CARRIER AGENT LOCATION

Year	Total number of interstate moves by households A	Number of household interstate moves by for-hire movers B = A × 20%	Number of interstate moves by for-hire movers within 50 miles C = B × 95%	Number of interstate moves by for-hire movers beyond 50 miles D = B × 5%
2018	2,830,154	556,621	528,784	27,837
2019	2,832,418	557,066	529,207	27,859
2020	2,834,684	557,512	529,630	27,882
2021	2,836,952	557,958	530,054	27,904
2022	2,839,221	558,404	530,478	27,926
2023	2,841,493	558,851	530,902	27,949
2024	2,843,766	559,298	531,327	27,971
2025	2,846,041	559,745	531,752	27,993
2026	2,848,318	560,193	532,177	28,016

[6] ATA. *American Trucking Trends 2015.* Page 79.

[7] Armstrong & Associates, Inc. *Carrier Procurement Insights.* 2009. Pages 4–5. Available at: *https://www.3plogistics.com/product/carrier-procurement-insights-trucking-company-volume-cost-and-pricing-tradeoffs-2009/* (accessed Dec. 14, 2021).

[8] Transport Topics. 2014. *Top 100 For-Hire Carriers.* Available at: *http://ttnews.com/top100/for-hire/2014* (accessed Dec. 14, 2021).

[9] Transport Topics. 2018. *Top 100 For-Hire Carriers.* Available at: *https://www.ttnews.com/top100/for-hire/2018* (accessed Dec. 14, 2021).

[10] Forbes. *Trucking Companies Hauling in Higher Sales.* Available at: *https://www.forbes.com/sites/sageworks/2018/03/04/trucking-companies-hauling-in-higher-sales/#40e0012f3f27* (accessed Nov. 19, 2018).

[11] Transport Topics. 2019. *Top 100 For-Hire Carriers.* Available at: *https://www.ttnews.com/top100/for-hire/2019* (accessed Oct. 14, 2020).

[12] Transport Topics. 2020. *Top 100 For-Hire Carriers.* Available at: *https://www.ttnews.com/top100/for-hire/2020* (accessed Dec. 13, 2021).

[13] U.S. Census Bureau. 2018: ACS 5-Year Estimates Data Profiles. Available at: *https://data.census.gov/cedsci/table?d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP02&tid=ACSDP5Y2018.DP02&vintage=2018&hidePreview=true* (accessed Oct. 6, 2020).

[14] 0.08 percent = (average households that moved interstate in 2018 ÷ average household that moved interstate in 2010)^(1/8)–1.

[15] American Moving and Storage Association. Newsroom: About our Industry. *https://www.moving.org/newsroom/data-research/about-our-industry/* (accessed Dec. 29, 2020).

TABLE 2—NUMBER OF INTERSTATE MOVES BY: HOUSEHOLDS, FOR-HIRE MOVERS, WITHIN AND BEYOND 50 MILES OF THE MOTOR CARRIER AGENT LOCATION—Continued

Year	Total number of interstate moves by households A	Number of household interstate moves by for-hire movers B = A × 20%	Number of interstate moves by for-hire movers within 50 miles C = B × 95%	Number of interstate moves by for-hire movers beyond 50 miles D = B × 5%
2027	2,850,596	560,641	532,603	28,038
2028	2,852,877	561,090	533,029	28,061
2029	2,855,159	561,539	533,456	28,083
2030	2,857,443	561,988	533,882	28,106
2031	2,859,729	562,438	534,309	28,128
2032	2,862,017	562,888	534,737	28,151

Cost Impacts

Recommendation 5—Appendix A

FMCSA is adopting the working group recommendation that would require the *Rights and Responsibilities* booklet to be provided earlier in the process—at the time the estimate is provided to the shipper. This document contains useful information to assist a shipper in making a determination regarding which household goods motor carrier to hire. However, requiring the document earlier in the process, prior to when a shipper has chosen a carrier, will result in providing an additional two documents per interstate move, as FMCSA estimates that shippers request an estimate from three household goods carriers and contract with only one. Therefore, while FMCSA considers it important to require this information early enough in the process for the information to inform the shipper's decision on which household goods carrier to choose, the requirement will result in costs equal to the increase in the time required to print the additional hard copy *Rights and Responsibilities* booklets provided.

FMCSA estimated this cost by first determining the increase in the number of hard copy *Rights and Responsibilities* booklets printed each year. This can be determined by subtracting the number of estimates provided from the number of orders for service provided, and adjusting for the preference to receive electronic documents. The number of orders for service provided is equal to the number of household interstate moves by for-hire movers from Table 2. The number of estimates provided is equal to the number of orders for service provided multiplied by three, accounting for the fact that shippers likely request estimates from more than one motor carrier. In the ICR supporting statement, FMCSA previously estimated that 40 percent of shippers prefer to receive information in hard copy form, and that 60 percent prefer to receive electronic information.

As shown in columns A and B of Table 3 below, FMCSA multiplied the number of interstate moves per year by 40 percent to estimate the number of hard copy *Rights and Responsibilities* booklets provided to shippers under the existing requirements, and multiplied the number of orders for service where hard copies are provided by three (to account for the assumption that shippers seek an estimate from three different household goods carriers) to estimate the number of hard copy *Rights and Responsibilities* booklets that will be provided under the final rule. The difference between these two variables (column C) represents the increase in the number of hard copy *Rights and Responsibilities* booklets that will be printed as a result of this rule.

The ICR supporting statement estimated that a carrier could print roughly 1,600 pages per hour, and that each *Rights and Responsibilities* booklet consists of 25 pages. Thus, the increase in the number of hours needed to print hard copy *Rights and Responsibilities* documents is equal to the number of *Rights and Responsibilities* documents from Table 3, Column C, multiplied by 25 pages per document, and divided by 1,600 pages per hour. Column D shows this maximum increase in hours spent printing.

The time spent printing additional copies of the *Rights and Responsibilities* booklet is time not spent in other revenue producing activities. As shown in Table 3, Column E, FMCSA quantifies this opportunity cost of time using the previously discussed estimate of the motor carrier profit per hour, $3.59, resulting in total 10-year costs of $251,000, or $218,000 discounted at 3 percent, and $179,000 discounted at 7 percent. On an annualized basis, the costs will be $26,000 discounted at 3 percent and $26,000 discounted at 7 percent.

TABLE 3—RECOMMENDATION 5: MOTOR CARRIER OPPORTUNITY COST RESULTING FROM INCREASED PRINTING OF RIGHTS AND RESPONSIBILITIES BOOKLET

Year	Number of orders for service with hard copy YRR (c) provided A = Interstate moves by for-hire movers × 40%	Number of estimates with hard copy of YRR provided B = A × 3	Maximum increase in number of hard copies provided C = B − A	Maximum increase in total hours spent printing D = C × 25 ÷ 1600	Motor carrier increase in cost for hours spent printing E = D × $3.59
2022	223,362	670,085	446,723	6,980	$25,051
2023	223,540	670,621	447,081	6,986	25,071
2024	223,719	671,158	447,438	6,991	25,092
2025	223,898	671,695	447,796	6,997	25,112

TABLE 3—RECOMMENDATION 5: MOTOR CARRIER OPPORTUNITY COST RESULTING FROM INCREASED PRINTING OF RIGHTS AND RESPONSIBILITIES BOOKLET—Continued

Year	Number of orders for service with hard copy YRR [c] provided A = Interstate moves by for-hire movers × 40%	Number of estimates with hard copy of YRR provided B = A × 3	Maximum increase in number of hard copies provided C = B − A	Maximum increase in total hours spent printing D = C × 25 ÷ 1600	Motor carrier increase in cost for hours spent printing E = D × $3.59
2026	224,077	672,232	448,155	7,002	25,132
2027	224,257	672,770	448,513	7,008	25,152
2028	224,436	673,308	448,872	7,014	25,172
2029	224,616	673,847	449,231	7,019	25,192
2030	224,795	674,386	449,590	7,025	25,212
2031	224,975	674,925	449,950	7,030	25,232
Total 10-Year Cost					251,418
Total Annualized Cost					25,142

Notes:
[a] Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)
[b] Values shown in parentheses are negative values (*i.e.,* less than zero) and represent a decrease in cost or a cost savings.
[c] The *Rights and Responsibilities* booklet is abbreviated as YRR for the purposes of the tables in this section.

FMCSA also adopts the recommendation to make it acceptable for motor carriers to provide documents, including the *Rights and Responsibilities* booklet, electronically without requiring the motor carrier to include a waiver statement on the written estimate. Under the existing requirements, when the shipper elects to receive these documents via the hyperlink, the motor carrier is required to obtain a signed waiver of the shipper's right to a hard copy via a statement on the written estimate, as well as a signed and dated receipt that includes ''verification of the shipper's agreement to access the Federal consumer protection information on the internet.'' The rule removes the requirement in 49 CFR 375.213(e)(1) for the shippers to include a waiver statement on the written estimate but retains the requirement to obtain a receipt. FMCSA expects that removing the waiver statement would be a de minimis one-time cost savings for motor carrier.

Recommendation 7—Survey of Household Goods

In agreement with the recommendations, FMCSA changes the requirement to conduct a survey of the shipper's goods by redefining a ''physical survey'' to include both an ''in person'' and a ''virtual'' survey. The physical survey would include in-person surveys and virtual surveys. This change does not require that shippers receive only virtual surveys, but it does provide the option and allows the shipper to determine whether a physical or virtual survey would better suit their needs.

In the event of a virtual survey, the motor carrier will likely spend the same amount of time completing the survey but will not need to travel to and from the shipper's location. This reduction in travel will allow that time to be put to other productive uses, resulting in a motor carrier cost savings equal to the now attainable profit that can be earned during that time. FMCSA estimates this cost savings using three variables; the reduction in travel time per completed survey, the number of completed surveys that will now be virtual, and the motor carrier hourly profit. The distance and time required to travel to and from a move site varies with each survey. However, the survey requirement is in place for moves originating within 50 miles from the motor carrier agent's location. Therefore, we can estimate that the time savings would accrue to those moves originating within 50 miles. FMCSA estimated the average round-trip travel time for a move originating within 50 miles of the motor carrier agent will be approximately 1 hour.

Under the current requirements, physical surveys must be completed for all moves originating within 50 miles of the motor carrier agent's location, unless the physical survey is waived by the individual shipper. FMCSA assumes that under the final rule, some portion of shippers will voluntarily request a virtual survey but is unable to estimate the exact number of virtual surveys that will be conducted under the final rule. FMCSA developed an estimate of the number of surveys that will be conducted virtually using a range from 25 percent to 75 percent, with a primary estimate of 50 percent. As shown in the table below, the motor carrier cost savings are estimated by multiplying the number of virtual surveys originating within 50 miles, by the 1 hour of time savings, and by the motor carrier profit per hour of $3.59. FMCSA estimates that providing virtual surveys will result in in costs of −$9.6 million over 10 years (or $9.6 million in cost savings), −$8.1 million (or $8.1 million in cost savings) discounted at 3 percent, and −$6.7 million (or $6.7 million in cost savings) discounted at 7 percent. On an annualized basis, the costs will be −$955,000 (or $955,000 in cost savings) discounted at 3 percent and $955,000 (or $955,000 in cost savings) discounted at 7 percent.

TABLE 4—RECOMMENDATION 7: MOTOR CARRIER OPPORTUNITY COST SAVINGS FOR PROVIDING VIRTUAL SURVEYS WITHIN 50 MILES

Year	Number of virtual surveys (low) A	Number of virtual surveys (primary) B	Number of virtual surveys (high) C	Motor carrier opportunity cost (low) D = A × $3.59 × −1 hour	Motor carrier opportunity cost (primary) E = B × $3.59 × −1 hour	Motor carrier opportunity cost (high) F = C × $3.59 × −1 hour
2022	132,619	265,239	397,858	($475,971)	($951,942)	($1,427,914)
2023	132,726	265,451	398,177	(476,352)	(952,704)	(1,429,056)
2024	132,832	265,663	398,495	(476,733)	(953,466)	(1,430,199)
2025	132,938	265,876	398,814	(477,114)	(954,229)	(1,431,343)
2026	133,044	266,089	399,133	(477,496)	(954,992)	(1,432,488)
2027	133,151	266,302	399,452	(477,878)	(955,756)	(1,433,634)
2028	133,257	266,515	399,772	(478,260)	(956,521)	(1,434,781)
2029	133,364	266,728	400,092	(478,643)	(957,286)	(1,435,929)
2030	133,471	266,941	400,412	(479,026)	(958,052)	(1,437,078)
2031	133,577	267,155	400,732	(479,409)	(958,818)	(1,438,228)
Total 10-Year Cost Savings				(4,776,884)	(9,553,767)	(14,330,651)
Total Annualized Cost Savings				(477,688)	(955,377)	(1,433,065)

Notes:
[a] Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)
[b] Values shown in parentheses are negative values (*i.e.*, less than zero) and represent a decrease in cost or a cost savings.

Recommendation 8—Survey of Household Goods; Beyond 50 Miles

In agreement with the recommendations, FMCSA is requiring that movers offer physical surveys for all household goods shipments, including those that are located over 50 miles from the motor carrier agent's location.

Currently, motor carriers are not required to offer physical surveys for household goods shipments that are located beyond 50 miles from the motor carrier agent's location. Often, a consumer will discuss the shipment load and the mover will provide an estimate based on the discussion, without visually inspecting the amount or weight of goods for transport. The purpose of the survey is to develop a more accurate estimate of moving fees and to prevent unexpected charges from surfacing later in the move process. Because FMCSA lacks data on how behavior would change, FMCSA estimates that all shippers located beyond 50 miles of the motor carrier agent's location will take advantage of the virtual survey option. These surveys would take about 1.5 hours each, and FMCSA monetizes this time using the motor carrier profit margin of $3.59 per hour. As shown below, FMCSA estimates the cost of providing virtual surveys to be approximately $1.5 million over 10 years, $1.3 million at a 3 percent discount rate, and $1.1 million at a 7 percent discount rate. On an annualized basis, the cost will be $151,000 annualized at both a 3 and 7 percent discount rate.

TABLE 5—RECOMMENDATION 8: MOTOR CARRIER OPPORTUNITY COST FOR PROVIDING VIRTUAL SURVEYS BEYOND 50 MILES

Year	Number of moves beyond 50 miles with a virtual survey A	Motor carrier opportunity cost A = B × 1.5 hours × $3.59	Motor carrier opportunity cost 3% discount rate	Motor carrier opportunity cost 7% discount rate
2022	27,926	$150,342	$145,963	$140,506
2023	27,949	150,462	141,825	131,419
2024	27,971	150,582	137,804	122,920
2025	27,993	150,703	133,898	114,971
2026	28,016	150,823	130,102	107,535
2027	28,038	150,944	126,413	100,580
2028	28,061	151,065	122,830	94,076
2029	28,083	151,186	119,347	87,991
2030	28,106	151,307	115,964	82,301
2031	28,128	151,428	112,676	76,978
Total 10-Year Cost Savings			1,286,822	1,059,278
Total Annualized Cost Savings			150,855	150,817

Notes:
[a] Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)
[b] Values shown in parentheses are negative values (*i.e.*, less than zero) and represent a decrease in cost or a cost savings.

Recommendation 9—Order for Service

In agreement with the working group recommendation, FMCSA is eliminating the order for service. Much of the information provided on the order for service is also on the bill of lading and is therefore duplicative.[16] Eliminating the order for service will reduce the amount of paperwork consumers are required to review, but will not reduce the necessary information they are provided. Currently, each interstate move requires both an order for service and a bill of lading. Each document takes 30 minutes to prepare. Under the final rule, a motor carrier will be able to save 30 minutes of time for each interstate move by no longer drafting an order for service. FMCSA monetized this time using the motor carrier hourly profit margin of $3.59. As shown below, FMCSA estimates that eliminating the order for service will result in costs of −$10 million over 10 years (or cost savings of $10 million), −$8.6 million (or $8.6 million in cost savings) discounted at 3 percent, and −$7.1 million (or $7.1 million in cost savings) discounted at 7 percent. On an annualized basis, the costs will be −$1.0 million (or $1.0 million in cost savings) discounted at 3 percent and 7 percent.

TABLE 6—RECOMMENDATION 9: MOTOR CARRIER OPPORTUNITY COST FOR ELIMINATING THE ORDER FOR SERVICE

Year	Number of interstate moves by for-Hire movers A	Motor carrier opportunity cost B = A × −0.5 hours × $3.59	Motor carrier opportunity cost 3% discount rate	Motor carrier opportunity cost 7% discount rate
2022	558,404	($1,002,056)	($972,870)	($936,501)
2023	558,851	(1,002,858)	(945,290)	(875,935)
2024	559,298	(1,003,660)	(918,491)	(819,286)
2025	559,745	(1,004,463)	(892,453)	(766,300)
2026	560,193	(1,005,267)	(867,152)	(716,741)
2027	560,641	(1,006,071)	(842,569)	(670,388)
2028	561,090	(1,006,876)	(818,682)	(627,032)
2029	561,539	(1,007,681)	(795,473)	(586,480)
2030	561,988	(1,008,487)	(772,922)	(548,550)
2031	562,438	(1,009,294)	(751,010)	(513,074)
Total 10- Year Cost Savings			(8,576,911)	(7,060,287)
Total Annualized Cost Savings			(1,005,476)	(1,005,226)

Notes:
[a] Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)
[b] Values shown in parentheses are negative values (i.e., less than zero) and represent a decrease in cost or a cost savings.

Document Production Cost

The ICR supporting statement also estimated printing costs of $0.15 per page for both the *Rights and Responsibilities* booklet and the Order for Service. FMCSA estimates the change in the cost of materials for printing the *Rights and Responsibilities* booklet and the Orders for Service by multiplying the change in the number of pages by the $0.15 cost per page. As shown in Table 7, FMCSA estimates a 10-year materials cost to total $16 million, or $13.6 million discounted at 3 percent, and $11.2 million discounted at 7 percent. On an annualized basis, the costs would be $1.6 million discounted at both 3 and 7 percent.

TABLE 7—DOCUMENT PRODUCTION COST

Year	Recommendation 5—increase in pages for hard copy YRR A	Recommendation 9—eliminating the order for service (reduction in pages) B	Total change in number of pages C = A + B	Total cost for producing documents D = C × $0.15
2022	11,168,084	(558,404)	10,609,680	$1,591,452
2023	11,177,018	(558,851)	10,618,167	1,592,725
2024	11,185,960	(559,298)	10,626,662	1,593,999
2025	11,194,909	(559,745)	10,635,163	1,595,275
2026	11,203,865	(560,193)	10,643,671	1,596,551
2027	11,212,828	(560,641)	10,652,186	1,597,828
2028	11,221,798	(561,090)	10,660,708	1,599,106
2029	11,230,775	(561,539)	10,669,237	1,600,386
2030	11,239,760	(561,988)	10,677,772	1,601,666
2031	11,248,752	(562,438)	10,686,314	1,602,947

[16] FMCSA is revising the requirements for a bill of lading to incorporate all of the requirements from an order for service, including non-duplicative information.

TABLE 7—DOCUMENT PRODUCTION COST—Continued

Year	Recommendation 5—increase in pages for hard copy YRR	Recommendation 9—eliminating the order for service (reduction in pages)	Total change in number of pages	Total cost for producing documents
	A	B	C = A + B	D = C × $0.15
Total 10-Year Cost Savings				15,971,934
Total Annualized Cost Savings				1,597,193

Notes:
[a] Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)
[b] Values shown in parentheses are negative values (*i.e.*, less than zero) and represent a decrease in cost or a cost savings.

Total Costs

As shown below, FMCSA estimates the total costs of this final rule at −$1.6 million (or $1.6 million in cost savings) discounted at 3 percent, and −$1.3 million (or $1.3 million in cost savings) discounted at 7 percent. Expressed on an annualized basis, this equates to −$188,000 in costs (or $188,000 in cost savings) at both a 3 and 7 percent discount rate.

TABLE 8—TOTAL 10-YEAR AND ANNUALIZED COSTS OF THE FINAL RULE
[Thousands of 2018$]

Year	Rec. 5: Appendix A [c]	Rec. 7: Virtual survey of HHG (primary) [d]	Rec. 8: Survey of HHG beyond 50 miles [e]	Rec. 9: Order for service [f]	Document production [g]	Total cost (primary)	Total cost 3% discount rate	Total cost 7% discount rate
2022	$25.1	($951.9)	$150.3	($1,002.1)	$1,591.5	($187.2)	($181.7)	($174.9)
2023	25.1	(952.7)	150.5	(1,002.9)	1,592.7	(187.3)	(176.6)	(163.6)
2024	25.1	(953.5)	150.6	(1,003.7)	1,594.0	(187.5)	(171.5)	(153.0)
2025	25.1	(954.2)	150.7	(1,004.5)	1,595.3	(187.6)	(166.7)	(143.1)
2026	25.1	(955.0)	150.8	(1,005.3)	1,596.6	(187.8)	(162.0)	(133.9)
2027	25.2	(955.8)	150.9	(1,006.1)	1,597.8	(187.9)	(157.4)	(125.2)
2028	25.2	(956.5)	151.1	(1,006.9)	1,599.1	(188.1)	(152.9)	(117.1)
2029	25.2	(957.3)	151.2	(1,007.7)	1,600.4	(188.2)	(148.6)	(109.5)
2030	25.2	(958.1)	151.3	(1,008.5)	1,601.7	(188.4)	(144.4)	(102.5)
2031	25.2	(958.8)	151.4	(1,009.3)	1,602.9	(188.5)	(140.3)	(95.8)
Total 10-Year Cost Savings						(1,878.3)	(1,601.9)	(1,318.6)
Total Annualized Cost Savings						(187.8)	(187.8)	(187.8)

Notes:
[a] Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)
[b] Values shown in parentheses are negative values (*i.e.,* less than zero) and represent a decrease in cost or a cost savings.
[c] (Increase in Number of Hard Copy YRR Booklets Provided) × (25 ÷ 1600) × ($3.59).
[d] (Number of Virtual Surveys) × ($3.59) × (−1 hour).
[e] (Interstate Moves beyond 50 miles by For-Hire Movers) × (−0.5 hours) × ($3.59).
[f] (Interstate Moves by For-Hire Movers) × (−0.5 hours) × ($3.59).
[g] ((Increase in Pages for YRR Booklet) + (Decrease in Pages for Elimination of Order for Service)) × $0.15.

Benefit Impacts

FMCSA does not expect this rule to impact safety, but does expect that it will result in benefits related to consumer protection and fuel savings. Recommendation 5 will result in shippers receiving accurate and clear information earlier in the process, allowing them to make more informed and better decisions regarding which household goods motor carrier to hire, and will allow shippers to obtain more accurate estimates of moving fees based on physical surveys for those interstate moves beyond 50 miles from a motor carrier agent's location. The motor carrier efficiencies discussed above will not negatively impact shippers, as the services and information they currently receive will not change under the final rule.

FMCSA anticipates that providing virtual surveys for those moves within 50 miles of a motor carrier agent's location will not only result in motor carrier time savings quantified above, but could potentially result in fuel savings if motor carriers drive fewer miles, which could produce a small reduction in CO_2 emissions. It is important to note that FMCSA is not anticipating a change in CMV vehicle miles traveled (VMT), as the rule does not affect the number of interstate moves occurring per year, but recognizes that motor carriers could reduce miles driven in light-duty vehicles used for providing estimates to shippers. The distance and fuel required to travel to and from a move site varies with each survey. However, the survey requirement is in place for moves within 50 miles of the motor carrier agent's location, and we can estimate that any potential fuel savings will only accrue to those moves. FMCSA assumes the average mileage for these moves will be approximately 25 miles, or 50 miles round-trip. Based on data provided by the Bureau of Transportation Statistics, light-duty vehicles averaged approximately 22 miles per gallon in 2019, resulting in just over 2 gallons saved per trip (22.2 miles per gallon ÷ 50 miles per trip = 2.25 gallons per trip).[17] The U.S. Energy Information

[17] U.S. Department of Transportation, Bureau of Transportation Statistics. Table 4–23: Average Fuel

Administration forecasts real petroleum prices for motor gasoline, and estimates an average price per gallon over the analysis period of $2.58 in 2020 dollars.[18] Therefore, FMCSA estimates that each virtual survey could result in $5.78 in avoided fuel costs (2.2 gallons per trip × $2.58 per gallon). Any potential fuel savings would result from a reduction in VMT in light-duty vehicles. The Agency is uncertain how motor carriers will respond to the proposed change allowing virtual surveys, and whether they will be involved in other driving-related activities which could diminish or negate any potential fuel savings. For these reasons, FMCSA is not quantifying any potential fuel impacts. Similarly, while these potential fuel savings, if realized, would result in a reduction of CO_2 emissions that is directly proportional to the amount of fuel saved, the Agency is not quantifying those potential savings in this final rule due to the aforementioned uncertainty with respect to how motor carriers will adjust their operations.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs (OIRA) designated this rule as not a *major rule,* as defined by 5 U.S.C. 804(2).[19]

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) (SBREFA), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule affects shippers and household goods motor carriers. Shippers, or consumers that hire household good motor carriers, are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, shippers are considered neither a small business under Section 601(3) of the RFA, nor are they considered a small organization under Section 601(4) of the RFA.

The Small Business Association (SBA) defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS).[20] Household goods motor carriers fall under Subsector Industry 48421, used household good and office goods moving, which has an SBA size standard based on annual revenue of $30 million.

FMCSA examined data from the U.S. Census Bureau to determine the number of small entities within the identified five-digit NAICS industry group. The Census Bureau collects and publishes data on the number of firms, establishments, employment, annual payroll, and estimated receipts by revenue size of the firm. The most recent data available is from the 2017 Economic Census.[21] The revenue size categories used in the 2017 Economic Census do not exactly align with the SBA size standard, but they do allow FMCSA to develop a good estimate of the percentage of small entities within the NAICS industry group 48421. The 2017 Economic Census reported that there were 6,097 firms operating for the entire year within NAICS industry group 48421 (used household goods and office goods moving). Of those firms that operated for the entire year, 6,041 firms (99 percent), had annual revenues of less than $25 million. FMCSA concludes that this rule will impact a substantial number of small entities.

The RFA does not define a threshold for determining whether a specific regulation results in a significant impact. However, the SBA, in guidance to government agencies, provides some objective measures of significance that the agencies can consider using.[22] Revenue is one measure that could be used to illustrate a significant impact, specifically, if the cost of the regulation exceeds one percent of the average annual revenues of small entities in the sector.

Examining the 2017 Economic Census data discussed above, FMCSA found that affected entities had average revenues ranging from $56,000 to $15.2 million.[23] The cost of the regulation would thus need to exceed $560 per carrier in any 1 year in order to be considered a significant impact on the entities within the smallest revenue size category. The exact impact per motor carrier is dependent on many variables throughout the year (*e.g.,* the number of hard copy *Rights and Responsibilities* booklets provided, the number of virtual surveys provided for those moves within 50 miles of the motor carrier agents' locations, and the number of virtual surveys completed for moves beyond 50 miles of the motor carrier agents' locations) and cannot be estimated with precision. While FMCSA cannot provide the exact impact per motor carrier, it is possible to evenly distribute the total cost of the rule across all affected motor carriers to determine the average impact per motor carrier. As shown in the table below, the estimated impact per motor carrier does not exceed $550 in any year, and therefore is not a significant impact.

Efficiency of U.S. Light Duty Vehicles. *https://www.bts.gov/content/average-fuel-efficiency-us-light-duty-vehicles* (Accessed Dec. 9, 2021).

[18] U.S. Energy Information Administration. Petroleum and Other Liquids Prices, Transportation, Motor Gasoline: Reference Case, years 2022–2031, 2020$. Available at: *https://www.eia.gov/outlooks/aeo/tables_side.php* (accessed Dec. 14, 2021).

[19] A ''major rule'' means any rule that the OIRA Administrator at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

[20] Executive Office of the President, OMB. ''North American Industry Classification System.'' 2017. *https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html* (accessed Dec. 14, 2021).

[21] U.S. Department of Commerce, U.S. Census Bureau. Establishment and Firm Size: Summary Statistics by Revenue Size of Firms for the U.S. Last edited October 8, 2021. Available at: *https://www.census.gov/data/tables/2017/econ/economiccensus/naics-sector-48-49.html* (accessed Dec. 14, 2021).

[22] SBA, Office of Advocacy. ''A Guide for Government Agencies. How to Comply with the Regulatory Flexibility Act.'' 2017. Available at: *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf* (accessed on Dec. 30, 2020).

[23] The 2017 Economic Census does not include a category for firm size between $25 million and $100 million. As such, FMCSA based these calculations off of firms below the $25 million threshold.

TABLE 8—ESTIMATED IMPACT PER MOTOR CARRIER

Year	Household goods motor carriers	Total cost 7% discount rate	Estimated impact per motor carrier
2022	4,884	($174,909.9)	($35.8)
2023	5,097	(163,597.9)	(32.1)
2024	5,319	(153,017.6)	(28.8)
2025	5,551	(143,121.5)	(25.8)
2026	5,793	(133,865.4)	(23.1)
2027	6,046	(125,208.0)	(20.7)
2028	6,309	(117,110.4)	(18.6)
2029	6,584	(109,536.5)	(16.6)
2030	6,871	(102,452.5)	(14.9)
2031	7,171	(95,826.6)	(13.4)

Consequently, I certify that the rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of SBREFA, FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

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 $170 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2020 levels) or more in any one year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires that an agency consider the impact of paperwork and other information collection burdens imposed on the public. An agency is prohibited from collecting or sponsoring an information collection, as well as imposing an information collection requirement, unless it displays a valid OMB control number (5 CFR 1320.8(b)(3)(vi)).

This final rule will amend the existing approved information collection titled ''Transportation of Household Goods; Consumer Protection,'' OMB control number 2126–0025, which expires on November 30, 2022. Specifically, FMCSA seeks approval for the revision of the ICR due to the Agency's issuance of this final rule. In accordance with 44 U.S.C. 3507(d), FMCSA will submit the proposed information collection amendments to the OIRA at OMB for its approval.

Title: Transportation of Household Goods; Consumer Protection.

OMB Control Number: 2126–0025.

Type of Review: Revision of a currently-approved information collection.

Summary: FMCSA makes various changes to the household goods regulations recommended by the Household Goods Consumer Protection Working Group. These changes include further revisions to streamline the *Rights and Responsibilities* booklet which are incorporated in appendix A to 49 CFR part 375, require new binding or non-binding estimates when an individual shipper tenders more goods or requests additional service instead of a revised estimate, allow a motor carrier to provide a virtual survey, remove the exception from the survey requirement for moves where the household goods are located more than 50 miles from the motor carrier agent's location, eliminate the order for service and incorporate that document into the bill of lading, and make other minor updates to increase the clarity of the regulations. These changes are intended to reduce the paperwork burden on household goods motor carriers and reduce confusion for individual shippers. FMCSA summarizes the resulting changes from the existing ICR below.

IC–1: Required Information for Prospective Individual Shippers

FMCSA requires the *Rights and Responsibilities* booklet to be provided earlier in the process, when the estimate is provided to the shipper, which will result in providing an additional two documents per interstate move. This is because FMCSA estimates that shippers request an estimate from three household goods carriers but contract with only one. FMCSA multiplied the average number of interstate moves per year by 40 percent to estimate the number of hard copy *Rights and Responsibilities* booklets provided to shippers under the previous requirements (558,851 × 40 percent = 223,540 copies). FMCSA then multiplied the number of orders for service where hard copies are provided by three, to account for the assumption that shippers seek an estimate from three different household goods carriers, (223,540 × 3 = 670,621 copies). The number of additional hard copies that will be provided as a result of this rule is 447,081 (670,621 − 223,540 = 447,081 copies). It is estimated that a carrier can print roughly 1,600 pages per hour and each *Rights and Responsibilities* booklet consists of 25 pages. The increase in the number of hours needed to print hard copy *Rights and Responsibilities* booklets will be the additional hard copies multiplied by 25 pages per document (447,081 × 25 = 11,177,021 pages) divided by 1,600 pages per hour (11,177,021 ÷ 1,600 = 6,986 hours). The

Agency assumes printing and storing these booklets will be completed by an office clerk with a loaded hourly wage of $33.31. Therefore, the increase in burden hours will be 6,986 and the increase in cost resulting from the proposed rule is $232,705, (6,986 burden hours × $33.31 = $232,693).

Estimated Number of Respondents: 5,100.

Estimated responses: 447,081.

Estimated burden hours: 6,986.

Estimated cost: $232,693.

IC–2: Estimating Charges

The rule requires that movers offer surveys for all household goods shipments, including those that are located over 50 miles from the motor carrier agent's location. Previously, household goods motor carriers were not required to offer surveys for household goods shipments located beyond 50 miles from the motor carrier agent's location. FMCSA estimates that all shippers located beyond 50 miles from the motor carrier agent's location will take advantage of the survey option. There is an annual average of 27,949 moves beyond 50 miles, of those moves that currently receive non-binding surveys. These surveys will take about 1.5 hours each, and FMCSA assumes all tasks will be completed by a first line supervisor of a transportation and material moving worker with a loaded hourly wage of $44.11, resulting in an increase of 41,923 burden hours and an increased cost of $1,849,045 (27,959 × 1.5 hours × $44.11 = $1,849,045).

Estimated Number of Respondents: 5,100.

Estimated responses: 27,949.

Estimated burden hours: 41,923.

Estimated cost: $1,849,045.

IC–3: Pick Up of Shipments of Household Goods

FMCSA eliminates the order for service because much of the information provided on the order for service is also provided on the bill of lading. Previously, each interstate move required both an order for service and a bill of lading and it took 30 minutes to prepare each document. As such, removing the order for service form requirement will save 30 minutes per move. The Agency assumes all tasks will be completed by a cargo agent with a loaded hourly wage of $33.80. With the annual average of 558,851 total interstate moves and 30 minute time savings, motor carriers will save 279,426 burden hours (558,851 interstate moves × −0.5 hours = −279,426 burden hours). The estimated cost savings is $9,445,421 (−279,426 burden hours × $33.80 = −$9,445,421).

Estimated Number of Respondents: 5,100.

Estimated responses: 558,851.

Estimated burden hours: −279,426.

Estimated cost savings: $9,445,421.

Document Production

The estimates of the costs of producing required documents is based on the total number of pages movers will need to produce multiplied by a flat rate of $0.15 per page. With the estimated annual average of 670,621 *Your Rights and Responsibilities When You Move* documents printed, there will be 16,765,531 total pages printed (670,621 documents printed × 25 pages per document = 16,765,531 total pages printed). The estimated total annual printing cost to respondents is $2.5 million (16,765,531 total pages printed × $0.15 per page = $2.5 million).

In removing the order for service form, which is a one page document, the Agency estimates that there will be 558,851 fewer documents printed. This results in an estimated annual cost savings to respondents of $83,828 (558,851 documents printed × 1 page per document × $0.15 per page = $83,828).

Estimated Number of Respondents: 5,100.

Estimated responses: 1,229,472.

Estimated cost: $2,431,002.

FMCSA asks for comment on the information collection requirements of this rule. Specifically, the Agency asks for comment on: (1) Whether the proposed information collection is necessary for FMCSA to perform its functions; (2) how the Agency can improve the quality, usefulness, and clarity of the information to be collected; (3) the accuracy of FMCSA's estimate of the burden of this information collection; and (4) how the Agency can minimize the burden of the information collection.

If you have comments on the information collection, you must send those comments to OMB as outlined under the COMMENTS ON THE INFORMATION COLLECTION section at the beginning of this final rule.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under Section 1(a) of E.O. 13132 if it has ''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.''

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,[24] requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII). In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 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.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraphs 6.m. and 6.l. The Categorical Exclusions (CEs) in paragraphs 6.m. and 6.l., respectively, cover regulations requiring every motor carrier to issue and keep a receipt or bill of lading (or record) for property tendered for transportation in interstate or foreign commerce, and regulations implementing procedures applicable to the operations of household good carriers engaged in the transportation of household goods. The requirements in this rule are covered by these CEs.

[24] Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

List of Subjects

49 CFR Part 371

Brokers, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 375

Advertising, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

Accordingly, FMCSA amends 49 CFR chapter III, parts 371 and 375 as follows:

PART 371—BROKERS OF PROPERTY

■ 1. The authority citation for part 371 continues to read as follows:

Authority: 49 U.S.C. 13301, 13501, and 14122; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

■ 2. Amend § 371.103 by adding, in alphabetical order, a definition for *Physical survey* to read as follows:

§ 371.103 What are the definitions of terms used in this subpart?

* * * * *

Physical survey has the same meaning as the term is defined in § 375.103 of this subchapter.

■ 3. Amend § 371.111 by adding paragraph (e) to read as follows:

§ 371.111 Must I provide individual shippers with Federal consumer protection information?

* * * * *

(e) If you have a website, you are required to display prominently either a link to the Department of Transportation (DOT) publication titled ''Ready to Move?—Tips for a Successful Interstate Move'' (DOT publication FMCSA–ESA–03–005, or its successor publication) on the FMCSA website or a true and accurate copy of that document on your website.

■ 4. Amend § 371.113 by revising paragraph (a) to read as follows:

§ 371.113 May I provide individual shippers with a written estimate?

(a) You may provide each individual shipper with an estimate of transportation and accessorial charges. If you provide an estimate, it must be in writing and must be based on a physical survey of the household goods conducted by the authorized motor carrier on whose behalf the estimate is provided. The estimate must be prepared in accordance with a signed, written agreement, as specified in § 371.115.

* * * * *

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 5. The authority citation for part 375 continues to read as follows:

Authority: 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

■ 6. Amend § 375.103 by:
■ a. Adding, in alphabetical order, definition for *Bill of lading;*
■ b. Removing the definition for *Order for service;* and
■ c. Adding, in alphabetical order, definition for *Physical survey;*
■ d. Revising the definitions for *Reasonable dispatch* and *Surface Transportation Board.*

The additions and revisions read as follows:

§ 375.103 What are the definitions of terms used in this part?

* * * * *

Bill of lading means both the receipt and the contract for the transportation of the individual shipper's household goods.

* * * * *

Physical survey means a survey which is conducted on-site or virtually. If the survey is performed virtually, the household goods motor carrier must be able to view the household goods through live or pre-recorded video that allows it to clearly identify the household goods to be transported.

Reasonable dispatch means the performance of transportation on the dates, or during the period, agreed upon by you and the individual shipper and shown on the bill of lading. For example, if you deliberately withhold any shipment from delivery after an individual shipper offers to pay the binding estimate or 110 percent of a non-binding estimate, you have not transported the goods with reasonable dispatch. The term *reasonable dispatch* excludes transportation provided under your tariff provisions requiring guaranteed service dates. You will have the defenses of force majeure, *i.e.,* superior or irresistible force, as construed by the courts.

* * * * *

Surface Transportation Board means an independent agency of the United States that regulates household goods carrier tariffs, among other economic regulatory responsibilities.

* * * * *

■ 7. Amend § 375.211 by revising the introductory text of paragraph (a)(2) to read as follows:

§ 375.211 Must I have an arbitration program?

(a) * * *

(2) Before execution of the bill of lading, you must provide notice to the individual shipper of the availability of neutral arbitration, including all three of the following items:

* * * * *

■ 8. Amend § 375.213 by:
■ a. Revising paragraph (a) and the introductory text of paragraph (b);
■ b. Removing paragraph (b)(1);
■ c. Redesignating paragraphs (b)(2) through (5) as paragraphs (b)(1) through (4);
■ d. Redesignating paragraph (e) as paragraph (f);
■ e. Adding new paragraph (e); and
■ f. Revising newly redesignated paragraph (f).

The revisions and addition read as follows:

§ 375.213 What information must I provide to a prospective individual shipper?

(a) When you provide the written estimate to a prospective individual shipper, you must also provide the individual shipper with the following documents:

(1) The Department of Transportation (DOT) publication titled ''Ready to Move?—Tips for a Successful Interstate Move'' (DOT publication FMCSA–ESA–03–005, or its successor publication). You must provide the individual shipper with either a copy or provide a hyperlink on your internet website to the web page on the FMCSA website containing that publication.

(2) The contents of appendix A of this part, titled ''Your Rights and Responsibilities When You Move'' (DOT publication FMCSA–ESA–03–006, or its successor publication). You must provide the individual shipper with either a copy or provide a hyperlink on your internet website to the web page on the FMCSA website with the publication ''Your Rights and Responsibilities When You Move.''

(b) Before you execute a bill of lading for a shipment of household goods, you must furnish to your prospective individual shipper all four of the following documents:

* * * * *

(e) If you have a website, you are required to display prominently either a link to the DOT publication titled ''Ready to Move?—Tips for a Successful Interstate Move'' (DOT publication FMCSA–ESA–03–005, or its successor publication) on the FMCSA website or a true and accurate copy of that document on your website.

(f) If an individual shipper elects to access the Federal consumer protection

information via the hyperlink on the internet as provided in paragraphs (a)(1) and (2) of this section:

(1) You must obtain a signed, dated receipt showing the individual shipper has received either or both of the publications that includes verification of the shipper's agreement to access the Federal consumer protection information on the internet.

(2) You must maintain the signed receipt required by paragraph (f)(1) of this section for one year from the date the individual shipper signs the receipt. You are not required to maintain the signed receipt when you do not actually transport household goods or perform related services for the individual shipper who signed the receipt.

■ 9. Revise § 375.215 to read as follows:

§ 375.215 How must I collect charges?

You must issue an honest, truthful invoice that includes all the information required by subpart A of part 373 of this chapter. All rates and charges for the transportation and related services must be in accordance with your appropriately published tariff provisions in effect, including the method of payment.

■ 10. Amend § 375.217 by revising paragraph (b) to read as follows:

§ 375.217 How must I collect charges upon delivery?

* * * * *

(b) You must specify the same form of payment provided in paragraph (a) of this section when you prepare the bill of lading.

* * * * *

■ 11. Amend § 375.221 by revising paragraph (c) to read as follows:

§ 375.221 May I use a charge or credit card plan for payments?

* * * * *

(c) If you allow an individual shipper to pay an invoice by charge or credit card, you are deeming such payment to be the same as payment by cash, certified check, money order, or a cashier's check.

* * * * *

■ 12. Amend § 375.401 by revising paragraphs (a), (b) introductory text, and (f) to read as follows:

§ 375.401 Must I estimate charges?

(a) You must conduct a physical survey of the household goods to be transported and provide the prospective individual shipper with a written estimate, based on the physical survey, of the charges for the transportation and all related services. An individual shipper may elect to waive a physical survey. The waiver agreement is subject to the following requirements:

(1) It must be in writing;

(2) It must be signed by the shipper before the shipment is loaded; and

(3) You must retain a copy of the waiver agreement as an addendum to the bill of lading with the understanding that the waiver agreement will be subject to the same record retention requirements that apply to bills of lading, as provided in § 375.505(d).

(b) Before you execute a bill of lading for a shipment of household goods for an individual shipper, you must provide a written estimate of the total charges and indicate whether it is a binding or a non-binding estimate, as follows:

* * * * *

(f) You must determine charges for any accessorial services such as elevators, long carries, etc., before preparing the bill of lading for binding or non-binding estimates. If you fail to ask the shipper about such charges and fail to determine such charges before preparing the bill of lading, you must deliver the goods and bill the shipper after 30 days for the additional charges.

* * * * *

■ 13. Amend § 375.403 by revising paragraphs (a)(1), (a)(6)(ii), and (a)(9) to read as follows:

§ 375.403 How must I provide a binding estimate?

(a) * * *

(1) You must base the binding estimate on the physical survey unless waived as provided in § 375.401(a).

* * * * *

(6) * * *

(ii) Prepare a new binding estimate prior to loading. The new estimate must be signed by the individual shipper. You should maintain a record of the date, time, and manner that the new estimate was prepared.

* * * * *

(9) If the individual shipper requests additional services after the bill of lading has been issued, you must inform the individual shipper of the additional charges involved. The individual shipper must agree to the new charges. You must prepare a new binding estimate and have the new binding estimate signed by the individual shipper. You may require full payment at destination for these additional services and for 100 percent of the original binding estimate. If applicable, you also may require payment at delivery of charges for impracticable operations (as defined in your carrier tariff) not to exceed 15 percent of all other charges due at delivery. You must bill and collect from the individual shipper any applicable charges not collected at delivery in accordance with subpart H of this part.

* * * * *

■ 14. Amend § 375.405 by revising paragraphs (b)(7)(ii) and (c) to read as follows:

§ 375.405 How must I provide a non-binding estimate?

* * * * *

(b) * * *

(7) * * *

(ii) Prepare a new non-binding estimate which must be signed by the individual shipper. You should maintain a record of the date, time, and manner that the new estimate was prepared.

* * * * *

(c) If you furnish a non-binding estimate, you must enter the estimated charges upon the bill of lading.

* * * * *

§ 375.501 [Removed and Reserved]

■ 15. Remove and reserve § 375.501.

■ 16. Amend § 375.505 by:

■ a. Revising paragraphs (a), (b) introductory text, and (b)(1) through (3), (6), and (14);

■ b. Adding paragraphs (b)(15) through (17);

■ c. Revising paragraph (d); and

■ d. Adding paragraphs (e) through (h).

The revisions and additions read as follows:

§ 375.505 Must I write up a bill of lading?

(a) Before you receive a shipment of household goods you will transport for an individual shipper, you must prepare and issue a bill of lading. The bill of lading must contain the terms and conditions of the contract.

(b) On a bill of lading, you must include the following 17 items:

(1) Your legal or trade name (*i.e.,* doing business as name) as it is registered with FMCSA, to include your physical address.

(2) The names, telephone numbers, addresses, and U.S. DOT numbers of any motor carriers, when known, who will participate in transportation of the shipment.

(3) The individual shipper's name, address, and, if available, telephone number(s).

* * * * *

(6) For non-guaranteed service, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment.

* * * * *

(14) A complete description of any special or accessorial services ordered

and minimum weight or volume charges applicable to the shipment, subject to the following two conditions:

(i) If you provide service for individual shippers on rates based upon the transportation of a minimum weight or volume, you must indicate on the bill of lading the minimum weight- or volume-based rates, and the minimum charges applicable to the shipment.

(ii) If you do not indicate the minimum rates and charges, your tariff must provide how you will compute the final charges relating to such a shipment based upon the actual weight or volume of the shipment.

(15) Each attachment to the bill of lading. Each attachment is an integral part of the bill of lading contract. If not provided elsewhere to the shipper, the following two items must be added as an attachment to the bill of lading.

(i) The binding or non-binding estimate.

(ii) The inventory.

(16) Any identification or registration number you assign to the shipment.

(17) A statement that the bill of lading incorporates by reference all the services included on the estimate.

* * * * *

(d) You must retain a copy of the bill of lading for each move you perform for at least 1 year from the date you created the bill of lading.

(e) You, your agent, or your driver must inform the individual shipper if you reasonably expect a special or accessorial service is necessary to safely transport a shipment. You must refuse to accept the shipment when you reasonably expect a special or accessorial service is necessary to safely transport a shipment and the individual shipper refuses to purchase the special or accessorial service. You must make a written note if the shipper refuses any special or accessorial services that you reasonably expect to be necessary.

(f) You and the individual shipper must sign the bill of lading prior to the shipment being loaded. The bill of lading must be signed at both the origin and the destination. You must provide a dated copy of the bill of lading to the individual shipper at the time you sign the bill of lading.

(g)(1) You may provide the individual shipper with blank or incomplete estimates, bills of lading, or any other blank or incomplete documents pertaining to the move.

(2) You may require the individual shipper to sign an incomplete document prior to the shipment being loaded provided it contains all relevant shipping information except the actual shipment weight and any other information necessary to determine the final charges for all services performed. You may omit only that information that cannot be determined before loading, such as actual shipment weight in the case of shipments moved under non-binding estimates or unforeseen charges incurred in transit.

(3) You may not require an individual shipper to sign a blank document.

(h) The bill of lading must be provided to, signed, and dated by the individual shipper at least 3 days before the shipment is scheduled to be loaded. You must provide the individual shipper the opportunity to rescind the bill of lading without any penalty for a 3-day period after the individual shipper signs the bill of lading. If the individual shipper tenders additional items to be moved or requires additional services on the day of the move, resulting in a new binding estimate under § 375.403(a)(6)(ii) or a new non-binding estimate under § 375.405(b)(7)(ii), the corresponding changes to the bill of lading from the new estimate do not require a new 3-day period as otherwise required in this paragraph (h).

■ 17. Amend § 375.605 by revising paragraph (a) introductory text to read as follows:

§ 375.605 How must I notify an individual shipper of any service delays?

(a) When you are unable to perform either the pickup or delivery of a shipment on the dates or during the periods specified in the bill of lading and as soon as the delay becomes apparent to you, you must notify the individual shipper of the delay, at your expense, in one of the following six ways:

* * * * *

■ 18. Amend § 375.801 by:

■ a. Revising the section heading; and

■ b. In paragraph (a), removing the words ''freight or expense bill, or'' and adding, in their place, the words ''invoice; or''.

The revision reads as follows:

§ 375.801 What types of charges are subject to this subpart?

* * * * *

§ 375.803 [Amended]

■ 19. Amend § 375.803 by removing the words ''freight or expense bill'' wherever they appear and adding, in their place, the word ''invoice'' and removing the words ''of this subpart''.

§ 375.805 [Amended]

■ 20. Amend § 375.805 by removing the words ''freight bill'' and adding, in their place, the word ''invoice''.

§ 375.807 [Amended]

■ 21. Amend § 375.807 by:

■ a. Removing the words ''freight bill'' and adding, in their place, the word ''invoice'' in the section heading and paragraphs (a) and (c)(1) through (3); and

■ b. Removing the words ''freight bills'' and adding, in their place, the word ''invoices'' in paragraphs (c)(3) and (4).

■ 22. Revise appendix A to part 375 to read as follows:

Appendix A to Part 375—Your Rights and Responsibilities When You Move

General Requirements

The Federal Motor Carrier Safety Administration's (FMCSA) regulations protect consumers of interstate moves and define the rights and responsibilities of consumers (shippers) and household goods motor carriers (movers).

The household goods motor carrier gave you this booklet to provide information about your rights and responsibilities as an individual shipper of household goods. Your primary responsibilities are to ensure that you understand the terms and conditions of the moving contract (bill of lading), and know what to do in case problems arise.

The primary responsibility for protecting your move lies with you in selecting a reputable household goods mover or household goods broker, and making sure you understand the terms and conditions of your contract and the remedies that are available to you in case problems arise.

Definitions and Common Terms

Accessorial (Additional) Services—These are services such as packing, unpacking, appliance servicing, or piano carrying, that you request to be performed or are necessary because of landlord requirements or other special circumstances.

Advanced Charges—Charges for services performed by someone other than the mover. A professional, craftsman, or other third party may perform these services at your request. The mover pays for these services and adds the charges to your bill of lading.

Agent—A local moving company authorized to act on behalf of a larger national company.

Appliance Service by Third Party—The preparation of major electrical appliances to make them safe for transportation. Charges for these services may be in addition to the line-haul charges.

Bill of Lading—The receipt for your shipment and the contract for its transportation.

Broker—A company that arranges for the transportation of household goods by a registered moving company.

Collect on Delivery (COD)—This means payment is required at the time of delivery at the destination residence (or warehouse).

Certified Scale—Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform or warehouse type scale that is properly inspected and certified.

Commercial Zone—A commercial zone is roughly equivalent to the local metropolitan area of a city or town. Moves that cross state lines within these zones are exempt from FMCSA's commercial jurisdiction and, therefore, the moves are not subject to FMCSA household goods regulations. For example, a move between Brooklyn, New York, and Hackensack, New Jersey, would be within the New York City commercial zone. Although it crossed states lines, this move would not be subject to FMCSA household goods regulations.

Estimate, Binding—This is a written agreement made in advance with your mover. It guarantees the total cost of the move based upon the quantities and services shown on the estimate.

Estimate, Non-Binding—This is what your mover believes the cost will be, based upon the estimated weight of the shipment and the services requested. A non-binding estimate is not binding on the mover. The final charges will be based upon the actual weight of your shipment, the services provided, and the tariff provisions in effect.

Expedited Service—An agreement with the mover to perform transportation by a set date in exchange for an agreed upon additional charge.

Flight Charge—An additional charge for carrying items up or down flights of stairs. Charges for these services may be in addition to the line-haul charges.

Full Value Protection—The liability coverage option you are to receive for your shipment unless you waive this option in writing. It means your mover will process your loss and damage claim by replacing or repairing the item to restore its original like, kind, and quality.

Guaranteed Pickup and/or Delivery Service—An additional level of service featuring guaranteed dates of service. Your mover will provide reimbursement to you for delays. This service may be subject to minimum weight requirements.

High-Value Article—These are items valued at more than $100 per pound.

Household Goods—As used in connection with transportation, household goods are the personal effects or property used, or to be used, in a dwelling, when part of the equipment or supplies of the dwelling belong to an individual shipper. Transporting of the household goods must be arranged for and paid by you or another individual on your behalf.

Household Goods Motor Carrier—A motor carrier that, in the normal course of its business of providing transportation of household goods, offers some or all the following additional services: (1) Binding and non-binding estimates, (2) Inventorying, (3) Protective packing and unpacking of individual items at personal residences, and (4) Loading and unloading at personal residences. The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier).

Individual Shipper—Any person who:

1. Is the shipper, consignor, or consignee of a household goods shipment;
2. Is identified as the shipper, consignor, or consignee on the face of the bill of lading;
3. Owns the household goods being transported; and
4. Pays his or her own tariff transportation charges.

Impracticable Operations—Conditions which make it physically impossible for the mover to perform pickup or delivery with its normally assigned road-haul equipment so that the mover is required to use specialized equipment and/or additional labor to complete pickup or delivery of your shipment. A mover may require payment of additional charges for services required due to impracticable operations, even if you do not request these services. The specific services considered to be impracticable operations by your mover are defined in your mover's tariff.

Inventory—The detailed list of your household goods showing the quantity and condition of each item.

Line-Haul Charges—The charges for the transportation portion of your move when a household goods mover transports your shipment.

Household goods brokers or movers must provide you with basic information before you move. You should expect to receive the following information:

- A written estimate
- The ''Ready to Move'' Brochure (or a web link to access the document)
- Information about the mover's arbitration program
- Written notice about access to the mover's tariff
- The process for handling claims
- This booklet, *Your Rights and Responsibilities When You Move* (or a web link to access the document)

You should avoid brokers and movers that are not registered with FMCSA or refuse to perform a physical survey of your household goods. If a broker or mover requires cash, FMCSA advises you to retain all receipts and supporting documents associated with the transaction.

Customer's Responsibilities

As a customer, you have responsibilities both to your mover and to yourself. They include:

- Reading all moving documents issued by the mover or broker.
- Being available at the time of pickup and delivery of your shipment. If you are not available, you should appoint a representative to act on your behalf.
- Promptly notifying your mover if something has changed regarding your shipment (*i.e.,* move dates, additional items).
- Making payment in the amount required and in the form agreed to with the mover based on the bill of lading document.
- Promptly filing claims for loss, damage, or delays with your mover, if necessary.

Estimates

The two most important things to understand for your interstate move are: The types of estimates offered and the mover's liability in the event of loss or damage. As you read further, you will discover that movers offer two different types of estimates—binding and non-binding. The type of estimate you select determines how the charges for your shipment will be calculated. The estimate provided by your mover will notify you of the two liability coverage options: Option 1—Full Value Protection and Option 2—Waiver of Full Value Protection (60 cents per pound). The mover's liability is discussed in detail in the next section.

FMCSA requires your mover to provide written estimates on every shipment transported for you. Your mover's verbal quote of charges is not an official estimate since it is not in writing. Your mover must provide you with a written estimate of all charges including transportation, and accessorial and advanced charges (defined at the end of this booklet). This written estimate must be dated and signed by you and the mover.

The estimate your mover provides you will include a statement notifying you of two options of liability coverage for your shipment: Full Value Protection and Waiver of Full Value Protection, Released Value of 60 cents per pound per article.

Your mover must provide an estimate based upon a physical survey of your household goods. A physical survey means a survey which is conducted on-site or virtually, that allows your mover to see the household goods to be transported. A physical survey must be performed unless you waive this requirement in writing.

Please be aware that a household goods broker may only provide an estimate on a mover's behalf if the broker has a written agreement with the mover and uses the mover's published tariff.

You and your mover may agree to change an estimate of charges based on changed circumstances, but only before your shipment is loaded. Your mover may not change an estimate after loading the shipment. There is more information about changes to estimates in the following sections.

Binding Estimates

A binding estimate guarantees that you cannot be required to pay more than the amount on the estimate at the time of delivery. However, if you add additional items to your shipment or request additional services, you and your mover may:

- Agree to abide by the original binding estimate;
- prepare a new binding estimate; or
- agree to convert the binding estimate into a non-binding estimate.

If you and the mover do not agree to one of the three options listed above, the mover is not required to service the shipment. If the mover does not give you a new binding estimate in writing, or agree in writing to convert the binding estimate to a non-binding estimate before your goods are loaded, the original binding estimate is reaffirmed. Under these circumstances, your mover should not charge or collect more than the amount of the original binding estimate at delivery for the quantities and services included in the estimate.

If there are unforeseen circumstances (such as elevators, stairs, or required parking

permits) at the destination the mover can bill you for these additional expenses after 30 days from delivery. Charges for services required because of impracticable operations (defined at the end of this booklet) are due at delivery, but may not exceed 15 percent of all other charges due at delivery; any remaining charges will be billed to you with payment due in 30 days from delivery.

If you are unable to pay 100 percent of the charges on a binding estimate at delivery, your mover may place your shipment in storage at your expense. In an effort to schedule delivery of your shipment from storage, you will have to pay the required charges and storage fees, if listed in the tariffs, after your shipment arrives at the residence.

Your mover may charge a fee to prepare a binding estimate.

Non-Binding Estimates

A non-binding estimate is intended to provide you with an estimate of the cost of your move. A non-binding estimate is not a guarantee of your final costs, but it should be reasonably accurate. The estimate must indicate that your final charges will be based upon the actual weight of your shipment, the services provided, and the mover's published tariff. Therefore, the amount of your mover's non-binding estimate may be different than the amount you ultimately must pay to receive your shipment.

A non-binding estimate must be in writing and clearly describe the shipment and all services provided. Under a non-binding estimate, the mover cannot require you to pay more than 110 percent of the non-binding estimate at the time of delivery. This does not excuse you from paying all the charges due on your shipment. The mover will bill you for any remaining charges after 30 days from delivery.

On the day of pick-up, if you have additional items to move, your mover must do one of two things prior to loading:

- Reaffirm your non-binding estimate; or
- prepare a new non-binding estimate to include all the items that are being moved.

If you and the mover do not agree to one of the two options listed above, the mover is not required to service the shipment. If you are unable to pay 110 percent of the charges on a non-binding estimate at delivery, your mover may place your shipment in storage at your expense. In order to schedule delivery of your shipment from storage, you will likely have to agree to pay the required charges and storage fees, if listed in the tariffs, after your shipment arrives at the residence.

Your mover must give you possession of your shipment if you pay 110 percent of a non-binding estimate or 100 percent of a binding estimate, plus 15 percent of the impracticable operations charges (if applicable). If your mover does not relinquish possession, the mover is holding your shipment hostage in violation of Federal law.

Your Mover's Liability and Your Claims

In general, your mover is legally liable for loss or damage that occurs during the transportation of your shipment and all related services identified on the bill of lading.

The extent of your mover's liability is governed by the Surface Transportation Board's Released Rates Order. The Surface Transportation Board is an independent Federal agency that has jurisdiction over HHG motor carrier tariffs and valuation for lost or damaged goods. You may obtain a copy of the current Released Rates Order by visiting the Surface Transportation Board's website at: *https://prod.stb.gov/wp-content/uploads/files/docs/householdGoodsMoving/41845.pdf.* In addition, your mover may, but is not required to, offer to sell you separate third-party liability insurance.

All moving companies are required to assume liability for the value of the household goods they transport. However, there are two different levels of liability that apply to interstate moves: Full Value Protection and Waiver of Full Value Protection—Released Value. It is important you understand the charges that apply and the amount of protection provided by each level.

Full Value Protection

This is the most comprehensive option available to protect your household goods, but it will increase the cost of your move. The initial cost estimate of charges that you receive from your mover must include this level of protection. Your shipment will be transported at this level of liability unless you waive Full Value Protection. Under your mover's Full Value Protection level of liability, subject to the allowable exceptions in your mover's tariff, if any article is lost, destroyed, or damaged while in your mover's custody, your mover will, at its option, either (1) repair the article to the extent necessary to restore it to the same condition as when it was received by your mover, or pay you for the cost of such repairs; or (2) replace the article with an article of like, kind and quality, or pay you for the cost to replace the items.

The exact cost for your shipment, including Full Value Protection, may vary by mover and may be further subject to various deductible levels. Full Value Protection will increase the cost of your move above the basic transportation cost. The minimum valuation level for determining the cost of Full Value Protection of your shipment is $6.00 per pound times the weight of your shipment. Your mover may use a higher minimum value, or you may declare a higher value for your shipment (at an additional cost). The charges that apply for providing Full Value Protection must be shown in your mover's tariff. Ask your mover for the details under its specific program.

Under this option, movers are permitted to limit their liability for loss or damage to articles of extraordinary value, unless you specifically list these articles on the shipping documents. An article of extraordinary value is any item whose value exceeds $100 per pound (for example, jewelry, silverware, china, furs, antiques, oriental rugs, and computer software). Ask your mover for a complete explanation of this limitation before your move. It is your responsibility to study this provision carefully and to make the necessary declaration.

Waiver of Full Value Protection (Released Value of 60 Cents per Pound per Article)

Released Value is minimal protection; however, it is the most economical protection available as there is no charge to you. Under this option, the mover assumes liability for no more than 60 cents per pound, per article. For example, if a 10-pound stereo component valued at $1,000 was lost or destroyed, the mover would be liable for no more than $6.00 (10 pounds × $ .60). Obviously, you should think carefully before agreeing to such an arrangement.

Third Party Insurance

If you purchase separate third party cargo liability insurance through your mover, the mover is required to issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document at the time of purchase. If the mover fails to comply with this requirement, the mover is liable for any claim for loss or damage.

Shipments transported under a mover's bill of lading may be subject to arbitration in the event of a dispute over loss or damage claims. However, disputes with third party insurance companies are not subject to FMCSA regulations.

Reducing Your Mover's Normal Liability

The following are some actions that may limit or reduce your mover's liability for loss or damage to your household goods:

1. Your acts or omissions cause the loss or damage to occur. For example, improper packing of containers you pack yourself do not provide sufficient protection or you include perishable, dangerous, or hazardous materials in your shipment without your mover's knowledge. Federal law forbids you to ship hazardous materials in your household goods boxes or luggage without informing your mover.
2. You chose the Waiver of Full Value Protection—Released Value level of liability (60 cents per pound per article) but ship household goods valued at more than 60 cents per pound per article.
3. You declare a value for your shipment which is less than the actual value of the articles in your shipment.
4. You fail to notify your mover in writing of articles valued at more than $100 per pound. (If you do notify your mover, you will be entitled to full recovery up to the declared value of the article or articles, not to exceed the declared value of the entire shipment.)

Loss and Damage Claims

Movers customarily take every precaution to make sure that, while your shipment is in their possession, no items are lost, damaged or destroyed. However, despite the precautions taken, articles are sometimes lost or destroyed during the move. You have the right to file a claim with your mover to be compensated for loss or damage.

You have 9 months from the date of delivery (or in the event of loss for the entire shipment, from the date your shipment should have been delivered) to file your claim.

The claim must be submitted in writing to your mover or to your mover's third party

insurer for claim processing. After you submit your claim, your mover has 30 days to acknowledge receipt of it. The mover then has 120 days to provide you with a disposition. The mover might be entitled to 60-day extensions if the claim cannot be processed or disposed of within 120 days. If an extension is necessary, your mover must notify you in writing.

Delay Claims

Delay claims are processed when you have contracted with your mover for guaranteed service for pickup and delivery. Your mover will outline on the bill of lading any penalty or per diem entitlements when there is a pickup delay and/or delivery delay.

Moving Paperwork

Do not sign entirely blank documents. And only sign *incomplete* documents where the only incomplete sections are for information that cannot be determined prior to loading, specifically the actual weight of your shipment, in the case of a non-binding estimate, and unforeseen charges that occur in transit or at destination.

Inventory

Your mover must prepare an inventory of your shipment. This is usually done at the time the mover loads your shipment. The mover is required to list any damage or unusual wear to any items. The purpose is to make a record of the existence and condition of each item before it is moved.

After completing the inventory, both you and the mover must sign each page of the inventory. It is important that before signing you make sure the inventory lists every item in your shipment and that entries regarding the condition of each item are correct. You have the right to note any disagreement. When your shipment is delivered, if an item is missing or damaged, your ability to recover from the mover for any loss or damage may depend on the notations made on this form.

The mover will give you a copy of each page of the inventory. Attach the complete inventory to your copy of the bill of lading. It is your receipt for the shipment.

At the time your shipment is delivered, it is your responsibility to check the items delivered against the items listed on your inventory. If new damage is discovered, make a record of it on the inventory form. Call the damage to the attention of the mover and request that a record of the damage be made on the mover's copy of the inventory.

After the complete shipment is unloaded, the mover will request that you sign the mover's copy of the inventory to show that you received the items listed. Do not sign until you have assured yourself that it is accurate and that proper notations have been entered regarding any missing or damaged items. Movers are prohibited from having you sign documents that release the mover from all liability for loss or damage to the shipment in exchange for delivery.

Bill of Lading

Your mover is required by law to prepare a bill of lading for your shipment. The bill of lading is the contract between you and the mover for the transportation of your shipment. This document is issued at least 3 days prior to the pickup date. The information on the bill of lading is required to include all the information and charges associated with the transportation of your shipment. The driver who loads your shipment must give you a copy of the bill of lading before or at the time of loading your shipment. The bill of lading is an important document. Do not lose or misplace your copy. Keep it available until your shipment is delivered, all charges are paid, and all claims, if any, are settled.

IT IS YOUR RESPONSIBILITY TO READ THE BILL OF LADING BEFORE YOU ACCEPT IT

The bill of lading requires the mover to provide the service you requested and requires you to pay the charges for the service. It is your responsibility to understand the bill of lading before you sign it. If you do not agree with something on the bill of lading, do not sign it until you are satisfied it is correct.

The bill of lading serves to identify the mover and specifies when the transportation is to be performed. Be sure that the portions of the bill of lading that note the dates when pickup and delivery are to be performed are completed and that you agree with the dates. The bill of lading also specifies the terms and conditions for payment of the total charges and the maximum amount required to be paid at the time of delivery for shipments moving under a binding estimate. In the case of shipments moving under non-binding estimates, the bill of lading will not include a final calculation of charges because that cannot be determined until the shipment is weighed. However, the bill of lading must contain all relevant shipment information—except the shipment weight that will be determined after the shipment has been weighed and any unforeseen charges that occur in transit or at destination.

The bill of lading must include the following 17 items:

1. The legal or trade name (*i.e.,* doing business as name) of the mover as it is registered with FMCSA, to include its physical address.

2. The names, telephone numbers, addresses, and USDOT Numbers of any motor carriers, when known, who will participate in transportation of the shipment.

3. Your name, address, and, if available, telephone number(s).

4. The form of payment the mover and its agents will honor at delivery. The payment information must be the same that was entered on the estimate.

5. When transportation is on a collect-on-delivery basis, the name, address, and if furnished, the telephone number, facsimile number, or email address of a person to notify about the charges. The notification may also be made by overnight courier or certified mail, return receipt requested.

6. For non-guaranteed service, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment.

7. For guaranteed service, subject to tariff provisions, the dates for pickup and delivery, and any penalty or per diem entitlements due to you.

8. The actual date of pickup.

9. The company or motor carrier identification number of the vehicle(s) that will transport your shipment.

10. The terms and conditions for payment of the total charges, including notice of any minimum charges.

11. The maximum amount your mover will demand at the time of delivery in order for you to obtain possession of the shipment, when you transport under a collect-on-delivery basis.

12. The valuation statements provided in the Surface Transportation Board (STB)'s released rates order. These statements require individual shippers either to accept Full Value Protection for their liability or to waive the Full Value Protection in favor of the STB's released rates. The released rates may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment. Contact the STB for a copy of the Released Rates of Motor Carrier Shipments of Household Goods. If the individual shipper waives your Full Value Protection in writing on the STB's valuation statement, you must include the charges, if any, for optional valuation coverage (other than Full Value Protection).

13. Evidence of any insurance coverage sold to or procured for the individual shipper from an independent insurer, including the amount of the premium for such insurance.

14. A complete description of any special or accessorial services ordered and minimum weight or volume charges applicable to the shipment, subject to the following two conditions:

(i) If your mover provides service for you on rates based upon the transportation of a minimum weight or volume, your mover must indicate on the bill of lading the minimum weight- or volume-based rates, and the minimum charges applicable to the shipment.

(ii) If your mover does not indicate the minimum rates and charges, your mover's tariff must provide information to compute the final charges relating to such a shipment based upon the actual weight or volume of the shipment.

15. Each attachment to the bill of lading is an integral part of the contract. That includes the binding or non-binding estimate, inventory and any signed waiver documents associated with the shipment.

16. Any identification or registration number assigned to the shipment.

17. A statement that the bill of lading incorporates by reference all the services included on the estimate, including any new estimate prepared by the mover.

The bill of lading must be signed and dated by you and your mover at origin and destination.

Invoice

At the time of payment of transportation charges, your mover must give you an invoice identifying the service provided and the charge for each service. It is customary for most movers to use a copy of the bill of lading as the invoice.

Except in those instances where a shipment is moving on a binding estimate, the invoice must specifically identify each service performed, the rate or charge per

service performed, and the total charges for each service. If this information is not on the invoice, do not accept or pay the invoice.

Your mover must deliver your shipment upon payment of 100 percent of a binding estimate or 110 percent of a non-binding estimate, plus the full cost of any additional services that you required after the contract was executed and any charges for impracticable operation, not to exceed 15 percent of all other charges due at delivery. If you do not pay the transportation charges due at the time of delivery, your mover has the right, under the bill of lading, to refuse to deliver your shipment. The mover may place your shipment in storage, at your expense, until the charges are paid.

On shipments paid in advance, your mover must present its invoice for all transportation charges within 15 days of the date your mover delivered the shipment. This period excludes Saturdays, Sundays, and Federal holidays.

On shipments paid upon delivery, your mover must present its invoice for all transportation charges on the date of delivery, or, at its discretion, within 15 days calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays. Bills for additional charges based on the weight of the shipment will be presented after 30 days from delivery; charges for impracticable operations not paid at delivery are due within 30 days of the invoice.

Your mover's invoice and accompanying written notices must state the following five items:

1. Penalties for late payment
2. The period of time for any credit extended
3. Service or finance charges
4. Collection expense charges
5. Any applicable discount terms

Weight Tickets

Your mover must obtain weight tickets if your shipment is moving under a non-binding estimate. Each time your shipment is weighed, a separate weight ticket must be obtained and signed by the weigh master. If both weighings are performed on the same scale, one weight ticket may be used to record both weighings. The weight tickets must be presented with the invoice. Each weight ticket must contain the following six items:

1. The complete name and location of the scale.
2. The date of each weighing.
3. The identification of the weight entries as being the tare, gross, or net weights.
4. The company or mover identification of the vehicle.
5. The last name of the individual shipper as it appears on the bill of lading.
6. The mover's shipment registration or bill of lading number.

Additional information regarding weighing shipments is located later in this booklet.

Collection of Charges

Your mover must issue you an honest and truthful invoice for each shipment transported. When your shipment is delivered, you will be expected to pay either: (1) 100 percent of the charges on your binding estimate, or (2) 110 percent of the charges on your non-binding estimate. You will also be requested to pay the charges for any services that you requested (for example, waiting time, an extra pickup or delivery, storage) after the contract with your mover was executed that were not included in the estimate, and any charges for services performed in conjunction with impracticable operations, not to exceed 15 percent of all other charges due at delivery. Your mover will bill you after your shipment is delivered for any remaining services.

You should verify in advance what method of payment your mover will accept. Your mover must note in writing on the bill of lading the forms of payment it accepts at delivery. Do not assume your mover will accept payment by credit card unless it is clearly indicated on the bill of lading.

If you do not pay the charges due at the time of delivery, the mover has the right to refuse to deliver your shipment and to place it into storage at your expense until the charges are paid. It is standard procedure for you to pay the charges due at delivery prior to the mover unloading the shipment at destination, in accordance with the terms specified on the bill of lading.

If your shipment is transported by two or more trucks, the mover may require payment for each portion as it is delivered. You mover may delay the collection of all the charges until the entire shipment is delivered, at its discretion. When you confirm your shipment transportation with your mover, you should ask the mover about this policy.

Your mover can only collect the charges on the percentage of the shipment that was successfully delivered. For example, if you receive a binding estimate of $1,000 to move 1,000 pounds of your goods, and 50 percent of that shipment is lost, then the mover can only collect 50 percent of the estimate or $500. If the estimate is non-binding then only 50 percent of the actual charges, not to exceed 110 percent of the estimate, can be collected, which would be $550.

Your mover is forbidden from collecting, or requiring you to pay, any freight charges (including any charges for accessorial or terminal services) when your shipment is totally lost or destroyed in transit, unless the loss or destruction was due to an act or omission by you. However, if you receive Full Value Protection on your shipment, you will be required to pay the premium to process your claim for the total loss.

Transportation of Your Shipment

Pickup and Delivery

Before you move, be sure to reach an agreement with your mover on the dates for pickup and delivery of your shipment. It is your responsibility to determine on what date your shipment will be picked up and the date or timeframe you require delivery. Once an agreement is reached, your mover must enter those dates on the bill of lading. Upon loading your shipment, your mover is contractually bound to provide the service described in the bill of lading.

The mover might use the term ''delivery spread'' as the timeframe in which you can expect your shipment to be delivered. This means that your shipment could arrive anytime during the delivery spread. The mover is required to give you a 24-hour advance notice of when they plan to arrive with your shipment. At that time, you must be available to accept delivery or your shipment could be placed in storage at your expense.

When you and the mover agree to a delivery date, or to a range of dates, it is your responsibility to be available to accept delivery on any of those dates. The same applies when you and the mover agree to alternate delivery dates.

Do not agree to have your shipment picked up or delivered ''as soon as possible.'' The dates or periods you and your mover agree upon should be definite.

If you request the mover to change the dates for your shipment, most movers will agree to do so if the change will not result in unreasonable delay to their equipment or interfere with another customer's move. However, the mover is not required to change the dates and can place your shipment in storage at your expense if you are unwilling or unable to accept delivery on the agreed dates.

The only reason your mover would be excused from providing a service as described in the bill of lading is because of ''force majeure.'' This is a legal term which means an unforeseen change of circumstances beyond the control of the mover. For example, if there were a major snow storm that prevented your mover from servicing your shipment as outlined in the bill of lading, your mover would not be responsible for damages resulting from its nonperformance.

If your mover fails to pick up or deliver your shipment on the agreed date or during the delivery spread, and you have expenses that you otherwise would not have, you may be able to recover these expenses from the mover through a delay of shipment claim.

Ask your mover before you move what payment or other arrangements you can expect if your shipment is delayed through the fault of the mover.

Your mover must transport your household goods in a timely manner. This is also known as ''reasonable dispatch service.'' If you have arranged for a guaranteed delivery date, the terms of that agreement with your mover apply.

When your mover is unable to meet either the pickup or delivery dates or provide service during the periods of time specified in the bill of lading, your mover must notify you of the delay. The mover must advise you of the dates or periods of time it may be able to pick up and/or deliver your shipment. Your mover must provide this information in writing.

Early Delivery

If you are unable to accept delivery before the first day of the delivery spread, then your mover may place your shipment in storage in a warehouse located in proximity to the destination. If your mover exercises this option, your mover must immediately notify you of the name and address of the warehouse where your mover places your shipment. Your mover has full responsibility

for the charges for re-delivery, handling, and storage until it makes the final delivery.

Storage in Transit

You may request your mover to store your household goods before delivering them. Your mover must notify you in writing or in person at least 10 days before the expiration date of:

1. The specified period of time when your mover is to hold your shipment in storage.
2. The maximum period of time provided in its tariff for storage-in-transit.

If your mover holds your household goods in storage-in-transit for less than 10 days, your mover must notify you, 1 day before the storage-in-transit period expires of the same information specified above.

When the storage period is about to expire, your mover must notify you in writing about the following four items:

1. The date when storage-in-transit will covert to permanent storage.
2. The existence of a 9-month period after the date of conversion to permanent storage, during which you may file claims against your mover for loss or damage occurring to your goods while in transit or during the storage-in-transit period.
3. When your mover's liability will end for loss and damage.
4. When your shipment will become subject to the rules, regulations, and charges of the management of the storage facility.

Weighing Shipments

If your mover transports your household goods on a non-binding estimate, your mover must determine the actual weight of your shipment on a certified scale in order to calculate its lawful tariff charge. If your mover provided a binding estimate, the weight of the shipment will not affect the charges you will pay, so there is no requirement to weigh shipments moving under binding estimates.

Most movers have a minimum weight charge for transporting a shipment. If your shipment appears to weigh less than the mover's minimum weight, your mover must state the minimum cost on the bill of lading. Should your mover fail to advise you of the minimum charges and your shipment is less than the minimum weight, your mover must base your final charges upon the actual weight, not upon the minimum weight.

Usually, your shipment will be weighed in the city or local area where the shipment originates. The driver has the truck weighed before coming to your residence and then has it weighed again after your shipment has been loaded. The difference in these two weights is the weight of your shipment.

The mover may also weigh your shipment at its destination when the shipment is delivered. The driver will have the truck weighed with your shipment on board and then weighed a second time after your shipment has been unloaded. Each time a weighing is performed, the driver is required to obtain an official weight ticket signed by the weigh master of a certified scale and a copy of the weight tickets must accompany your copy of the bill of lading. Shipments of less than 3,000 pounds may be weighed on a certified warehouse scale.

You have the right, and your mover must inform you of your right, to observe all weighing of your shipment. Your mover must tell you where and when each weighing will occur. Your mover must give you a reasonable opportunity to be present to observe the weighing. You may waive your right to observe weighing; however, you must waive that right in writing.

If your shipment is weighed at origin and you believe that the weight may not be accurate, you have the right to request that the shipment be reweighed before it is unloaded. The mover is not permitted to charge you for the reweighing, but the final charges due will be based on the reweigh weight, even if it is more than the initial weight.

If you request notification of the actual weight and charges of your shipment, your mover must comply with your request if it is moving your household goods on a collect-on-delivery basis. This requirement is conditioned upon you supplying your mover with contact information.

Notification of Delivery

You must receive the mover's notification at least 24-hours before the scheduled delivery, excluding Saturdays, Sundays, and Federal holidays.

Your mover may disregard this 24-hour notification requirement on shipments subject to one of the following three situations:

1. When your mover weighs your shipment at destination.
2. When pickup and delivery encompasses two consecutive weekdays, if you agree.
3. When the maximum payment at time of delivery is 110 percent of the estimated charges, if you agree.

Resolving Disputes With Your Mover

The FMCSA maintains regulations to govern the processing of loss and damage claims; however, we cannot resolve these claims on your behalf. If you cannot reach a settlement with your mover, you have the right to request arbitration from your mover. All movers are required to participate in an arbitration program, and your mover is required to provide you with a summary of its arbitration program before you sign the bill of lading.

Arbitration gives you the opportunity to resolve loss or damage claims and certain types of disputed charges through a neutral arbitrator. You may find submitting your claim to arbitration is a less expensive and more convenient way to seek recovery of your claim than filing a lawsuit. You are not required to submit to arbitration in the event of a dispute. However, if you request arbitration for a claim for $10,000 or less, the mover must agree to arbitration and the arbitrator's decision is binding on the parties. Further, the mover is not required to agree to arbitration if the claim exceeds $10,000. If the mover does agree, the arbitrator's decision will be binding on both you and the mover.

You may choose to pursue a civil action in a court of appropriate jurisdiction in lieu of arbitration. Legal action may be initiated by filing a claim in your State and serving papers on the mover's process agent in your State. You may file in State court or (if the amount of the claim is more than $10,000) in Federal court. You may obtain the mover's process agent information in your State by contacting FMCSA at (800) 832–5660. You may also obtain the name of the mover's process agent via the internet by following the instructions below.

1. Go to *http://li-public.fmcsa.dot.gov.*
2. Scroll to the bottom of the page and click on CONTINUE.
3. At the top of the screen click on CHOOSE MENU OPTION, for the drop-down box and select CARRIER SEARCH, then press GO.
4. Type in the USDOT or MC number for the motor carrier.
5. Click on HTML.
6. Scroll to the bottom of the page, see BLANKET COMPANY, and click on the link.
7. You will see a list of process agents by State, locate the process agent for your State.

The FMCSA cannot settle your dispute with your mover. You must resolve your own loss and damage and/or moving charge disputes with your mover.

You entered into a contractual agreement with your mover. Therefore, you are bound by each of the following terms and conditions:

1. The terms and conditions you accepted when you signed the bill of lading.
2. The terms and conditions you accepted when you signed for delivery of your shipment.
3. Any additional terms and conditions you agreed to with your mover.

If your mover refuses to deliver your shipment unless you pay an amount the mover is not entitled to charge, contact FMCSA immediately at (888) 368–7238.

Important Points To Remember

1. Movers must give written estimates. The estimates may be either binding or non-binding. Non-binding estimates are ''approximations'' only, and the actual transportation charges you are eventually required to pay may be higher than the estimated price.
2. Do not sign blank documents. Verify the document is complete before you sign. In limited situations, it may be appropriate to sign an incomplete document if the only information that does not appear in your moving paperwork is the actual weight of your shipment (in the case of a non-binding estimate) and unforeseen charges that occur in transit or at destination.
3. Be sure you understand the mover's responsibility for loss or damage. For more information see FMCSA's brochure titled, ''Understanding Valuation and Insurance Options'' *https://www.fmcsa.dot.gov/protect-your-move/valuation-insurance.*
4. Understand the type of liability to which you agree. Ask yourself if 60 cents per pound is enough coverage for your household goods or whether you need to purchase additional valuation.
5. Notify your mover if you have high value items. High value items are valued at more than $100 per pound.
6. You have the right to be present each time your shipment is weighed. You also

have the right to request a reweigh at no charge.

7. Confirm with your mover the types of payment acceptable prior to the delivery of your shipment.

8. Consider requesting arbitration to settle disputed claims with your mover.

9. You should know if the company you are dealing with is a household goods motor carrier (mover) or household goods broker, and if they are registered with FMCSA. Go to *www.protectyourmove.gov* for this information.

10. Do not sign the delivery receipt if it contains any language releasing or discharging your mover or its agents from liability. Strike out such language before signing, or refuse delivery if the mover refuses to provide a proper delivery receipt.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Deputy Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140818679–5356–02; RTID 0648–XB963]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2022 Red Snapper Recreational For-Hire Fishing Season in the Gulf of Mexico

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the 2022 recreational fishing season for the Federal charter vessel/headboat (for-hire) component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational for-hire component in the Gulf EEZ opens on June 1, 2022, and will close at 12:01 a.m., local time, on August 19, 2022. This closure is necessary to prevent the Federal for-hire component from exceeding its quota and to prevent overfishing of the Gulf red snapper resource.

DATES: The closure is effective at 12:01 a.m., local time, on August 19, 2022, until 12:01 a.m., local time, on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, NMFS Southeast Regional Office, telephone: 727–551–5719, email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and established separate seasonal closures for the two components. The Federal for-hire component's red snapper annual catch target (ACT) is 9 percent below the for-hire component quota (85 FR 9684, February 20, 2020; 50 CFR 622.41(q)(2)(iii)(B)).

The red snapper for-hire component seasonal closure is projected from the component ACT. Projecting the for-hire component's seasonal closure using the ACT reduces the likelihood of the harvest exceeding the component quota and the total recreational quota.

All weights described in this temporary rule are in round weight.

The Federal for-hire component 2022 ACT for red snapper in the Gulf EEZ is 2.848 million lb (1.292 million kg) (50 CFR 622.41(q)(2)(iii)(B)).

The 2022 Federal Gulf red snapper for-hire fishing season has been determined to be 79 days based on NMFS' projection of the date landings are expected to reach the component ACT. For details about the calculation of the projection for 2022, see *https://www.fisheries.noaa.gov/southeast/sustainable-fisheries/gulf-mexico-recreational-red-snapper-management.* Therefore, the 2022 recreational season for the Federal for-hire component will begin at 12:01 a.m., local time, on June 1, 2022, and close at 12:01 a.m., local time, on August 19, 2022.

On and after the effective date of the Federal for-hire component closure, the bag and possession limits for red snapper for Federal for-hire vessels are zero. When the Federal for-hire component is closed, these bag and possession limits apply in the Gulf on board a vessel for which a valid Federal for-hire permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. In addition, a person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is taken under 50 CFR 622.41(q)(2)(i) and (ii), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest.

Such procedures are unnecessary because the rule implementing the recreational red snapper quotas and ACTs, and the rule implementing the requirement to close the for-hire component when its ACT is projected to be reached have already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because many for-hire operations book trips for clients in advance and require as much notice as NMFS is able to provide to adjust their business plans to account for the fishing season.

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

Dated: April 20, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–08810 Filed 4–25–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 80
Tuesday, April 26, 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 431

[EERE–2019–BT–STD–0042]

RIN 1905–AE59

Energy Conservation Program: Energy Conservation Standards for Commercial Warm Air Furnaces

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

ACTION: Notification of proposed determination and request for comment.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including commercial warm air furnaces (''CWAFs''). EPCA also requires the U.S. Department of Energy (''DOE'') to periodically review standards. In this notification of proposed determination (''NOPD''), DOE has initially determined that it lacks clear and convincing evidence that amended energy conservation standards for CWAFs would be economically justified. DOE requests comment on this proposed determination.

DATES:

Meeting: DOE will hold a webinar on Tuesday, June 7, 2022, from 1:00 p.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: Written comments and information are requested and will be accepted on or before June 27, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–STD–0042, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *PkgHVACFurnace2019STD0042@ee.doe.gov.* Include docket number EERE–2019–BT–STD–0042 and/or RIN 1904–AE59 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document (Public Participation).

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket?D=EERE-2019-BT-STD-0042.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@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: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Synopsis of the Proposed Determination

Title III, Part C [1] of EPCA,[2] established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) Such equipment includes CWAFs, which are the subject of this NOPD.[3] (42 U.S.C. 6311(J))

Pursuant to EPCA, DOE is triggered to consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever the American Society of Heating, Refrigerating, and Air Conditioning Engineers (''ASHRAE'') amends the standard levels or design requirements prescribed in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings,'' (''ASHRAE Standard 90.1''). Under a separate provision of EPCA, DOE is required to review the existing energy conservation standards for those types of covered equipment subject to ASHRAE Standard 90.1, at a minimum, every 6 years after issuance of any final rule establishing or amending a standard (42 U.S.C. 6313(a)(6)(A)–(C)). DOE is conducting this review of the energy conservation standards for CWAFs under EPCA's six-year-lookback authority. (42 U.S.C. 6313(a)(6)(C))

For this proposed determination, DOE considered CWAFs subject to the current Federal energy conservation standards specified in the Code of Federal Regulations (CFR) at 10 CFR 431.77. In a direct final rule published in the **Federal Register** on January 15, 2016 (''January 2016 final rule''), DOE, in relevant part, established amended standards for CWAFs, including energy conservation standards for which compliance is required beginning on January 1, 2023. 81 FR 2420. DOE has tentatively determined that there is significant uncertainty regarding whether more-stringent standards would be economically justified at this time, a matter which the Department discusses in more detail in section III.F of this document. Therefore, DOE has preliminarily determined that the energy conservation standards for CWAFs do not need to be amended because there is not clear and convincing evidence that amended standards would be economically justified, as required by EPCA to establish a more-stringent standard. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed determination, as well as the historical background relevant to the establishment of energy conservation standards for CWAFs.

A. Authority

EPCA, Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CWAFs, the subject of this document. (42 U.S.C. 6311(J))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy conservation requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6316(b)(2)(D), which incorporates the preemption waiver provisions of 42 U.S.C. 6297(d))

EPCA prescribed initial mandatory energy conservation standards for CWAFs. (42 U.S.C. 6313(a)(4)) In doing so, EPCA established Federal energy conservation standards that generally corresponded to the levels in the ASHRAE Standards 90.1 in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989).

In overview, if ASHRAE Standard 90.1 is amended with respect to the standard levels or design requirements applicable under that standard for certain commercial equipment, including CWAFs, not later than 180 days after the amendment of the standard, DOE must publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards. (42 U.S.C. 6313(a)(6)(A)(i)) DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless DOE determines that there is clear and convincing evidence to support a determination that the adoption of a more stringent efficiency level as a uniform national standard would produce significant additional energy savings and be technologically feasible and economically justified.[4] (42 U.S.C. 6313(a)(6)(A)(ii))

If DOE decides to adopt, as a uniform national standard, the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines, supported by clear and convincing evidence, that a more-stringent uniform national standard would result in significant additional conservation of energy and is technologically feasible and

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflects the last statutory amendments that impact Parts A and A–1 of EPCA.

[3] Air-cooled commercial package air conditioning and heating equipment (referred to as ''air-cooled unitary air conditioners and air-cooled unitary heat pumps'' or ''ACUACs and ACUHPs'') were also included in the scope of the request for information (''RFI'') published by DOE on May 12, 2020 (''May 2020 RFI'') that precedes this NOPD. 85 FR 27941. In this NOPD, DOE only addresses CWAFs. DOE will address ACUACs and ACUHPs in a separate proceeding.

[4] In determining whether a more-stringent standard is economically justified, EPCA directs DOE to determine, after receiving views and comments from the public, whether the benefits of the proposed standard exceed the burdens of the proposed standard by, to the maximum extent practicable, considering the following seven factors: (1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard; (2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial price of, initial charges for, or maintenance expense of the products that are likely to result from the standard; (3) The total projected amount of energy savings likely to result directly from the standard; (4) Any lessening of the utility or the performance of the products likely to result from the standard; (5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard; (6) The need for national energy conservation; and (7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6313(a)(6)(B)(ii))

economically justified, then DOE must establish the more-stringent standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (B)(i))

EPCA also requires that every six years DOE shall evaluate the energy conservation standards for each class of certain covered commercial equipment, including CWAFs, and publish either a notice of determination that the standards do not need to be amended, or a notice of proposed rulemaking (''NOPR'') that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(i)) EPCA further provides that, not later than three years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(iii)(II))

A determination of whether amended energy conservation standards are needed must be based on the same considerations as if it were adopting a standard that is more stringent than an amendment to ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(C)(i)(II); 42 U.S.C. 6313(a)(6)(A)–(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6313(a)(6)(C)(ii)) Further, there must be clear and convincing evidence that a determination that more-stringent standards would (1) result in significant additional conservation of energy, (2) be technologically feasible and (3) be economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A))

DOE is publishing this NOPD in satisfaction of the six-year-lookback review requirement in EPCA, having initially determined that DOE lacks clear and convincing evidence that amended standards for CWAFs would be economically justified.

B. Background

In a final rule published in the **Federal Register** on October 21, 2004 (''October 2004 final rule''), DOE codified energy conservation standards for CWAFs equal to those established in EPCA (*i.e.,* a thermal efficiency of 80 percent for gas-fired CWAFs, and a thermal efficiency of 81 percent for oil-fired CWAFs). 69 FR 61916, 61941. The standards established in the October 2004 final rule are the same as DOE's current CWAF standards for CWAFs manufactured before January 1, 2023. 10 CFR 431.77.

As noted previously, DOE most recently amended the energy conservation standards for CWAFs in the January 2016 final rule, which requires compliance beginning on January 1, 2023. 81 FR 2420 (Jan. 15, 2016).

Since publication of the January 2016 final rule, ASHRAE published two updated versions of ASHRAE Standard 90.1, one in 2016 (''ASHRAE Standard 90.1–2016'') and another in 2019 (''ASHRAE Standard 90.1–2019''). The CWAF standards adopted in the January 2016 final rule (*i.e.,* the standards which take effect on and after the January 1, 2023 compliance date) are more stringent than the minimum efficiency levels for CWAFs in ASHRAE Standard 90.1–2016. ASHRAE 90.1–2019 updated the minimum efficiency levels for CWAFs to align with those adopted by DOE in the January 2016 final rule.[5] Because neither ASHRAE Standard 90.1–2016 nor ASHRAE Standard 90.1–2019 contained minimum efficiency levels more stringent than the current Federal standards for CWAFs, DOE was not triggered to examine amended standards for this equipment under 42 U.S.C. 6313(a)(6)(A).[6] As a result, despite these intervening ASHRAE actions, the Federal standards for CWAFs are those set forth in the January 2016 final rule and codified in DOE's regulations at 10 CFR 431.77.

More specifically, for gas-fired CWAFs manufactured starting on January 1, 1994, until January 1, 2023, the thermal efficiency (''TE'') at the maximum rated capacity (*i.e.,* rated maximum input) must be not less than 80 percent. For gas-fired CWAFs manufactured starting on January 1, 2023, the TE at the maximum rated capacity must be not less than 81 percent. For oil-fired CWAFs manufactured starting on January 1, 1994, until January 1, 2023, the TE at the maximum rated capacity must be not less than 81 percent. For oil-fired CWAFs manufactured starting on January 1, 2023, the TE at the maximum rated capacity must be not less than 82 percent. 10 CFR 431.77

In the January 2016 final rule, DOE rejected more-stringent standards on the basis that benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers, negative net present value (''NPV'') of consumer benefits, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in industry net present value (''INPV''). 81 FR 2420, 2522 (Jan. 15, 2016).

In support of its present review of the CWAF energy conservation standards, DOE published in the **Federal Register** a request for information (RFI) on May 12, 2020 (May 2020 RFI), which identified various issues on which DOE sought comment, data, and information to inform its determination of whether the current Federal standards need to be amended. (It is again noted that the May 2020 RFI addressed ACUACs and ACUHPs, in addition to CWAFs.) 85 FR 27941.

DOE received numerous comments in response to the May 2020 RFI from interested parties, as listed in Table II–1. While Table II–1 includes all parties that commented in response to the May 2020 RFI, only those comments relevant to CWAFs are summarized and addressed in this NOPD.[7] As previously mentioned, DOE will consider ACUACs and ACUHPs in a separate proceeding,

[5] It is DOE's understanding that the relevant provisions of ASHRAE Standard 90.1–2019 pertaining to CWAF standards contained a typographical error. Table 6.8.1–5 of ASHRAE Standard 90.1–2019 specifies a thermal efficiency (TE) requirement of 82 percent for oil-fired CWAFs applicable after January 1, 2023, which aligns with the standard adopted by the January 2016 final rule. However, Table 6.8.1–5 of ASHRAE 90.1–2019 also specifies a TE requirement of only 80 percent for oil-fired CWAFs applicable before January 1, 2023, whereas the previous version, ASHRAE 90.1–2016, specified a TE requirement of 81 percent for this class. DOE understands the 80-percent level in ASHRAE Standard 90.1–2019 to be a typographical error, and that the TE requirement for oil-fired warm-air furnaces ≥225,000 Btu/h before January 1, 2023 should be 81 percent, thereby aligning with ASHRAE Standard 90.1–2016 and the current Federal standard. Since the 80-percent level in ASHRAE Standard 90.1–2019 is lower than the corresponding current Federal standard, DOE cannot consider adopting the ASHRAE Standard 90.1–2019 level due to the ''anti-backsliding'' provision in EPCA, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)) Further, because the revised ASHRAE Standard 90.1–2019 lowers the standard, as compared to the level specified by the uniform national standard adopted pursuant to EPCA, DOE did not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A)(ii)(II) (*i.e.,* DOE is not triggered). *See* 84 FR 3910, 3915 (Feb. 13, 2019).

[6] DOE assessed whether it was triggered based upon consideration of the current Federal standards codified at 10 CFR 431.77, which were promulgated through the final rule published in the **Federal Register** on 81 FR 2420 (Jan. 15, 2016). In doing so, DOE considered the totality of these CWAF standard levels, even though compliance with certain of those standards is not yet required (*i.e.,* a compliance date of January 1, 2023).

[7] The following stakeholders listed in Table II–1 did not provide comments relevant to CWAFs and, therefore, are not discussed further in this document: PGE, UCA, Verified Inc., Heinemeier, and Walsh.

in which the Department will address comments received in response to the May 2020 RFI related to ACUACs and ACUHPs.

TABLE II–1—INTERESTED PARTIES THAT PROVIDED WRITTEN COMMENT ON THE MAY 2020 RFI

Commenter(s)	Acronym used in this NOPD	Commenter type
United CoolAir Corporation	UCA	Manufacturer.
Lennox International, Inc	Lennox	Manufacturer.
Carrier Corporation	Carrier	Manufacturer.
Trane Technologies	Trane	Manufacturer.
Goodman Manufacturing Company, L.P	Goodman	Manufacturer.
Spire Inc	Spire	Utility.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	Trade Association.
American Public Gas Association	APGA	Trade Association.
Portland General Electric Company	PGE	Utility.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
California Investor-Owned Utilities	CA IOUs	Utility.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, California Energy Commission, Natural Resources Defense Council, and Northeast Energy Efficiency Partnerships.	Joint Advocates	Efficiency Organizations and State Government.
Institute for Policy Integrity at NYU School of Law	Policy Integrity	Academic Institution.
Robert Mowris	Verified Inc	Other Stakeholder.
Kristin Heinemeier	Heinemeier	Other Stakeholder.
John Walsh	Walsh	Other Stakeholder.
Daniel Harkins	Harkins	Other Stakeholder.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[8]

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the comment period for a notice of proposed rulemaking. Section 6(f)(2) of appendix A specifies that the length of the public comment period for a NOPR will not be less than 75 days. For this proposed determination, DOE has opted to instead provide a 60-day comment period. As stated previously, DOE requested comment in the May 2020 RFI on the technical and economic analyses that would be used to determine whether, based on clear and convincing evidence, a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. DOE has determined that a 60-day comment period, in conjunction with the prior May 2020 RFI, provides sufficient time for interested parties to review the proposed rule and develop comments.

[8] The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE–2019–BT–STD–0042, which is maintained at *www.regulations.gov/docket?D=EERE-2019-BT-STD-0042).* The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

III. General Discussion and Rationale

DOE developed this proposed determination after a review of the CWAF market, including product literature and product listings in the DOE Compliance Certification Management System (CCMS) database. DOE also considered comments, data, and information from interested parties that represent a variety of interests. This notice addresses issues raised by these commenters.

A. General Comments

DOE received multiple comments from stakeholders stating generally that DOE should not amend the current Federal standards for CWAFs. (AHRI, No. 14 at p. 3; Carrier, No. 13 at pp. 4–5, 18–19; Lennox, No. 15 at pp. 1, 3; Trane, No. 16 at p. 2; APGA, No. 19 at pp. 1–3; Spire, No. 21 at pp. 2–3) More specifically, AHRI, Carrier, Lennox, and Trane argued that the current Federal standards should not be amended because of the regulatory burdens manufacturers already face. (AHRI, No. 14 at p. 2; Carrier, No. 13 at pp. 18–19; Lennox, No. 15 at p. 4; Trane, No. 16 at p. 2) Commenters also asserted that the impacts associated with the 2023 standards cannot be assessed at this time because the standards have yet to take effect, and, therefore, considering new standards prior to 2023 would be premature. (Lennox, No. 15 at pp. 2–3; AHRI, No. 14 at p. 3; Carrier, No. 13 at p. 8; Trane, No. 16 at p. 2)

DOE also received comments from several other stakeholders generally expressing support for DOE evaluating and amending the current energy conservation standards for CWAFs. (Joint Advocates, No. 23 at p. 1; CA IOUs No. 20 at pp. 1–7; NEEA, No. 24 at pp. 1–10) More specifically, the Joint Advocates stated that very large energy savings could result from amended standards for CWAFs, citing the max-tech efficiency levels analyzed in the January 2016 final rule, as well as the range of efficiencies in the current market. (Joint Advocates, No. 23 at pp. 1–2) NEEA and the CA IOUs similarly commented as to the potential for energy savings. (CA IOUs No. 20 at pp. 1–7; NEEA, No. 24 at pp. 1, 5–7)

In response to the May 2020 RFI, AHRI asserted that DOE is not statutorily required to review amended standards under the six-year-lookback rulemaking for CWAFs, based on the fact that the 2023 standards adopted in the January 2016 final rule have not yet come into effect. (AHRI, No. 14 at p. 3) DOE disagrees with AHRI's reading of the statute. The statute does not reference compliance dates from previous rulemakings in setting the timing for DOE's required review, but instead, the language of EPCA simply requires DOE to evaluate amended standards for CWAFs every 6 years, which DOE has interpreted as running from publication of the last final rule to amend the applicable standards. (*see* 42 U.S.C. 6313(a)(6)(C)(i)) However, DOE acknowledges that if it were to set standards under EPCA's six-year-lookback provision, the statute would require DOE to set a compliance date

that is the later of: (1) The date three years after publication of the final rule establishing the amended standard or (2) the date that is six years after the effective date of the current standard for a covered product (in this case 2029). (*see* 42 U.S.C. 6313(a)(6)(C)(iv))

Therefore, pursuant to its statutory obligations (particularly EPCA's required six-year-lookback review under 42 U.S.C. 6313(a)(6)(C)) and as discussed in this NOPD, DOE has considered the potential for amended standards for CWAFs. Such review is necessary for DOE to determine whether potential amended energy conservation standards for CWAFs would meet the applicable statutory criteria. DOE's analyses in this proceeding also allow it to evaluate the opposing view of the comments previously discussed regarding the appropriateness of amended CWAF standards.

B. Equipment Classes and Scope of Coverage

For CWAFs, the current energy conservation standards specified in 10 CFR 431.77 are based on two equipment classes determined according to fuel type: Gas-fired CWAFs and oil-fired CWAFs. The current standards are consistent with the equipment class structure in the current version of ASHRAE Standard 90.1.

1. Equipment Class Structure

In response to the May 2020 RFI, NEEA recommended that DOE should consider dividing the gas-fired CWAF equipment class into two or more classes by capacity. NEEA argued that smaller units are more prominent in commercial buildings, that analyzing them as a separate equipment class would help identify their unique characteristics and challenges, and that the cost-effectiveness of efficiency features for smaller units will be different than those of larger units. (NEEA, No. 24 at p. 3)

DOE declines to make NEEA's recommended changes to the CWAF class structure for the reasons that follow. First, as discussed in section III.F of this document, DOE has tentatively determined that it lacks clear and convincing evidence that amended standards for CWAFs would be economically justified. As explained in that section, DOE has tentatively determined that the market for CWAFs has not yet fully responded to the pending 2023 energy conservation standards. This uncertainty extends to the energy characteristics of the market against which any alternate equipment class scheme would be compared. However, more importantly, DOE has determined that it lacks statutory authority to make the changes NEEA requests, as explained subsequently.

As a general rule, for covered consumer products, EPCA requires that a rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a different level of energy use or efficiency (either higher or lower) than that which applies (or would apply) to any group of covered products that have the same function or intended use, if the Secretary determines that covered products within such group either: (1) Consume a different kind of energy; or (2) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a different standard from that which applies (or will apply) to other products within such type (or class). (42 U.S.C. 6295(q)(1)) These provisions also apply to covered commercial and industrial equipment—other than ASHRAE equipment—through the statutory crosswalk provision at 42 U.S.C. 6316(a). In contrast, ASHRAE equipment, which includes CWAFs, has its own separate statutory scheme under EPCA, as described in section II.A of this document. For ASHRAE equipment, there is neither a companion provision nor crosswalk to 42 U.S.C. 6295(q)(1). Therefore, EPCA in essence requires DOE to establish energy conservation standards for CWAFs at the minimum efficiencies set forth in ASHRAE Standard 90.1 (unless DOE has clear and convincing evidence to adopt more-stringent standards), consistent with the equipment class structure in ASHRAE Standard 90.1. (*See* 42 U.S.C. 6313(a)(6)(A)) Consequently, DOE is not considering amendments to the equipment classes for CWAFs.

2. Definition and Coverage

EPCA defines a ''warm air furnace'' as a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces. (42 U.S.C. 6311(11)(A)) A ''commercial warm air furnace'' is further defined in DOE's regulations as a warm air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 British thermal units (''Btu'') per hour or more. 10 CFR 431.72. In the May 2020 RFI, DOE requested comment on whether the Department's regulatory definition for ''commercial warm air furnace,'' or related definitions, require any revisions, and if so, how those definitions should be revised. 85 FR 27941, 27945 (May 12, 2020).

Trane stated that it does not see the need for any changes to the definition of CWAF. (Trane, No. 16 at p. 3) Conversely, NEEA recommended that DOE should consider updating its definition for CWAF to account for different operating characteristics, different functions, or use cases in order to reduce uncertainty as to the applicable standard and test procedure and to provide more comprehensive coverage. (NEEA, No. 24 at p. 5)

In response, DOE reviewed the definition of ''commercial warm air furnace.'' The codified definition of ''warm air furnace'' at 10 CFR 431.72 matches EPCA's definition of a ''warm air furnace'' at 42 U.S.C 6311(11)(A). A CWAF is defined at 10 CFR 431.72 as a warm air furnace with the additional requirements that it be industrial equipment having a capacity (rated maximum input) of 225,000 Btu per hour (''Btu/h'') or more, which picks up where the upper limit of consumer furnace input capacity for consumer furnaces leaves off (*see* 42 U.S.C. 6291(23)(D)). After careful review, DOE considers this definition to be appropriately aligned with the definition in EPCA and to adequately cover commercial furnaces. (As discussed later in this section, DOE identified a small number of furnace models that are not covered by either the consumer furnace definition or the CWAF definition, but tentatively concludes that amending the CWAF definition in the CFR to cover those models is unnecessary because it would be duplicative, and would provide little opportunity for energy savings.) Therefore, DOE has tentatively determined that no amendments to the regulatory definitions for ''commercial warm air furnace'' or ''warm air furnace'' are needed.

AHRI and Carrier suggested modifying the definition of ''commercial warm air furnace'' to introduce an upper limit to the input capacity of covered CWAFs. (AHRI, No. 14 at p. 4; Carrier, No. 13 at p. 3) DOE notes that the topic of an upper capacity limit was discussed previously in a NOPR published in the **Federal Register** on February 4, 2015 (''February 2015 NOPR''). 80 FR 6182, 6192–6193. In the February 2015 NOPR, DOE noted that neither EPCA nor DOE's existing regulations for CWAFs specify an upper limit to the input rating of covered equipment, and that establishing an upper limit would potentially remove coverage of models that would have otherwise been covered by DOE regulations. Because of this, DOE did

not propose an upper limit on the input capacity of covered CWAF. *Id.* DOE tentatively maintains its position taken in the February 2015 NOPR and, therefore, is not proposing an upper limit on the input capacity of covered CWAFs.

Carrier stated that there are gaps in coverage between the consumer furnace and CWAF definitions, so the commenter recommended that the CWAF definition should be modified to address those gaps. Specifically, Carrier stated that three-phase furnaces with input ratings less than 225,000 Btu/h, as well as single-phase furnaces with input ratings less than 225,000 Btu/h that are installed within the same cabinet as an air conditioner with a cooling capacity greater than 65,000 Btu/h, are not covered by either definition. Carrier recommended that the CWAF definition be expanded to classify furnaces that are currently unregulated as CWAFs, with the option of rating either with annual fuel utilization efficiency (''AFUE'') or TE, as allowed in ASHRAE Standard 90.1. (Carrier, No. 13 at pp. 2–3)

As previously stated, DOE defines a ''commercial warm air furnace'' as a warm air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 Btu per hour or more. 10 CFR 431.72. DOE defines a consumer ''furnace'' as a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which: (1) Is designed to be the principal heating source for the living space of a residence; (2) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour; (3) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low-pressure steam or hot water boiler; and (4) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low-pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces. 10 CFR 430.2. This potential gap in coverage was addressed in the February 2015 NOPR, in which DOE did not propose to extend CWAF coverage to three-phase, less than 225,000 Btu/h equipment. 80 FR 6182, 6192 (Feb. 4, 2015). In the February 2015 NOPR, DOE agreed with commenters that there is limited potential for energy savings from coverage of such units due to the fact that equipment with these characteristics are already meeting efficiency levels specified by ASHRAE Standard 90.1. In its review of the market at the time, DOE did not identify any equipment with an efficiency level below that specified in ASHRAE Standard 90.1 levels for analogous equipment, and thus, tentatively determined that a separate equipment class and standard for this equipment may be unnecessarily duplicative and provide little opportunity for energy savings. *Id.*

For this notice, DOE reexamined this matter, and the agency once again reviewed the market and found a small number of gas-fired furnace models that are three-phase with an input rating less than 225,000 Btu/h. The Department found that for all of these models, manufacturers provide efficiency ratings, and the models meet or exceed the current gas-fired CWAF standards. Further, a majority of models identified also meet or exceed the 2023 gas-fired CWAF standards. In addition, DOE notes that these individual models make up a very small portion (roughly 2 percent) of the total CWAF market. Therefore, DOE tentatively maintains its previous conclusion that there is limited potential for energy savings from extending the ''commercial warm air furnace'' definition to cover this equipment due to the small size of the market and the fact that these products appear to meet or exceed the minimum energy conservation standards despite falling in a coverage gap. DOE also was unable to identify any models currently on the market with input ratings less than 225,000 Btu/h and that are contained within the same cabinet as a central air conditioner with a cooling capacity greater than 65,000 Btu/h, indicating that there would likely be no potential for additional energy savings from covering this equipment. Therefore, DOE has tentatively determined that amending the CWAF definition to cover such equipment would provide little opportunity for energy savings and is not proposing to do so in this notice.

C. Test Procedures

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) As a general matter, manufacturers of covered ASHRAE equipment must use these test procedures to certify to DOE that their equipment complies with energy conservation standards and to quantify the efficiency of their equipment. (42 U.S.C. 6316(b); 42 U.S.C. 6296) DOE's current energy conservation standards for CWAFs are expressed in terms of a minimum thermal efficiency in percent. (*See* 10 CFR 431.77) The applicable test procedure for CWAFs is found at 10 CFR 431.76, ''Uniform Test Method for Measurement of Energy Efficiency of Commercial Warm Air Furnaces.''

In commenting on the May 2020 RFI, DOE received input from multiple stakeholders regarding DOE's CWAF test procedure, particularly as relates to jacket loss. (Joint Advocates, No. 23 at pp. 3–4; NEEA, No. 24 at pp. 6–7; CA IOUs, No. 20 at p. 4; AHRI, No. 14 at p. 4; Carrier, No. 13. at p. 5; Goodman, No. 17 at p. 2) DOE also received comments from stakeholders regarding DOE's CWAF test procedure relating to auxiliary electrical consumption. (Joint Advocates, No. 23 at pp. 2–3) However, on May 5, 2020, DOE published a test procedure RFI for CWAFs (''May 2020 CWAF TP RFI'') in the **Federal Register** to initiate its review of the CWAF test procedure. DOE notes that the May 2020 CWAF TP RFI specifically requested comment on jacket loss and auxiliary electrical consumption. 85 FR 26626, 26631, 26332 (May 5, 2020). DOE reasons that it is most appropriate to consider issues related to the CWAF test procedure as part of a separate, dedicated test procedure rulemaking for such equipment. Consequently, DOE will address comments received in response to both the May 2020 RFI and May 2020 CWAF TP RFI regarding these topics as part of the CWAF test procedure proceeding.

D. Market and Technology Assessment, and Engineering Analysis

In the May 2020 RFI, DOE requested comment on topics related to performing a market and technology assessment, screening analysis, and engineering analysis. 85 FR 27941, 27945–27950 (May 12, 2020). More specifically, DOE requested comment on: (1) Technology options that should be considered in a potential market and technology assessment; (2) the representative designs and characteristics of models that would be expected to be on the market after the 2023 compliance date; (3) the screening criteria used to determine whether technologies are included in the engineering analysis; (4) baseline efficiency levels; (5) max-tech efficiency levels; (6) manufacturer production costs; and (7) manufacturer selling prices. *Id.*

Regarding CWAF technology options, Carrier and Lennox stated that the technology options considered in the analysis for the January 2016 final rule and presented in the May 2020 RFI for CWAFs are appropriate. (Lennox, No. 15 at p. 5; Carrier, No. 13 at p. 4) Trane

asserted that pre-mixed burners [9] do not provide benefits, that burner de-rating [10] may result in oversizing burners for CWAF applications, and that concentric venting may not be appliable to rooftop applications due to the length of the vent. (Trane, No. 16 at p. 4) NEEA and the Joint Advocates suggested that DOE should consider additional technology options for CWAFs that are were not listed in the May 2020 RFI. (NEEA, No. 24 at p. 6; Joint Advocates, No. 23 at p. 4) More specifically, NEEA recommended that increased jacket insulation, decreased casing leakage, heat recovery equipment, high-efficiency fans, variable-speed motors, low-leak dampers, modulating heat or cooling, and advanced controls such as demand control ventilation should be considered, and the Joint Advocates recommended DOE should consider insulation improvements and any technology options that may reduce the auxiliary electrical consumption of CWAFs. *Id.* Harkins recommended DOE consider all technologies that increase efficiency. (Harkins, No. 25 at p. 1)

Regarding the designs and characteristics of the CWAF markets after the 2023 compliance date of the current set of standards, DOE received comments from multiple stakeholders asserting that the current CWAF markets are not representative of the models that would be expected to be on the market after the 2023 standards take effect. (Carrier, No. 13 at pp. 7–8; Trane, No. 16 at p. 7) AHRI commented that it is impossible to forecast the market impact of the 2023 standards on CWAFs. (AHRI, No. 14 at p. 3) Carrier asserted that manufacturers will be working to optimize efficiencies, lower cost, and implement new entry-level products, and that the upcoming 2023 standards are causing manufacturers to further optimize their higher-efficiency equipment. (Carrier, No. 13 at pp. 7–8) According to Trane, the furnaces currently on the market will need to be redesigned to meet the 2023 standards. (Trane, No. 16 at p. 7) In contrast, Lennox commented that the CWAF models on the market are representative of designs and characteristics of models that would be expected to be on the market after the 2023 compliance date, although Lennox acknowledged that the market impacts of the 2023 standards are unknown because of uncertainties in assessing the evolving market, including uncertainties in future shipments, the economic impact on manufacturers and consumers, and the total projected energy savings. (Lennox, No. 15 at pp. 5–6)

In response to these comments, DOE explains that it conducted a preliminary market assessment based on the current CWAF market. DOE found that the characteristics of the current CWAF market are largely the same as when DOE assessed the CWAF market in the context of the proceeding culminating in the January 2016 final rule. However, unlike the market at that time, there are currently no condensing CWAFs (which typically have a TE of 90 percent or greater) or gas-fired CWAFs with a TE of 82 percent certified to DOE through the CCMS.[11] Furthermore, DOE's review of the market indicates that the available technologies used to achieve the 2023 baseline efficiency level, as compared to the technologies that could be used to achieve higher levels of thermal efficiency (*i.e.,* condensing technology) under the existing test procedure, have not changed significantly. Although NEEA and the Joint Advocates suggest analyzing numerous technologies (*e.g.,* increased jacket insulation, decreased jacket leakage, heat recovery equipment, high-efficiency fans, variable-speed motors, low-leak dampers, modulating heat or cooling, advanced controls such as demand control ventilation, and any technology options that may reduce the auxiliary electrical consumption of CWAFs), none of the technologies identified by these commenters would improve thermal efficiency as it is measured today. More specifically, these technology options are not currently incorporated into the DOE CWAF test procedure, or the measurement of CWAF performance, because the current DOE test method does not require measurement of jacket losses and accounts for operation only when operating at the maximum input rating at steady state. DOE initially decided to exclude jacket loss from the calculation of TE in a NOPR published on December 13, 1999. 64 FR 69598, 69601 (December 1999 NOPR).[12] Therefore, because the technologies would not impact the regulatory metric (TE), it would not be appropriate to consider them as potential technologies for improving CWAF efficiency at this time.

Regarding the screening criteria and analysis, AHRI and Carrier supported screening out CWAF technology options along the lines presented in the May 2020 RFI (which were the same technology options screened out in the January 2016 final rule). (AHRI, No. 14 at p. 5; Carrier, No. 13 at p. 7) Carrier also recommended that an additional screening criterion be added to address the cost of the technology option. (Carrier, No. 13 at pp. 6–7)

In response to Carrier's suggestion that DOE include an additional screening criterion to address cost of the technology option, DOE notes that the current screening criteria are included in 10 CFR part 430, subpart C, Appendix A, ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment.'' *See* sections 6(b)(3) and 7(b). These criteria do not include an evaluation of the cost of a technology option, which is instead evaluated in the engineering analysis and subsequently in the consumer economic analyses. Thus, DOE asserts that it would be inappropriate to exclude a technology option from consideration based solely on incremental technology cost increases, because changes in the cost of equipment are more appropriately considered as part of the consumer economic analyses.

Regarding baseline efficiency levels, multiple commenters stated that the 2023 CWAF standards would be the correct baseline efficiency to be used in a future DOE analysis. (AHRI, No. 14 at p. 6; Lennox, No. 15 at p. 6; Goodman, No. 17 at p. 3; Carrier, No. 13 at pp. 8–9)

Regarding the max-tech levels, multiple stakeholders asserted that the 2023 CWAF standards are the highest possible for non-condensing equipment and recommended that a higher standard requiring condensing operation should not be considered. (AHRI, No. 14 at p. 7; Trane, No. 16 at pp. 4, 7; Carrier, No. 13 at pp. 4–5, 10; Goodman, No. 17 at p. 3; Spire, No. 21 at p. 2; Lennox, No. 15 at p. 5) Carrier, Trane, and Lennox cautioned that increasing the baseline efficiency past

[9] Pre-mixed burners mix the primary air and the fuel prior to combustion, which reduces or eliminates the need for secondary air and results in more complete combustion.

[10] ''Burner de-rating'' means decreasing the burner firing rate to increase the ratio of heat transfer area to fuel input.

[11] DOE's Compliance Certification Database for CWAFs is available at: *www.regulations.doe.gov/ccms* (Last accessed Jan. 12, 2022).

[12] In the December 1999 NOPR, DOE did not include jacket loss in the TE calculation, having determined that, consistent with adopting industry test standards referenced in ASHRAE/IES Standard 90.1–1989, the statute's intent was to assign the same meaning to the term ''thermal efficiency'' as its definition in the corresponding referenced standards (*i.e.,* 100 percent minus percent flue loss). 64 FR 69598, 69601 (Dec. 13, 1999). DOE's determination in the December 1999 NOPR was informed by a public workshop held on April 14 and 15, 1998, and what DOE understood to be the consensus of the participants that TE should not include jacket loss, because ANSI Z21.47 defined TE without jacket loss. *Id.*

the 2023 standards by utilizing improvements in these technology options would result in condensing operation, thereby imposing additional burden on manufacturers. (Lennox, No. 15 at p. 5; Carrier, No. 13 at pp. 4–5; Trane, No. 16 at p. 4) Commenters citied technological problems associated with implementing CWAF standards at a level that would require condensing operation, including issues related to condensate disposal. Such issues included high costs, as well as practicality and the ability to dispose of condensate properly. *Id.* In contrast, the Joint Advocates and NEEA recommended that DOE should consider a condensing standard because of the potential for energy savings. (Joint Advocates, No. 23 at p. 4, NEEA, No. 24 at p. 7). DOE discusses the merits of establishing a condensing standard in section III.F of this document.

Regarding manufacturer production costs, manufacturer selling price, and how manufacturers would incorporate technology options to increase energy efficiency above the baseline, Carrier and Trane stated that the technology options listed in the May 2020 RFI (which were the options considered in the January 2016 final rule) are used to increase efficiency. (Carrier, No. 13 at p. 11; Trane, No. 16 at p. 8) AHRI stated that generally, the engineering analysis in the January 2016 final rule was accurate at the time. (AHRI, No. 14 at p. 7)

DOE considered how the manufacturer production cost and selling price of CWAFs have changed since the January 2016 final rule. As discussed previously, the designs and technologies used in equipment on the market are generally the same as those on the market at the time of the January 2016 final rule. DOE, therefore, has tentatively determined that relevant factors such as manufacturing processes, materials, and components are the same as or similar to those in use in January 2016. However, a review of the producer price index (PPI) [13] for furnaces found that it has increased significantly, and DOE has tentatively determined such an increase would apply to technologies used to improve CWAF efficiency as well.[14] These factors indicate that to the extent that the cost of CWAFs (and in particular the cost of improving CWAF efficiency) has changed since the engineering analysis was conducted for the January 2016 final rule, it has increased. Thus, DOE does not expect that conducting additional engineering analysis would provide clear and convincing evidence that would lead DOE to differ in its conclusions from the January 2016 final rule regarding economic justification of adopting levels more stringent than those adopted in the January 2016 final rule. DOE notes that other factors also contribute to the economic justification of potential standards, and additional discussion of those factors is included in section III.E of this document.

In summary, DOE considered the preliminary market assessment conducted for this rulemaking, as well as comments received that are relevant to the market and technology assessment, screening, and engineering analysis. For the reasons discussed previously, DOE has tentatively determined that the current CWAF market conditions (including issues in meeting more-stringent standards that would require use of condensing technology) are largely the same as those analyzed in the January 2016 final rule.

E. Economic and Energy Analyses

In the May 2020 RFI, DOE requested comment on a number of issues related to mark-ups and distribution channels, the energy use analysis, the life-cycle cost analysis, repair and maintenance costs, the shipments analysis, and the national impact analysis. 85 FR 27941, 27950–27953 (May 12, 2020). DOE specifically requested information to describe how equipment moves from the manufacturer to the customer, the relative sales volume through each channel, data to estimate the mark-ups at each segment in the distribution channel, the energy use methodology, inputs to the life-cycle-cost model such as equipment lifetime, installation, repair, and maintenance costs, energy prices, the no-new-standards efficiency distribution, historical shipments, and future efficiency trends. *Id.*

Regarding mark-ups and distribution channels, DOE received comments from AHRI and Carrier. AHRI commented that it is researching distribution channels; however, it had no feedback at the time the comment was provided. AHRI disagreed with DOE's use of incremental mark-ups and recommended that DOE revert to using the baseline mark-up for both baseline and incremental costs. (AHRI, No. 14 at p. 8) Carrier commented that it has not observed large shifts in the distribution channels, as the industry remains mature in the United States. (Carrier, No. 13 at p. 12)

In response, DOE notes that in the January 2016 final rule, the efficiency levels above the amended standard level were not economically justified. As DOE has received no feedback to indicate the distribution channels have changed and no feedback that markups have decreased (which would reduce the incremental costs of higher-efficiency products), DOE does not expect the outcome to change from the January 2016 final rule.

Regarding the energy use analysis, DOE received comments from the CA IOUs, AHRI, Carrier, Trane, Goodman, and NEEA. The CA IOUs commented that DOE should update the weather data used in the energy use analysis to reflect the temperatures recorded in the United States in recent years. Along these lines, the CA IOUs recommended that DOE should consider the methodology used by the California Energy Commission to update weather files to analyze Title 24 of the Building Energy Efficiency Standard.[15] (CA IOUs, No. 20 at p. 5) AHRI expressed concern that use of the 2003 Commercial Building Energy Consumption Survey (CBECS 2003) and estimating the energy consumption using an equivalent full-load hour approach does not accurately reflect equipment that is optimized for part-load performance (AHRI, No. 14 at p. 9). Trane commented that a more up-to-date building inventory analysis should be used to measure CWAF energy use. (Trane, No. 16 at p. 9) Carrier and Goodman commented that the previous analysis, from the January 2016 final rule, was based on perimeter conditions (*i.e.,* outdoor air conditions). (Carrier, No. 13 at p. 14; Goodman, No. 17 at p. 4) Carrier commented that CWAFs do not run very often due to the internal loads on the building, and Goodman commented that CWAFs normally only provide morning warm up and night set back heating. (Carrier, No. 13 at p. 14; Goodman, No. 17 at p. 4) NEEA recommended that DOE should account for part-load operation, staged

[13] The U.S. Bureau of Labor Statistics publishes PPI data. PPI measures the average change over time in the selling prices received by domestic producers for their output. The prices included in the PPI are from the first commercial transaction for many products and some services. For more information see: *www.bls.gov/ppi/.*

[14] Specifically, DOE reviewed the series ID PCU 333415333415C, which provides PPI information for warm air furnaces, including duct furnaces and humidifiers, and electric comfort heating. The PPI index as of August 2021 (*i.e.,* the last month for which data is available that is not subject to revision by BLS) was 186.7 as compared to 142.8 in January 2016, an increase of over 30 percent. Although recent price increases could be temporary, reviewing the 10-year trend indicates that an increase of approximately 19 percent would be expected.

[15] For analysis of Title 24–2022, the California Energy Commission used data from DOE's National Renewable Energy Laboratory's National Solar Radiation Database to include weather data collected between 1998–2017 (Available at: *https://nsrdb.nrel.gov/*).

systems, and varying percentages of outside air. (NEEA, No. 24 at p. 9)

In response, DOE notes that while the previous analysis relied on CBECS 2003, the CWAF energy consumption was adjusted for projected decreases in heating degree days between CBECS 2003 and the compliance year.[16] Furthermore, DOE notes that the main driver of CWAF energy consumption in the January 2016 final rule is the building heating load, which is based on the reported space heating energy consumption of buildings with a furnace in CBECS 2003.[17] The previous analysis was not based on full-load hours or perimeter conditions. Finally, as stated in section III.D of this document, the Department's research suggests that the characteristics of the CWAF market are largely the same as when analyzed for the January 2016 final rule and that none of the technology options presented would improve thermal efficiency as measured in the current test procedure. Given the similar market, DOE does not anticipate the energy use to have changed sufficiently to drive a different outcome, as compared to that in the January 2016 final rule.

Regarding equipment lifetime, DOE received comments from AHRI, Carrier, and Trane. AHRI disagreed with the Weibull approach to lifetimes and stated its understanding that service lifetimes are in the range of 12 to 15 years. (AHRI, No. 14 at p. 10) In contrast, Trane stated that the Weibull approach is appropriate and that equipment lifetime should be the same as in the January 2016 final rule. (Trane, No. 16 at p. 10) Carrier likewise stated that the lifetimes determined by DOE's proposed approach seem reasonable. (Carrier, No. 13 at p. 14) AHRI and Carrier both stated that location is an important determinant of lifetime. (AHRI, No. 14 at p. 10; Carrier, No. 13 at p. 14)

In response, DOE notes that the CWAF lifetime was developed based on the lifetime model for ACUACs as nearly all CWAFs are packaged with an ACUAC. The ACUAC lifetime model was calibrated based on historical shipments data.[18] Given the similar market characteristics to the January 2016 final rule, DOE does not expect that equipment lifetime has changed significantly, and, therefore, it would not warrant changes to the findings regarding CWAF lifetimes presented in the January 2016 final rule.

Regarding repair and maintenance costs, DOE received comments from AHRI, Trane, Carrier, and Goodman. AHRI stated that the costs used in previous analyses do not reflect actual repair and maintenance costs and that typical maintenance costs are double the values reported in RS Means.[19] (AHRI, No. 14 at p. 10) Trane stated that the methodology used in the January 2016 final rule for repair and maintenance costs is adequate, although an update to a more recent version of RS Means is appropriate. (Trane, No. 16 at p. 10) Carrier stated that the higher efficiency standards in 2023 will include more costly components, and, therefore, an increased cost of equipment which could lead end users to opt for repair instead of replacement. As the higher efficiency levels require more advanced components, it will increase overall cost. Carrier also commented that the impact of A2L refrigerants and low global warming potential (GWP) regulations on repair and maintenance costs is still unknown; however, the commenter believes that equipment with A2L refrigerants will inherently have increased repair and maintenance costs due to additional safety components in the equipment. (Carrier, No. 13 at p. 16) Goodman stated that repair and maintenance costs will be higher for products using alternative refrigerants. In addition, Goodman commented that DOE's modeling on repair and maintenance costs should be appropriately revised to account for the baseline technologies that will be required to meet the amended standards beginning on January 1, 2023. (Goodman, No. 17 at p. 4)

In response, DOE notes that the increased repair and maintenance costs presented in the January 2016 analysis for higher-efficiency products reflects the increased cost of more advanced components. Moreover, the Department has tentatively concluded that an update to the most current RS Means would not reduce the incremental difference in repair and maintenance costs by efficiency level, and, therefore, it would not be expected to change the outcome as compared to the January 2016 final rule.

Regarding energy prices, DOE received comments from Spire and APGA. Spire commented that the gas prices used in developing the January 2016 final rule for amended CWAF energy conservation standards were overstated and that gas prices have decreased since 2016. Spire also asserted that DOE did not properly measure the marginal gas rates when calculating the energy savings for CWAFs in the January 2016 final rule. (Spire, No. 21 at pp. 3–6) APGA commented that the natural gas supply has increased, allowing for stable or declining prices in some markets. APGA also stated that DOE should be utilizing marginal consumption-based prices, as they more accurately determine the impact of efficiency savings for an end-user. (APGA, No. 19 at p. 2)

In response, DOE notes that the majority of CWAFs use natural gas. The Department uses the *Annual Energy Outlook* (''*AEO*'') to project future natural gas prices. In the January 2016 final rule, DOE used the natural gas price projections from *AEO 2015*.[20] The most current *AEO* is *AEO 2021*,[21] and the natural gas price projections of *AEO 2021* are indeed lower than for *AEO 2015*, in real dollars. With similar CWAF products and lower natural gas price projections, DOE does not expect the annual energy costs to rise compared to the January 2016 final rule.

Regarding the no-new-standards efficiency distribution and future efficiency trends, DOE received comments from Carrier and Trane. Carrier commented that it expects most shipments in 2023 to be near the standards level. (Carrier, No. 13 at p. 15) Trane asserted that the majority of shipments (60–80 percent) will be at the minimum standard level in 2023. (Trane, No. 16 at p. 10) Carrier and Trane further commented that they expect the efficiency trends to remain close to the Federal standard level after 2023. (Carrier, No. 13 at p. 17; Trane, No. 16 at p. 11)

Regarding historical shipments, Carrier, Goodman, and Trane commented that historical shipments would not accurately portray the market for CWAFs, as the impacts of COVID–19 on the heating, ventilation, and air-conditioning (''HVAC'') industry are not yet known. (Carrier, No. 13 at p. 16; Goodman, No. 17 at p. 4; Trane, No. 16 at p. 11) Goodman argued that the CWAF market and shipments will be negatively impacted by future electrification trends and regulations. (Goodman, No. 17 at p. 4)

[16] Chapter 7 of the January 2016 Final Rule Technical Support Document (Available at: *www.regulations.gov/document/EERE-2013-BT-STD-0021-0050*).

[17] *Id.*

[18] *See* Appendix 8F of the January 2016 final rule technical support document (Available at: *www.regulations.gov/document/EERE-2013-BT-STD-0021-0050*).

[19] RS Means provides construction cost information that DOE uses to estimate installation, maintenance, and repair costs of CWAFs (Available at: *https://www.rsmeansonline.com/*) (Last accessed April 10, 2013).

[20] Available at: *https://www.eia.gov/outlooks/aeo/tables_side.php.*

[21] Available at: *https://www.eia.gov/outlooks/archive/aeo21/.*

In response, DOE did not receive any historical shipments data in response to the May 2020 RFI. However, the CWAF market is mature, and in the January 2016 final rule, shipments were projected to grow approximately 1 percent per year, with the large majority of shipments going to the replacement market.[22] The no-new-standards distribution projected that in 2023, nearly all shipments would be at or near the baseline level analyzed in the January 2016 final rule.[23] As to comments on impacts related to the COVID–19 pandemic, it is too soon to tell what long-term effects that event may have on CWAF shipment trends, if any. Likewise, DOE cannot adequately account for future statutory or regulatory efforts to promote electrification until they are finalized. At this point, DOE finds these factors to be too speculative to account for in the present analysis for CWAFs. Accordingly, given the mature market, the expectation that most shipments will be at the baseline level in 2023, and no anticipated increase in equipment lifetime, DOE does not expect the shipments estimates and no-new-standards distributions from the January 2016 final rule to change significantly for CWAFs.

DOE also received comments from Policy Integrity regarding the social cost of carbon used in the emissions monetization analysis. Policy Integrity urged DOE to account for the benefits of greenhouse gas emissions reductions from the use of higher-efficiency equipment using the global estimate of the social cost of greenhouse gases, and the commenter added that the values developed by the interagency working group for the social cost of greenhouse gases are the best available. (Policy Integrity, No. 7, at pp. 2–3, 5)

On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for a stay pending appeal of the February 11, 2022, preliminary injunction in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law. However, in this NOPD, the Department will not be monetizing the cost of greenhouse gas emissions, as DOE is not proposing any amended standards. Should DOE follow this NOPD with a final determination that amended standards for CWAFs would not meet the applicable statutory criteria, no change in greenhouse gas emissions would be expected to result from this proceeding.

Finally, DOE received a comment from Lennox asserting that DOE lacks clear and convincing evidence to support a finding that implementing amended standards above the levels scheduled for compliance in 2023 would be economically justified. (Lennox, No. 15 at p. 8)

DOE considered the comments provided on the economic and energy use analyses and reviewed the inputs used in the life-cycle-cost, shipments, and national impact analysis from the January 2016 final rule. As discussed above, DOE has tentatively determined that there have not been any significant changes to the mark-ups and distribution channels, energy use, equipment lifetimes, repair and maintenance costs, energy prices, the no-new-standards efficiency distributions, and shipments that would lead to higher life-cycle-cost savings, increased national energy savings, and increased net present value of consumer benefits from the analysis that was conducted for the January 2016 final rule. Therefore, as discussed in section III.F of this document, DOE has tentatively determined that the analyses conducted for the January 2016 final rule are appropriate for the present determination.

F. Proposed Determination

After carefully considering the comments on the May 2020 RFI and the available data and information, DOE has tentatively determined that the energy conservation standards for CWAFs do not need to be amended, for the reasons explained in the paragraphs immediately following. DOE will consider all comments received on this proposed determination prior to issuing the next document in this rulemaking proceeding.

As previously discussed, EPCA specifies that for any commercial and industrial equipment addressed under 42 U.S.C. 6313(a)(6)(A)(i), including CWAFs, DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1 only if ''clear and convincing evidence'' shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) The ''clear and convincing'' evidentiary threshold applies both when DOE is triggered by ASHRAE action and when DOE conducts a six-year-lookback rulemaking, with the latter being the basis for the current proceeding. DOE addresses each of these statutory criteria in turn.

1. Significant Conservation of Energy

EPCA mandates that DOE consider whether amended energy conservation standards for CWAFs would result in significant additional conservation of energy. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II))

DOE acknowledges that more-stringent standards for CWAFs have the potential to result in significant additional conservation of energy. In the January 2016 final rule, DOE estimated that establishing a condensing standard (*i.e.,* 92-percent thermal efficiency) for gas-fired and oil-fired CWAFs would result in 2.1 quads of primary energy savings compared to a no-new-standards case over the lifetime of the CWAF (2019 through 2048). 81 FR 2420, 2508 (Jan. 15, 2016). However, as discussed in section III.F.3 of this document, DOE has preliminarily determined that it lacks clear and convincing evidence to show that the potential amended standard levels considered would be economically justified.

2. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for CWAFs would be technologically feasible. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) As previously discussed, establishing more-stringent standards for CWAFs would likely require condensing operation,[24] and

[22] The January 15, 2016 direct final rule relied on the December 14, 2015 National Impact Analysis Spreadsheet (Available at: *www.regulations.gov/document/EERE-2013-BT-STD-0021-0052*).

[23] *Id.*

[24] Although DOE analyzed 82-percent thermal efficiency for gas-fired CWAFs in the January 2016 final rule, currently there are no non-condensing models available on the market with an efficiency exceeding the minimum standard of 81 percent. In addition, discussion during the negotiations that led to the January 2016 final rule indicated that it is not clear that CWAFs operating at 82-percent efficiency are always non-condensing.

DOE previously analyzed levels requiring condensing operation (*i.e.,* 92-percent thermal efficiency) for the January 2016 final rule. 81 FR 2420 (Jan. 15, 2016). In the analysis for the January 2016 final rule, DOE identified a small number of condensing gas-fired CWAF models (four models at 90-percent thermal efficiency and four models at 92-percent thermal efficiency) and one condensing oil-fired CWAF model,[25] indicating that the market for condensing CWAFs is still very small, and DOE's subsequent review suggests that it is now potentially smaller than it was at the time of the analysis for the January 2016 final rule. Although there is some uncertainty in how the market will respond once compliance is required with the 2023 energy conservation standards, DOE does not expect that the upcoming standards would spur significant development of condensing CWAFs, as there are certain technological and implementational challenges associated with use of condensing CWAFs, including condensate disposal and freezing in many commercial buildings/applications. In addition, DOE notes that the amended standards in the January 2016 final rule implemented a 1-percent increase in standard level for both gas-fired and oil-fired CWAFs, which can be achieved without use of condensing technology, and are levels at which models currently exist using non-condensing technology. However, DOE is not aware of any models on the market currently with an efficiency above the amended standards from the January 2016 final rule and that are non-condensing. Additionally, there are currently no condensing CWAFs certified to DOE through the compliance certification management system at this time.[26]

3. Economic Justification

In the January 2016 final rule, DOE concluded that energy conservation standards at levels requiring condensing operation would not be economically justified, due to the economic burden on most consumers, the negative NPV of consumer benefits using a 7-percent discount rate, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. *Id.* at 81 FR 2522 (Jan. 15, 2016). In examining the current market, DOE has found that market conditions are largely the same as at the time of the January 2016 final rule.

Given the similar market size, DOE has tentatively determined that the manufacturing costs and manufacturer impacts would not be significantly different now than projected in the January 2016 final rule. In addition, DOE has tentatively determined that installation costs, which for condensing levels included costs for condensate removal, would be similar to those estimated in the previous analysis, and that energy cost savings would not increase as compared to the previous analysis, as updated *AEO* projections of energy prices show declining prices. For these reasons, DOE has tentatively determined that any analysis of a condensing level for CWAFs would not result in a significantly different economic outcome from the January 2016 final rule, and that as such, it lacks clear and convincing evidence that more-stringent standard levels for CWAFs would be economically justified.

DOE notes that the tentative determination, that it lacks clear and convincing evidence, is specific to this rulemaking. DOE will evaluate its ability to reach clear and convincing evidence on a case-by-case basis.

DOE requests comment on its proposed determination that the existing energy conservation standards for CWAFs do not need to be amended.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

OMB has determined that this proposed determination does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not subject to review under E.O. 12866 by OIRA at OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*energy.gov/gc/office-general-counsel*).

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The equipment covered by this rule are classified under North American Industry Classification

[25] See Chapter 3 of the Technical Support Document for the January 2016 final rule (Available at: *https://www.regulations.gov/document/EERE-2013-BT-STD-0021-0050*).

[26] *See* DOE's Compliance Certification Database for CWAFs (Available at: *www.regulations.doe.gov/ccms*) (Last accessed Jan. 12, 2022).

System (''NAICS'') code 333415,[27] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE has conducted a focused inquiry into small business manufacturers of the equipment covered by this rulemaking. The Department used available public information to identify potential small manufacturers. DOE accessed its Compliance Certification Database (''CCD'')[28] to identify a list of companies that manufacture the CWAFs covered by this proposal. Using these sources, DOE identified a total of eight distinct manufacturers of CWAFs. DOE screened out companies that do not meet the definition of a ''small business'' or are foreign-owned and operated. Of these manufacturers, DOE identified one small, domestic manufacturer as a potential small business.

DOE reviewed this proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is not proposing to amend standards for CWAFs, the determination, if adopted, would not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This proposed determination, which proposes to determine that amended energy conservation standards for CWAFs are unneeded under the applicable statutory criteria, would impose no new informational or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed action in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE anticipates that this action qualifies for categorical exclusion A4 because it is an interpretation or ruling in regard to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final action.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of this proposed determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) As this proposed determination would not amend the standards for CWAFs, there is no impact on the policymaking discretion of the States. Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant

[27] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (Last accessed March 4, 2022).

[28] U.S. Department of Energy Compliance Certification Management System (Available at: *www.regulations.doe.gov/ccms*).

intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this proposed determination according to UMRA and its statement of policy and determined that the proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, ''Improving Implementation of the Information Quality Act'' (April 24, 2019), DOE published updated guidelines which are available at: *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IAQ%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this NOPD under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor Executive Order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed determination, which does not propose to amend energy conservation standards for CWAFs, is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Therefore, it is not a significant energy action, and accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared Peer Review report pertaining to the energy conservation standards rulemaking analyses.[29] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences (NAS) to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting December 2021 NAS report.[30]

V. Public Participation

A. Participation in the Public Meeting Webinar

The time and date of the webinar 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=49.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this NOPD, or who

[29] ''Energy Conservation Standards Rulemaking Peer Review Report.'' 2007 (Available at: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0*).

[30] The December 2021 NAS report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

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. Such persons may submit requests to speak by email to the Appliance and Equipment Standards Program, *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this proposed determination and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

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.

C. Conduct of the Public Meeting Webinar

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 proposed determination.

The webinar will be conducted in an informal, conference style. DOE will present a summary of the proposed determination, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed determination. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, 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 and comment on statements made by others. 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 proposed determination. The official conducting the webinar meeting 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 public meeting webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this NOPD. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed determination no later than the date provided in the **DATES** section at the beginning of this proposed determination. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. With this instruction followed, the cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of proposed determination and request for comment.

Signing Authority

This document of the Department of Energy was signed on April 20, 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 April 21, 2022.

Treena V. Garrett,

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

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–STD–0014]

RIN 1904–AE68

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines

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

ACTION: Notification of availability of preliminary technical support document and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') announces the availability of the preliminary analysis it has conducted for purposes of evaluating the need for amended energy conservation standards for refrigerated bottled or canned beverage vending machines, which is set forth in the Department's preliminary technical support document (''TSD'') for this rulemaking. DOE will hold a public meeting via webinar to discuss and receive comment on its preliminary analysis. The meeting will cover the analytical framework, models, and tools used to evaluate potential standards for this equipment; the results of preliminary analyses performed by DOE; the potential energy conservation standard levels derived from these analyses (if DOE determines that proposed amendments are necessary); and other relevant issues. In addition, DOE encourages written comments on these subjects.

DATES: *Comments:* Written comments and information will be accepted on or before June 27, 2022.

Meeting: DOE will hold a webinar on Monday, May 23, 2022, from 1:00 p.m. to 4:00 p.m. See section IV, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under docket number EERE–2020–BT–STD–0014. Follow the instructions for submitting comments. Alternatively, comments may be submitted by email to: *BVM2020STD0014@ee.doe.gov.* Include docket number EERE–2020–BT–STD–0014 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including the Federal eRulemaking Portal, email, postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing corona virus 2019 (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

To inform interested parties and to facilitate this rulemaking process, DOE has prepared an agenda, a preliminary TSD, and briefing materials, which are available on the DOE website at: *www.regulations.gov/docket/EERE-2020-BT-STD-0014.*

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2020-BT-STD-0014.* The docket web page contains instructions on how to access all documents, including public comments in the docket. See section IV for information on how to submit comments through *www.regulations.gov.*

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

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

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I. Introduction

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include refrigerated bottled or canned beverage vending machine (''BVM'') equipment, the subject of this document. (42 U.S.C. 6295(v)) [3] EPCA directed DOE to prescribe energy conservation standards for beverage vending machines not later than 4 years after August 8, 2005. (42 U.S.C 6295(v)(1))

EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notification of determination that standards for the products do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Not later than 3 years after issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B))

Under EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE is publishing this preliminary analysis to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including beverage vending machines. As noted, EPCA requires that any new or amended energy conservation standard prescribed by the Secretary of Energy (''Secretary'') be designed to achieve the maximum improvement in energy efficiency (or water efficiency for certain products specified by EPCA) that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[4] For example, the United States has now rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing greenhouse gas (''GHG'') emissions in order to limit the rise in mean global temperature.[5] As such, energy savings that reduce GHG emission have taken on greater importance. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and full-fuel-cycle (''FFC'') effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors.

DOE has initially determined the energy savings estimated for the candidate standard levels considered in this preliminary analysis are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] Because Congress included beverage vending machines in Part A of Title III of EPCA, the consumer product provisions of Part A (rather than the industrial equipment provisions of Part A–1) apply to beverage vending machines. DOE placed the regulatory requirements specific to beverage vending machines in 10 CFR part 431, ''Energy Efficiency Program for Certain Commercial and Industrial Equipment'' as a matter of administrative convenience based on their type and will refer to beverage vending machines as ''equipment'' throughout this document because of their placement in 10 CFR part 431. Despite the placement of beverage vending machines in 10 CFR part 431, the relevant provisions of Title A of EPCA and 10 CFR part 430, which are applicable to all product types specified in Title A of EPCA, are applicable to beverage vending machines. *See* 74 FR 44914, 44917 (Aug. 31, 2009) and 80 FR 45758, 45759 (Jul. 31, 2015). The regulatory provisions of 10 CFR 430.33 and 430.34 and subparts D and E of 10 CFR part 430 are applicable to beverage vending machines.

[4] *See* 86 FR 70892, 70901 (Dec. 13, 2021).

[5] *See* Executive Order 14008, 86 FR 7619 (Feb. 1, 2021) (''Tackling the Climate Crisis at Home and Abroad'').

price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy Use Analysis.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
(1) Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
(2) Lifetime operating cost savings compared to increased cost for the product.	• Markups for Product Price Analysis. • Energy Use Analysis. • Life-Cycle Cost and Payback Period Analysis.
(3) Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
(4) Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
(5) Impact of any lessening of competition	• Manufacturer Impact Analysis.
(6) Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.
(7) Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits.[6] • Regulatory Impact Analysis.

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such a feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such a higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''),

[6] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law.

Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE reviewed the operating modes available for beverage vending machines and determined that this equipment does not have operating modes that meet the definition of standby mode or off mode, as established at 42 U.S.C. 6295(gg)(3). Specifically, beverage vending machines are typically always providing at least one main function—refrigeration. (42 U.S.C. 6295(gg)(1)(A)) DOE recognizes that in a unique equipment design, the low power mode includes disabling the refrigeration system, while for other equipment the low power mode controls only elevate the thermostat set point. Because low power modes still include some amount of refrigeration for most equipment for the vast majority of equipment, DOE believes that such a mode does not constitute a ''standby mode,'' as defined by EPCA, for beverage vending machines. Therefore, DOE believes that beverage vending machines do not operate under standby and off mode conditions as defined in EPCA, and that the energy use of a beverage vending machine would be captured in any standard established for active mode energy use. This preliminary analysis does not specifically address standby and off mode energy consumption for the equipment.

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE intends to use to evaluate standards for the equipment at issue and the results of preliminary analyses DOE performed for the equipment.

DOE is examining whether to amend the current standards pursuant to its obligations under EPCA. This notification announces the availability of the preliminary TSD, which details the preliminary analyses and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), applicable to BVM equipment under 10 CFR 431.4, DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking (after initiating the rulemaking process through an early assessment), the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking (''ANOPR''). DOE is opting to deviate from this step by publishing a preliminary analysis without a framework document. A framework document is intended to introduce and summarize the various analyses DOE conducts during the rulemaking process and requests initial feedback from interested parties. As discussed further in the following section, prior to this notification of the preliminary analysis, DOE issued an early assessment request for information (''RFI'') in which DOE identified and sought comment on the analyses conducted in support of the most recent energy conservation standards rulemaking (*i.e.,* 81 FR 1028; January 8, 2016 (the ''January 2016 Final Rule'')). 85 FR 35394 (June 10, 2020) (the ''June 2020 RFI''). DOE provided a 60-day comment period for the early assessment RFI. 85 FR 35394. As DOE is intending to rely on substantively the same analytical methods as in the most recent rulemaking, publication of a framework document would be largely redundant with the published early assessment RFI. As such, DOE is not publishing a framework document.

Section 6(d)(2) of appendix A specifies that the length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this preliminary analysis, DOE has opted to instead provide a 60-day comment period. As stated, DOE requested comment in the June 2020 RFI on the analysis conducted in support of the January 2016 Final Rule and provided stakeholders a 60-day comment period. For this preliminary analysis, DOE has relied on many of the same analytical assumptions and approaches as used in the previous rulemaking and has determined that a 60-day comment period in conjunction with the prior 60-day comment period provides sufficient time for interested parties to review the preliminary analysis and develop comments.

II. Background

A. Current Standards

In the January 2016 Final Rule, DOE prescribed the current energy conservation standards for BVM equipment manufactured on and after January 8, 2019. 81 FR 1028. These standards are set forth in DOE's regulations at 10 CFR 431.296 and are repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR REFRIGERATED BOTTLED OR CANNED BEVERAGE VENDING MACHINES

Equipment class	Maximum daily energy consumption kilowatt hours per day
Class A	0.052 × V + 2.43.
Class B	0.052 × V + 2.20.
Combination A	0.086 × V + 2.66.
Combination B	0.111 × V + 2.04.

B. Current Process

In the June 2020 RFI, DOE published a notification that it was initiating an early assessment review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for BVM equipment as well as a request for information. 85 FR 35394.

Comments received to date as part of the current process have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

III. Summary of the Analyses Performed by DOE

For the equipment covered in this preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine equipment price; (3) energy use; (4) life cycle cost (''LCC'') and payback period (''PBP''); and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at *www.regulations.gov/docket/EERE-2020-BT-STD-0014.*

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses that will be expanded if DOE determines that a NOPR is warranted to

propose amended energy conservation standards. These analyses include (1) the market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and the national impact analysis (''NIA''). In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR should one be issued.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including general characteristics of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment include the following: (1) A determination of the scope of the rulemaking and equipment classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of the equipment.

See chapter 3 of the preliminary TSD for further discussion of the market and technology assessment.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial equipment or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial equipment could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on equipment utility or equipment availability.* If it is determined that a technology would have a significant adverse impact on the utility of the equipment for significant subgroups of consumers or would result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

If DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

See chapter 4 of the preliminary TSD for further discussion of the screening analysis.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of BVM equipment. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of equipment cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each equipment class, DOE estimates the manufacturer production cost (''MPC'') for the baseline as well as higher efficiency levels. The output of the engineering analysis is a set of cost-efficiency ''curves'' that is used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

DOE converts the MPC to the manufacturer selling price (''MSP'') by applying a manufacturer markup. The MSP is the price the manufacturer charges its first customer, when selling into the equipment distribution channels. The manufacturer markup accounts for manufacturer non-production costs and profit margin. DOE developed the manufacturer markup by examining publicly available financial information for manufacturers of the covered equipment.

See chapter 5 of the preliminary TSD for additional detail on the engineering analysis. See chapter 12 of the preliminary TSD for additional detail on the manufacturer markup.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* wholesaler markups) in the distribution chain and sales taxes to convert MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the equipment to cover business costs and profit margin.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of equipment with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[7]

Chapter 6 of the preliminary TSD provides details on DOE's development of markups for BVM equipment.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of BVM equipment at different efficiencies in representative U.S. commercial buildings, and to assess the energy savings potential of increased BVM equipment efficiency. The energy use analysis estimates the range of energy use of BVM equipment in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

Chapter 7 of the preliminary TSD addresses the energy use analysis.

[7] Because the projected price of standards-compliant equipment is typically higher than the price of baseline equipment, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

F. Life-Cycle Cost and Payback Period Analyses

The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

• The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

• The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

G. National Impact Analysis

The NIA estimates the national energy savings (''NES'') and the net present value (''NPV'') of total consumer costs and savings expected to result from amended standards at specific efficiency levels (referred to as candidate standard levels).[8] DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, equipment costs, and NPV of consumer benefits over the lifetime of BVM equipment sold from 2028 through 2057.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections (''no-new-standards case''). The no-new-standards case characterizes energy use and consumer costs for each equipment class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each equipment class if DOE adopted new or amended standards at specific energy efficiency levels for that class. For each efficiency level, DOE considers how a given standard would likely affect the market shares of equipment with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each efficiency level. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs. Critical inputs to this analysis include shipments projections, estimated equipment lifetimes, equipment installed costs and operating costs, equipment annual energy consumption, the no-new-standards-case efficiency projection, discount rates, electricity price projection, and equipment type market share distribution projection.

DOE estimates a combined total of 0.152 quads of FFC energy savings over the analysis period at the max-tech efficiency levels for BVM equipment. Combined FFC energy savings at Efficiency Level 1 for all equipment classes are estimated to be 0.021 quads.

Chapter 10 of the preliminary TSD addresses the NIA.

IV. Public Participation

DOE invites public engagement in this process through participation in the webinar and submission of written comments and data. After the webinar and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Following such consideration, the Department will publish either a determination that the energy conservation standards for BVM equipment need not be amended or a NOPR proposing to amend those standards. The NOPR, should one be issued, would include proposed energy conservation standards for the equipment covered by this rulemaking, and members of the public would be given an opportunity to submit written and oral comments on the proposed standards.

A. Participation in the Webinar

The time and date for 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: *www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this 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. Such persons may submit requests to speak via email to the Appliance and Equipment Standards Program at *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in 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.

C. Conduct of the Webinar

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 present a general overview of the topics addressed in this rulemaking, 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

[8] The NIA accounts for impacts in the 50 states and U.S. territories.

discussion of specific topics. DOE will permit, as time allows, 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/public meeting 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.

D. Submission of Comments

DOE invites all interested parties, regardless of whether they participate in the public meeting webinar, to submit in writing no later than the date provided in the **DATES** section at the beginning of this document, comments and information on matters addressed in this notification and on other matters relevant to DOE's consideration of potential amended energy conservations standards for BVM equipment. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov.* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of the availability of the preliminary technical support document and request for comment.

Signing Authority

This document of the Department of Energy was signed on April 20, 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 April 21, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–08869 Filed 4–25–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0470; Project Identifier MCAI–2021–01002–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by reports that some oxygen box assemblies had their piston ejected during the mask deployment test. This proposed AD would require a one-time inspection of each passenger oxygen box dual manifold assembly to find and replace affected parts. This proposed AD would also prohibit installing affected parts. 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 June 10, 2022.

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

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

For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0470; 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.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@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–2022–0470; Project Identifier MCAI–2021–01002–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 NPRM.

Confidential Business Information

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

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–30, dated September 7, 2021 (TCCA AD CF–2021–30) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0470.

This proposed AD was prompted by reports that some passenger oxygen box dual manifold assemblies had their piston ejected during the mask deployment test due to a non-conformity in manufacturing. The FAA is proposing this AD to address a possible in-service piston ejection when used for emergency descent, smoke, or fire that may result in a high rate of oxygen leakage, which could prematurely deplete the oxygen for all passengers. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued the following service information.

- Service Bulletin 700–35–5004, Revision 02, dated August 27, 2021.
- Service Bulletin 700–35–5502, dated August 27, 2021.
- Service Bulletin 700–35–6004, Revision 05, dated August 27, 2021.
- Service Bulletin 700–35–6502, dated August 27, 2021.

This service information describes procedures for inspecting each passenger oxygen box dual manifold assembly to find affected parts, and replacing affected parts. These documents are distinct because they apply to different airplane configurations.

This service information is reasonably available because the interested parties have access to it through their normal

course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 308 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$26,180

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 34 work-hours × $85 per hour = $2,890	Up to $1,700	Up to $4,590.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2022–0470; Project Identifier MCAI–2021–01002–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 10, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by reports that some passenger oxygen box dual manifold had their piston ejected during the mask deployment test due to a non-conformity in manufacturing. The FAA is issuing this AD to address a possible in-service piston ejection when used for emergency descent, smoke, or fire that may result in a high rate of oxygen leakage, which could prematurely deplete the oxygen for all passengers.

(f) Compliance

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

(g) Definition

An affected part is a passenger oxygen box assembly having a dual manifold assembly having part number 100–009–39 and a lot and serial number specified in figure 1 to paragraph (g) of this AD.

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Figure 1 to paragraph (g) – *Affected Part*

Lot Numbers Affected	Serial Numbers Affected
3516-001	3516-001-01 through 3516-001-60 inclusive
3538-002	3538-002-01 through 3538-002-60 inclusive
3598-001	3598-001-01 through 3598-001-60 inclusive
3568-001	3568-001-01 through 3568-001-60 inclusive
3724-001	3724-001-01 through 3724-001-20 inclusive
3724-002	3724-002-01 through 3724-002-12 inclusive
3706-001	3706-001-01 through 3706-001-40 inclusive

(h) Required Actions

Within the applicable compliance time specified in paragraph (h)(1) or (2) of this AD: Inspect each passenger oxygen box dual manifold assembly to determine if it is an affected part, as defined in paragraph (g) of this AD, and replace any affected part in accordance with paragraph 2.B. of the Accomplishment Instructions of the applicable Bombardier service bulletin specified in figure 2 to paragraph (h) of this AD. Replace any affected part before further flight.

(1) For airplanes having serial numbers 9771, 9779, 9784, 9788 through 9824 inclusive, 9853 through 9857 inclusive, and 9859 through 9876 inclusive, within 4 months after the effective date of this AD.

(2) For airplane having serial numbers 9877 through 9879 inclusive, and 60001 through 60042 inclusive, within 30 months after the effective date of this AD.

Figure 2 to paragraph (h) – *Applicable Service Bulletins*

Airplane Model and Serial Numbers	Applicable Service Bulletin
BD-700-1A10, serial numbers 9771, 9779, 9784, 9788, 9789, 9791 through 9797 inclusive, 9799 through 9806 inclusive, 9808, 9809, 9811, 9812, 9814 through 9818 inclusive, 9820 through 9824 inclusive, 9853 through 9857 inclusive, 9859, 9860, 9863 through 9871 inclusive, 9873 through 9879 inclusive, and 60005 through 60042 inclusive	700-35-6004, Revision 05, dated August 27, 2021
BD-700-1A10, serial numbers 9861, 9872, and 60001 through 60042 inclusive	700-35-6502, dated August 27, 2021
BD-700-1A11 serial numbers 9790, 9798, 9807, 9810, 9813, 9819, 9853 through 9857 inclusive, 9859 through 9862 inclusive, and 9868 through 9879 inclusive	700-35-5004, Revision 02, dated August 27, 2021
BD-700-1A11, serial numbers 60007 through 60042 inclusive	700-35-5502, dated August 27, 2021

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an affected part as defined in paragraph (g) of this AD, on any airplane.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (j)(1) through (7) of this AD, as applicable.

(1) Bombardier Service Bulletin 700–35–5004, dated December 10, 2018.

(2) Bombardier Service Bulletin 700–35–5004, Revision 01, dated November 29, 2019.

(3) Bombardier Service Bulletin 700–35–6004, dated December 10, 2018.

(4) Bombardier Service Bulletin 700–35–6004, Revision 01, dated January 16, 2019.

(5) Bombardier Service Bulletin 700–35–6004, Revision 02, dated April 5, 2019.

(6) Bombardier Service Bulletin 700–35–6004, Revision 03, dated May 31, 2019.

(7) Bombardier Service Bulletin 700–35–6004, Revision 04, dated November 29, 2019.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–30, dated September 7, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0470.

(2) For more information about this AD, contact Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on April 20, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08822 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0440; Airspace Docket No. 19–AAL–45]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–376 in the Vicinity of Iliamna, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route, in the vicinity of Iliamna, AK. This action is in support of a large and comprehensive RNAV T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before June 10, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building, Ground Floor Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0440; Airspace Docket No. 19–AAL–45 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

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 (FAA Docket No. FAA–2022–0440; Airspace Docket No. 19–AAL–45) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0440; Airspace Docket No. 19–AAL–45.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for 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 office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub L., 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project's mission statement is ''to modernize Alaska's Air Traffic Service route structure using satellite based navigation. Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (1) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (2) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (3) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The FAA considers this transition as time sensitive, given the increasing number of NDBs that are currently and/or scheduled out of service, and the lack of an NDB acquisition, maintenance, or sustainment program. This forces pilots flying under Instrument Flight Rules (IFR), with aircraft not equipped with de-icing protection, to fly at higher than normal MEAs, increasing the risk to flight safety. The Iliamna, AK, (ILI) NDB and the Kacehmak, AK, (ACE) NDB are two of the many NDBs scheduled for decommissioning. The proposal to establish RNAV route, T–376, would support the decommissioning of both ILI and ACE. Additionally, the proposed T–376 would support en route operations for Iliamna Airport (PAIL), Alaska. Finally, the proposed RNAV route would provide an alternative for, and eventually replace, the Colored airways Green 8 and Red 99.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route, T–376, in the vicinity of Iliamna, AK, in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed RNAV T-route is described below.

T–376: T–376 is a new RNAV T-route that would extend between the FAGIN, AK, waypoint (WP) and the Homer, AK, VHF Omnidirectional Radar/Distance Measuring Equipment (VOR/DME).

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would 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 proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis 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

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–376 FAGIN, AK TO HOMER, AK (HOM) [NEW]

FAGIN, AK	WP	(Lat. 59°51′56.15″ N, long. 155°32′43.30″ W)
VAYUT, AK	WP	(Lat. 59°43′08.58″ N, long. 154°55′24.16″ W)
WOLCI, AK	WP	(Lat. 59°38′36.38″ N, long. 154°37′31.77″ W)
JETIG, AK	WP	(Lat. 59°30′38.31″ N, long. 154°28′33.12″ W)
WUKSU, AK	WP	(Lat. 59°29′31.36″ N, long. 153°54′56.76″ W)
Homer, AK (HOM)	VOR/DME	(Lat. 59°42′33.95″ N, long. 151°27′23.76″ W)

* * * * *

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08782 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0429; Airspace Docket No. 21–AAL–40]

RIN 2120–AA66

Proposed Establishment of Area Navigation (RNAV) Route T–719; Sitka, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish one Canadian Area Navigation (RNAV) route in the vicinity of Sitka, AK. This action is required in support of a large and comprehensive RNAV T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before June 10, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0429; Airspace Docket No. 21–AAL–40 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

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 (FAA Docket No. FAA–2022–0429; Airspace Docket No. 21–AAL–40) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0429; Airspace Docket No. 21–AAL–40.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for 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 office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176),

which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project's mission statement is ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation. Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (1) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (2) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (3) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The FAA considers this transition as time sensitive, given the increasing number of NDBs that are currently and/or scheduled out of service, and the lack of an NDB acquisition, maintenance, or sustainment program. This forces pilots flying under Instrument Flight Rules (IFR), with aircraft not equipped with de-icing protection, to fly at higher than normal MEAs, increasing the risk to flight safety. The Sitka, AK, NDB is one of the many NDBs scheduled for decommissioning. The proposal to establish RNAV route, T–719, would support the decommissioning of the Sitka, AK, NDB. Further, the proposed route would connect with a planned Canadian extension to their RNAV route T–719, thereby connecting the Sandspit, Canada (YZP) VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the proposed new EEVER waypoint (WP). The Canadian extension will occur concurrently with the publication of the United States portion of the proposed RNAV T-route, T–719. Finally, the proposed RNAV route would overlie and eventually replace directly the Colored airway Amber 1.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–719, near Sitka, AK, in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed RNAV route establishment is described below.

T–719: T–719 is a new RNAV route that would extend between the new EEVER, AK, WP and the Biorka Island, AK, (BKA) VOR and Tactical Air Navigational System (VORTAC). The EEVER, AK, WP would replace the CFQBR computer navigation Fix to be located along the Sandspit, Canada (YZP), VOR/DME 312° radial and the US/Canada border.

Canadian Area Navigation Routes are published in paragraph 6013 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 RNAV route listed in this document would 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 proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis 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

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6013 Canadian Area Navigation Routes.

* * * * *

T–719 EEVER, AK to Biorka Island, AK (BKA)

EEVER, AK	WP	(Lat. 54°35′01.79″ N, long. 133°05′54.23″ W)
Biorka Island, AK (BKA)	VORTAC	(Lat. 56°51′33.87″ N, long. 135°33′04.72″ W)

* * * * *

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08785 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0435; Airspace Docket No. 19–AAL–73]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–270; Shishmaref, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) T-route, T–270 in the vicinity of Shishmaref, AK due to the planned decommissioning of the Shishmaref, AK, (SHH) Non-Directional Beacons (NDB) and the Norton Bay, AK, (OAY) NDB. Both NDBs will be decommissioned as part of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before June 10, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0435; Airspace Docket No. 19–AAL–73 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

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 (FAA Docket No. FAA–2022–0435; Airspace Docket No. 19–AAL–73) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0435; Airspace Docket No. 19–AAL–73.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for 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 office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub L., 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive RNAV T-route modernization project in the state of Alaska. The project's mission statement is ''to modernize Alaska's Air Traffic Service route structure using satellite based navigation. Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide

enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

Industry and users have indicated a desire that the FAA transition the Alaskan enroute navigation structure away from any dependency on NDBs, and move to develop and improve the RNAV route structure. The FAA believes this request is time sensitive given the increasing number of NDBs that are currently and/or scheduled out of service, and the lack of an NDB acquisition, maintenance, or sustainment program, which forces aircraft flying under Instrument Flight Rules (IFR) that are without de-icing protection to fly at higher MEAs, with the potentially associated loss of safety.

The FAA is proposing to amend RNAV T-route T–270. This proposed action is necessary due to the planned decommissioning of the Norton Bay, AK, (OAY) NDB and the Shishmaref, AK, (SHH) NDB. Both NDBs will decommissioned as part of the RNAV modernization effort for the state of Alaska. The FAA proposes to replace the Norton Bay and Shishmaref, AK, NDBs with the HALUS and the HIPIV waypoints (WPs), respectively. The FAA also proposes to reverse the order of the RNAV T-route in the route description to comply with guidance in FAA Order JO 7400.2. Finally, the FAA proposes to remove the HEXOG, AK, WP from the legal description due to it having less than a 1 degree turn and is not required.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–270 in the vicinity of Shishmaref, AK in support of a large and comprehensive T-route modernization project in the state of Alaska.

The proposed RNAV T-route amendment is described below.

T–270: T–270 currently extends between the Norton Bay, AK, (OAY) NDB and the Shishmaref, AK, (SHH) VOR/DME. This FAA proposes to replace the OAY NDB and the SHH NDB with the HALUS, AK, WP and the HIPIV, AK, WP, respectively. Further, the FAA proposes to remove the HEXOG, AK, WP from the legal description. Finally, the order of the T-route would be reversed from the published legal description to comply with current guidance in FAA Order JO 7400.2. As a result, T–270 would extend between the HIPIV, AK, WP and the HALUS, AK, WP.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would 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 proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis 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

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–270 HIPIV, AK TO HALUS, AK

HIPIV, AK	WP	(Lat. 66°15′29.11″ N, long. 166°03′23.59″ W)
HALUS, AK	WP	(Lat. 64°41′43.78″ N, long. 162°04′03.53″ W)

* * * * *

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08783 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0428; Airspace Docket No. 21–AAL–20]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–271; Iliamna, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) T-route, T–271 in the vicinity of Iliamna, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before June 10, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0428; Airspace Docket No. 21–AAL–20 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

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 (FAA Docket No. FAA–2022–0428; Airspace Docket No. 21–AAL–20) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0428; Airspace Docket No. 21–AAL–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for 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 office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project's mission statement is ''to modernize Alaska's Air Traffic Service route structure using satellite based navigation. Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar

or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant. In support of this project, the FAA is proposing to amend RNAV route T–271, to improve the RNAV network in Alaska by planning for the future connectivity with future RNAV T-routes.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–271 in the vicinity of Iliamna, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed RNAV T-route amendment is described below.

T–271: T–271 extends between the Cold Bay, AK, (CDB) VHF Omnidirectional Radar and Tactical Air Navigational System (VORTAC) and the AMOTT, AK, waypoint (WP). The FAA proposes to update the GPS coordinates for the Cold Bay, AK, (CBD) VORTAC, the King Salmon, AK, (AKN) VORTAC; and, the AMOTT, AK, WP because of more precise improvements in technology. The FAA also proposes to remove the BINAL, AK, Fix from the legal description due to it having less than a 1 degree turn and is not required. Although, the BINAL Fix would be removed, it will remain as a Fix to the airway. Finally, the FAA proposes to insert the ZINAM, AK, WP. The rest of the route would remain unchanged.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would 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 proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis 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

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–271 Cold Bay, AK (CDB) to AMOTT, AK

Cold Bay, AK (CDB)	VORTAC	(Lat. 55°16′02.26″ N, long. 162°46′26.39″ W)
King Salmon, AK (AKN)	VORTAC	(Lat. 58°43′28.97″ N, long. 156°45′08.45″ W)
ZINAM, AK	WP	(Lat. 60°37′07.20″ N, long. 152°07′54.44″ W)
AMOTT, AK	WP	(Lat. 60°52′26.59″ N, long. 151°22′23.60″ W)

* * * * *

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–08784 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0275]

RIN 1625–AA00

Safety Zone; Cumberland River, Nashville, TN

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to a temporary safety zone from mile marker 191.1 to 191.5 of the Cumberland River. This action is necessary to provide for the safety of life on these navigable waters near Korean Veterans Bridge, Nashville, TN, during Music City Grand Prix on August 5 through August 7, 2022. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 26, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0275 using the Federal Decision Making 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.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Third Class Benjamin Gardner and Marine Safety Detachment Nashville, U.S. Coast Guard; telephone 615–736–5421, email *Benjamin.t.gardner@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, Purpose, and Legal Basis

The Coast Guard was notified by Indy Car of a proposed racing event that goes over the Cumberland River. The event would take place from August 5, 2022, to August 7, 2022. On August 5, 2022 the river closure would be from 2:00 p.m. to 6:30 p.m. On August 6, 2022, the river closure would be from 11:00 a.m. to 5:00 p.m. On August 7, 2022, the river closure would be from 2:00 p.m. to 4:30 p.m. The COTP has determined that there is a need to protect the river users while the Indy cars are on the track between MM 191.1 and MM 191.5 on the Cumberland River. This propsed rule is needed to protect life and the marine environment in the navigable waters within the temporary safety zone during the racing portion of the event.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone that would be enforced from 2 p.m. to 6:30 p.m. on August 5, 2022, from 11 a.m. to 5 p.m. on August 6, 2022, and from 2 p.m. to 4:30 p.m. on August 7, 2022. The safety zone would cover all navigable waters within .4 miles of the Korean Veterans Bridge on the Cumberland River in Nashville, TN. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled Indy Car races. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will be 13 hours spread over the course of 3 days during daylight hours in Nashville, TN. The safety zone will only encompass .4 miles of the Cumberland River. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Cumberland River before or after the time of the events on each day. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rulemaking would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this propsed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the effects of this propsed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 12 hours spread over the course of 3 days that would prohibit entry within .4 miles of the Korean Veterans Bridge. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0275 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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 is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0275 to read as follows:

§ 165.T08–0275 Safety Zone; Cumberland River, Nashville, TN.

(a) *Location.* The following area is a safety zone: All navigable waters of the Cumberland River from mile marker 191.1 to mile marker 191.5.

(b) *Definitions:* As used in this section, *designated representative* means a Coast Guard Patrol Commander, 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 Sector Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, 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 VHF–FM radio channel 16 or phone at 1–800–253–7465. 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 periods.* This section will be enforced from 2 p.m. until 6:30 p.m. on August 5, 2022, from 11 a.m. until 5 p.m. on August 6, 2021, and from 2 p.m. until 4:30 p.m. on August 7, 2022.

Dated: April 20, 2022.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2022–08882 Filed 4–25–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, and 63

[EPA–HQ–OAR–2020–0556; FRL–8335–03–OAR]

RIN 2060–AV35

Testing Provisions for Air Emission Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes corrections and updates to regulations for source testing of emissions under various rules. This proposed rule includes corrections to inaccurate testing provisions, updates to outdated procedures, and approved alternative procedures that provide testers enhanced flexibility. The revisions will improve the quality of data but will not impose new substantive requirements on source owners or operators.

DATES: Comments must be received on or before June 27, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2020–0556 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–2020–0556 in the subject line of the message.
- *Fax:* (202) 566–9744.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. 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: Mrs. Lula H. Melton, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** in this preamble is organized as follows:

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B. What action is the Agency taking?
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B. General Provisions (Subpart A) of Part 60
C. Standards of Performance for New Residential Wood Heaters (Subpart AAA) of Part 60
D. Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters, and Forced-Air Furnaces (Subpart QQQQ) of Part 60
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H. Method 19 of Appendix A–7 of Part 60
I. Method 25 of Appendix A–7 of Part 60
J. Method 25C of Appendix A–7 of Part 60
K. Method 26 of Appendix A–8 of Part 60
L. Performance Specification 1 of Appendix B of Part 60
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T. General Provisions (Subpart A) of Part 63
U. National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry (Subpart S) of Part 63
V. National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors (Subpart EEE) of Part 63
W. National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating (Subpart JJJJ) of Part 63
X. National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (Subpart ZZZZ) of Part 63
Y. National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands Residual Risk and Technology Review (Subpart PPPPP) of Part 63
Z. National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (Subpart UUUUU) of Part 63
AA. Method 315 of Appendix A of Part 63
BB. Method 323 of Appendix A of Part 63
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
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 and 1 CFR part 51
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Public Participation and Written Comments

Submit your comments identified by Docket ID No. EPA–HQ–OAR–2020–0556 at *https://www.regulations.gov* (our preferred method) or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov/* any information you consider to be Confidential Business Information (CBI) 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.*

Public visitors are allowed in the EPA Docket Center and Reading Room by making an appointment in advance. 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 Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

II. General Information

A. Does this action apply to me?

The proposed amendments apply to industries that are subject to the current provisions of 40 CFR parts 51, 60, and 63. We did not list all of the specific affected industries or their North American Industry Classification

System (NAICS) codes herein since there are many affected sources in numerous NAICS categories. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13.

B. What action is the Agency taking?

This action proposes corrections and revisions to source test methods, performance specifications (PS), and associated regulations. The corrections and revisions consist primarily of typographical errors, updates to testing procedures, and the addition of alternative equipment and methods the Agency has deemed acceptable to use.

III. Background

The EPA catalogs errors and corrections, as well as necessary revisions to test methods, performance specifications, and associated regulations in 40 CFR parts 51, 60, and 63 and periodically updates and revises these provisions. The most recent updates and revisions were promulgated on October 7, 2020 (85 FR 63394). This proposed rule addresses necessary corrections and revisions identified after that final action, many of which were brought to our attention by regulated sources and end-users, such as environmental consultants and compliance professionals. These revisions will improve the quality of data obtained and give source testers the flexibility to use newly approved alternative procedures.

IV. Incorporation by Reference

The EPA proposes to incorporate by reference two ASTM standards. Specifically, the EPA proposes to incorporate ASTM D6216–20, which covers the procedure for certifying continuous opacity monitors and includes design and performance specifications, test procedures, and QA requirements to ensure that continuous opacity monitors meet minimum design and calibration requirements necessary for accurate opacity monitoring measurements in regulatory environmental opacity monitoring applications subject to 10 percent or higher opacity standards. The EPA also proposes to update the incorporation by reference for ASTM D6784, a test method for elemental, oxidized, particle-bound, and total mercury in emissions from stationary sources, from the 2002 version to the 2016 version; this update would apply to incorporations by reference in 40 CFR part 60, appendix B, Performance Specification 12A for continuous monitoring of mercury emissions. Likewise, EPA proposes to update the incorporations by reference in 40 CFR part 63 for use of ASTM D6784 under table 5 and appendix A of Subpart UUUUU, for mercury emissions measurement and monitoring. Both the ASTM D6216–20 and ASTM D6784–16 standards were developed and adopted by ASTM. The ASTM standards may be obtained from *www.astm.org* or from the ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

The EPA also proposes to incorporate by reference the American Public Health Association (APHA) Method 5210 Biochemical Oxygen Demand (BOD) from ''Standard Methods for the Examination of Water and Wastewater.'' This standard is acceptable as an alternative to Method 405.1 and is available from APHA at *www.standardmethods.org* or by telephone at (844) 232–3707.

The EPA is also proposing specific modifications to requirements in an existing incorporation by reference, the ASTM E2515–11 test method. The proposed stipulations would modify the post-test leak check procedures as well as add procedures for performing leak checks during a sampling run.

V. Summary of Proposed Amendments

The following amendments are being proposed.

A. Method 201A of Appendix M of Part 51

In Method 201A, the erroneous equation 25 in section 12.5 would be corrected.

B. General Provisions (Subpart A) of Part 60

In the General Provisions of part 60, § 60.17(h) would be revised to add American Society for Testing and Materials (ASTM) D6216–20 and D6784–16 to the list of incorporations by reference and to re-number the remaining consensus standards that are incorporated by reference in alpha-numeric order.

C. Standards of Performance for New Residential Wood Heaters (Subpart AAA) of Part 60

Subpart AAA would be amended to add stipulations for use of the ASTM E2515–11 test method. The stipulations would modify the post-test leak check procedures as well as add procedures for performing leak checks during a sampling run. The stipulations to ASTM E2515–11 are necessary as we have learned that the quality assurance/quality control (QA/QC) requirements for leak tests required by ASTM E2515–11, section 9.6.5.1 are not sufficient to provide assurance of the sampling system integrity. Additionally, the language of ASTM E2515–11, section 9.6.5.1 currently allows for averaging the PM results from a non-leaking sampling system with those from a leaking sampling system, which effectively reduces reported PM emissions by as much as half, rendering the test method inappropriate for compliance determination.

We would revise the language in § 60.534(c) and are proposing new language to replace ASTM E2515–11, section 9.6.5.1 by adding § 60.534(c)(1), which specifies appropriate post-test leak check procedures and in § 60.534(c)(2) by adding procedures for performing leak checks during a sampling run. We are proposing these modifications to bring appropriate QA/QC requirements to PM measurements required by the rule and to eliminate opportunity for emissions test results to be considered valid when a leaking sampling system allows dilution of the PM sample(s).

We are also proposing in § 60.534(d) that the first hour PM emissions measurements be conducted using a separate ASTM E2515–11 sampling train operated concurrently with the paired ASTM E2515–11 sampling trains used in compliance PM sampling. In this manner, the first hour PM emissions would be collected appropriately, and the compliance test measurements would not be impacted by a sampling pause for filter replacement at the 1-hour mark.

The regulatory language in § 60.539b(b) would be revised to include General Provisions that were added to § 60.8(f)(2) (81 FR 59801, August 30, 2016) and were inadvertently exempted from inclusion in subpart AAA as that rule, as promulgated in 2015, exempted § 60.8(f) in its entirety. The exemption promulgated in subpart AAA at § 60.539b(b) was intended to exempt those affected sources from § 60.8(f), which, at the time, consisted of what is now currently § 60.8(f)(1) and is specific to compliance testing results consisting of the arithmetic mean of three replicate tests. We are proposing these modifications to ensure that emissions test reporting includes all data necessary to assess and assure the quality of the reported emissions data and appropriately describes and identifies the specific unit covered by the emissions test report. Since compliance tests in this category consist of a single test, the original regulatory

exemption to the General Provisions of § 60.8(f)(1) is retained.

D. Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters, and Forced-Air Furnaces (Subpart QQQQ) of Part 60

The erroneous PM emission limits in g/MJ in §§ 60.5474(b)(2), (b)(3) and (b)(6) would be corrected.

In addition, subpart QQQQ would be amended to add stipulations for use of the ASTM E2515–11 test method. The stipulations would modify the post-test leak check procedures as well as add procedures for performing leak checks during a sampling run. The stipulations to ASTM E2515–11 are necessary as we have learned that the QA/QC requirements for leak tests required by ASTM E2515–11, section 9.6.5.1 are not sufficient to provide assurance of the sampling system integrity. Additionally, the language of ASTM E2515–11, section 9.6.5.1 currently allows for averaging the PM results from a non-leaking sampling system with those from a leaking sampling system, which effectively reduces reported PM emissions by as much as half, rendering the test method inappropriate for compliance determination. The language in § 60.5476(c)(5) and § 60.5476(c)(6) would be replaced with the word ''reserved.''

We would revise language in § 60.5476(f) and are proposing new language to replace ASTM E2515–11, section 9.6.5.1 by adding § 60.5476(f)(1), which specifies appropriate post-test leak check procedures and in § 60.5476(f)(2) adding procedures for performing leak checks during a sampling run. We are proposing these modifications to bring appropriate QA/QC requirements to PM measurements required by the rule and eliminate opportunity for emissions test results to be considered valid when a leaking sampling system allows dilution of the PM sample(s).

We are also proposing in § 60.5476(f) that first hour PM emissions measurements should be conducted using a separate ASTM E2515–11 sampling train operated concurrently with the paired ASTM E2515–11 sampling trains used in compliance PM sampling. In this manner, the first hour PM emissions will be collected appropriately, and the compliance test measurements would not be impacted by a sampling pause for filter replacement at the one-hour mark. In § 60.5476(f), we would incorporate language about filter type and size acceptance currently in § 60.5476(c)(5). Additionally, we would remove text relating to EN 303–5 currently found in § 60.5476(f).

The regulatory language in § 60.5483(b) would be revised to include General Provisions that were added to § 60.8(f)(2) (81 FR 59801, August 30, 2016) and were inadvertently exempted from subpart QQQQ as that rule, as promulgated in 2015, exempted § 60.8(f) in its entirety. The exemption promulgated in subpart QQQQ at § 60.5483(b) was intended for those affected sources subject to § 60.8(f), which, at the time, consisted of what is currently § 60.8(f)(1) and is specific to compliance testing results consisting of the arithmetic mean of three replicate tests. We are proposing these modifications to ensure that emissions test reporting includes all data necessary to assess and assure the quality of the reported emissions data and appropriately describes and identifies the specific unit covered by the emissions test report. Since compliance tests in this category consist of a single test, the original regulatory exemption to the General Provisions of § 60.8(f)(1) is retained.

In subpart QQQQ, in Method 28WHH, in section 13.8, the erroneous CO calculation instructions for equation 23 would be corrected to include the summation of CO emissions over four instead of three test categories.

E. Method 1 of Appendix A–1 of Part 60

In Method 1, the heading in section 11.5.1 would be moved to 11.5, and the word ''procedure'' would be moved to the first sentence in section 11.5.1 for clarity. Section 11.5.2 would be revised to clearly specify the number of traverse points that must be used for sampling and velocity measurements once a directional flow-sensing probe procedure has been used to demonstrate that an alternative measurement site is acceptable. The last sentence of section 11.5.2, which appears unclear as to what ''same traverse point number and locations'' it is referring, would be revised to instead specify the ''same minimum of 40 traverse points for circular ducts and 42 points for rectangular ducts'' that are used in the alternative measurement procedure of section 11.5.3.

Also, Table 1–2 would be revised to correct the erroneous requirement that calls for 99.9 percent of stack diameter from the inside wall to the traverse point to 98.9 percent.

F. Method 4 of Appendix A–3 of Part 60

In Method 4, Table 4–3 would be formatted correctly.

G. Method 7 of Appendix A–4 of Part 60

In Method 7, section 10.1.3 would be revised to change the word ''should'' to ''shall'' in the last sentence because the difference between the calculated concentration values and the actual concentrations are required to be less than 7 percent for all standards.

H. Method 19 of Appendix A–7 of Part 60

In Method 19, the erroneous equation 19–5 would be corrected.

I. Method 25 of Appendix A–7 of Part 60

In Method 25, a record and report section (section 12.9) would be added to confirm that the quality control (QC) was successfully performed. Also, the erroneous Figure 25–6 would be corrected.

J. Method 25C of Appendix A–7 of Part 60

In Method 25C, the nomenclature in section 12.1 for C_{N2} and C_{mN2} would be revised to provide clarity.

K. Method 26 of Appendix A–8 of Part 60

In Method 26, erroneous equations 26–4 and 26–5 in sections 12.4 and 12.5, respectively, would be revised to be consistent with the nomenclature in section 12.1.

L. Performance Specification 1 of Appendix B of Part 60

In Performance Specification 1, references to ASTM D6216–12 (in sections 2.1, 3.1, 6.1, 8.1(1), 8.1(2)(iii), 8.1(3)(ii), 8.2(1), 8.2(2), 8.2(3), 9.0, 12.1, 13.1, 13.2, and 16.0 reference 8) would be replaced with ASTM D6216–20. Note: If the initial certification of the continuous opacity monitoring system (COMS) has already occurred using D6216–98, D6216–03, D6216–07, or D6216–12, it will not be necessary to recertify using D6216–20.

Also, in Performance Specification 1, section 8.1(2)(iii) would be revised by removing the next to the last sentence, which reads, ''The opacities of the two locations or paths may be measured at different times but must represent the same process operating conditions,'' because the statement is confusing and unclear; furthermore, it is unlikely that one would achieve the same conditions at two different times.

M. Performance Specification 2 of Appendix B of Part 60

In Performance Specification 2, in section 8.3.3, a sentence would be added to clarify that during a calibration, the reference gas is to be

introduced into the sampling system prior to any sample conditioning or filtration equipment and must pass through as much of the probe as is practical. In section 12.5, minor revisions would be made to clarify that relative accuracy (RA) test results are expressed as a percent of emission rate or concentration (units of the applicable standard) and the definition of the average reference method (RM) value for Equation 2–6.

N. Performance Specification 4B of Appendix B of Part 60

The entire Performance Specification 4B would be updated to the Environmental Monitoring Management Council (EMMC) methods format used for all other performance specifications.

O. Performance Specification 6 of Appendix B of Part 60

In Performance Specification 6, section 13.2 would be revised to specifically state the relative accuracy criteria including significant figures. On October 7, 2020 (85 FR 63394), we revised section 13.2 of Performance Specification 6 to make the relative accuracy calculations and criteria consistent with Performance Specification 2 and offer an alternate calculation and criterion for low emission concentration/rate situations; however, we neglected to specifically cite the alternate relative accuracy criterion from Performance Specification 2 for low emission sources and to ensure consistency with Performance Specification 2 with regard to significant figures in the relative accuracy criteria.

P. Performance Specification 12A of Appendix B of Part 60

We are proposing to revise the references (in sections 8.4.2, 8.4.4, 8.4.5, 8.4.6.1, and 17.5 and the footnote to Figure 12A–3) to ASTM D6784, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), to update them from the 2002 version to the latest version, which was authorized in 2016.

The capabilities of mercury CEMS have been improving since initially being deployed to support regulations over a decade ago. Therefore, we are proposing to revise section 13.3 to modify the alternative relative accuracy criterion such that: (1) It would apply only at mercury concentrations less than 2.5 μg/scm and (2) the difference between the average reference method and CEMS values added to the confidence coefficient would now be 0.5 μg/scm. This revised criterion is consistent with revisions that we made to the mercury monitoring requirements in 40 CFR 63, subpart UUUUU (81 FR 20172, April 6, 2016).

Q. Performance Specification 16 of Appendix B of Part 60

In Performance Specification 16, several corrections and modifications would be made to clarify the intent of the requirements. In section 1.1, we would correct the language to make it clear that if a PEMS (predictive emission monitoring system) contains a diluent component, then the diluent component must be tested as well. Also, in section 1.1, the language referring to PS–17 would be removed since PS–17 was never promulgated. In sections 3.11 and 3.12, language would be added to define commonly used acronyms, and in section 3.12, the language would be corrected to indicate that the relative accuracy test audit (RATA) is to be conducted as specified in section 8.2. In section 9.1, the QA/QC Summary chart would be corrected to reflect the language found in section 2.2, which indicates that the relative accuracy audit (RAA) is required on all PEMS and not just those classified as compliance PEMS. The QA/QC Summary Chart is also modified to align the criteria for a RAA with that found in section 13.5. In section 9.4, the language stating a RATA is to be conducted at the normal operating level would be corrected to indicate the RATA is to be conducted as specified in section 8.2 and to remove the statement that the statistical tests in section 8.3 are not required for the yearly RATA. In section 12.3.2, the alternative criteria language would be removed because it does not apply to F-factor determinations. In sections 13.1 and 13.5, the language would be modified to add the corresponding alternative criteria in units of lb/mmBtu.

R. Procedure 1 of Appendix F of Part 60

In Procedure 1, in section 4.1, a sentence would be added to clarify that during a calibration, the reference gas is to be introduced into the sampling system prior to any sample conditioning or filtration equipment and must pass through as much of the probe as is practical. Section 5.2.3 (2) would be modified to refine the alternative cylinder gas audit (CGA) criteria in response to the use of analyzers with lower span values. In section 6.2, in order to provide clarity and clear up any confusion, we would remove the language referring to the relevant performance specification and insert the language referring to the use of Equation 1–1.

S. Procedure 5 of Appendix F of Part 60

Regulated entities have pointed out that we did not include criteria for the system integrity check required in Procedure 5. In section 2.5, we would clarify that ongoing daily calibration of the Hg CEMS must be conducted using elemental mercury reference gas. This is consistent with revisions that we made to the Hg monitoring requirements in 40 CFR 63, subpart UUUUU (81 FR 20172, April 6, 2016). We would revise the title of section 4.0 and add section 4.4 to explain more explicitly the procedure for conducting the system integrity check as well as to provide the criteria for passing the check. In section 5.1.3, to add clarity we would insert language referring to Equation 1–1 of Procedure 1 for calculating relative accuracy.

T. General Provisions (Subpart A) of Part 63

In the General Provisions of part 63, § 63.14 would be revised to: (1) Add ASTM D6784–16 to redesignated paragraph (i) and (2) add ''Standard Methods for the Examination of Water and Wastewater'' Method 5210B to new paragraph (d).

U. National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry (Subpart S) of Part 63

In subpart S, the existing reference in 40 CFR 63.457(c)(4) to Method 405.1 of part 136 of chapter 40 for the measurement of biochemical oxygen demand (BOD) is no longer valid, as Method 405.1 was withdrawn in 2007. It was replaced with Biochemical Oxygen Demand Standard Methods 5210 B (72 FR 11199, March 12, 2007), which has been previously approved in test plans for measuring BOD to demonstrate compliance with the requirements of subpart S. In § 63.457(c)(4), Method 405.1 would be updated to reference Method 5210B. This method would also be incorporated by reference in 40 CFR 63.14.

V. Standards of Performance for Hazardous Air Pollutants From Hazardous Waste Combustors (Subpart EEE) of Part 63

In the appendix to subpart EEE, we would remove the erroneous language regarding an Interference Response Test in the introductory paragraph of section 5 and section 5.3 in its entirety.

W. National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating (Subpart JJJJ) of Part 63

In 2009, revisions were made to § 63.3360(e)(1)(viii) to clarify that the

results of Method 25 or Method 25A were being used to determine ''total organic volatile matter'' (85 FR 41276). At the time, the use of the terminology ''total gaseous non-methane organic volatile organic matter'' in § 63.3360(e)(1)(vi) was overlooked. We are proposing to revise § 63.3360(e)(1)(vi) by removing the term ''non-methane'' to be consistent with § 63.3360(e)(1)(viii).

X. National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (Subpart ZZZZ) of Part 63

We have received multiple inquiries regarding the requirements in Table 4 of Subpart ZZZZ to measure the exhaust gas moisture when measuring the concentration of carbon monoxide (CO), formaldehyde, or THC to demonstrate compliance with the rule. It was first pointed out that it is not always necessary to measure that exhaust gas moisture when measuring CO. We would add language to all three sections of Table 4 stating that that the moisture measurement is only necessary when needed to correct the CO, formaldehyde, THC and/or O_2 measurements to a dry basis.

Y. National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands Residual Risk and Technology Review (Subpart PPPPP) of Part 63

In subpart PPPPP, the existing erroneous statement in § 63.9306(d)(2)(iv) would be corrected to read, ''Using a pressure sensor with measurement sensitivity of 0.002 inches water, check gauge calibration quarterly and transducer calibration monthly.'' Also, in subpart PPPPP, the existing erroneous statement in § 63.9322(a)(1) would be corrected to read, ''The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a permanent total enclosure (PE) and directs all the exhaust gases from the enclosure to an add-on control device.''

Z. National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (Subpart UUUUU) of Part 63

We are proposing to revise the references in sections 4.1.1.5 and 4.1.1.5.1 in subpart UUUUU, appendix A to ASTM Method D6784, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), to update them from the 2002 version to the latest version, which was authorized in 2016. In table 5, we are proposing to add ASTM Method D6784–16 as a mercury testing option as it was inadvertently left out previously.

AA. Method 315 of Appendix A of Part 63

Section 16.2 is mislabeled as section 6.2 and would be corrected.

BB. Method 323 of Appendix A of Part 63

In Method 323, sections 10.1 and 10.3 would be revised to require best laboratory practices. The nomenclature in section 12.1 would be revised to include ''b,'' which is the intercept of the calibration curve at zero concentration and revise K_c; these additions are necessary because equation 323–5 in section 12.6 would be revised to reflect changes in calibration procedures for calculating the mass of formaldehyde.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. The amendments being proposed in this action to the test methods, performance specifications, and testing regulations only make corrections and minor updates to existing testing methodology. In addition, the proposed amendments clarify performance testing 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. This proposed rule will not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. 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. This action would correct and update existing testing regulations. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act and 1 CFR Part 51

This action involves technical standards. The EPA proposes to use ASTM D6216–20 for continuous opacity monitors in Performance Specification 1. The ASTM D6216–20 standard covers the procedure for certifying continuous opacity monitors and includes design and performance specifications, test procedures, and QA requirements to ensure that continuous opacity monitors meet minimum design and calibration requirements, necessary in part, for accurate opacity monitoring measurements in regulatory environmental opacity monitoring applications subject to 10 percent or

higher opacity standards. The EPA also proposes to update the version of ASTM D6784, a test method for elemental, oxidized, particle-bound, and total mercury in emissions from stationary sources, from the 2002 to 2016 version in the references contained in 40 CFR part 60, appendix B, Performance Specification 12A for continuous monitoring of mercury emissions. Likewise, EPA proposes to update the version of ASTM D6784 referenced in table 5 and appendix A of Subpart UUUUU in 40 CFR part 63, for mercury emissions measurement and monitoring. The ASTM D6216–20 and D6784–16 standards were developed and adopted by the American Society for Testing and Materials. The standards may be obtained from *http://www.astm.org* or from the ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

The EPA also proposes to use the APHA Method 5210 Biochemical Oxygen Demand (BOD) from ''Standard Methods for the Examination of Water and Wastewater.'' This standard is acceptable as an alternative to Method 405.1 and is available from APHA at *www.standardmethods.org* or by telephone at (844) 232–3707.

Additionally, the EPA proposes language intended to correct a portion of the ASTM E2515–11 test method. The stipulations would modify the post-test leak check procedures as well as add procedures for performing leak checks during a sampling run. The stipulations to ASTM E2515–11 are necessary as we have learned that the quality assurance/quality control (QA/QC) requirements for leak tests required by ASTM E2515–11, section 9.6.5.1 are not sufficient to provide assurance of the sampling system integrity. Additionally, the language of ASTM E2515–11, section 9.6.5.1 currently allows for averaging the PM results from a non-leaking sampling system with those from a leaking sampling system which effectively reduces reported PM emissions by as much as half, rendering the test method inappropriate for compliance determination.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action would correct and update existing testing regulations.

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control, Performance specifications, Test methods and procedures.

40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Performance specifications, Test methods and procedures.

40 CFR Part 63

Environmental protection, Air pollution control, Incorporation by reference, Performance specifications, Test methods and procedures.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Amend section 12.5 in Method 201A of appendix M to part 51 by revising Eq. 25 to read as follows:

Appendix M to Part 51—Recommended Test Methods for State Implementation Plans

* * * * *

Method 201A—Determination of PM_{10} and $PM_{2.5}$ Emissions From Stationary Sources (Constant Sampling Rate Procedure)

* * * * *

12.5 Equations. Use the following equations to complete the calculations required in this test method.

* * * * *

$$\Delta p_s = \Delta p_m \left[\frac{C_p'}{C_p}\right]^2 \quad \text{(Eq. 25)}$$

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 3. The authority citation of part 60 is revised to read as follows:

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

■ 4. In § 60.17:

■ a. Revise paragraphs (a) and (h)(179) and (191);

■ b. Redesignate paragraphs (h)(193) through (h)(212) as (h)(194) through (h)(213) respectively; and

■ c. Add new paragraph (h)(193).

The additions and revisions read as follows:

§ 60.17 Incorporations by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the EPA must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the EPA and the National Archives and Records Administration (NARA). Contact EPA at: The EPA Docket Center, Public Reading Room, EPA WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC, phone (202) 566–1744. For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source(s) in the following paragraph(s) of this section.

* * * * *

(h) * * *

(179) ASTM D6216–20, Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, 2020; IBR approved for appendix B: Performance Specification 1.

* * * * *

(191) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method); IBR approved for § 60.56c(b).

* * * * *

(193) ASTM D6784–16, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), 2016; IBR approved for appendix B: Performance Specification 12A.

* * * * *

■ 5. Amend § 60.534 by revising paragraphs (c) and (d) to read as follows:

§ 60.534 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

* * * * *

(c) For affected wood heaters subject to the 2015 and 2020 particulate matter emission standards specified in § 60.532(a), (b) and (c), particulate

matter emission concentrations must be measured with ASTM E2515–11 (IBR, see § 60.17) with the following exceptions: Eliminate section 9.6.5.1 of ASTM E2515–11 and perform the post-test leak checks as described in paragraph (c)(1) of this section. Additionally, if a component change of either sampling train is needed during sampling, then perform the leak check specified in paragraph (c)(2) of this section. Four-inch filters and Teflon membrane filters or Teflon-coated glass fiber filters may be used in ASTM E2515–11.

(1) Post-Test Leak Check: A leak check of each sampling train is mandatory at the conclusion of each sampling run before sample recovery. The leak check must be performed in accordance with the procedures of ASTM E2515–11, section 9.6.4.1 (IBR, see § 60.17), except that it must be conducted at a vacuum equal to or greater than the maximum value reached during the sampling run. If the leakage rate is found to be no greater than 0.0003 m^3/min (0.01 cfm) or 4% of the average sampling rate (whichever is less), the leak check results are acceptable. If a higher leakage rate is obtained, the sampling run is invalid.

(2) Leak Checks During Sample Run: If, during a sampling run, a component (*e.g.,* filter assembly) change becomes necessary, a leak check must be conducted immediately before the change is made. The leak check must be done according to the procedure outlined in ASTM E2515–11, section 9.6.4.1 (IBR, see § 60.17), except that it must be done at a vacuum equal to or greater than the maximum value recorded up to that point in the sampling run. If the leakage rate is found to be no greater than 0.0003 m^3/min (0.01 cfm) or 4% of the average sampling rate (whichever is less), the leak check results are acceptable. If a higher leakage rate is obtained, the sampling run is invalid.

Note 1 to paragraph (c)(2): Immediately after component changes, leak checks are optional but highly recommended. If such leak checks are done, the procedure in paragraph (c)(1) of this section should be used.

(d) For all tests conducted using ASTM E2515–11 (IBR, see § 60.17), with the exceptions described in § paragraphs (c)(1) and (2) of this section, and pursuant to this section, the manufacturer and approved test laboratory must also measure the first hour of particulate matter emissions for each test run by sampling with a third, identical and independent sampling train operated concurrently for the first hour of PM paired train compliance testing according to paragraph (c) of this section. The manufacturer and approved test laboratory must report the test results from this third train separately as the first hour emissions.

* * * * *

■ 6. Amend § 60.539b by revising paragraph (b) to read as follows:

§ 60.539b What parts of the General Provisions do not apply to me?

* * * * *

(b) Section 60.8(a), (c), (d), (e), (f) (1), and (g);

* * * * *

■ 7. Amend § 60.5474 by revising paragraph (b)(2), (3) and (6) to read as follows:

§ 60.5474 What standards and requirements must I meet and by when?

* * * * *

(b) * * *

(2) 2020 residential hydronic heater particulate matter emission limit: 0.10 lb/mmBtu (0.043 g/MJ) heat output per individual burn rate as determined by the crib wood test methods and procedures in § 60.5476 or an alternative crib wood test method approved by the Administrator.

(3) 2020 residential hydronic heater cord wood alternative compliance option for particulate matter emission limit: 0.15 lb/mmBtu (0.064 g/MJ) heat output per individual burn rate as determined by the cord wood test methods and procedures in § 60.5476 or an alternative cord wood test method approved by the Administrator.

* * * * *

(6) 2020 forced-air furnace particulate matter emission limit: 0.15 lb/mmBtu (0.064 g/MJ) heat output per individual burn rate as determined by the cord wood test methods and procedures in § 60.5476 or cord wood test methods approved by the Administrator.

* * * * *

■ 9. Amend § 60.5476 by removing paragraph (c)(5) and (6) and revising paragraph (f).

The revision reads as follows:

§ 60.5476 What test methods and procedures must I use to determine compliance with the standards and requirements for certification?

* * * * *

(f) For affected wood heaters subject to the particulate matter emission standards, particulate matter emission concentrations must be measured with ASTM E2515–11 (IBR, see § 60.17) with the following exceptions, eliminate section 9.6.5.1 of ASTM E2515–11 and perform the post-test leak checks as described in paragraph (f)(1) of this section. Additionally, if a component change of either sampling train is needed during sampling, then perform the leak check specified in paragraph (f)(2 of this section). Four-inch filters and Teflon membrane filters or Teflon-coated glass fiber filters may be used in ASTM E2515–11. For all tests conducted using ASTM 2515–11, with the exceptions described in paragraphs (f)(1) and (2) of this section, the manufacturer and approved test laboratory must also measure the first hour of particulate matter emissions for each test run by sampling with a third, identical and independent sampling train operated concurrently with the first hour of PM paired train compliance testing. The manufacturer and approved test laboratory must report the test results for this third train separately as the first hour emissions.

(1) Post-Test Leak Check: A leak check of each sampling train is mandatory at the conclusion of each sampling run before sample recovery. The leak check must be performed in accordance with the procedures of ASTM E2515–11, section 9.6.4.1 (IBR, see § 60.17), except that it must be conducted at a vacuum equal to or greater than the maximum value reached during the sampling run. If the leakage rate is found to be no greater than 0.0003 m^3/min (0.01 cfm) or 4% of the average sampling rate (whichever is less), the leak check results are acceptable. If a higher leakage rate is obtained, the sampling run is invalid.

(2) Leak Checks During Sample Run: If, during a sampling run, a component (*e.g.,* filter assembly) change becomes necessary, a leak check must be conducted immediately before the change is made. The leak check must be done according to the procedure outlined in ASTM E2515–11, section 9.6.4.1 (IBR, see § 60.17), except that it must be done at a vacuum equal to or greater than the maximum value recorded up to that point in the sampling run. If the leakage rate is found to be no greater than 0.0003 m^3/min (0.01 cfm) or 4% of the average sampling rate (whichever is less), the leak check results are acceptable. If a higher leakage rate is obtained, the sampling run is invalid.

Note 1 to paragraph (f)(2): Immediately after component changes, leak checks are optional but highly recommended. If such leak checks are done, the procedure in paragraph (f)(1) of this section should be used.

* * * * *

■ 10. Amend § 60.5483 by revising paragraph (b) to read as follows:

§ 60.5483 What parts of the General Provisions do not apply to me?

* * * * *

(b) Section 60.8(a), (c), (d), (e), (f) (1), and (g);

* * * * *

■ 11. Amend Appendix A–1 to part 60 by revising sections 11.5, 11.5.1, and 11.5.2, and Table 1–2 in Method 1 to read as follows:

Appendix A–1 to Part 60—Test Methods 1 Through 2F

* * * * *

Method 1—Sample and Velocity Traverses For Stationary Sources

* * * * *

11.5 Alternative Measurement Site Selection Procedure. The alternative site selection procedure may be used to determine the rotation angles in lieu of the procedure outlined in section 11.4.

11.5.1 This alternative procedure applies to sources where measurement locations are less than 2 equivalent or duct diameters downstream or less than one-half duct diameter upstream from a flow disturbance. The alternative should be limited to ducts larger than 24 inches in diameter where blockage and wall effects are minimal. A directional flow-sensing probe is used to measure pitch and yaw angles of the gas flow at 40 or more traverse points; the resultant angle is calculated and compared with acceptable criteria for mean and standard deviation.

Note: Both the pitch and yaw angles are measured from a line passing through the traverse point and parallel to the stack axis. The pitch angle is the angle of the gas flow component in the plane that INCLUDES the traverse line and is parallel to the stack axis. The yaw angle is the angle of the gas flow component in the plane PERPENDICULAR to the traverse line at the traverse point and is measured from the line passing through the traverse point and parallel to the stack axis.

11.5.2 Traverse Points. Use a minimum of 40 traverse points for circular ducts and 42 points for rectangular ducts for the gas flow angle determinations. Follow the procedure outlined in section 11.3 and Table 1–1 or 1–2 of this method for the location and layout of the traverse points. If the alternative measurement location is determined to be acceptable according to the criteria in this alternative procedure, use the same minimum of 40 traverse points for circular ducts and 42 points for rectangular ducts that were used in the alternative measurement procedure for future sampling and velocity measurements.

* * * * *

TABLE 1–2—LOCATION OF TRAVERSE POINTS IN CIRCULAR STACKS

[Percent of stack diameter from inside wall to traverse point]

Traverse point number on a diameter	Number of traverse points on a diameter											
	2	4	6	8	10	12	14	16	18	20	22	24
1	14.6	6.7	4.4	3.2	2.6	2.1	1.8	1.6	1.4	1.3	1.1	1.1
2	85.4	25.0	14.6	10.5	8.2	6.7	5.7	4.9	4.4	3.9	3.5	3.2
3	.....	75.0	29.6	19.4	14.6	11.8	9.9	8.5	7.5	6.7	6.0	5.5
4	.....	93.3	70.4	32.3	22.6	17.7	14.6	12.5	10.9	9.7	8.7	7.9
5	.....	.....	85.4	67.7	34.2	25.0	20.1	16.9	14.6	12.9	11.6	10.5
6	.....	.....	95.6	80.6	65.8	35.6	26.9	22.0	18.8	16.5	14.6	13.2
7	.....	.....	.....	89.5	77.4	64.4	36.6	28.3	23.6	20.4	18.0	16.1
8	.....	.....	.....	96.8	85.4	75.0	63.4	37.5	29.6	25.0	21.8	19.4
9	.....	.....	.....	.....	91.8	82.3	73.1	62.5	38.2	30.6	26.2	23.0
10	.....	.....	.....	.....	97.4	88.2	79.9	71.7	61.8	38.8	31.5	27.2
11	.....	.....	.....	.....	.....	93.3	85.4	78.0	70.4	61.2	39.3	32.3
12	.....	.....	.....	.....	.....	97.9	90.1	83.1	76.4	69.4	60.7	39.8
13	.....	.....	.....	.....	.....	.....	94.3	87.5	81.2	75.0	68.5	60.2
14	.....	.....	.....	.....	.....	.....	98.2	91.5	85.4	79.6	73.8	67.7
15	.....	.....	.....	.....	.....	.....	.....	95.1	89.1	83.5	78.2	72.8
16	.....	.....	.....	.....	.....	.....	.....	98.4	92.5	87.1	82.0	77.0
17	.....	.....	.....	.....	.....	.....	.....	.....	95.6	90.3	85.4	80.6
18	.....	.....	.....	.....	.....	.....	.....	.....	98.6	93.3	88.4	83.9
19	.....	.....	.....	.....	.....	.....	.....	.....	.....	96.1	91.3	86.8
20	.....	.....	.....	.....	.....	.....	.....	.....	.....	98.7	94.0	89.5
21	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	96.5	92.1
22	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	98.9	94.5
23	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	96.8
24	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	98.9

* * * * *

■ 12. Amend Method 4 in Appendix A–3 to part 60 by revising Figure 4–3 to read as follows:

Appendix A–3 to Part 60—Test Methods 4 Through 5I

* * * * *

Method 4—Determination of Moisture Content in Stack Gases

* * * * *

Plant .....
Location .....
Operator .....
Date .....
Run No. .....
Ambient temperature .....
Barometric pressure .....
Probe length m (ft) .....

SCHEMATIC OF STACK CROSS SECTION

Traverse point number	Sampling time (θ), min.	Stack temperature °C (°F)	Pressure differential across orifice meter Δ H mm (in.) H_2O	Meter reading gas sample volume m^3 (ft^3)	Δ V_m m^3 (ft^3)	Gas Sample temperature at dry gas meter Inlet (Tm_{in}), °C (°F)	Gas Sample temperature at dry gas meter Outlet (Tm_{out}), °C (°F)	Temperaturem of gas leaving condenser or last impinger °C (°F)
Total.								
Average.								

Figure 4-3 Moisture Field Data Sheet

* * * * *

■ 13. Amend Appendix A–4 to part 60 by revising section 10.1.3 in Method 7 of to read as follows:

Appendix A–4 to Part 60—Test Methods 6 Through 10B

* * * * *

Method 7—Determination of Nitrogen Oxide Emissions From Stationary Sources

* * * * *

10.1.3 Spectrophotometer Calibration Quality Control. Multiply the absorbance value obtained for each standard by the K_c factor (reciprocal of the least squares slope) to determine the distance each calibration point lies from the theoretical calibration line. The difference between the calculated concentration values and the actual concentrations (*i.e.,* 100, 200, 300, and 400 μg NO_2) shall be less than 7 percent for all standards.

* * * * *

■ 16. Amend Appendix A–7 to part 60 by:

■ a. In Method 19, revising Equation 19–5;

■ b. In Method 25, adding sections 12.9 and 12.9.1 through 12.9.16, and revising Figure 25–6; and

■ c. In Method 25C, revising section 12.1.

The revisions and additions read as follows:

Appendix A–7 to Part 60—Test Methods 19 Through 25E

* * * * *

Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate Matter, Sulfur Dioxide, and Nitrogen Oxide Emission Rates

* * * * *

$$E = C_d F_d \frac{20.9}{20.9 - \frac{\%O_{2w}}{1 - B_{ws}}} \qquad \text{Eq. 19-5}$$

* * * * *

Method 25—Determination of Total Gaseous Nonmethane Organic Emissions As Carbon

* * * * *

12.9 Record and Report Initial Method Checks as follows:

12.9.1 Calibration and Linearity Check Gas Certifications (Section 7.2 and 7.4)

12.9.2 Condensate Trap Blank Check (Section 8.1.1)

12.9.3 Pretest Leak-Check (Section 8.1.4)

12.9.4 Condensate Recovery Apparatus (Section 10.1.1)

12.9.5 Carrier Gas and Auxiliary O_2 Blank Check (Section 10.1.1.1)

12.9.6 Oxidation Catalyst Efficiency Check. (Section 10.1.1.2)

12.9.7 System Performance Check. (Section10.1.1.3)

12.9.8 Oxidation Catalyst Efficiency Check. (Section 10.1.2.1)

12.9.9 Reduction Catalyst Efficiency Check (Section 10.1.2.2)

12.9.10 NMO Analyzer Linearity Check Calibration. (Section 10.1.2.3)

12.9.11 NMO Analyzer Daily Calibration. (Section 10.2)

12.9.12 Condensate Recovery. (Section 11.1)

12.9.13 Daily Performance Checks. (Section 11.1.1)

12.9.14 Leak-Check. (Section 11.1.1.1)

12.9.15 System Background Test. (Section 11.1.1.2)

12.9.16 Oxidation Catalyst Efficiency Check. (Section 11.1.1.3)

* * * * *

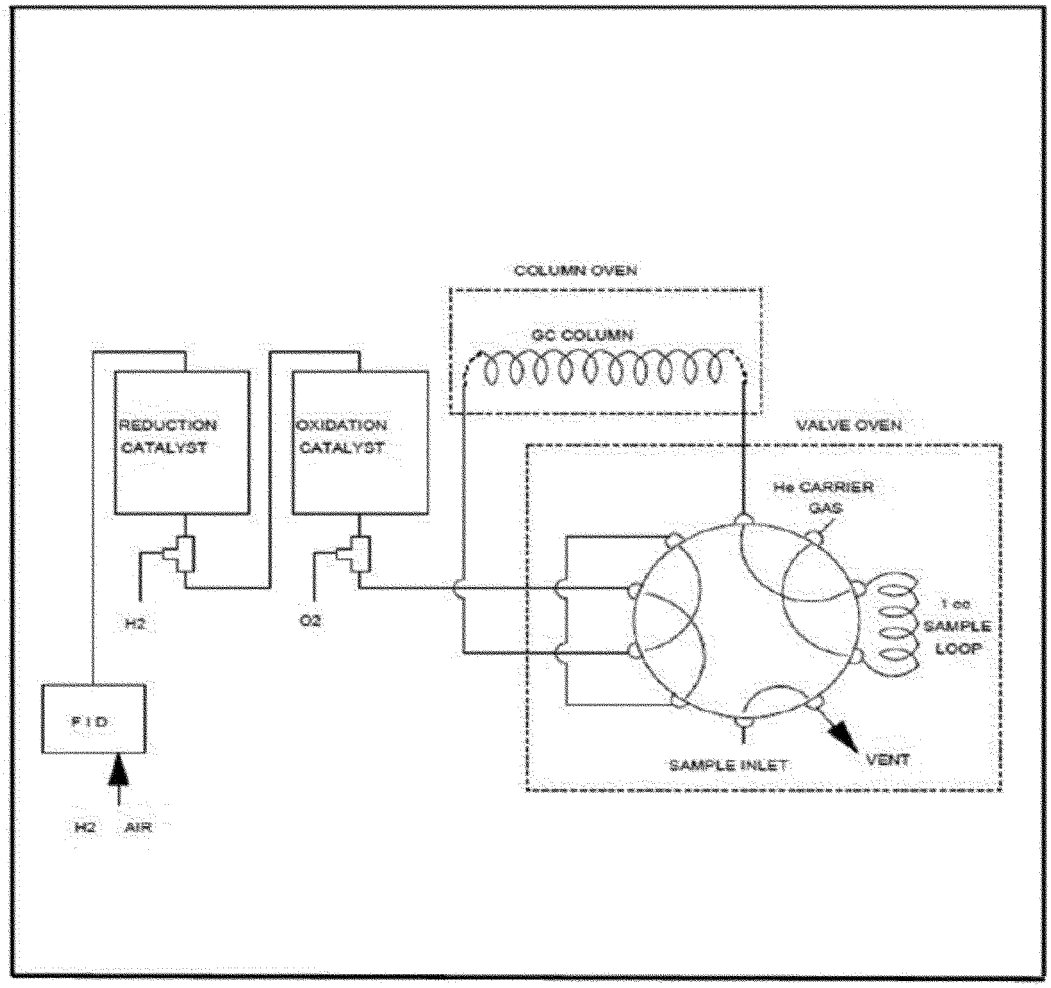

Figure 25-6. Nonmethane Organic Analyzer (NMO)

* * * * *

Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in Landfill Gases

* * * * *

12.1 Nomenclature.

* * * * *

C_{N2} = N_2 concentration in the landfill gas sample

C_{mN2} = Measured N_2 concentration, diluted landfill gas sample

* * * * *

■ 17. In Appendix A–8 to part 60:

■ a. Revise sections 12.4 and 12.5 in Method 26.

■ b. Revise section 13.8 in Test Method 28WHH.

The revisions read as follows:

Appendix A–8 to Part 60—Test Methods 26 Through 30B

* * * * *

Method 26—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Non-Isokinetic Method

* * * * *

12.4 Total ug HCl, HBr, or HF Per Sample.

$$m_{HX} = K_{HCl,HBr,HF} V_s (S_{x^-} - B_{x^-}) \text{ Eq. 26-4}$$

12.5 Total ug Cl_2 or Br_2 Per Sample.

$$M_{x2} = V_s (S_{x^-} - B_{x^-}) \text{ Eq. 26-5}$$

* * * * *

Test Method 28WHH for Measurement of Particulate Emissions and Heating Efficiency of Wood-Fired Hydronic Heating Appliances

* * * * *

13.8 Carbon Monoxide Emissions.

For each minute of the test period, the carbon monoxide emissions rate (g/min) shall be calculated as:

$$CO_{g/min} = Q_{std} \cdot CO_s \cdot 3.30x10^{-5} \quad \text{Eq. 23}$$

Total CO emissions for each of the four test periods ($CO_{_1}$, $CO_{_2}$, $CO_{_3}$, $CO_{_4}$) shall be calculated as the sum of the emissions rates for each of the 1-minute intervals.

Total CO emissions for the test run, CO_T, shall be calculated as the sum of $CO_{_1}$, $CO_{_2}$, $CO_{_3}$ and $CO_{_4}$.

* * * * *

■ 18. Amend Appendix B to part 60 by:

■ a. In Performance Specification 1, revising sections 2.1, 3.1, 6.1, 8.1(1), 8.1(2)(iii), 8.1(3)(ii), 8.2(1), 8.2(2), 8.2(3), 9.0, 12.1, 13.1, 13.2, and 16.0 reference 8;

■ b. In Performance Specification 2, revising sections 8.3.3 and 12.5;

■ c. Revising Performance Specification 4B;

■ d. In Performance Specification 6, revising section 13.2;

■ e. In Performance Specification 12A, revising sections 8.4.2, 8.4.4, 8.4.5, 8.4.6.1, 13.3, 17.5, and footnote to Figure 12A–3;

■ f. In Performance Specification 16, revising sections 1.1, 3.11, 3.12, 9.1, 9.4, 12.3.2, 13.1, and 13.5.

The revisions read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

Performance Specification 1—Specifications and Test Procedures for Continuous Opacity Monitoring Systems in Stationary Sources

* * * * *

2.1 ASTM D6216 (IBR, see § 60.17) is the reference for design specifications, manufacturer's performance specifications, and test procedures. The opacity monitor manufacturer must periodically select and test an opacity monitor, that is representative of a group of monitors produced during a specified period or lot, for conformance with the design specifications in ASTM D6216. The opacity monitor manufacturer must test each opacity monitor for conformance with the manufacturer's performance specifications in ASTM D6216. Note: If the initial certification of the opacity monitor occurred before [the effective date of the final rule] using ASTM D6216–98, D6216–03, D6216–07, or D6216–12, it is not necessary to recertify using ASTM D6216–20.

* * * * *

3.1 All definitions and discussions from section 3 of ASTM D6216 are applicable to PS–1.

* * * * *

6.1 *Continuous Opacity Monitoring System.* You, as owner or operator, are responsible for purchasing an opacity monitor that meets the specifications of ASTM D6216, including a suitable data recorder or automated data acquisition handling system. Example data recorders include an analog strip chart recorder or more appropriately an electronic data acquisition and reporting system with an input signal range compatible with the analyzer output.

* * * * *

8.1 * * *

(1) You must purchase an opacity monitor that complies with ASTM D6216 and obtain a certificate of conformance from the opacity monitor manufacturer.

(2) * * *

(iii) Alternative Locations and Light Beam Paths. You may select locations and light beam paths, other than those cited above, if you demonstrate, to the satisfaction of the Administrator or delegated agent, that the average opacity measured at the alternative location or path is equivalent to the opacity as measured at a location meeting the criteria of sections 8.1(2)(i) and 8.1(2)(ii). The opacity at the alternative location is considered equivalent if {1} the average opacity value measured at the alternative location is within ±10 percent of the average opacity value measured at the location meeting the installation criteria, and {2} the difference between any two average opacity values is less than 2 percent opacity (absolute). You use the following procedure to conduct this demonstration: Simultaneously measure the opacities at the two locations or paths for a minimum period of time (*e.g.,* 180-minutes) covering the range of normal operating conditions and compare the results. You may use alternative procedures for determining acceptable locations if those procedures are approved by the Administrator.

(3) * * *

(ii) Calibration Error Check. Conduct a three-point calibration error test using three calibration attenuators that produce outlet pathlength corrected, single-pass opacity values shown in ASTM D6216, section 7.5. If your applicable limit is less than 10 percent opacity, use attenuators as described in ASTM D6216, section 7.5 for applicable standards of 10 to 19 percent opacity. Confirm the external audit device produces the proper zero value on the COMS data recorder. Separately, insert each calibration attenuators (low, mid, and high-level) into the external audit device. While inserting each attenuator, {1} ensure that the entire light beam passes through the attenuator, {2} minimize interference from reflected light, and {3} leave the attenuator in place for at least two times the shortest recording interval on the COMS data recorder. Make a total of five nonconsecutive readings for each attenuator. At the end of the test, correlate each attenuator insertion to the corresponding value from the data recorder. Subtract the single-pass calibration attenuator values corrected to the stack exit conditions from the COMS responses. Calculate the arithmetic mean difference, standard deviation, and confidence coefficient of the five measurements value using equations 1–3, 1–4, and 1–5. Calculate the calibration error as the sum of the absolute value of the mean difference and the 95 percent confidence coefficient for each of the three test attenuators using equation 1–6. Report the calibration error test results for each of the three attenuators.

* * * * *

8.2 * * *

(1) Conduct the verification procedures for design specifications in section 6 of ASTM D6216.

(2) Conduct the verification procedures for performance specifications in section 7 of ASTM D6216.

(3) Provide to the owner or operator, a report of the opacity monitor's conformance to the design and performance specifications required in sections 6 and 7 of ASTM D6216 in accordance with the reporting requirements of section 9 in ASTM D6216.

9.0 *What quality control measures are required by PS–1?*

Opacity monitor manufacturers must initiate a quality program following the requirements of ASTM D6216, section 8. The quality program must include:

(1) A quality system and

(2) A corrective action program.

* * * * *

12.1 Desired Attenuator Values. Calculate the desired attenuator value corrected to the emission outlet pathlength as follows:

$$OP_2 = 1 - (1 - OP_1)^{\frac{L_2}{L_1}} \quad \text{Eq. 1-1}$$

Where:

OP_1 = Nominal opacity value of required low-, mid-, or high-range calibration attenuators.

OP_2 = Desired attenuator opacity value from ASTM D6216, section 7.5 at the opacity limit required by the applicable subpart.

L_1 = Monitoring pathlength.

L_2 = Emission outlet pathlength.

* * * * *

13.1 Design Specifications. The opacity monitoring equipment must comply with the design specifications of ASTM D6216.

13.2 Manufacturer's Performance Specifications. The opacity monitor must comply with the manufacturer's performance specifications of ASTM D6216.

* * * * *

16.0 * * *

8. ASTM D6216–20: Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications. ASTM. September 2020.

* * * * *

Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.3.3 Conduct the CD test at the two points specified in section 6.1.2. Introduce to the CEMS the reference gases, gas cells, or optical filters (these need not be certified). When using reference gases, introduce the reference gas prior to any sample conditioning or filtration equipment and ensure that it passes through all filters,

scrubbers, conditioners, and other monitor components used during normal sampling. The reference gas should pass through as much of the sampling probe as practical.

Record the CEMS response and subtract this value from the reference value (see example data sheet in Figure 2–1).

* * * * *

12.5 Relative Accuracy. Calculate the RA, expressed as a percentage, of a set of data as follows:

$$RA = \frac{[|\bar{d}| + |CC|]}{\overline{RM}} \times 100 \qquad Eq. 2-6$$

Where:

$|d|$ = Absolute value of the mean differences (from Equation 2–3).

$|CC|$ = Absolute value of the confidence coefficient (from Equation 2–3).

$\overline{RM}$ = Average RM value. In cases where the average emissions for the test are less than 50 percent of the applicable emission standard, substitute the applicable emission standard value in the denominator of Eq. 2–6 in place of the average RM value. In all other cases, use $\overline{RM}$.

* * * * *

Performance Specification 4B—Specifications and Test Procedures for Carbon Monoxide and Oxygen Continuous Monitoring Systems in Stationary Sources

1.0 Scope and Application

Analytes

Analyte	CAS No.
Carbon Monoxide (CO)	630–08–0
Oxygen (O_2)	7782–44–7

Applicability

This specification is to be used for evaluating the acceptability of carbon monoxide (CO) and oxygen (O_2) continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in the regulations. The CEMS may include, for certain stationary sources, (a) flow monitoring equipment to allow measurement of the dry volume of stack effluent sampled, and (b) an automatic sampling system.

This specification is not designed to evaluate the installed CEMS' performance over an extended period of time, nor does it identify specific calibration techniques and auxiliary procedures to assess the CEMS' performance. The source owner or operator, however, is responsible to properly calibrate, maintain, and operate the CEMS. To evaluate the CEMS' performance, the Administrator may require, under section 114 of the Act, the operator to conduct CEMS performance evaluations at times other than the initial test.

The definitions, installation and measurement location specifications, test procedures, data reduction procedures, reporting requirements, and bibliography are the same as in PS 3 (for O_2) and PS 4A (for CO) except as otherwise noted below.

Summary of Performance Specification

Installation and measurement location specifications, performance specifications, test procedures, and data reduction procedures are included in this specification. Reference method tests, calibration error tests, calibration drift tests, and interferant tests are conducted to determine conformance of the CEMS with the specification.

Definitions

The definitions are the same as in section 3.0 of PS2 with the following definitions added:

Continuous Emission Monitoring System (CEMS). This definition is the same as PS 2 section 3.0 with the following addition. A continuous monitor is one in which the sample to be analyzed passes the measurement section of the analyzer without interruption.

Response Time (RT). The time interval between the start of a step change in the system input and when the pollutant analyzer output reaches 95 percent of the final value.

Calibration Error (CE). The difference between the concentration indicated by the CEMS and the known concentration generated by a calibration source when the entire CEMS, including the sampling interface is challenged. A CE test procedure is performed to document the accuracy and linearity of the CEMS over the entire measurement range.

Interferences [Reserved]

Safety

This performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing this performance specification. The CEMS user's manual should be consulted for specific precautions to be taken with regard to the analytical procedures.

Equipment and Supplies

Same as section 6.0 of PS 2, except for the following:

Data Recorder Scale. For O_2, same as specified in PS 3, except that the span must be 25 percent. The span of the O_2 may be higher if the O_2 concentration at the sampling point can be greater than 25 percent. For CO, same as specified in PS 4A, except that the low-range span must be 200 ppm and the high range span must be 3000 ppm. In addition, the scale for both CEMS must record all readings within a measurement range with a resolution of 0.5 percent.

Reagents and Standards

Sample Collection, Preservation, Storage, and Transport

Installation and Measurement Location Specifications

The CEMS Installation. This specification is the same as PS 2 section 8.1.1 with the following additions. Both the CO and O_2 monitors should be installed at the same general location. If this is not possible, they may be installed at different locations if the effluent gases at both sample locations are not stratified and there is no in-leakage of air between sampling locations.

Measurement Location. Same as PS 2 section 8.1.2.

Point CEMS. The measurement point should be within or centrally located over the centroidal area of the stack or duct cross section.

Path CEMS. The effective measurement path should: (1) Have at least 70 percent of the path within the inner 50 percent of the stack or duct cross sectional area, or (2) be centrally located over any part of the centroidal area.

Reference Method (RM) Measurement Location and Traverse Points

This specification is the same as PS 2 section 8.1.3 with the following additions. When pollutant concentration changes are due solely to diluent leakage and CO and O_2 are simultaneously measured at the same location, one half diameter may be used in place of two equivalent diameters.

Pretest Preparation. Install the CEMS, prepare the RM test site according to the specifications in section 8.1, and prepare the CEMS for operation according to the manufacturer's written instructions.

Stratification Test Procedure. Stratification is defined as the difference in excess of 10 percent between the average concentration in the duct or stack and the concentration at any point more than 1.0 meter from the duct or stack wall. To determine whether effluent stratification exists, a dual probe system should be used to determine the average effluent concentration while measurements at each traverse point are being made. One probe, located at the stack or duct centroid, is used as a stationary reference point to indicate change in the effluent concentration over time. The second probe is used for sampling at the traverse points specified in Method 1 (40 CFR part 60 appendix A). The monitoring system samples sequentially at the reference and traverse points throughout the testing period for five minutes at each point.

Calibration Drift Test Procedure. Same as section 8.3 in PS 2.

Note: The CE and RT tests must be conducted during the CD test period.

Calibration Error Test Procedure. Challenge each monitor (both low and high range CO and O_2) with zero gas and EPA Protocol 1 cylinder gases at three measurement points within the ranges specified in Table 4B–1 (in section 18.0).

Operate each monitor in its normal sampling mode as nearly as possible. The calibration gas must be injected into the sample system as close to the sampling probe outlet as practical and should pass through all CEMS components used during normal sampling. Challenge the CEMS three non-consecutive times at each measurement point and record the responses. The duration of each gas injection should be sufficient to ensure that the CEMS surfaces are conditioned.

Response Time Test Procedure. Same as section 8.3 in PS 4A and must be carried out for both the CO and O_2 monitors.

Relative Accuracy Test Procedure. Sampling Strategy for Reference Method (RM) Tests, Number of RM Tests, and Correlation of RM and CEMS Data are the same as PS 2, sections 8.4.3, 8.4.4, and 8.4.5, respectively.

Quality Control [Reserved]

Calibration and Standardization [Reserved]

Analytical Procedure

Sample collection and analysis are concurrent for this Performance Specification (see section 8.0). Refer to the RM for specific analytical procedures.

Calculation and Data Analysis

Summarize the results on a data sheet as shown in Figure 4B–1 (in section 18.0).

Calibration Error (CE) is the average the differences between the instrument response and the certified cylinder gas value for each gas. Calculate the CE results for the CO monitor according to:

$$CE = \left|\frac{d}{FS}\right| \times 100 \qquad \text{Eq.4B-1}$$

Where:

d = mean difference between the CEMS response and the known reference concentration, and

FS = span value.

The CE for the O_2 monitor is the average percent O_2 difference between the O_2 monitor and the certified cylinder gas value for each gas.

Method Performance

Calibration Drift Performance Specification. For O_2, same as specified in PS 3. For CO, the same as specified in PS 4A except that the CEMS calibration must not drift from the reference value of the calibration standard by more than 3 percent of the span value on either the high or low range.

Calibration Error (CE) Performance Specification. The mean difference between the CEMS and reference values at all three test points (see Table 4B–1) must be no greater than 5 percent of span value for CO monitors and 0.5 percent for O_2 monitors.

Response Time Performance Specification. The response time for the CO or O_2 monitor must not exceed 240 seconds.

Relative Accuracy (RA) Performance Specification. For O_2, same as specified in PS 3. For CO, the same as specified in PS 4A.

Pollution Prevention [Reserved]

Waste Management [Reserved]

Alternative Procedure

Alternative RA Procedure. Under some operating conditions, it may not be possible to obtain meaningful results using the RA test procedure. This includes conditions where consistent, very low CO emission or low CO emissions interrupted periodically by short duration, high level spikes are observed. It may be appropriate in these circumstances to waive the RA test and substitute the following procedure.

Conduct a complete CEMS status check following the manufacturer's written instructions. The check should include operation of the light source, signal receiver, timing mechanism functions, data acquisition and data reduction functions, data recorders, mechanically operated functions, sample filters, sample line heaters, moisture traps, and other related functions of the CEMS, as applicable. All parts of the CEMS must be functioning properly before the RA requirement can be waived. The instrument must also successfully pass the CE and CD specifications. Substitution of the alternate procedure requires approval of the Regional Administrator.

Reference

40 CFR part 266, Appendix IX, section 2, ''Performance Specifications for Continuous Emission Monitoring Systems.''

Tables, Diagrams, Flowcharts, and Validation Data

TABLE 4B–1—CALIBRATION ERROR CONCENTRATION RANGE

Measurement point	CO Low range (ppm)	CO High range (ppm)	O_2 (%)
1	0–40	0–600	0–2
2	60–80	900–1,200	8–10
3	140–160	2,100–2,400	14–16

FIGURE 4B–1—CALIBRATION ERROR DATA SHEET

Run No.	Calibration value	Monitor response	Difference		
			Zero	Mid	High
1-Zero. 2-Mid. 3-High. 4-Mid. 5-Zero. 6-High. 7-Zero. 8-Mid. 9-High.					
Mean Difference =					
Calibration Error =			%	%	%

* * * * *

Performance Specification 6—Specifications and Test Procedures for Continuous Emission Rate Monitoring Systems in Stationary Sources

* * * * *

13.2 CERMS Relative Accuracy. Calculate the CERMS Relative Accuracy (RA) expressed as a percentage using Eq. 2–6 of section 12 of Performance Specification 2. The RA of the CERMS shall be no greater than 20.0 percent in terms of the units of the emission standard. If the average emissions for the test are less than 50 percent of the applicable emission standard, substitute the applicable emission standard value in the denominator of Eq. 2–6 in place of the average RM value; in this case, the RA of the CERMS shall be no greater than 10.0 percent consistent with section 13.2 of Performance Specification 2.

* * * * *

Performance Specification 12A—Specifications and Test Procedures for Total Vapor Phase Mercury Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.4.2 Reference Methods (RM). Unless otherwise specified in an applicable subpart of the regulations, use Method 29, Method 30A, or Method 30B in appendix A–8 to this part or ASTM D6784 (IBR, see § 60.17) as the RM for Hg concentration. For Method 29 and ASTM D6784 only, the filterable portion of the sample need not be included when making comparisons to the CEMS results. When Method 29, Method 30B, or ASTM D6784–16 is used, conduct the RM test runs with paired or duplicate sampling systems and use the average of the vapor phase Hg concentrations measured by the two trains. When Method 30A is used, paired sampling systems are not required. If the RM and CEMS measure on a different moisture basis, data derived with Method 4 in appendix A–3 to this part must also be obtained during the RA test.

* * * * *

8.4.4 Number and Length of RM Test Runs. Conduct a minimum of nine RM test runs. When Method 29, Method 30B, or ASTM D6784 is used, only test runs for which the paired RM trains meet the relative deviation criteria (RD) of this PS must be used in the RA calculations. In addition, for Method 29 and ASTM D6784, use a minimum sample time of 2 hours and for Methods 30A and 30B use a minimum sample time of 30 minutes.

* * * * *

8.4.5 Correlation of RM and CEMS Data. Correlate the CEMS and the RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration for each RM test period. Consider system response time, if important, and confirm that the results are on a consistent moisture basis with the RM test. Then, compare each integrated CEMS value against the corresponding RM value. When Method 29, Method 30B, or ASTM D6784 is used, compare each CEMS value against the corresponding average of the paired RM values.

* * * * *

8.4.6.1 When Method 29, Method 30B, or ASTM D6784 is used, outliers are identified through the determination of relative deviation (RD) of the paired RM tests. Data that do not meet the RD criteria must be flagged as a data quality problem and may not be used in the calculation of RA. The primary reason for performing paired RM sampling is to ensure the quality of the RM data. The percent RD of paired data is the parameter used to quantify data quality. Determine RD for paired data points as follows: Where: Ca and Cb are the Hg concentration values determined from the paired samples.

* * * * *

13.3 Relative Accuracy (RA). The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data in terms of units of μg/scm. Alternatively, if the mean RM is less than 2.5 μg/scm, the results are acceptable if the absolute value of the difference between the mean RM and CEMS values added to the absolute value of the confidence coefficient from Equation 12A–7 does not exceed 0.5 μg/scm.

* * * * *

17.5 ASTM D6784–16, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method).''

* * * * *

FIGURE 12A–3—RELATIVE ACCURACY TEST DATA

Run No.	Date	Begin time	End time	RM value (μg/m³)	CEMS value (μg/m³)	Difference (μg/m³)	Run used? (yes/no)	RD [1]
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
Average Values								

Arithmetic Mean Difference:

Standard Deviation:
Confidence Coefficient:
T-Value:
% Relative Accuracy:
$(RM)_{avg} - (CEMS)_{avg}$:

[1] Calculate the RD only if paired samples are taken using RM 30B, RM 29, or ASTM D6784. Express RD as a percentage or, for very low RM concentrations (≤1.0 μg/m³), as the absolute difference between C_a and C_b.

* * * * *

Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources

* * * * *

1.1 *Does this performance specification apply to me?* If you, the source owner or operator, intend to use (with any necessary approvals) a predictive emission monitoring system (PEMS) to show compliance with

your emission limitation under 40 CFR parts 60, 61, or 63, you must use the procedures in this performance specification (PS) to determine whether your PEMS is acceptable for use in demonstrating compliance with applicable requirements. Use these procedures to certify your PEMS after initial installation and periodically thereafter to ensure the PEMS is operating properly. If your PEMS contains a diluent (O_2 or CO_2) measuring component, the diluent component must be tested as well. These specifications apply to PEMS that are installed under 40 CFR parts 60, 61, and 63 after the effective date of this performance specification.

* * * * *

3.11 *Relative Accuracy Audit (RAA)* means a quarterly audit of the PEMS against a portable analyzer meeting the requirements of ASTM D6522–00 or a RM for a specified number of runs. A RM may be used in place of the portable analyzer for the RAA.

3.12 *Relative Accuracy Test Audit* (RATA) means a RA test that is performed at least once every four calendar quarters after the initial certification test. The RATA shall be conducted as described in section 8.2.

* * * * *

9.1 QA/QC Summary. Conduct the applicable ongoing tests listed below.

ONGOING QUALITY ASSURANCE TESTS

Test	PEMS regulatory purpose	Acceptability	Frequency
Sensor Evaluation	All		Daily.
RAA	All	Same as for RA in Sec. 13.5	Each quarter except quarter when RATA performed.
RATA	All	Same as for RA in Sec. 13.1	Yearly in quarter when RAA not performed.
Bias Correction	All	If $d_{avg} \leq \lvert cc \rvert$	Bias test passed (no correction factor needed).
PEMS Training	All	If $F_{critical} \geq F$, $r \geq 0.8$	Optional after initial and subsequent RATAs.
Sensor Evaluation Alert Test (optional).	All	See Section 6.1.8	After each PEMS training.

* * * * *

9.4 Yearly Relative Accuracy Test Audit. Perform a minimum 9-run RATA as specified by section 8.2 on a yearly basis in the quarter that the RAA is not performed.

* * * * *

12.3.2 F-test. Conduct an F-test for each of the three RA data sets collected at different test levels. Calculate the variances of the PEMS and the RM using Equation 16–6.

$$S^2 = \frac{\sum_{i=1}^{n} (e_i - e_m)^2}{n-1} \qquad Eq.\ 16\text{-}6$$

Determine if the variance of the PEMS data is significantly different from that of the RM data at each level by calculating the F-value using Equation 16–7.

$$F = \frac{S^2\ PEMS}{S^2\ RM} \qquad Eq.\ 16\text{-}7$$

Compare the calculated F-value with the critical value of F at the 95 percent confidence level with n–1 degrees of freedom. The critical value is obtained from Table 16–2 or a similar table for F-distribution. If the calculated F-value is greater than the critical value at any level, your proposed PEMS is unacceptable.

* * * * *

13.1 PEMS Relative Accuracy. The RA, calculated in units of the emission standard, must not exceed 10 percent if the PEMS measurements are greater than 100 ppm or 0.2 lbs/mm Btu. The RA must not exceed 20 percent if the PEMS measurements are between 100 ppm (or 0.2 lb/mm Btu) and 10 ppm (or 0.02 lb/mm Btu). For measurements below 10 ppm (or 0.02 lb/mm Btu), the absolute mean difference between the PEMS measurements and the RM measurements must not exceed 2 ppm (or 0.01 lb/mm Btu). For diluent only PEMS, an alternative criterion of ±1 percent absolute difference between the PEMS and RM may be used if less stringent.

* * * * *

13.5 Relative Accuracy Audits (RAA). The average of the three portable analyzer or RM determinations must not differ from the simultaneous PEMS average value by more than 10 percent of the analyzer or RM for concentrations greater than 100 ppm (or 0.2 lb/mm Btu) or 20 percent for concentrations between 100 ppm (or 0.2 lb/mm Btu) and 20 ppm (or 0.04 lb/mm Btu), or the test is failed. For measurements at 20 ppm (or 0.04 lb/mm Btu) or less, this difference must not exceed 2 ppm (or 0.01 lb/mm Btu) for a pollutant PEMS. For diluent PEMS, the difference must not exceed 1 percent.

* * * * *

■ 19. Amend Appendix F to part 60 by:

■ a. In Procedure 1, by revising sections 4.1, 5.2.3, and 6.2; and

■ b. In Procedure 5, by revising sections 2.5, 4.0, adding section 4.4, and revising section 5.1.3.

The revisions and addition read as follows:

Appendix F to Part 60—Quality Assurance Procedures

Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination

* * * * *

4.1 CD Requirement. As described in 40 CFR 60.13(d), source owners and operators of CEMS must check, record, and quantify the CD at two concentration values at least once daily (approximately 24 hours) in accordance with the method prescribed by the manufacturer. When using reference gases, introduce the reference gas prior to any sample conditioning or filtration equipment and ensure that it passes through all filters, scrubbers, conditioners, and other monitor components used during normal sampling. The reference gas must pass through as much of the sampling probe as practical. The CEMS calibration must, as minimum, be adjusted whenever the daily zero (or low-level) CD or the daily high-level CD exceeds two times the limits of the applicable PS's in appendix B of this regulation.

* * * * *

5.2.3 * * *

(1) * * *

(2) For the CGA, for pollutant monitors, the audit inaccuracy must be ±15 percent of the average audit value as calculated using Equation 1–1 or the difference between the average CEMS response and the average audit value must be less than one of the following:

Analyzer span	Alternative CGA criteria (ppm)
≥50 ppm	±5
>20 ppm, but ≤50 ppm	±3
≤20 ppm	+2

For diluent monitors, ±15 percent of the average audit value.

(3) For the RAA, ±15 percent of the three-run average or ±7.5 percent of the applicable standard, whichever is greater.

* * * * *

6.2 RAA Accuracy Calculation. Use Equation 1–1 to calculate the accuracy for the RAA. The RAA must be calculated in the units of the applicable emission standard.

* * * * *

Procedure 5—Quality Assurance Requirements for Vapor Phase Mercury Continuous Emissions Monitoring Systems and Sorbent Trap Monitoring Systems Used for Compliance Determination at Stationary Sources

* * * * *

2.5 Calibration Drift (CD) means the absolute value of the difference between the CEMS output response and either the upscale elemental Hg reference gas or the zero-level elemental Hg reference gas, expressed as a percentage of the span value, when the entire

CEMS, including the sampling interface, is challenged after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

* * * * *

4.0 Calibration Drift (CD) Assessment and Weekly System Integrity Check

* * * * *

4.4 Weekly System Integrity Check. At least once every 7 calendar days, using the procedure described in section 8.3.3 of Performance Specification 12A in appendix B to this part, source owners and operators of Hg CEMS must use a single mid- or high-level oxidized Hg (mercuric chloride, $HgCl_2$) reference gas to assess transport and measurement of oxidized mercury. The absolute value of the difference between the Hg CEMS output response and the reference gas value, as a percentage of span, must not be greater than 10.0 percent.

* * * * *

5.1.3 Relative Accuracy Audit (RAA). As an alternative to the QGA, a RAA may be conducted in three of four calendar quarters, but in no more than three quarters in succession. To conduct a RAA, follow the RATA test procedures in section 8.5 of PS 12A in appendix B to this part, except that only three test runs are required. Calculate the relative accuracy according to Equation 1–1 of Procedure 1 of this appendix.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 20. The authority citation for part 63 continues to read as follows:

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

■ 21. In § 63.14:
■ a. Revise paragraph (a);
■ b. Redesignate paragraphs (d) through (t) as paragraphs (e) through (u);
■ c. Add new paragraph (d);
■ d. Revise newly redesignated paragraph (i)(102);
■ e. Redesignate newly redesignated paragraphs (i)(103) through (116) as paragraphs (i)(104) through (117); and
■ f. Add new paragraph (i)(103).

The revisions and addition read as follows:

§ 63.14 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, EPA must publish a document in the **Federal Register** and the material must be available to the public. All approved materials are available for inspection at the EPA and the National Archives and Records Administration (NARA). Contact EPA at: Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source(s) in the following paragraph(s) of this section.

* * * * *

(d) American Public Health Association, 1015 15th Street NW, Washington, DC 20005; phone: (844) 232–3707; email: *standardmethods@subscritpionoffice.com*; website: *www.standardmethods.org.* Standard Methods (Online) For the Examination of Water and Wastewater:

(1) 5210B (Method 5210B); Biochemical Oxygen Demand (BOD), 2019; IBR approved for § 63.457(c).

(2) [Reserved]

* * * * *

(i) * * *

(102) ASTM D6784–02 (Reapproved 2008), Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), Approved April 1, 2008; IBR approved for §§ 63.2465(d); 63.11646(a); 63.11647(a) and (d); tables 1, 2, 5, 11, 12t, and 13 to subpart DDDDD; tables 4 and 5 to subpart JJJJJ; tables 4 and 6 to subpart KKKKK; table 4 to subpart JJJJJJ.

(103) ASTM D6784–16, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), 2016; IBR approved for table 5 to subpart UUUUU appendix A to subpart UUUUU.

* * * * *

Subpart S—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry

■ 22. In § 63.457, revise paragraph (c)(4) to read as follows:

§ 63.457 Test methods and procedures.

* * * * *

(c) * * *

(4) To determine soluble BOD_5 in the effluent stream from an open biological treatment unit used to comply with §§ 63.446(e)(2) and 63.453(j), the owner or operator shall use Method 5210B (IBR, see § 63.14) with the following modifications:

(i) Filter the sample through the filter paper, into an Erlenmeyer flask by applying a vacuum to the flask sidearm. Minimize the time for which vacuum is applied to prevent stripping of volatile organics from the sample. Replace filter paper as often as needed in order to maintain filter times of less than approximately 30 seconds per filter paper. No rinsing of sample container or filter bowl into the Erlenmeyer flask is allowed.

(ii) Perform Method 5210B on the filtrate obtained in paragraph (c)(4) of this section. Dilution water shall be seeded with 1 milliliter of final effluent per liter of dilution water. Dilution ratios may require adjustment to reflect the lower oxygen demand of the filtered sample in comparison to the total BOD_5. Three BOD bottles and different dilutions shall be used for each sample.

* * * * *

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

■ 23. In Appendix to Subpart EEE of part 63 revise section 5, remove section 5.3 and redesignate section 5.4 as new section 5.3. to read as follows:

Appendix to Subpart EEE of Part 63—Quality Assurance Procedures for Continuous Emissions Monitors Used for Hazardous Waste Combustors

* * * * *

5. Performance Evaluation for CO, O_2, and HC CEMS

Carbon Monoxide (CO), Oxygen (O_2), and Hydrocarbon (HC) CEMS. An Absolute Calibration Audit (ACA) must be conducted quarterly, and a Relative Accuracy Test Audit (RATA) (if applicable, see sections 5.1 and 5.2) must be conducted yearly. When a performance test is also required under § 63.1207 to document compliance with emission standards, the RATA must coincide with the performance test. The audits must be conducted as follows.

5.1 Relative Accuracy Test Audit (RATA). This requirement applies to O_2 and CO CEMS. The RATA must be conducted at least yearly. Conduct the RATA as described in the RA test procedure (or alternate procedures section) described in the applicable Performance Specifications. In addition, analyze the appropriate performance audit samples received from the EPA as described in the applicable sampling methods.

5.2 Absolute Calibration Audit (ACA). The ACA must be conducted at least quarterly except in a quarter when a RATA (if applicable, see section 5.1) is conducted instead. Conduct an ACA as described in the

calibration error (CE) test procedure described in the applicable Performance Specifications.

5.3 Excessive Audit Inaccuracy. If the RA from the RATA or the CE from the ACA exceeds the criteria in the applicable Performance Specifications, hazardous waste burning must cease immediately. Hazardous waste burning cannot resume until the owner or operator takes corrective measures and audit the CEMS with a RATA to document that the CEMS is operating within the specifications.

* * * * *

Subpart JJJJ—National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating

■ 24. In § 63.3360, revise paragraph (e)(1)(vi) introductory text to read as follows:

§ 63.3360 What performance tests must I conduct?

* * * * *

(e) * * *

(1) * * *

(vi) Method 25 or 25A of appendix A–7 to 40 CFR part 60 must be used to determine total gaseous organic matter concentration. Use the same test method for both the inlet and outlet measurements which must be conducted simultaneously. You must submit notice of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7(b). You must use Method 25A if any of the conditions described in paragraphs (e)(1)(vi)(A) through (D) of this section apply to the control device.

* * * * *

Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

■ 25. Revise Table 4 to subpart ZZZZ of part 63 to read as follows:

Table 4 to Subpart ZZZZ of Part 63—Requirements for Performance Tests

As stated in §§ 63.6610, 63.6611, 63.6620, and 63.6640, you must comply with the following requirements for performance tests for stationary RICE:

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
2SLB, 4SLB, and CI stationary RICE.	Reduce CO emissions	Select the sampling port location and the number/location of traverse points at the inlet and outlet of the control device; and.	.....	For CO, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of section 11.1.1 of Method 1 of 40 CFR part 60, appendix A–1, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to section 8.1.2 of Method 7E of 40 CFR part 60, appendix A–4.
		Measure the O_2 at the inlet and outlet of the control device; and.	Method 3 or 3A or 3B of 40 CFR part 60, appendix A–2, or ASTM D6522–00 (Reapproved 2005) [a b c] (heated probe not necessary).	Measurements to determine O_2 must be made at the same time as the measurements for CO concentration.
		Measure the CO at the inlet and the outlet of the control device; and.	ASTM D6522–00 (Reapproved 2005) [a b c] (heated probe not necessary) or Method 10 of 40 CFR part 60, appendix A–4.	The CO concentration must be at 15 percent O_2, dry basis.
		Measure moisture content at the inlet and outlet of the control device as needed to determine CO and O_2 concentrations on a dry basis.	Method 4 of 40 CFR part 60, appendix A–3, or Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 [b].	Measurements to determine moisture content must be made at the same time and location as the measurements for CO concentration.
4SRB stationary RICE	Reduce formaldehyde or THC emissions.	Select the sampling port location and the number/location of traverse points at the inlet and outlet of the control device; and.	.....	For formaldehyde, THC, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of section 11.1.1 of Method 1 of 40 CFR part 60, appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to section 8.1.2 of Method 7E of 40 CFR part 60, appendix A.
		Measure O_2 at the inlet and outlet of the control device; and.	Method 3 or 3A or 3B of 40 CFR part 60, appendix A–2, or ASTM Method D6522–00 (Reapproved 2005) [a b] (heated probe not necessary).	Measurements to determine O_2 concentration must be made at the same time as the measurements for formaldehyde or THC concentration.

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
		Measure moisture content at the inlet and outlet of the control device as needed to determine formaldehyde or THC and O_2 concentrations on a dry basis; and.	Method 4 of 40 CFR part 60, appendix A–3, or Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 [b].	Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde or THC concentration.
		If demonstrating compliance with the formaldehyde percent reduction requirement, measure formaldehyde at the inlet and the outlet of the control device.	Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03,[b] provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
		If demonstrating compliance with the THC percent reduction requirement, measure THC at the inlet and the outlet of the control device.	(1) Method 25A, reported as propane, of 40 CFR part 60, appendix A–7.	THC concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
Stationary RICE	Limit the concentration of formaldehyde or CO in the stationary RICE exhaust.	Select the sampling port location and the number/location of traverse points at the exhaust of the stationary RICE; and.	.....	For formaldehyde, CO, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of section 11.1.1 of Method 1 of 40 CFR part 60, appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to section 8.1.2 of Method 7E of 40 CFR part 60, appendix A. If using a control device, the sampling site must be located at the outlet of the control device.
		Determine the O_2 concentration of the stationary RICE exhaust at the sampling port location; and.	Method 3 or 3A or 3B of 40 CFR part 60, appendix A–2, or ASTM Method D6522–00 (Reapproved 2005) [a b] (heated probe not necessary).	Measurements to determine O_2 concentration must be made at the same time and location as the measurements for formaldehyde or CO concentration.
		Measure moisture content of the stationary RICE exhaust at the sampling port location as needed to determine formaldehyde or CO and O_2 concentrations on a dry basis; and.	Method 4 of 40 CFR part 60, appendix A–3, or Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 [b].	Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde or CO concentration.
		Measure formaldehyde at the exhaust of the stationary RICE; or.	Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03,[b] provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
		Measure CO at the exhaust of the stationary RICE.	Method 10 of 40 CFR part 60, appendix A–4, ASTM Method D6522–00 (2005),[a b] Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03 [b].	CO concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

[a] You may also use Methods 3A and 10 as options to ASTM–D6522–00 (2005).
[b] You may obtain a copy of the standard from at least one of the following addresses: ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands

■ 26. In § 63.9306, revise paragraph (d)(2)(iv) to read as follows:

§ 63.9306 What are my continuous parameter monitoring system (CPMS) installation, operation, and maintenance requirements?

* * * * *

(d) * * *

(2) * * *

(iv) Using a pressure sensor with measurement sensitivity of 0.002 inch water, check gauge calibration quarterly and transducer calibration monthly.

* * * * *

■ 27. In § 63.9322, revise paragraph (a)(1) to read as follows:

§ 63.9322 How do I determine the emission capture system efficiency?

* * * * *

(a) * * *

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a permanent total enclosure (PE) and directs all the exhaust gases from the enclosure to an add-on control device.

* * * * *

Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units

■ 28. Revise table 5 to subpart UUUUU of part 63 to read as follows:

Table 5 to Subpart UUUUU of Part 63—Performance Testing Requirements

As stated in § 63.10007, you must comply with the following requirements for performance testing for existing, new or reconstructed affected sources:

Note: Regarding emissions data collected during periods of startup or shutdown, see §§ 63.10020(b) and (c) and 63.10021(h).

To conduct a performance test for the following pollutant . . .	Using . . .	You must perform the following activities, as applicable to your input- or output-based emission limit . . .	Using . . .[1]
1. Filterable Particulate matter (PM).	Emissions Testing	a. Select sampling ports location and the number of traverse points.	Method 1 at appendix A–1 to part 60 of this chapter.
		b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2A, 2C, 2F, 2G or 2H at appendix A–1 or A–2 to part 60 of this chapter.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at appendix A–2 to part 60 of this chapter, or ANSI/ASME PTC 19.10.[2]
		d. Measure the moisture content of the stack gas.	Method 4 at appendix A–3 to part 60 of this chapter.
		e. Measure the filterable PM concentration	Methods 5 and 5I at appendix A–3 to part 60 of this chapter. For positive pressure fabric filters, Method 5D at appendix A–3 to part 60 of this chapter for filterable PM emissions. Note that the Method 5 or 5I front half temperature shall be 160° ±14 °C (320° ±25 °F).
		f. Convert emissions concentration to lb/MMBtu or lb/MWh emissions rates.	Method 19 F-factor methodology at appendix A–7 to part 60 of this chapter or calculate using mass emissions rate and gross output data (see § 63.10007(e)).
	OR	OR	
	PM CEMS	a. Install, certify, operate, and maintain the PM CEMS.	Performance Specification 11 at appendix B to part 60 of this chapter and Procedure 2 at appendix F to part 60 of this chapter.
		b. Install, certify, operate, and maintain the diluent gas, flow rate, and/or moisture monitoring systems.	Part 75 of this chapter and § 63.10010(a), (b), (c), and (d).
		c. Convert hourly emissions concentrations to 30 boiler operating day rolling average lb/MMBtu or lb/MWh emissions rates.	Method 19 F-factor methodology at appendix A–7 to part 60 of this chapter or calculate using mass emissions rate and gross output data (see § 63.10007(e)).
2. Total or individual non-Hg HAP metals.	Emissions Testing	a. Select sampling ports location and the number of traverse points.	Method 1 at appendix A–1 to part 60 of this chapter.
		b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2A, 2C, 2F, 2G or 2H at appendix A–1 or A–2 to part 60 of this chapter.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at appendix A–2 to part 60 of this chapter, or ANSI/ASME PTC 19.10.[2]
		d. Measure the moisture content of the stack gas.	Method 4 at appendix A–3 to part 60 of this chapter.
		e. Measure the HAP metals emissions concentrations and determine each individual HAP metals emissions concentration, as well as the total filterable HAP metals emissions concentration and total HAP metals emissions concentration.	Method 29 at appendix A–8 to part 60 of this chapter. For liquid oil-fired units, Hg is included in HAP metals and you may use Method 29, Method 30B at appendix A–8 to part 60 of this chapter or ASTM D6784;[2] for Method 29 or ASTM D 6784, you must report the front half and back half results separately. When using Method 29, report metals matrix spike and recovery levels.
		f. Convert emissions concentrations (individual HAP metals, total filterable HAP metals, and total HAP metals) to lb/MMBtu or lb/MWh emissions rates.	Method 19 F-factor methodology at appendix A–7 to part 60 of this chapter or calculate using mass emissions rate and gross output data (see § 63.10007(e)).
3. Hydrogen chloride (HCl) and hydrogen fluoride (HF).	Emissions Testing	a. Select sampling ports location and the number of traverse points.	Method 1 at appendix A–1 to part 60 of this chapter.
		b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2A, 2C, 2F, 2G or 2H at appendix A–1 or A–2 to part 60 of this chapter.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at appendix A–2 to part 60 of this chapter, or ANSI/ASME PTC 19.10.[2]
		d. Measure the moisture content of the stack gas.	Method 4 at appendix A–3 to part 60 of this chapter.
		e. Measure the HCl and HF emissions concentrations.	Method 26 or Method 26A at appendix A–8 to part 60 of this chapter or Method 320 at appendix A to this part or ASTM D6348–03[2] with (1) the following conditions when using ASTM D6348–03: (A) The test plan preparation and implementation in the Annexes to ASTM D6348–03, sections A1 through A8 are mandatory; (B) For ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (see Equation A5.5); (C) For the ASTM D6348–03 test data to be acceptable for a target analyte, %R must be 70% ≥R ≤130%; and (D) The %R value for each compound must be reported in the test report and all field measurements corrected with the calculated %R value for that compound using the following equation:

$$\text{Reported Result} = \frac{(\text{Measured Concentration in Stack})}{\%R} \times 100$$

To conduct a performance test for the following pollutant . . . (cont'd)	Using . . . (cont'd)	You must perform the following activities, as applicable to your input- or output-based emission limit . . . (cont'd)	Using . . .[1] (cont'd)
			(2) spiking levels nominally no greater than two times the level corresponding to the applicable emission limit. Method 26A must be used if there are entrained water droplets in the exhaust stream.
		f. Convert emissions concentration to lb/MMBtu or lb/MWh emissions rates.	Method 19 F-factor methodology at appendix A–7 to part 60 of this chapter or calculate using mass emissions rate and gross output data (see § 63.10007(e)).
	OR	OR	
	HCl and/or HF CEMS	a. Install, certify, operate, and maintain the HCl or HF CEMS.	Appendix B to this subpart.
		b. Install, certify, operate, and maintain the diluent gas, flow rate, and/or moisture monitoring systems.	Part 75 of this chapter and § 63.10010(a), (b), (c), and (d).
		c. Convert hourly emissions concentrations to 30 boiler operating day rolling average lb/MMBtu or lb/MWh emissions rates.	Method 19 F-factor methodology at appendix A–7 to part 60 of this chapter or calculate using mass emissions rate and gross output data (see § 63.10007(e)).
4. Mercury (Hg)	Emissions Testing	a. Select sampling ports location and the number of traverse points.	Method 1 at appendix A–1 to part 60 of this chapter or Method 30B at Appendix A–8 for Method 30B point selection.
		b. Determine velocity and volumetric flowrate of the stack gas.	Method 2, 2A, 2C, 2F, 2G or 2H at appendix A–1 or A–2 to part 60 of this chapter.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at appendix A–1 to part 60 of this chapter, or ANSI/ASME PTC 19.10–1981.[2]
		d. Measure the moisture content of the stack gas.	Method 4 at appendix A–3 to part 60 of this chapter.
		e. Measure the Hg emission concentration	Method 30B at appendix A–8 to part 60 of this chapter, ASTM D6784,[2] or Method 29 at appendix A–8 to part 60 of this chapter; for Method 29 or ASTM D 6784, you must report the front half and back half results separately.
		f. Convert emissions concentration to lb/TBtu or lb/GWh emission rates.	Method 19 F-factor methodology at appendix A–7 to part 60 of this chapter or calculate using mass emissions rate and gross output data (see § 63.10007(e)).
	OR	OR	
	Hg CEMS	a. Install, certify, operate, and maintain the CEMS.	Sections 3.2.1 and 5.1 of appendix A to this subpart.
		b. Install, certify, operate, and maintain the diluent gas, flow rate, and/or moisture monitoring systems.	Part 75 of this chapter and § 63.10010(a), (b), (c), and (d).
		c. Convert hourly emissions concentrations to 30 boiler operating day rolling average lb/TBtu or lb/GWh emissions rates.	Section 6 of appendix A to this subpart.
	OR	OR	
	Sorbent trap monitoring system.	a. Install, certify, operate, and maintain the sorbent trap monitoring system.	Sections 3.2.2 and 5.2 of appendix A to this subpart.
		b. Install, operate, and maintain the diluent gas, flow rate, and/or moisture monitoring systems.	Part 75 of this chapter and § 63.10010(a), (b), (c), and (d).
		c. Convert emissions concentrations to 30 boiler operating day rolling average lb/TBtu or lb/GWh emissions rates.	Section 6 of appendix A to this subpart.
	OR	OR	
	LEE testing	a. Select sampling ports location and the number of traverse points.	Single point located at the 10% centroidal area of the duct at a port location per Method 1 at appendix A–1 to part 60 of this chapter or Method 30B at Appendix A–8 for Method 30B point selection.
		b. Determine velocity and volumetric flowrate of the stack gas.	Method 2, 2A, 2C, 2F, 2G, or 2H at appendix A–1 or A–2 to part 60 of this chapter or flow monitoring system certified per appendix A to this subpart.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at appendix A–1 to part 60 of this chapter, or ANSI/ASME PTC 19.10–1981,[2] or diluent gas monitoring systems certified according to part 75 of this chapter.
		d. Measure the moisture content of the stack gas.	Method 4 at appendix A–3 to part 60 of this chapter, or moisture monitoring systems certified according to part 75 of this chapter.
		e. Measure the Hg emission concentration	Method 30B at appendix A–8 to part 60 of this chapter; perform a 30 operating day test, with a maximum of 10 operating days per run (*i.e.,* per pair of sorbent traps) or sorbent trap monitoring system or Hg CEMS certified per appendix A of this subpart.
		f. Convert emissions concentrations from the LEE test to lb/TBtu or lb/GWh emissions rates.	Method 19 F-factor methodology at appendix A–7 to part 60 of this chapter or calculate using mass emissions rate and gross output data (see § 63.10007(e)).

To conduct a performance test for the following pollutant . . . (cont'd)	Using . . . (cont'd)	You must perform the following activities, as applicable to your input- or output-based emission limit . . . (cont'd)	Using . . .[1] (cont'd)
		g. Convert average lb/TBtu or lb/GWh Hg emission rate to lb/year, if you are attempting to meet the 29.0 lb/year threshold.	Potential maximum annual heat input in TBtu or potential maximum electricity generated in GWh.
5. Sulfur dioxide (SO_2)	SO_2 CEMS	a. Install, certify, operate, and maintain the CEMS.	Part 75 of this chapter and § 63.10010(a) and (f).
		b. Install, operate, and maintain the diluent gas, flow rate, and/or moisture monitoring systems.	Part 75 of this chapter and § 63.10010(a), (b), (c), and (d).
		c. Convert hourly emissions concentrations to 30 boiler operating day rolling average lb/MMBtu or lb/MWh emissions rates.	Method 19 F-factor methodology at appendix A–7 to part 60 of this chapter or calculate using mass emissions rate and gross output data (see § 63.10007(e)).

[1] See tables 1 and 2 to this subpart for required sample volumes and/or sampling run times.
[2] IBR, see § 63.14.

* * * * *

■ 29. Amend sections 4.1.1.5 and 4.1.1.5.1 under ''4. Certification and Recertification Requirements'' in Appendix A to subpart UUUUU of part 63 to read as follows:

Appendix A to Subpart UUUUU—Hg Monitoring Provision

* * * * *

4.1.1.5 *Relative Accuracy Test Audit (RATA).* Perform the RATA of the Hg CEMS at normal load. Acceptable Hg reference methods for the RATA include ASTM D6784 (IBR, see § 63.14) and Methods 29, 30A, and 30B in appendix A–8 to part 60 of this chapter. When Method 29 or ASTM D6784 is used, paired sampling trains are required, and the filterable portion of the sample need not be included when making comparisons to the Hg CEMS results for purposes of a RATA. To validate a Method 29 or ASTM D6784 test run, calculate the relative deviation (RD) using Equation A–1 of this section, and assess the results as follows to validate the run. The RD must not exceed 10 percent, when the average Hg concentration is greater than 1.0 μg/dscm. If the RD specification is met, the results of the two samples shall be averaged arithmetically.

$$RD = \frac{|C_a - C_b|}{C_a + C_b} \times 100 \quad (Eq.\ A-1)$$

Where:

RD = Relative Deviation between the Hg concentrations of samples ''a'' and ''b'' (percent),

C_a = Hg concentration of Hg sample ''a'' (μg/dscm), and

C_b = Hg concentration of Hg sample ''b'' (μg/dscm).

4.1.1.5.1 *Special Considerations.* A minimum of nine valid test runs must be performed, directly comparing the CEMS measurements to the reference method. More than nine test runs may be performed. If this option is chosen, the results from a maximum of three test runs may be rejected so long as the total number of test results used to determine the relative accuracy is greater than or equal to nine; however, all data must be reported including the rejected data. The minimum time per run is 21 minutes if Method 30A is used. If Method 29, Method 30B, or ASTM D6784 (IBR, see § 63.14) is used, the time per run must be long enough to collect a sufficient mass of Hg to analyze. Complete the RATA within 168 unit operating hours, except when Method 29 or ASTM D6784 is used, in which case; up to 336 operating hours may be taken to finish the test.

* * * * *

■ 30. Amend Appendix A to part 63 by:

■ a. In Method 315 by redesignating section 6.2 as section 16.2, placing it in numerical order and revising the introductory paragraph.

■ b. In Method 323, by revising sections 10.1, and 10.3; in section 12.1 adding entry ''b'' in alphabetical order, revising the entry ''K_c''; and revising section 12.6.

The revisions and addition read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Method 315—Determination of Particulate and Methylene Chloride Extractable Matter (MCEM) From Selected Sources at Primary Aluminum Production Facilities

* * * * *

16.2 Critical orifices as calibration standards. Critical orifices may be used as calibration standards in place of the wet test meter specified in section 10.3 of this method, provided that they are selected, calibrated, and used as follows:

* * * * *

Method 323—Measurement of Formaldehyde Emissions From Natural Gas-Fired Stationary Sources—Acetyl Acetone Derivatization Method

* * * * *

10.1 Spectrophotometer Calibration. Prepare a stock solution of 10 μg/mL formaldehyde. Prepare a series of calibration standards from the stock solution corresponding to 0.0, 0.5, 1.5, 3.5, 5.0, and 7.5 μg/mL formaldehyde. Mix 2.0 ml of each calibration standard with 2.0 mL of acetyl acetone reagent in screw cap vials, thoroughly mix the solution, and place the vials in a water bath (or heating block) at 60 °C for 10 minutes. Remove the vials and allow to cool to room temperature. Transfer each solution to a cuvette and measure the absorbance at 412 nm using the spectrophotometer. Develop a calibration curve (response vs. concentration) from the analytical results of these standards. The acceptance criteria for the spectrophotometer calibration is a correlation coefficient of 0.99 or higher. If this criterion is not met, the calibration procedures should be repeated.

* * * * *

10.3 Calibration Checks. Calibration checks consisting of analyzing a mid-range standard separate prepared with each batch of samples. The calibration check standard must be prepared independent of the calibration stock solution. The result of the check standard must be within 10 percent of the theoretical value to be acceptable. If the acceptance criteria are not met, the standard must be reanalyzed. If still unacceptable, a new calibration curve must be prepared using freshly prepared standards.

* * * * *

12.1 Nomenclature.

* * * * *

b = the intercept of the calibration curve at zero concentration

* * * * *

K_c = spectrophotometer calibration factor, slope of the least square regression line, absorbance/(μg/mL) (Note: Most spreadsheets are capable of calculating a least squares line, including slope, intercept, and correlation coefficient).

* * * * *

12.6 Mass of Formaldehyde in Liquid Sample.

$$m = \frac{(A-b)*F}{K_c}(V_t)\left(\frac{1\,mg}{1000\mu g}\right) \quad \text{Eq. 323-5}$$

* * * * *

[FR Doc. 2022–07891 Filed 4–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0188; FRL–9775–01–R4]

Air Plan Approval; Kentucky; Source Specific Changes for Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), on March 4, 2020, and supplemented on January 28, 2022. The proposed changes were submitted on behalf of the Louisville Metro Air Pollution Control District (District), which has jurisdiction over Jefferson County, Kentucky, and make changes to a Reasonably Available Control Technology (RACT) determination for a specific major source of nitrogen oxides (NO_X) and volatile organic compound (VOC) emissions. EPA is proposing to approve these changes as they are consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before May 26, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0188 at *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 *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Joel Huey, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Huey can be reached by telephone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. EPA's Proposed Action

EPA is proposing to approve changes to the Kentucky SIP that were received by EPA on March 4, 2020 and supplemented on January 28, 2022. Approval of this submission would incorporate Board Order—Amendment 2, issued by the Air Pollution Control Board of Jefferson County (Board) for American Synthetic Rubber Company (ASRC), into the SIP. This amended Board Order [1] would replace in the SIP the existing Board Order issued by the Board for ASRC. The amended Board Order and EPA's rationale for proposing to approve it into the SIP are described in detail below.

II. Background and EPA's Analysis of the Proposed Revisions

Three counties in the Louisville area (Jefferson County in Kentucky and Clark and Floyd Counties in Indiana) were designated as nonattainment for ozone in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), after the CAA Amendments of 1990 were enacted, Jefferson County and portions of Bullitt and Oldham Counties in Kentucky and the Indiana Counties of Clark and Floyd were designated as the Louisville Moderate ozone nonattainment area (Louisville Area) under section 107(d)(4)(A) as a result of monitored violations of the 1979 1-hour ozone national ambient air quality standards (NAAQS) during 1987–1989.[2]

Section 182(b)(2) of the CAA requires states to adopt RACT for all major stationary sources of VOC in Moderate and above ozone nonattainment areas. Section 182(f) of the CAA requires that the same provisions for major stationary sources of VOC shall also apply to major stationary sources of NO_X. Therefore, pursuant to section 182(f), RACT is a requirement, with certain exceptions described therein, for major sources of NO_X in ozone nonattainment areas where VOC RACT applies.

To comply with the NOx RACT requirement, which was a result of the Moderate nonattainment area designation for the 1-hour ozone NAAQS, the District submitted Jefferson County Air Quality Regulation 6.42, *Reasonably Available Control Technology Requirements for Major Volatile Organic Compound- and Nitrogen Oxides-Emitting Facilities,* to EPA approval.[3] Regulation 6.42 requires the establishment and implementation of RACT, including the determination and demonstration of compliance with RACT, for certain emission units located at a major stationary source of NO_X or VOC emissions and requires that each determination of RACT approved by the District be submitted to EPA as a source-specific revision to the Kentucky SIP. RACT is defined at paragraph 1.66 of District Regulation 1.02 as meaning ''devices, systems, process modifications, or other apparatus or techniques, including pollution prevention approaches, that are reasonably available taking into account the necessity of imposing those controls in order to attain and maintain a national ambient air quality standard and the social, environmental, and economic impact of those controls.''

As discussed in EPA's June 22, 2001 (66 FR 33505), proposal to redesignate the Louisville Area to attainment for the 1979 1-hour ozone NAAQS, Regulation 6.42 has been implemented in part by means of Board Orders adopted by the Air Pollution Control Board of Jefferson County. Such Board Orders contain NO_X RACT and VOC RACT plans, which set forth RACT requirements for the source, including monitoring, recordkeeping, and reporting requirements, as attachments.

[1] A Board Order issued by the Board is a regulatory instrument which specifies air pollution control limits or requirements for a specific source or company. *See* 66 FR 53665, 53671 (October 23, 2001) (Response 2I).

[2] The Louisville Area was subsequently redesignated to attainment for the 1979 1-hour ozone NAAQS. *See* 66 FR 53665 (October 23, 2001). More recently, the Louisville Area was designated as Marginal nonattainment for the 2015 ozone NAAQS. *See* 83 FR 25776 (June 4, 2018).

[3] EPA incorporated Regulation 6.42 into the Jefferson County portion of the Kentucky SIP on October 23, 2001. *See* 66 FR 53658.

ASRC, owned by Michelin North America, Inc., provides electrical power to its facility by operating two coal-fired boilers and two natural gas-fired boilers that are subject to the RACT requirements of Regulation 6.42. The original Board Order for ASRC was approved by the Board on December 20, 2000, and subsequently submitted to EPA as a source-specific revision to the Kentucky SIP. The Board Order, approved by EPA on October 23, 2001 (66 FR 53665), includes as an attachment a RACT plan which restricts the allowable emissions of NO_X (expressed as NO_2) from (coal-fired) Boiler No. 1 and Boiler No. 2 to 0.50 pound per million British thermal units (lb/MMBtu) of heat input each, based upon a 30-day rolling average and which applies at all times. The RACT plan also restricts allowable emissions of NO_X (expressed as NO_2) from (natural gas-fired) Boiler No. 3 and Boiler No. 4 to 0.20 lb/MMBtu of heat input each, which applies at all times.

On August 1, 2019, ASRC submitted a proposed RACT plan to the District for three new boilers, referred to as Boilers B5, B6, and B7, that are planned to be constructed to replace the facility's existing Boiler Nos. 1, 2, 3, and 4. The Board approved Board Order—Amendment 1 on November 20, 2019. Board Order—Amendment 1 includes as an attachment a revised RACT plan that addresses RACT for both NO_X and VOC emissions.[4] On March 4, 2020, the District, through the Cabinet, submitted a SIP revision to EPA to replace the existing Board Order for ASRC with Board Order—Amendment 1. On November 17, 2021, the Board approved Board Order—Amendment 2, which includes an updated RACT plan.[5] On January 28, 2022, the District, through the Cabinet, submitted to EPA a supplement to the March 4, 2020, SIP revision to replace Board Order—Amendment 1 with Board Order—Amendment 2.

The revised RACT plan attached to Board Order—Amendment 2 contains two sections: Section A, which applies to the facility's existing boilers (Boiler Nos. 1, 2, 3, and 4), and Section B, which applies to the facility's planned new boilers (B5, B6, and B7). Section A consists of the same provisions as the original Board Order of December 20, 2000, and includes the same NO_X emission limits (summarized above) for the existing boilers that are currently incorporated into the SIP. EPA proposes approval of Section A of the revised RACT plan because it does not alter the existing SIP-approved provisions for Boiler Nos. 1, 2, 3, and 4.

Section B of the revised RACT plan contains NO_X RACT and VOC RACT provisions for the new boilers (B5, B6, and B7) that are planned to be constructed. To comply with the VOC RACT provisions of Regulation 6.42, Section B includes the following requirements, which were developed as part of the construction permit[6] issued for the new boilers:[7]

(a) Paragraph 1.A. of Section B requires the VOC emissions from each Boiler (B5, B6, and B7) to be limited by implementation of good combustion and operating practices including the selection of efficient burners, implementation of combustion controls to optimize efficiency, and use of insulation media to minimize heat losses.

(b) Paragraph 1.B. of Section B requires ASRC to comply with the tune-up requirements of 40 CFR 63.7540(a)(10)[8] on an annual basis, prescribes six specific annual preventative maintenance steps, and requires the facility to maintain on-site and submit, if requested by the Administrator, a report containing information regarding burner efficiency before and after the tune-up of the boiler and a description of any corrective actions taken as a part of the tune-up.

For NO_X RACT, the District has adopted requirements that are similar to the existing SIP-approved requirements for Boiler Nos. 1, 2, 3, and 4, but with significantly lower NO_X emission limits. To comply with the NO_X RACT provisions of Regulation 6.42, Section B includes the following requirements for the new boilers:

(a) Paragraph 2 of Section B provides that NO_X emissions (expressed as NO_2) are not to exceed 0.04 lb/MMBtu for each boiler, based upon a 30-day rolling average. This NO_X limit for the three new natural gas-fired boilers is significantly more stringent than the current limits for the four existing boilers (*i.e.,* 0.50 lb/MMBtu for coal-fired Boilers Nos. 1 and 2 and 0.20 lb/MMBtu for natural gas-fired Boilers Nos. 3 and 4). In addition, the new boilers are to be rated at 200 MMBtu/hr each (totaling 600 MMBtu/hr of heat input capacity), while the boilers being replaced are rated at 212 MMBtu/hr each for Boiler Nos. 1 and 2 and 99 MMBtu/hr each for Boiler Nos. 3 and 4 (totaling 622 MMBtu/hr of heat input capacity), therefore resulting in an overall decrease of 22 MMBtu/hr of total heat input capacity.

(b) Paragraphs 3 and 4 of Section B are the same as paragraphs 5.A. and 5.B., respectively, of the existing approved Board Order for ASRC (except for referencing the new boiler numbers and the addition of a reference to the VOC RACT plan) and therefore do not represent a change to existing requirements currently incorporated into the SIP. These paragraphs pertain to NO_X performance testing requirements.

(c) Paragraph (5) of Section B requires ASRC to conduct an initial performance test and perform ongoing emissions verification on a 30-day rolling basis, pursuant to 40 CFR part 60, subpart Db, *Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.* After the initial compliance test, NO_X emissions data shall be collected by installing, calibrating, maintaining, and operating either a continuous emissions monitoring system pursuant to 40 CFR 60.48b(g)(1) or by predicting NO_X emission rates pursuant to 40 CFR 60.48b(g)(2).

(d) Paragraph 6 of Section B is the same as paragraph 5.C. of the existing approved Board Order for ASRC and therefore does not represent a change to existing requirements currently incorporated into the SIP. This paragraph pertains to NO_X performance testing requirements.

(e) Paragraphs 7 and 8 of Section B are new requirements to help improve boiler efficiency. Paragraph 7 requires the facility to perform and make a record of non-routine boiler maintenance activities, including inspection and maintenance of the fuel combustion system, inspection and optimization of the flame pattern, inspection and adjustment of the combustion control system, adjustment of the air-to-fuel ratio, and inspection and adjustment of all other components of the boiler. These maintenance

[4] The existing SIP-approved Board Order does not include VOC RACT requirements.

[5] Specifically, the RACT plan was updated to include revised NO_X monitoring requirements that are better suited to the 30-day rolling average NO_X limit for the new boilers.

[6] The authority for ASRC to construct new boilers B5, B6 and B7 was approved by the District through issuance of construction permit C–0011–19–0028–V, issued on January 21, 2020. That permit is included in the docket for this proposed rulemaking, but the permit itself was not included in the SIP revision and EPA is not proposing to incorporate it into the SIP.

[7] Pursuant to the Board Order, Section A shall no longer apply to a boiler once ASRC provides written notification to the District that the boiler has been decommissioned.

[8] This reference, 40 CFR 63.7540(a)(10), is from the continuous compliance provisions of 40 CFR part 63, subpart DDDDD—*National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters.* Although boilers B5, B6, and B7 will be subject to the requirements of subpart DDDDD, Regulation 6.42 does not provide any exemption from the NO_X and VOC RACT requirements of the SIP on this basis.

activities shall be completed annually within 13 months of the previous maintenance cycle. Paragraph 8 requires ASRC to include in each semi-annual report (required by paragraph 9) a summary of the non-routine boiler maintenance activities.

(f) Paragraphs 9 and 10 of Section B are the same as paragraphs 6 and 7, respectively, of the existing SIP-approved Board Order for ASRC (except for minor wording changes and that they now apply not just to NO_X but also to VOC by virtue of the addition of the VOC RACT requirements) and therefore do not represent a change to existing requirements currently incorporated into the SIP. Paragraph 9 pertains to the requirement to keep a record identifying all deviations from the requirements of the NO_X and VOC RACT plan and to submit semiannual deviation reports to the District. Paragraph 10 provides that the facility may comply with alternatives to the requirements of the NO_X and VOC RACT plan, provided certain conditions are met, but that the District's approval of any such alternative requirements is not binding on EPA.

In summary, EPA proposes to approve Board Order—Amendment 2, including the attached VOC/NO_X RACT Plan, dated November 17, 2021, and issued by the Board to ASRC to replace the existing Board Order for ASRC, and to incorporate Board Order—Amendment 2 into the SIP because it achieves at least the same level of NO_X emission reductions as the previously SIP-approved Board Order and meets the VOC RACT requirements of Regulation 6.42 (discussed in Section II, above). ASRC's replacement of two existing coal-fired boilers and two existing natural gas-fired boilers with three new natural gas-fired boilers will achieve NO_X and VOC emission reductions at the facility, and there are no potential air pollutant emission increases associated with this proposed SIP revision. EPA is proposing to approve these changes because they are consistent with SIP-approved Jefferson County Air Quality Regulation 6.42 and with the CAA.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Board Order—Amendment 2, including the attached VOC/NO_X RACT Plan, for ASRC effective November 17, 2021. Also, in this document, EPA is proposing to remove the Board Order for ASRC effective January 1, 2001, from the Kentucky State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, the State Implementation Plan generally available at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to replace the existing Board Order in the Kentucky SIP for ASRC with Board Order—Amendment 2, including the attached VOC/NO_X RACT Plan, for ASRC effective November 17, 2021, for the reasons stated above.

V. 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, these proposed actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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, Incorporation by reference, Reposting and recordkeeping requirements, Ozone, Nitrogen oxides, Volatile organic compounds.

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

Dated: April 19, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–08866 Filed 4–25–22; 8:45 am]

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Notices

Federal Register
Vol. 87, No. 80
Tuesday, April 26, 2022

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

DEPARTMENT OF AGRICULTURE

Forest Service

Missouri River Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Missouri River Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on Helena-Lewis and Clark National Forest within Broadwater, Lewis & Clark, and Teton Counties, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *Helena-Lewis and Clark National Forest—Advisory Committees (usda.gov).*

DATES: The meeting will be held on May 19, 2022, 7:00 p.m.–10:00 p.m., Mountain Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting is open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or can be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Sara Mayben, Designated Federal Officer (DFO), by phone at 719–395–7785 or email at *sara.mayben@usda.gov* or Chiara Cipriano, RAC Coordinator, at 406–594–6497 or email at *chiara.cipriano@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss Title II project proposals;
2. Make funding recommendations on Title II projects;
3. Approve meeting minutes; and
4. Schedule the next round of project proposal solicitations and the date for the next RAC meeting.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by May 17, 2022, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Chiara Cipriano, 2880 Skyway Drive, Helena, Montana 59602 or by email to *chiara.cipriano@usda.gov.*

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Dated: April 21, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–08881 Filed 4–25–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Eastern Idaho Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/ctnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on May 23, 2022, 9:30 a.m.–11:30 a.m., Mountain Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance and information on how to connect to the meeting, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting is open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under *Summary* or can be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Dubois Ranger District Office, 98 N Oakley, Dubois, ID 83420.

FOR FURTHER INFORMATION CONTACT: Bill Davis, RAC Coordinator, by phone at 208–374–5422 or via email at *william.davis6@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss the current status of RAC;
2. Elect a Committee Chair; and
3. Discuss and make recommendations on new Title II projects.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement at the meeting should request in writing by Friday, May 6, 2022, to be scheduled on the agenda. Individuals who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Bill Davis, RAC Coordinator, P.O. Box 46, Dubois, ID 83420 or by email to *william.davis6@usda.gov* or via facsimile to 208–374–5623.

Meeting Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case-by-case basis.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the RAC. To help ensure that recommendations of the RAC have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, political beliefs, income derived from a public assistance program, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Dated: April 21, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–08879 Filed 4–25–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Aviastar—TU, 5 b. 7 Leningradsky Prospekt, g. Moskva, 125040, Moscow, Russia; Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) (''EAR'' or ''the Regulations''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of: Aviastar—TU (''Aviastar''). OEE's request and related information indicates that Aviastar is an airline headquartered in Zhukovsky, Moscow Oblast, Russia, and that Aviastar provides a variety of cargo services, including delivery of military cargo, dangerous goods, and oversized goods.

I. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

II. OEE's Request for a Temporary Denial Order (''TDO'')

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

specified in Export Control Classification Number (ECCN) 9A991 (Section 746.8(a)(1) of the EAR).[2] BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS) (Section 740.15 of the EAR).[3] Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request is based upon facts indicating that Aviastar engaged in recent conduct prohibited by the Regulations by operating aircraft subject to the EAR and classified under ECCN 9A991 on flights into Russia after March 2, 2022, without the required BIS authorization.

Specifically, OEE's investigation, including publicly available flight tracking information, indicates that after March 2, 2022, Aviastar operated multiple U.S.-origin aircraft subject to the EAR, including, but not limited to, those identified below, on flights into and out of Novosibirsk, Russia and Abakan, Russia from/to Hangzhou, China; Shenzhen, China; and Zhengzhou, China. Pursuant to Section 746.8 of the EAR, all of these flights would have required export or reexport licenses from BIS. Moreover, Aviastar flights would not be eligible to use license exception AVS. No BIS authorizations were either sought or obtained by Aviastar for these exports or reexports to Russia. The information about those flights includes the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA–73355	27054	757–223 (PCF) (B752)	Hangzhou, CN/Novosibirsk, RU	April 10, 2022.
RA–73355	27054	757–223 (PCF) (B752)	Zhengzhou, CN/Abakan, RU	April 12, 2022.
RA–73351	25696	757–223 (PCF) (B752)	Hangzhou, CN/Novosibirsk, RU	April 8, 2022.
RA–73351	25696	757–223 (PCF) (B752)	Hangzhou, CN/Novosibirsk, RU	April 11, 2022.
RA–73352	25731	757–223 (PCF) (B752)	Shenzhen, CN/Abakan, RU	April 9, 2022.
RA–73352	25731	757–223 (PCF) (B752)	Hangzhou, CN/Novosibirsk, RU	April 14, 2022.
RA–73354	27053	757–223 (PCF) (B752)	Shenzhen, CN/Abakan, RU	April 5, 2022.
RA–73354	27053	757–223 (PCF) (B752)	Shenzhen, CN/Abakan, RU	April 12, 2022.

'Based on this information, there are heightened concerns of future violations of the EAR, especially given that any subsequent actions taken with regard to any of the listed aircraft, or other Aviastar aircraft illegally exported or reexported to Russia after March 2, 2022, may violate the EAR. Such actions include, but are not limited to, refueling, maintenance, repair, or the provision of spare parts or services. *See* General Prohibition 10 of the EAR at 15 CFR 736.2(b)(10).[4] Even Aviastar's continued use of such U.S.-origin aircraft only on domestic routes within Russia runs afoul of General Prohibition 10, which (among other restrictions) prohibits the continued use of an item that was known to have been exported or reexported in violation of the EAR. For example, publicly available flight tracking data shows that, between April 12 and April 15, 2022, aircraft RA–73355 (SN: 27054) and RA–73351 (SN: 25696) flew on flights into and out of Moscow, Russia to/from Norilsk, Russia, Novosibirsk, Russia, and Yakutsk, Russia, following those aircrafts' unauthorized flights into Russia as referenced in the chart above. In addition, in a public statement on its website and available as of the signing of this order, Aviastar states that it ''regularly carr[ies] out express delivery of mail and freight across Russia . . .''[5]

Moreover, additional concerns of future violations of the Regulations are raised by other public statements available as of the signing of this order on Aviastar's website stating that its fleet includes multiple U.S.-origin 757–200F aircraft.[6] Given BIS's review policy of denial under Section 746.8(a) of the Regulations for exports and reexports to Russia, it is foreseeable that Aviastar will attempt to evade the Regulations in order to obtain new or additional aircraft parts or service for its existing aircraft that were exported or reexported to Russia in violation of Section 746.8 of the Regulations. Additionally, as a cargo carrier and given its prior record of apparent EAR non-compliance, Aviastar presents a heightened risk of committing future violations by transporting items subject to the EAR into Russia without the required BIS authorization, potentially enabling a means of transport to support Russia's military efforts and/or attempts to evade U.S. sanctions by acquiring such items from abroad.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Aviastar took actions in apparent violation of the Regulations by exporting or reexporting the aircraft cited above, among many others, on flights into Russia after March 2, 2022, without the required BIS authorization. Moreover, the continued operation of these cargo aircraft by Aviastar, the company's on-going need to acquire replacement parts and components (many of which are U.S.-origin), and the concern the aircraft can be used to evade U.S. export controls, presents a high likelihood of imminent violations warranting imposition of a TDO. I further find that such apparent violations have been significant and deliberate. Therefore, issuance of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Aviastar, in connection with export and reexport

[2] 87 FR 12226 (Mar. 3, 2022).

[3] 87 FR 13048 (Mar. 8, 2022).

[4] Section 736.2(b)(10) of the EAR provides: General Prohibition Ten—Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur). You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR. (emphasis in original).

[5] *https://aviastartu.com/.*

[6] *https://aviastartu.com/ourfleet.*

transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with Section 766.24 and 766.23(b) of the Regulations.

IV. Order

It is therefore ordered:

First, Aviastar-TU, 5 b. 7 Leningradsky prospekt, g. Moskva, 125040, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Aviastar any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Aviastar of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Aviastar acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Aviastar of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Aviastar in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Aviastar, or service any item, of whatever origin, that is owned, possessed or controlled by Aviastar if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Aviastar by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Aviastar may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Aviastar as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Aviastar and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Dated: April 21, 2022.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2022–08885 Filed 4–25–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Arnoldo Vidaurri, 113 Coronado Ave., Laredo, TX 78043; Order Denying Export Privileges

On March 29, 2019, in the U.S. District Court for the Southern District of Texas, Arnoldo Vidaurri (''Vidaurri'') was convicted of violating 18 U.S.C. 554(a). Specifically, Vidaurri was convicted of fraudulently and knowingly exporting and sending, from the United States to Mexico, two Ruger LCP 380 pistols and 100 rounds of ammunition, without a Department of State export license or other written authorization, in violation of 18 U.S.C. 554.

As a result of his conviction, the Court sentenced Vidaurri to 36 months of probation, 75 hours of community service, and a $100 court assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Vidaurri's conviction for violating 18 U.S.C. 554 and, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). has provided notice and opportunity for Vidaurri to make a written submission to BIS. 15 CFR 766.25.[2] BIS received

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2021).

and considered a written submission from Vidaurri.

Based upon my review of the record, including Vidaurri's submission and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Vidaurri's export privileges under the Regulations for a period of five years from the date of Vidaurri's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Vidaurri had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until March 29, 2024, Arnoldo Vidaurri, with a last known address of 113 Coronado Ave, Laredo, TX 78043, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed, or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, pursuant to Section 1760(e) of ECRA (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to the Denied Person by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, the Denied Person may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Denied Person and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until March 29, 2024.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–08793 Filed 4–25–22; 8:45 am]

BILLING CODE 3510–DT–P

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB961]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Punta Gorda Lighthouse Stabilization Project in Humboldt County, California

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Bureau of Land Management (BLM) for authorization to take marine mammals incidental to the Punta Gorda Lighthouse Stabilization Project in Humboldt County, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 26, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address)

voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process and making a final decision on the IHA request.

Summary of Request

On August 30, 2021, NMFS received a request from the BLM for an IHA to take marine mammals incidental to the Punta Gorda Lighthouse (PGL) Stabilization Project in Humboldt County, California. The application was deemed adequate and complete on February 15, 2022. The BLM's request is for take of a small number of northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and Steller sea lions (*Eumetopias jubatus*) by Level B harassment only. Neither the BLM nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The PGL was established as an aid to navigation in 1912 along the northern California coast. While in use, the lighthouse station included the lighthouse, oil house, three residences, and numerous other small buildings typical of small military outposts. Although the lighthouse is located on the mainland, maintaining the station in the remote and rugged location along the coast proved to be too difficult and the U.S. Coast Guard decommissioned the lighthouse in 1951. The BLM assumed management of the site following the PGL's decommission but was unable to keep up with the maintenance and after the windy ocean environment took a toll on the site, the BLM intentionally burned down the wooden structures of the station. The concrete lighthouse and oil house were all that remained when the site was listed in the National Registry of Historic Places in 1976. The BLM proposes to stabilize the lighthouse site, repair the remaining structures, and rebuild former structures.

Dates and Duration

The PGL stabilization and repair work will occur between June 1 and October 1, 2022. Work crews are expected to work 8 to 10 hours per day, Monday through Friday. However, weekend work may be necessary intermittently to meet work schedule objectives, for a total of up to 122 days of work. The proposed IHA would be valid from June 1, 2022 through October 1, 2022.

Specific Geographic Region

The PGL is located approximately 10 kilometers (km; 6.2 miles (mi)) southwest of Petrolia, California and 18 km (11.2 mi) south of Cape Mendocino, within the King Range National Conservation Area. The lighthouse is located along the Lost Coast Trail, which extends from the Mattole River to Shelter Cove, California, covering approximately 40 km (24.8 mi). The BLM would access the PGL by traveling along the coast from the north, originating at either the Windy Point Trailhead or the Trailhead at the Mattole Campground.

The Lost Coast Trail is the longest stretch of undeveloped coastline in California. The coastline includes stretches of varyingly rocky and sandy beaches, including a black sand beach at the southern end of the trail. The area between the coastal bluffs and shoreline is typically very narrow, with many stretches of the trail impassible when high tides the cliff. In some areas, including the area immediately surrounding the PGL, there is a slight terrace at the base of the bluffs, just above the beach, that is suitable for hiking and camping above the high tide line. Scattered hauled-out pinnipeds may be found on the beach throughout the Lost Coast Trail, and are concentrated at haulout sites, such as the beach below the PGL. Pinnipeds are most often found on the beach itself, but occasionally venture beyond the beach and onto the marine terrace (Wonderland Guides, 2019). Please see the Description of Marine Mammals in the Area of Specified Activities section below for a detailed description of the marine mammals that are known to haul-out at the PGL and surrounding areas.

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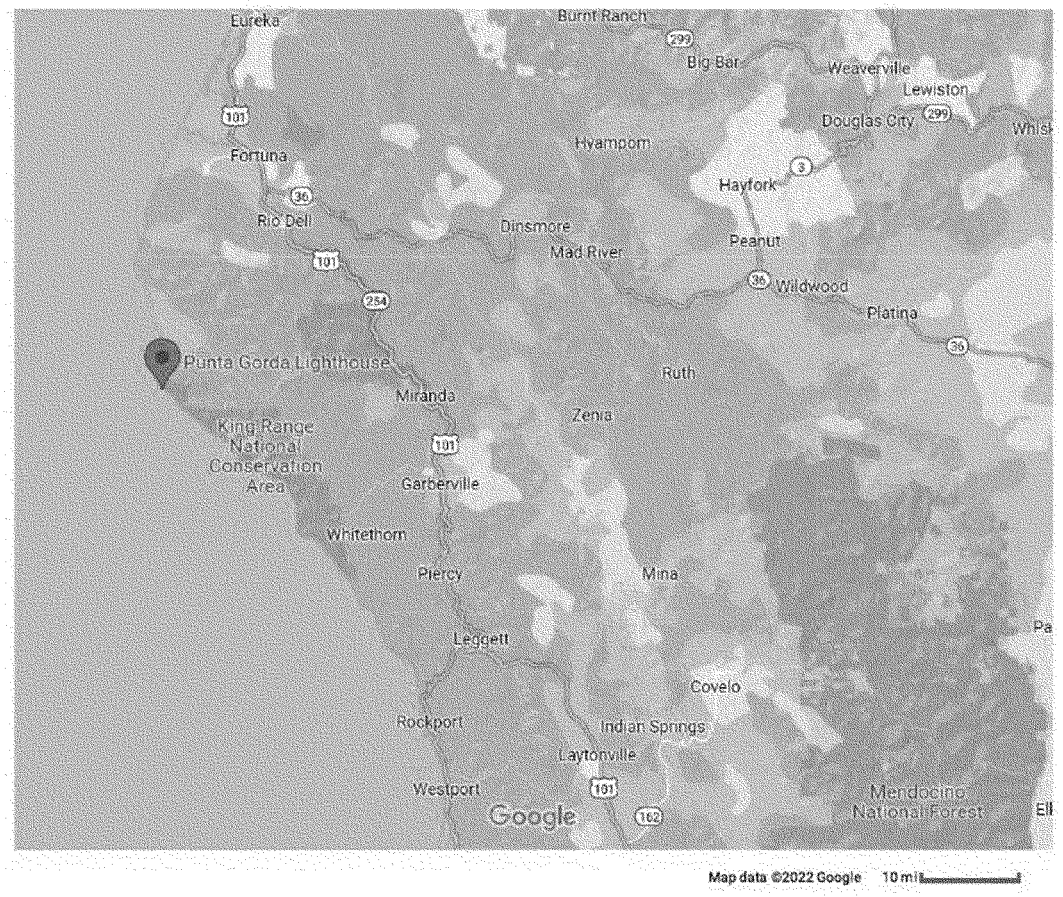

Figure 1. Location of the Punta Gorda Lighthouse in Humboldt County, California

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Detailed Description of Specific Activity

Despite occasional maintenance by BLM staff and lighthouse advocates, the PGL buildings need extensive repairs. Both of the remaining buildings (the lighthouse and the oil house) are constructed of reinforced concrete. The lighthouse building has a metal second story that once housed the lens. The concrete has experienced spalling where large chunks of the walls and ceiling break off due to water intrusion followed by expansion of rusty reinforcement steel (re-bar). The northern portion of the oil house foundation has cracked and separated from the rest of the structure. In addition, all metal structures (*e.g.,* the second story of the lighthouse, the second story access stairs, above ground oil storage tanks) have experienced substantial corrosion.

The BLM proposes to conduct stabilization and repair work at the PGL in stages. As part of the initiation phase, a portion of the marine terrace north of the PGL would be designated for staging and support of construction activities (*e.g.,* parking vehicles, storing tools and materials, fuel storage and containment). A fence would be erected around the staging area and lighthouse station to prevent elephant seals from moving into the work zone.

The first stage of correcting the deficiencies in the PGL station would consist of lead paint remediation and demolition of the failing concrete and re-bar, followed by treating the remaining structure to prevent further corrosion. Next, the BLM would demolish the roof of the oil house along with the northwestern corner of the oil house foundation. Once the concrete demolition is complete, concrete forms would be erected and new concrete poured in place. The new concrete would include corrosion inhibitors and would be formed to mimic the visual characteristics of the existing structures. To further prevent against corrosion, a sealing elastomeric (or similar product) would be applied once the new concrete has thoroughly dried.

Some of the small metalwork on both floors of the lighthouse would be restored off sire and reinstalled during the project. The second story of the lighthouse would likely need to be repaired and restored onsite. In addition to the metalwork, the windows of the lighthouse would also be replaced. The new windows would likely be made of some form of plexiglass.

The public is only allowed to access the PGL site on foot, as there are no developed roads that reach the PGL. However, due to the substantial construction activities proposed, the BLM would use vehicles to drive along the beach and marine terrace to transport construction materials and personnel.

Equipment proposed for use in the PGL stabilization project include gas powered construction saws, various jack hammers, heavy equipment (likely a backhoe or small excavator), saws, and hand tools. Materials created during the demolition process would either be buried on site or transported to waste facilities by ground vehicles and/or

helicopter lifts. The ground vehicles would include all-terrain vehicles (ATVs), Side by Side ATVs (UTVs), and trucks. Helicopters may be used to transport supplies faster than ground transportation would allow. Helicopters would not land at the work site, but would hover approximately 50–100 feet (ft; 15–30 meters (m)) above ground for a short duration (up to 5 minutes) while the sling load is disconnected.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in Table 1 are the most recent available at the time of publication and are available in the 2020 SARs (Carretta *et al.,* 2021; Muto *et al.,* 2021) and draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller Sea Lion	*Eumetopias jubatus*	Eastern U.S	-, -, N	43,201 (see SAR, 43,201, 2017)	2,592	112
California Sea Lion	*Zalophus californianus*	U.S	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>320
Family Phocidae (earless seals):						
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013)	5,122	13.7
Harbor Seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012)	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all four species (with four managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

California Sea Lion

California sea lions are distributed along the west coast of North America from British Columbia to Baja California and throughout the Gulf of California. Breeding occurs on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.,* 2017). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between four and 10 months of age (NMML 2010).

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.

California sea lions have not been observed hauled-out at the PGL, but have been seen swimming in the nearshore waters and at other haulouts along the Lost Coast Trail and are therefore considered reasonably likely to occur on the beaches surrounding the lighthouse and along the access route.

Steller Sea Lion

There are two separate stocks of Steller sea lions, the Eastern U.S. stock,

which occurs east of Cape Suckling, Alaska (144° W), and the Western U.S. stock, which occurs west of that point. Only the Western stock of Steller sea lions, which is designated as the Western distinct population segment (DPS) of Steller sea lions, is listed as endangered under the ESA (78 FR 66139; November 4, 2013). Unlike the Western U.S. stock of Steller sea lions, there has been a sustained and robust increase in abundance of the Eastern U.S. stock throughout its breeding range. The eastern stock of Steller sea lions includes animals born east of Cape Suckling, AK (144° W), and includes sea lions living in southeast Alaska, British Columbia, Washington, Oregon, and California. Any Steller sea lions in the PGL area are expected to belong to the Eastern U.S. stock.

Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS, 1995; Trujillo *et al.,* 2004; Hoffman *et al.,* 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al.,* 2007).

Like California sea lions, Steller sea lions have not been observed hauled-out at the PGL but have been observed at other haulouts along the Lost Coast Trail and are therefore considered reasonably likely to occur at the PGL or occur along the access route.

Northern Elephant Seal

Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska to as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 1,000 to 2,500 ft (305 to 762 m) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

The northern elephant seal breeding population is distributed from central Baja California, Mexico to the Point Reyes Peninsula in northern California. Along this coastline, there are 13 major breeding colonies. Northern elephant seals breed and give birth primarily on offshore islands (Stewart *et al.,* 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed farther south, south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993).

In mid-December, adult males begin arriving at rookeries, closely followed by pregnant females on the verge of giving birth. Females give birth to a single pup, generally in late December or January (Le Boeuf and Laws, 1994) and nurse their pups for approximately 4 weeks (Reiter *et al.,* 1991). Upon pup weaning, females mate with an adult male and then depart the islands. The last adult breeders depart the islands in mid-March. The spring peak of elephant seals on the rookery occurs in April, when females and immature seals (approximately 1 to 4 years old) arrive at the colony to molt (a one-month process) (USFWS 2013). The year's new pups remain on the island throughout both of these peaks, generally leaving by the end of April (USFWS 2013). The lowest numbers of elephant seals present at rookeries occurs during June, July, and August, when sub-adult and adult males molt. Another peak number of young seals returns to the rookery for a haul out period in October, and at that time some individuals undergo partial molt (Le Boeuf and Laws, 1994).

Northern elephant seals had occasionally been seen along the Lost Coast but a group of elephant seals colonized the beach below the PGL in 2013 and 2014, and the colony has grown rapidly since then. Approximately 165 elephant seal pups were born during the 2020–2021 breeding season, up from 110 the previous year. The highest attendance counted during the 2021 spring molt (*i.e.,* April) totaled approximately 700 individuals. The lowest elephant seal attendance of the year occurs in July and August. Juveniles and non-breeding females start to appear in September before the pregnant females begin arriving in mid-October (Goley *et al.,* 2021).

Harbor Seal

Pacific harbor seals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. They are divided into two subspecies: *P.* v. *stejnegeri* in the western North Pacific, near Japan, and *P.* v. *richardii* in the northeast Pacific Ocean. The latter subspecies occurs along the California coast. The California stock of harbor seals ranges from Mexico to the Oregon-California border. In California, 400–600 harbor seal haul-out sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.,* 2008).

Harbor seals mate at sea, and females give birth during the spring and summer, although the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July (Lowry *et al.,* 2008).

There are two large harbor seal haulout sites near the PGL, Sea Lion Gulch, approximately 2.5 km (1.5 mi) to the south, and the Mattole River Spit, approximately 6 km (3.7 km) to the north. A small group of harbor seals routinely haul-out on the beach near the intertidal zone and on the adjacent rocks below the PGL, approximately 120 m (394 ft) from the oil house. Up to 180 harbor seals have been observed at the PGL (Goley *et al.,* 2021). Harbor seals typically have small home ranges and the seals present at the PGL haulout are likely to be present across multiple days (Waring *et al.,* 2016; Wood *et al.,* 2011). Although harbor seals commonly use the beach near the PGL for resting, very few pups have been observed in the area and the PGL is not considered a rookery site for harbor seals.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals may or may not impact marine mammal species or stocks.

Acoustic and visual stimuli generated by personnel working at the PGL and traversing the beach to access the work site, noise from construction equipment operating at the PGL, and helicopters hovering over the site to transport equipment and supplies may have the potential to cause behavioral disturbance.

Human Presence

The appearance of construction personnel may have the potential to

cause Level B harassment of marine mammals hauled-out at the PGL and along the proposed access routes. Disturbance includes a variety of effects, from subtle to conspicuous changes in behavior, movement, and displacement. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of the BLM's construction personnel (*e.g.,* turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than two body lengths or longer, or if already moving, a change of direction of greater than 90 degrees in response to the disturbance, or pinnipeds that flush into the water, are behaviorally harassed, and thus considered incidentally taken by Level B harassment. NMFS uses a 3-point scale (Table 2) to determine which disturbance reactions constitute take under the MMPA. Levels 2 and 3 (movement and flush) are considered take, whereas level 1 (alert) is not. Animals that respond to the presence of BLM personnel by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

TABLE 2—DISTURBANCE SCALE OF PINNIPED RESPONSES TO IN-AIR SOURCES TO DETERMINE TAKE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only Levels 2 and 3 are considered take under the MMPA, whereas Level 1 is not.

Reactions to human presence, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Southall *et al.,* 2007; Weilgart 2007). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displace marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart, 2007). Nevertheless, this is not likely to occur during the proposed activities since rapid habituation or movement to nearby haulouts is expected to occur after a potential pinniped flush.

Disturbances resulting from human activity can impact short- and long-term pinniped haulout behavior (Renouf *et al.,* 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.,* 1984; Stewart, 1984; Suryan and Harvey, 1999; and Kucey and Trites, 2006). Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.,* 1984; Calambokidis *et al.,* 1991; and Suryan and Harvey 1999) or lead Hawaiian monk seals (*Neomonachus schauinslandi*) to avoid beaches (Kenyon 1972).

In 2004, Acevedo-Gutierrez and Johnson (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haulout sites on Yellow Island, Washington. The authors estimated the minimum distance between the vessels and the haulout sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the 7-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m), respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haulout site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Acevedo-Gutierrez and Johnson, 2007). Although no boats would be used in the PGL Stabilization Project, we expect that hauled-out pinnipeds exposed to the BLM's vehicles and construction equipment would exhibit similar responses to those exposed to boats in the 2007 Acevedo-Gutierrez and Johnson study, and would quickly return to their haulout after the vehicles pass.

Noise

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this proposed rule. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is the ratio of a measured sound pressure and a reference level. The commonly used reference pressure is 1 μPa for under water, and the units for SPLs are dB re: 1 μPa. The commonly used reference pressure is 20 μPa for in air, and the units for SPLs are dB: 20 μPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square is the square root of the arithmetic average of the squared instantaneous pressure values. All references to SPL in this document refer to the rms unless otherwise noted. SPL does not take into account the duration

of a sound. NMFS has developed acoustic thresholds for behavioral disturbance from airborne noise (90 dB for harbor seals and 100 dB for all other pinnipeds; NMFS 2018).

It is possible that the use of helicopters to transport materials, especially the helicopter hovering at the work site while the sling load is disconnected, would cause a subset of the marine mammals hauled-out at the PGL to react. There is little information available on the acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson, *et al.,* 1995) and to NMFS' knowledge, there has been no specific documentation of temporary threshold shift (TTS), let alone permanent threshold shift (PTS), in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions (Baker *et al.,* 2012; Scheidat *et al.,* 2011). The specific type and model of helicopter that may be used for work at the PGL is not yet known, therefore the predicted source level of noise from the helicopter that could be used to estimate distances to the behavioral disturbance threshold is also unknown. However, NMFS has considered that while noise from the helicopter is likely to affect the degree to which marine mammals respond to the stimulus, the physical presence of aircraft could also lead to non-auditory effects on marine mammals involving visual or other cues. Marine mammals in the vicinity of the helicopter are likely to exhibit behavioral responses (*e.g.,* hasty dives or turns, change in course, or flushing and stampeding from a haulout site, as a result of visual detection of the helicopter) regardless of the received SPL.

There are few well-documented studies of the impacts of aircraft overflight over pinniped haulout sites or rookeries, and many of those that exist, are specific to military activities (Efroymson *et al.,* 2001). In 2008, NMFS issued an IHA to the USFWS for the take of small numbers of Steller sea lions and Pacific harbor seals, incidental to rodent eradication activities on an islet offshore of Rat Island, AK conducted by helicopter. The 15-minute aerial treatment consisted of the helicopter slowly approaching the islet at an elevation of over 1,000 ft (304.8 m); gradually decreasing altitude in slow circles; and applying the rodenticide in a single pass and returning to Rat Island. The gradual and deliberate approach to the islet resulted in the sea lions present initially becoming aware of the helicopter and calmly moving into the water. Further, the USFWS reported that all responses fell well within the range of Level B harassment (*i.e.,* limited, short-term displacement resulting from aircraft noise due to helicopter overflights).

Several factors complicate the analysis of long- and short-term effects for aircraft overflights. Information on behavioral effects of overflights by military aircraft (or component stressors) on most wildlife species is sparse. Moreover, models that relate behavioral changes to abundance or reproduction, and those that relate behavioral or hearing effects thresholds from one population to another are generally not available. In addition, the aggregation of sound frequencies, durations, and the view of the aircraft into a single exposure metric is not always the best predictor of effects and it may also be difficult to calculate. Overall, there has been no indication that single or occasional aircraft flying above pinnipeds in water cause long term displacement of these animals (Richardson *et al.,* 1995). Bowles and Stewart (1980) observed the effects of helicopter flights over California sea lions and harbor seals observed on San Miguel Island, CA; animals responded to some degree by moving within the haulout and entering into the water, stampeding into the water, or clearing the haul out completely. Both species always responded with the raising of their heads. California sea lions appeared to react more to the visual cue of the helicopter than the noise.

In a study of the effects of helicopter landings at the St. George Reef Lighthouse on Northwest Seal Rock off the coast of Crescent City, California, Crescent Coastal Research (CCR) found a range of from 0 to 40 percent of all pinnipeds present on the island were temporarily displaced (flushed) due to initial helicopter landings in 1998. Their data suggested that the majority of these animals returned to the island once helicopter activities ceased, over a period of minutes to 2 hours (CCR, 2001). Far fewer animals flushed into the water on subsequent takeoffs and landings, suggesting rapid habituation to helicopter landing and departure (CCR, 2001).

Demolition and construction work at the PGL would include use of gas powered construction saws, jack hammers, heavy equipment (likely a backhoe or small excavator), saws, and hand tools. Fencing would be erected to prevent marine mammals from entering the work area. Received sound levels for seals hauled out on the beaches below the PGL are not likely to exceed the behavioral disturbance thresholds.

Stampede

There are other ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. They are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. These situations are particularly injurious when: (1) Animals fall when entering the water at high-relief locations; (2) there is extended separation of mothers and pups; and (3) crushing of pups by large males occurs during a stampede. However, NMFS does not expect any of these scenarios to occur at the PGL as the proposed action would occur outside of the pupping/breeding season for elephant seals and late enough in the harbor seal pupping season that any pups present would likely be old enough to accompany their mother during a flushing event, there are no cliffs at the PGL, and monitoring from IHAs for similar activities has not recorded stampeding events (*e.g.,* Point Blue Conservation Science, 2020; University of California Santa Cruz Partnership for Interdisciplinary Studies of Coastal Oceans, 2021).

The haulout sites at the PGL consist of low sloping sandy beaches with unimpeded and non-obstructive access to the water. If disturbed, the small number of hauled-out animals may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area or increase injury potential. Therefore, NMFS has determined the BLM's proposed activities pose no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations and thus there is no risk that these disturbances will result in Level A harassment or mortality/serious injury.

Anticipated Effects on Marine Mammal Habitat

The primary potential impact to marine mammal habitat associated with the construction activity is the temporary occupation of marine mammal habitat by BLM personnel and equipment but no permanent impacts would occur. The footprint of the PGL station would not change, and although vagrant elephant seals occasionally enter the compound, the lighthouse station itself is not considered to be suitable marine mammal habitat. During the stabilization project, a fence would be erected to exclude a portion of the marine terrace from use by elephant

seals. The area expected to be fenced is usually unoccupied during the proposed construction window so few animals are expected to be displaced. Hauled out pinnipeds may temporarily leave the area if disturbed by acoustic or visual stimuli from project activities, but would likely return to the area once activities are concluded. The duration of displacement could vary from minutes, which would be expected for animals disturbed along the access route that may return to the haulout once the construction personnel pass by (*e.g.,* Allen *et al.,* 1985), to hours or days, for animals that flush from the beach below the PGL. The Lost Coast has miles of suitable undeveloped habitat for displaced animals to relocate during construction activities. The direct effects to pinnipeds appear at most to displace the animals temporarily from their haulout sites, and we do not expect, and have not observed during previous authorizations, that the pinnipeds would permanently abandon a haulout site as a result of the PGL stabilization project.

Indirect effects of the activities on nearby feeding or haulout habitat are not expected. Increased noise levels are not likely to affect acoustic habitat or adversely affect marine mammal prey in the vicinity of the project area because source levels are low, transient, well away from the water, and do not readily transmit into the water. It may be necessary for the BLM to bring a fuel storage tank to the PGL site to power generators and heavy equipment. Fuel would be stored behind fencing upland of the beach and the fuel tank would have a secondary containment system in place. To prevent chemical leaks, the BLM would inspect all equipment prior to attempting to cross Four Mile Creek while accessing the worksite. Debris generated by the construction activities (*e.g.,* removed concrete and metal structures) would either be buried onsite or removed by overland transit or helicopter lifts. Any materials not removed would be buried well upland of the beach, far away from any potential haulout areas. Buried material would consist of existing elements of the lighthouse station, no new materials would be introduced and left behind. NMFS does not expect that the proposed activities would have any long- or short-term physical impacts to pinniped habitat at the PGL.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to construction personnel and equipment, including helicopters used to transport materials. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. For the BLM's proposed activities, behavioral (Level B) harassment is limited to movement and flushing, defined by the disturbance scale of pinniped responses to in-air sources to determine take (Table 2). As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information, that will inform the take calculations.

Researchers from Humboldt State University (HSU) regularly conduct census counts of pinnipeds at the PGL and surrounding areas along the northern California coast (*e.g.,* Goley *et al.,* 2021). Counts of northern elephant seals and harbor seals at the PGL during the effective dates of the proposed IHA (June 1 through October 1) are presented below.

TABLE 3—NORTHERN ELEPHANT SEAL CENSUS COUNTS

2019 counts		2020 counts	
Date	Number of seals observed	Date	Number of seals observed
June 8	101	June 4	177
June 15	74	June 11	83
June 23	34	June 14	80
July 7	40	June 24	37
July 14	50	June 27	38
July 21	54	July 4	36
August 3	39	July 12	39
August 21	44	July 16	38
August 31	62	July 24	36
September 15	162	July 30	38
September 27	244	August 6	32
		August 9	28
		August 13	28
		August 20	27
		August 27	33
		August 30	48
		September 5	60
		September 19	133
		September 27	177

The average daily count of elephant seals at the PGL during the effective dates of the proposed IHA (June 1 through October 1) was 82.2 in 2019 and 61.5 in 2020. Across both years, the average daily count was 69.1 elephant seals (Goley *et al.,* 2021). A large portion of the elephant seals present at the PGL are uniquely tagged and dye stamped to identify individuals, and the same individuals were identified at the PGL haulout on multiple days.

TABLE 4—HARBOR SEAL CENSUS COUNTS

2019 counts		2020 counts	
Date	Number of seals observed	Date	Number of seals observed
June 8	51	June 14	55
June 15	107	June 27	77
June 23	81	July 12	90
July 7	116	July 24	123
July 14	180	August 9	73
July 21	123	August 30	36
August 3	105	September 5	38
August 21	80	September 19	51
August 31	22	September 27	53
September 15	22		
September 27	28		

The average daily count of harbor seals at the PGL was 83.2 in 2019 and 66.2 in 2020. Across both years, the average daily count was 75.55 harbor seals (Goley *et al.,* 2021). The harbor seals present at the PGL are not tagged or otherwise clearly identifiable, but since harbor seals typically show high philopatry (Waring *et al.,* 2016; Wood *et al.,* 2011), researchers from HSU hypothesize that the harbor seal colony at the PGL is made up of the same individuals that move between Punta Gorda and other nearby haulouts.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

To estimate the total number of northern elephant seals and harbor seals that may be present at the PGL and subject to behavioral disturbance from the PGL stabilization project, the BLM multiplied the daily count of each species averaged across the two years of census data (69.1 elephant seals and 75.55 harbor seals) by the maximum days of work at the PGL (122 days), for a total estimate of 8,431 northern elephant seals and 9,218 harbor seals taken by Level B harassment. This estimation assumes that all animals present would exhibit behavioral responses that are considered take (Levels 2 and 3 as described in Table 2). As described above, many of the seals present at the PGL are suspected or confirmed to be present across multiple days. Therefore, the above estimated take numbers are considered to represent instances of take, not necessarily the number of individual seals that may be taken.

California sea lions and Steller sea lions have not been observed hauled-out at the PGL, but have been observed in the water near the PGL and at nearby haulouts along the Lost Coast Trail. The BLM assumes that no more than 5 individual California sea lions and Steller sea lions may haul-out at the PGL or along the access route and be taken by Level B harassment.

TABLE 5—PROPOSED TAKE BY LEVEL B HARASSMENT BY SPECIES AND PERCENTAGE OF EACH STOCK AFFECTED

Species	Stock	Proposed take by Level B harassment	Stock abundance	Percent of stock
Northern elephant seal	California breeding	[a] 8,431	187,386	4.5
Pacific harbor seal	California	[a] 9,218	30,968	29.8
California sea lion	U.S	5	257,606	<0.01
Steller sea lion	Eastern U.S	5	43,201	0.01

[a] The proposed take represents the estimated number of exposures, which does not necessarily equate to the number of individuals that may be exposed.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or

stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are proposed:

The work season has been planned to reduce the level of impact on elephant and harbor seals. The effective dates of the proposed IHA (June 1, 2022 through October 1, 2022) occurs when the elephant seal population is at its lowest and any harbor seal pups that may be on site would be old enough to be self-sufficient if the colony temporarily flushes into the water. No elephant seal pups would be present during the work season.

Whenever possible, the BLM would utilize the access route that begins at the Windy Point Trailhead, rather than the route that begins at the Mattole Campground, as that route requires a longer stretch of driving on the beach or marine terrace (approximately 5 km (3.1 mi)) where harbor seals are more likely to be hauled-out. The preferred route from the Windy Point Trailhead requires only 1.25 km (0.78 mi) of driving on the beach and marine terrace. Utilizing the access route with the shortest amount of driving on the beach and marine terrace is expected to reduce the number of marine mammals that may be encountered and disturbed along the access route and minimize the impact of the vehicles on marine mammal habitat.

To the extent possible, the BLM would limit the daily number of vehicle trips between the project area and the contractor's offshore camp where additional tools and supplies would be stored in trailers or other storage containers. Additionally, the BLM would utilize helicopters to deliver construction equipment to the PGL work site to reduce the number of vehicle trips that would be necessary to conduct the proposed activities.

While accessing the project site, trained protected species observers (PSOs) would monitor ahead of the vehicle(s) path, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation (*e.g.,* change of course, slow down) is required. Vehicles would not approach within 20 m (65.6 ft) of marine mammals. If animals remain in the access path with no possible route to go around and maintain 20 m (65.6 ft) separation, personnel may exit the vehicle(s) to walk toward animals and intentionally flush them into the water to allow the vehicle(s) to proceed. To the extent possible, if multiple vehicles are traveling to the site, they should travel in a convoy such that animals are not potentially harassed more than once while the vehicles pass.

A fence would be erected to keep elephant seals from entering the construction area to limit disturbance and prevent accidental injury from vehicles and construction debris.

All helicopters associated with the project would slowly approach the work site and allow all marine mammals present to flush into the water before setting any hauled materials down on the ground.

The BLM must cease or delay visits to the project site if a species for which the number of takes that have been authorized for a species are met, or if a species for which takes were not authorized, is observed (*e.g.,* northern fur seals (*Callorhinus ursinus*) or Guadalupe fur seals (*Arctocephalus townsendi*)).

The BLM must monitor for offshore predators and must not approach hauled-out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are observed. If the BLM and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

At least one NMFS-approved PSO would travel to and from the construction site ahead of the work crew each day and serve as a lead monitor to record incidental take. PSOs would consist of BLM wildlife biologists, biological technicians, and interns, as well as King Range National Conservation Area staff. At least one PSO would monitor the beach surrounding the PGL during all construction activities.

PSOs must be approved by NMFS prior to beginning any activity subject to

the proposed IHA. PSOs must have the following qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PSOs must record the following information for each day of work:

- Date, time, and access route of each visit to the work site;
- Information on the weather, including tidal state and estimated horizontal visibility;
- Composition of marine mammals observed, such as species, sex, and life history stage (*e.g.,* adult, sub-adult, pup);
- The numbers (by species) of marine mammals observed during the activities;
- Estimated number of marine mammals (by species) that may have been harassed during the activities;
- Marine mammal disturbances according to a three-point scale of intensity (see Table 2);
- Behavioral responses or modifications of behaviors that may be attributed to the specific activities, a description of the specific activities occurring during that time (*e.g.,* pedestrian, vehicle, or helicopter approach), and any mitigation action taken; and
- If applicable, note the presence of any offshore predators (date, time, number, and species) and any mitigation action taken.

Reporting

The BLM would report all observations of marked or tag-bearing pinnipeds or carcasses and unusual behaviors, distributions, or numbers of pinnipeds to the NMFS West Coast Regional Office.

A draft marine mammal monitoring report would be submitted to MFS within 90 days after the completion of each work season, or 60 days prior to the requested issuance date of any future IHAs for projects at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS on the draft report, the draft report will be considered the final report.

In addition to raw sightings data, the report must include:

- A summary of the dates, times, site access route, and weather during all construction activities;
- The numbers (by species) of marine mammals observed during the activities, by age and sex, if possible;
- The estimated number of marine mammals (by species) that may have been harassed during the activities based on the three-point disturbance scale (Table 2);
- Any behavioral responses or modifications of behaviors that may be attributed to the specific activities (*e.g.,* flushing into the water, becoming alert and moving, rafting); and
- A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

Reporting Injured or Dead Marine Mammals

In the event that the BLM or any other personnel involved in the activities discover an injured or dead marine mammal, the BLM would report the incident to the NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*) and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury were clearly caused by the specified activity, the BLM would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The BLM would not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 5, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. Activities associated with the PGL stabilization project, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) from in-air sounds and visual disturbance. Potential

takes could occur if individual marine mammals are present nearby when activity is happening.

No injuries or mortalities are anticipated to occur as a result of the PGL stabilization project and none are proposed to be authorized. The risk of marine mammal injury, serious injury, or mortality associated with the proposed construction project increases somewhat if disturbances occur during pupping season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (*e.g.,* through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. However, the proposed activities would occur outside of the elephant seal pupping season, therefore no elephant seal pups are expected to be present. Although the timing of the proposed activities would partially overlap with harbor seal pupping season, the PGL is not a harbor seal rookery and few pups are anticipated to be encountered during the proposed surveys. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. The proposed activities would occur late enough in the pupping season that any harbor seal pups present would likely be old enough to keep up with their mother in unlikely event of a stampede or other flushing event. The proposed mitigation measures (*i.e.,* minimum separation distance, slow approaches, and minimizing vehicle trips to the PGL) generally preclude the possibility of behaviors, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as alerts or movements away from the lighthouse structure, including flushing into the water. Most likely, individuals will simply move away from the acoustic or visual stimulus and be temporarily displaced from the areas.

Monitoring reports from similar activities (*e.g.,* Point Blue Conservation Science, 2020; University of California Santa Cruz Partnership for Interdisciplinary Studies of Coastal Oceans, 2021) have reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations as noted above. Repeated exposures of individuals to relatively low levels of sound and visual disturbance outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors or result in permanent abandonment of the haulout site. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound and visual disturbance produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

Of the marine mammal species anticipated to occur in the proposed activity areas, none are listed under the ESA and there are no known areas of biological importance in the project area. Taking into account the planned mitigation measures, effects to marine mammals are generally expected to be restricted to short-term changes in behavior or temporary displacement from haulout sites. The Lost Coast area has abundant haulout areas for pinnipeds to temporarily relocate, and marine mammals are expected to return to the area shortly after activities cease. No adverse effects to prey species are anticipated as no work would occur in-water, and habitat impacts are limited and highly localized, consisting of construction work at the existing lighthouse station and the transit of vehicles and equipment along the access route. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from the BLM's PGL stabilization project will not adversely affect annual rates of recruitment or survival and, therefore, will have a negligible impact on the affected species or stocks.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality, or Level A harassment is anticipated or proposed to be authorized;
- Few pups are expected to be disturbed, and would not be abandoned or otherwise harmed by other seals flushing from the area;
- Effects of the activities would be limited to short-term, localized behavioral changes;
- Nominal impacts to pinniped habitat are anticipated;
- No biologically important areas have been identified in the project area;
- There is abundant suitable habitat nearby for marine mammals to temporarily relocate; and
- Mitigation measures are anticipated to be effective in minimizing the number and severity of takes by Level B harassment, which are expected to be of short duration.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorizes is below one third of the estimated stock abundance of all species (in fact, take of individuals is less than 5 percent of the abundance of all of the affected stocks except Pacific harbor seals, see Table 5). This is likely a conservative estimate because it assumes all takes are of different individual animals which is likely not the case. Using tags and dye stamps, researchers from HSU have identified individual northern elephant seals across several days of monitoring at the PGL. Although harbor seals observed at the PGL are not typically tagged or marked, HSU researchers suggest that the harbor seals seen

hauled-out at the PGL are the same individuals that move between Punta Gorda and other nearby haulouts. Therefore, many individuals that may be taken by Level B harassment are likely to be the same across consecutive days, but PSOs would count them as separate takes across days.

Based on the analysis contained herein of the prop20osed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the West Coast Regional Office.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the BLM for conducting the PGL stabilization project in Humboldt County, California between June 1 and October 1, 2022, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed PGL stabilization project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 21, 2022.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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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; Greater Atlantic Region Logbook Family of Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 16, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Greater Atlantic Region Logbook Family of Forms.

OMB Control Number: 0648–0212.

Form Number(s): 80–30, 80–140.

Type of Request: Regular (extension of a currently approved collection).

Number of Respondents: 2,036.

Average Hours per Response: Fishing Vessel Trip reports, 5 minutes; Shellfish Log, 12.5 minutes; Spawning Blocks, DAS, EFP, Herring, RSA, and Tilefish, 3 minutes each.

Total Annual Burden Hours: 9,141.

Needs and Uses: This request is for revision and extension of a current information collection. This information collection, 0648–0212, is sponsored by the Data Processing & Quality Branch, which falls under the Analysis & Program Support Division located at the Greater Atlantic Regional Office. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is

responsible for management of the nation's marine fisheries. Fishing vessels permitted to participate in Federally permitted fisheries in the Northeast are required to submit logbooks containing catch and effort information about their fishing trips. The information submitted is needed for the management of the fisheries. The only change to this collection is that all information collected is required to be submitted via electronic means.

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: Per trip.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0212.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08836 Filed 4–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB976]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Shell Offshore Inc. (Shell) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from April 21, 2022, through December 31, 2022.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Shell plans to conduct a 3D ocean bottom node (OBN) survey of approximately 62 lease blocks in Mississippi and De Soto Canyons, with approximate water depths ranging from 1,700 to 2,400 meters (m). See Section F of the LOA application for a map of the area.

Shell anticipates using a single source vessel, towing an airgun array consisting of 32 elements, with a total volume of 5,110 cubic inches (in^3). Please see Shell's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Shell in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19,

2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No 3D OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220; June 22, 2018). Coil was selected as the best available proxy survey type in this case, because the spatial coverage of the planned survey is most similar to the coil survey pattern. The planned 3D OBN survey will involve a single source vessel sailing along closely spaced survey lines that are 100 m apart and approximately 30 km in length. The path taken by the vessel to cover these lines will mean that consecutive survey lines sailed will be 400 m apart. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Shell is not proposing to perform a survey using the coil geometry, its planned 3D OBN survey is expected to cover approximately 15.7 km^2 per day, meaning that the coil proxy is most representative of the effort planned by Shell in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to differences in both the airgun array (32 elements, 5,110 in^3) and the daily survey area planned by Shell (15.7 km^2), as compared to those modeled for the rule.

The survey will take place over approximately 70 days, including 60 days of sound source operation. The survey plan includes 16 days within Zone 5 and 44 days within Zone 7. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results that are inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

Rice's whales (formerly known as GOM Bryde's whales) [3] are generally found within a small area in the northeastern GOM in waters between 100–400 m depth along the continental shelf break (Rosel *et al.,* 2016). Whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014), and a NOAA survey reported observation of a Rice's whale in the western GOM in 2017 (NMFS, 2018). Habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although a ''core habitat area'' defined in the northeastern GOM (outside the scope of the rule) contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29212, 29228, 29280 (June 22, 2018); 86 FR 5322, 5418 (January 19, 2021).

Although it is possible that Rice's whales may occur outside of their core habitat, NMFS expects that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m). Shell's planned activities will occur in water depths of approximately 1,700–2,400 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through this LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. NMFS has determined that the approach can result in unrealistic projections regarding the likelihood of encountering killer whales.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional three encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by protected species observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales would result in high estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single killer whale group encounter (*i.e.,* up to 7 animals).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than one day (see 86 FR 5322, 5404; January 19, 2021). The output of this scaling, where appropriate, is incorporated into an adjusted total take estimate that is the basis for NMFS' small numbers determination, as depicted in Table 1.

This product is used by NMFS in making the necessary small numbers determination, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determination is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale	0	n/a	51	n/a
Sperm whale	654	276.6	2,207	12.5
Kogia spp	[3] 290	106.3	4,373	2.4
Beaked whales	3,915	395.4	3,768	10.5

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rough-toothed dolphin	702	201.4	4,853	4.2
Bottlenose dolphin	1,523	437.2	176,108	0.2
Clymene dolphin	1,908	547.6	11,895	4.6
Atlantic spotted dolphin	604	173.5	74,785	0.2
Pantropical spotted dolphin	14,099	4,046.5	102,361	4.0
Spinner dolphin	1,328	381.1	25,114	1.5
Striped dolphin	875	251.2	5,229	4.8
Fraser's dolphin	266	76.3	1,665	4.6
Risso's dolphin	427	125.9	3,764	3.3
Melon-headed whale	1,241	366.1	7,003	5.2
Pygmy killer whale	455	134.4	2,126	6.3
False killer whale	579	170.9	3,204	5.3
Killer whale	7	n/a	267	2.6
Short-finned pilot whale	222	65.6	1,981	3.3

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 19 takes by Level A harassment and 271 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of Shell's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Shell authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: April 21, 2022.

Catherine G. Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–08870 Filed 4–25–22; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Revise Collection Numbers 3038–0087: Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information mandated by Commission regulations 23.201 through 23.205 (Reporting, Recordkeeping, and Daily Trading Records Requirements For Swap Dealers and Major Swap Participants).

DATES: Comments must be submitted on or before June 27, 2022.

ADDRESSES: You may submit comments, identified by ''OMB Control Number 3038–0087'' by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Chapin, Associate Chief Counsel, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5465, email: *achapin@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA,[1] Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information,

[1] 44 U.S.C. 3501 *et seq.*

including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

Title: Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants (OMB Control Nos. 3038–0087). This is a request for an extension of currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulations 23.201 through 23.205 (Reporting, Recordkeeping, and Daily Trading Records Requirements For Swap Dealers and Major Swap Participants) [2] pursuant to sections 4s(f) [3] and 4s(g) [4] of the Commodity Exchange Act (''CEA'').[5] Commission regulations 23.201 through 23.205 require, among other things, swap dealers (''SD'') [6] and major swap participants (''MSP'') [7] to maintain transaction and position records of their swaps (including daily trading records) and to maintain specified business records (including records related to the governance and financial status of the swap dealer or major swap participant, complaints received by such SD or MSP and such SD or MSP's marketing and sales materials). They also require SDs and MSPs to report certain swap transaction data to swap data repositories, to satisfy certain real time public reporting requirements, and to maintain records of information reported to swap data depositories and for real time reporting purposes.[8] The Commission believes that the information collection obligations imposed by Commission regulations 23.201 through 23.205 are necessary to implement sections 4s(f) and 4s(g) of the CEA, including ensuring that each SD and MSP maintains the required records of their business activities and an audit trail sufficient to conduct comprehensive and accurate trade reconstruction. 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.

With respect to the collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality,usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those whoare 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[9]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 107.

Estimated Average Burden Hours Per Respondent: 2,096.

Estimated Total Annual Burden Hours: 224,272.

Frequency of Collection: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 20, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–08787 Filed 4–25–22; 8:45 am]

BILLING CODE 6351–01–P

[2] 17 CFR 23.201–23.205.

[3] 7 U.S.C. 6s(f).

[4] 7 U.S.C. 6s(g).

[5] 77 FR 20128.

[6] For the definition of SD, see section 1a(49) of the CEA and Commission regulation 1.3.7 U.S.C. 1a(49) and 17 CFR 1.3.

[7] For the definitions of MSP, see section 1a(33) of the CEA and Commission regulation 1.3.7 U.S.C. 1a(33) and 17 CFR 1.3.

[8] See 17 CFR 23.201–23.205.

[9] 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0089: Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on reporting requirements relating to swap data recordkeeping and reporting requirements codified in the Code of the Federal Regulations that imposes recordkeeping and reporting requirements on the following entities: Swap Dealers (''SDs''), Major Swap Participants (''MSPs''), and swap counterparties that are neither swap dealers nor major swap participants (''non-SD/MSP counterparties'').

DATES: Comments must be submitted on or before June 27, 2022.

ADDRESSES: You may submit comments, identified by ''OMB Control No. 3038–0089'' by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Isabella Bergstein, Attorney Adviser, Division of Data Policy, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 993–1384; email: *ibergstein@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed extension of the existing collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.[1]

Title: Swap Data Recordkeeping and Reporting Requirements: Reenactment and Transition Swaps (OMB Control No. 3038–0089). This is a request for an extension of a currently approved information collection.

Abstract: Sections 4r(a)(2)(A) and 2(h)(5) of the Commodity Exchange Act requires the reporting of pre-enactment and transition swaps. Regulations 46.2, 46.3, and 46.11 establish reporting requirements that are mandated by 4r and 2(h) and, thus, are necessary to implement the objectives of 4r and 2(h). Regulation 46.2 establishes swap counterparties' recordkeeping requirements for pre-enactment and transition swaps. Regulation 46.3 establishes reporting requirements for uncleared pre-enactment or transition swaps in existence on or after April 25, 2011, and throughout the existence of the swap.[2] Regulation 46.11 addresses the reporting of errors and omission in previously reported data. The data required to be compiled and maintained pursuant to the Part 46 regulations would be used by the Commission and other financial regulators for fulfillment of various regulatory mandates. The collection of information is needed to ensure that the CFTC and other regulators have access to data regarding pre-enactment and transition swaps, as required by the Commodity Exchange Act as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish for the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[3]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission estimates that the respondent burden for this collection is as follows:

- *Recordkeeping:*

Estimated Number of Respondents: 30,108.

Estimated Average Burden Hours per Respondent: 69.5 hours.

Estimated Total Annual Burden Hours: 13,506 hours.

Frequency of Collection: 1.

- *Reporting:*

Estimated Number of Respondents: 608.

Estimated Average Burden Hours per Respondent: 5.64 hours.

Estimated Total Annual Burden Hours: 860 hours.

Frequency of Collection: Daily.

- *Total Annual Burden for the Collection:* 14,366 hours.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 20, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–08789 Filed 4–25–22; 8:45 am]

BILLING CODE 6351–01–P

[1] The OMB control numbers for the CFTC regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981).

[2] *See* 17 CFR part 46.1 (defining ''pre-enactment swap'' as any swap entered into prior to enactment of the Dodd-Frank Act of 2010 (July 21, 2010), the terms of which have not expired as of the date of enactment of that Act, and ''transition swap'' as any swap entered into on or after the enactment of the Dodd-Frank Act of 2010 (July 21, 2010) and prior to the applicable compliance date on which a registered entity or swap counterparty subject to the jurisdiction of the Commission is required to commence full compliance with all provisions of part 46).

[3] *See* 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection Number 3038–0080: Annual Report for Chief Compliance Officer of Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits

comments on the collections of information mandated by Commission Regulation 3.3 (Chief Compliance Officer).

DATES: Comments must be submitted on or before June 27, 2022.

ADDRESSES: You may submit comments, identified by ''OMB Control No. 3038–0080'' by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Cummings, Special Counsel, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5445; email: *ccummings@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed extension of the existing collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Title: Annual Report for Chief Compliance Officer of Registrants (OMB Control No. 3038–0080). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Regulation 3.3 (Chief Compliance Officer) [1] under sections 4d(d) and 4s(k) [2] of the Commodity Exchange Act (''CEA''). Commission Regulation 3.3 requires each futures commission merchant (''FCM''), swap dealer (''SD''), and major swap participant (''MSP'') to designate, by filing a Form 8–R, a chief compliance officer who is responsible for developing and administering policies and procedures that fulfill certain duties of the SD, MSP, or FCM and that are reasonably designed to ensure the registrant's compliance with the CEA and Commission regulations; establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer; establishing procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues; preparing, signing, certifying and filing with the Commission an annual compliance report that contains the information specified in the regulations; amending the annual report if material errors or omissions are identified; and maintaining records of the registrant's compliance policies and procedures and records related to the annual report. The information collection obligations imposed by Commission Regulation 3.3 are essential to ensuring that FCMs, SDs, and MSPs maintain comprehensive policies and procedures that promote compliance with the CEA and Commission regulations. In particular, the Commission believes that, among other things, these obligations (i) promote compliance behavior through periodic self-evaluation, (ii) inform the Commission of possible compliance weaknesses, (iii) assist the Commission in determining whether the registrant remains in compliance with the CEA and Commission regulations, and (iv) help the Commission to assess whether the registrant has mechanisms in place to adequately address compliance problems that could lead to a failure of the registrant.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish for the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[3]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden for this collection is estimated to be as follows:

Number of Registrants: 166.

Estimated Average Burden Hours per Registrant: 1006.

Estimated Aggregate Burden Hours: 166,966.

Frequency of Recordkeeping: Annually or on occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 20, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–08788 Filed 4–25–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 3.3.

[2] 7 U.S.C. 6d(d) and 6s(k).

[3] 17 CFR 145.9.

DEPARTMENT OF EDUCATION

Applications for New Awards; Veterans Upward Bound Program

AGENCY: Office of Postsecondary Education, 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 the Veterans Upward Bound (VUB) Program, Assistance Listing Number 84.047V. This notice relates to the approved information collection under OMB control number 1840–0823.

DATES:

Applications Available: April 26, 2022.

Deadline for Transmittal of Applications: June 10, 2022.

Deadline for Intergovernmental Review: August 9, 2022.

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: Kenneth Foushee, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C221, Washington, DC 20202–4260. Telephone: (202) 453–7417. Email: *Kenneth.Foushee@ed.gov* or Dana Foreman, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C142, Washington, DC 20202–4260. Telephone: (202) 453–7396. Email: *Dana.Foreman@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Upward Bound (UB) Program is one of the seven programs collectively known as the Federal TRIO Programs. The UB Program is a discretionary grant program that supports projects designed to provide students with the skills and motivation necessary to complete a program of secondary education and enter into and succeed in a program of postsecondary education. There are three types of grants under the UB Program: UB; VUB; and UB Math and Science. In this notice we invite applications for VUB grants only. The invitation to apply for UB grants was published in the **Federal Register** on December 16, 2021, and is available at *https://www.federalregister.gov/documents/2021/12/16/2021-27235/applications-for-new-awards-upward-bound-program.* We will invite applications for UB Math and Science grants in a separate notice.

The VUB Program supports projects designed to prepare, motivate, and assist military veterans in the development of academic and other skills necessary for acceptance into and success in a program of postsecondary education.

VUB grantees are required to provide the services listed in section 402C(b) and (c) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a–13(b), (c)). Permissible services under the VUB Program are specified in section 402C(d) of the HEA (20 U.S.C. 1070a–13(d)).

Priorities: This notice contains three competitive preference priorities. Competitive Preference Priority 1 is from the Secretary's Notice of Administrative Priorities for Discretionary Grant Programs, published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities). Competitive Preference Priorities 2 and 3 are from the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Note: Applicants must include in the one-page abstract submitted with the application an indication of which, if any, competitive preference priorities are addressed. If the applicant has addressed one or more of the competitive preference priorities, this information must also be listed on the VUB Program Profile Form.

Competitive Preference Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional nine points to an application, depending on how well the application meets the priorities.

These priorities are:

Competitive Preference Priority 1: Applications that Demonstrate a Rationale (Up to 3 points).

Under this priority, an applicant proposes a project that demonstrates a rationale (as defined in this notice).

Note: A list of evidence-based practices that are relevant to the VUB Program is available at *https://www2.ed.gov/programs/triovub/applicant.html.* This list is not exhaustive. Additional information regarding What Works Clearinghouse practice guides and intervention reports that could also be relevant is posted on the Department's website at *www.ies.ed.gov/ncee/wwc.*

Competitive Preference Priority 2: Meeting Student Social, Emotional, and Academic Needs (Up to 3 points).

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through the following priority areas:

(a) Developing and supporting educator and school capacity to support social and emotional learning and development that is trauma-informed, such as addressing exposure to community-based violence and trauma specific to military- or veteran-connected students (as defined in this notice); and

(b) Creating education or work-based settings that are supportive, positive, identify-safe and inclusive with regard to race, ethnicity, culture, language, and disability status, through developing trusting relationships between students (including underserved students), educators, families, and community partners.

Note: Because the VUB Program supports students and not the professional development of educators, applicants should address supports for students only.

Competitive Preference Priority 3: Strengthening Cross-Agency Coordination and Community Engagement to Advance Systemic Change (Up to 3 points).

Projects that are designed to take a systemic evidence-based approach to improving outcomes for underserved students by establishing cross-agency partnerships, or community-based partnerships with local nonprofit organizations, businesses, philanthropic organizations, or others, to meet family well-being needs.

Definitions: The definitions below are from 34 CFR 77.1, the Supplemental Priorities, and the UB regulations at 34 CFR 645.6.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Evidence-based means the proposed project component is supported by evidence that demonstrates a rationale.

Logic model (also referred to as theory of action) means a framework that identifies key components of the proposed project, product (*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.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp.* Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Military- or veteran-connected student means a student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.[1]

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Underserved student means a student in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student experiencing homelessness or housing insecurity.

(c) A student who is the first in their family to attend postsecondary education.

(d) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

Application Requirements: The following application requirements for FY 2022 are from section 402C(e) of the HEA (20 U.S.C. 1070a–13(e)) and the program regulations at 34 CFR 645.21.

An applicant must submit the following, as part of the application—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first- generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or veterans who have a high risk for academic failure; and

(3) The project will collaborate with other Federal TRIO projects or programs serving similar populations in the target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–13.

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 (EDGAR) in 34 CFR parts 75, 77, 79, 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. (d) The regulations for this program in 34 CFR part 645. (e) The Administrative Priorities. (f) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration received $1,137,000,000 for the Federal TRIO Programs for FY 2022, of which we intend to use an estimated $19,288,880 for the VUB Program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $287,537–$460,000.

Estimated Average Size of Awards: $373,768.

Maximum Award: The maximum award varies based on whether the applicant is currently receiving a VUB Program grant, as well as the number of participants served.

- For an applicant that is not currently receiving a VUB Program grant, the maximum award amount is $287,537, based upon a per-participant cost of no more than $2,300 and a minimum of 125 participants.
- For an applicant that is currently receiving a VUB Program grant, the maximum award amount is equal to the applicant's base award amount for FY 2021, and the minimum number of participants is the number of participants in the project's FY 2021 grant award notification.

Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education; public and private agencies; organizations, including community-based organizations with experience in serving disadvantaged youth; secondary schools; and combinations of such institutions, agencies, and organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding

[1] In accordance with the VUB regulations, ''military- and veteran-connected student'' is limited to those who qualify as ''veterans'' under 34 CFR 645.6(b), namely ''a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.''

34 CFR 645.6(b).

training indirect cost rates, see 34 CFR 75.562. 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.*

4. *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.

5. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

6. *Other:* An applicant may submit more than one application for a VUB Program grant so long as each application describes a project that serves a different target area (34 CFR 645.20(a)). The Secretary is not designating any additional populations for which an applicant may submit a separate application under this competition (34 CFR 645.20 (b)). The term ''target area'' is defined as a discrete local or regional geographical area served by a project (34 CFR 645.6(b)).

IV. Application 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,* which contain requirements and information on how to submit an application. 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 DUNS number to the implementation of the 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 program 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 program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 645.41. We reference additional 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, which includes the budget narrative, to no more than 65 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, excluding titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs, which may be single-spaced.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- 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 one-page abstract. However, the recommended page limit does apply to all of the application narrative. We recommend that any application addressing the competitive preference priorities include no more than three additional pages for each priority, for a total of up to nine additional pages for the competitive preference priorities if the three competitive preference priorities are addressed.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria are from 34 CFR 645.31.

We will award up to 100 points to an application under the selection criteria and up to 9 additional points to an application under the competitive preference priorities, for a total score of up to 109 points. The maximum number of points available for each criterion is indicated in parentheses.

(a) *Need for the project.* (Up to 24 points). The Secretary evaluates the need for a VUB project in the proposed target area on the basis of clear evidence that shows—

(i) The proposed target area lacks the services for eligible veterans that the applicant proposes to provide; (Up to 6 points)

(ii) A large number of veterans who reside in the target area are low income and potential first-generation college students; (Up to 6 points)

(iii) A large number of veterans who reside in the target area who have not completed high school, or have completed high school but have not enrolled in a program of postsecondary education; (Up to 6 points) and

(iv) Other indicators of need for a VUB project, including the presence of unaddressed academic or socio-economic problems of veterans in the area. (Up to 6 points)

(b) *Objectives.* (Up to 9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under selection criterion (a), and attainable, given the project's plan of operation, budget, and other resources:

(i) Academic performance (standardized test scores) (2 points);

(ii) Education program retention and completion (3 points);

(iii) Postsecondary enrollment (3 points); and

(iv) Postsecondary completion (1 point).

(c) *Plan of operation.* (Up to 30 points). The Secretary determines the quality of the applicant's plan of operation by assessing the quality of—

(1) The plan to inform the faculty and staff at the applicant institution or agency and the interested individuals and organizations throughout the target area of the goals and objectives of the project (Up to 3 points);

(2) The plan for identifying, recruiting, and selecting participants to be served by the project (Up to 3 points);

(3) The plan for assessing individual participant needs and for monitoring the academic progress of participants while they are in VUB (Up to 3 points);

(4) The plan for locating the project within the applicant's organizational structure (Up to 3 points);

(5) The curriculum, services and activities that are planned for participants in both the academic year and summer components (Up to 3 points);

(6) The planned timelines for accomplishing critical elements of the project (Up to 3 points);

(7) The plan to ensure effective and efficient administration of the project, including, but not limited to, financial management, student records management, and personnel management (Up to 3 points);

(8) The applicant's plan to use its resources and personnel to achieve project objectives and to coordinate the VUB project with other projects for disadvantaged students (Up to 3 points);

(9) The plan to work cooperatively with parents and key administrative, teaching, and counseling personnel at the target schools to achieve project objectives (Up to 3 points); and

(10) A follow-up plan for tracking graduates of VUB as they enter and continue in postsecondary education (Up to 3 points).

(d) *Applicant and community support.* (Up to 16 points). The Secretary evaluates the applicant and community support for the proposed project on the basis of the extent to which—

(1) The applicant is committed to supplementing the project with resources that enhance the project such as: Space, furniture and equipment, supplies, and the time and effort of personnel other than those employed in the project (Up to 8 points).

(2) Resources secured through written commitments from community partners (Up to 8 points).

(i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations;

(ii) An applicant that is a secondary school must include in its application commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district;

(iii) An applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

(e) *Quality of personnel.* (Up to 8 points). To determine the quality of personnel the applicant plans to use, the Secretary looks for information that shows—

(1) The qualifications required of the project director, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects (Up to 3 points);

(2) The qualifications required of each of the other personnel to be used in the project, including formal training or work experience in fields related to the objectives of the project (Up to 3 points); and

(3) The quality of the applicant's plan for employing personnel who have succeeded in overcoming barriers similar to those confronting the project's target population (Up to 2 points).

(f) *Budget and cost effectiveness.* (Up to 5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support planned project services and activities (Up to 3 points); and

(2) Costs are reasonable in relation to the objectives and scope of the project (Up to 2 points).

(g) *Evaluation plan.* (Up to 8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project and include both quantitative and qualitative evaluation measures (Up to 4 points); and

(2) Examine in specific and measurable ways the success of the project in making progress toward achieving its process and outcomes objectives (Up to 4 points).

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 assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 645.31. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the average peer reviewer score received in the review process. Additionally, in accordance with 34 CFR 645.32, the Secretary will award prior experience points to applicants that conducted a VUB Program project during budget periods 2017–18, 2018–2019, 2019–20, and 2020–21, based on their documented experience. Prior experience points, if any, will be added to the application's averaged reader score to determine the total score for each application.

If there are insufficient funds for all applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographic areas in which there is a significant concentration of veterans, that have been underserved by the VUB program, in accordance with 34 CFR 645.30(c) and the following procedures. The Secretary will identify and recommend an award for—

- First, applicants in the funding band that are located within a Congressional District (a) that did not have a VUB project during the prior grant cycle and (b) that have the highest percentage of veterans among the general population of their district. If this first tie-breaker provision exhausts available funds, then no further action is taken.
- Second, the remaining applicants in the funding band that have the highest percentage of veterans among the general population of their district.

Note: In applying the tie-breaker criteria, the Department will use the most current data available. With respect to Congressional Districts and percentages of veterans among the general population within Congressional Districts, the most recent available data from the National Center for Veterans Analysis and Statistics Veterans Population Tables for Congressional Districts is for the 116th Congress. Therefore, the geographical boundaries used for the tie-breaker are drawn from the 116th Congress.

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose special 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.

4. *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 (SAM). 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.

5. *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 or subgrantee 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:* The success of the VUB Program will be measured by the percentage of VUB participants who enroll in and complete a postsecondary education program. The following performance measures have been developed to track progress toward achieving program success:

(a) The percentage of VUB participants who enrolled in a program of postsecondary education;

(b) The percentage of former VUB participants who enrolled in a program of postsecondary education and who attained either an associate's degree within three years or a bachelor's degree within six years;

(c) The percentage of former VUB participants who enrolled in a program of postsecondary education and who in the first year of the program placed into college-level math and English without the need for remediation; and

(d) The percentage of former VUB participants who enrolled in a program of postsecondary education and graduated on time—within four years for a bachelor's degree and within two years for an associate's degree.

All VUB Program grantees will be required to submit APRs.

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, whether the grantee has made substantial progress in achieving 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.

Michelle Asha Cooper,

Acting Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2022–08827 Filed 4–25–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Training Program for Federal TRIO Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the Training Program for Federal TRIO Programs (Training Program), Assistance Listing Number (ALN) 84.103A. This notice relates to the approved information collection under OMB control number 1840–0814.

DATES:

Applications Available: April 26, 2022.

Deadline for Transmittal of Applications: June 10, 2022.

Deadline for Intergovernmental Review: August 9, 2022.

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: Suzanne Ulmer, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C222, Washington, DC 20202. Telephone: (202) 453–7691. Email: *Suzanne.Ulmer@ed.gov*; or ReShone Moore, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B–214, Washington, DC 20202–4260. Telephone: (202) 453–7624. Email: *reshone.moore@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Training Program provides grants to train the staff and leadership personnel employed in, participating in, or preparing for employment in, projects funded under the Federal TRIO Programs, to improve project operation.

Priorities: This notice contains six absolute priorities and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(iv) and 34 CFR 75.105(b)(2)(ii), the absolute priorities are from section 402G(b) of the Higher Education Act of 1965, as amended (HEA), and the regulations for this program at 34 CFR 642.24. The invitational priority is from the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Absolute Priorities: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one of these absolute priorities.

In accordance with 34 CFR 642.7, each application must clearly identify the specific absolute priority for which a grant is requested. An applicant must submit a separate application for each absolute priority it proposes to address. If an applicant submits more than one application for the same absolute priority, we will accept only the application with the latest ''date/time received'' validation.

These priorities are:

Absolute Priority 1. Training to improve reporting of student and project performance and project evaluation, in order to design and operate a model program for projects funded under the Federal TRIO Programs.

Absolute Priority 2. Training on budget management and the statutory and regulatory requirements for the operation of projects funded under the Federal TRIO Programs.

Absolute Priority 3. Training on assessment of student needs; retention and graduation strategies; and the use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

Absolute Priority 4. Training on assisting students in receiving adequate financial aid from programs assisted under title IV of the HEA and from other programs, and on college and university admissions policies and procedures.

Absolute Priority 5. Training on strategies for recruiting and serving hard to reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths (as this term is defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a)), students who are foster care youth, or other disconnected students.

Absolute Priority 6. Training on general project management for new project directors.[1]

Under this competition we are particularly interested in applications that address the following priority.

Invitational 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 invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success.

Projects supporting the development and implementation of high-quality and accessible learning opportunities, including learning opportunities that are accelerated or hybrid online; credit-bearing; work-based; and flexible for working students.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–17.

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

[1] In addressing Absolute Priority 6, the Department encourages applicants to (a) focus on directors who are in the early years of that role, and (b) demonstrate that the training will provide new project directors with the basic tools required to be a successful TRIO project director, including incorporation, where possible, of the content in Absolute Priorities 1 through 5.

Administrative Regulations in 34 CFR parts 75 (except for 75.215 through 75.221), 77, 79, 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. (d) The regulations for this program in 34 CFR part 642. (e) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration received $1,137,000,000 for new awards for the Federal TRIO Programs for FY 2022, of which we intend to use an estimated $3,219,292 for the TRIO Training Program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $297,601–$386,882, depending on the absolute priority under which the award is funded (see below).

Estimated Average Size of Awards: $321,929.

Maximum Award and Minimum Participants: We will not make an award exceeding the maximum award amount listed here for a single budget period of 12 months. Projects proposed under each absolute priority also must propose to serve the minimum number of applicable participants listed here.

Under Absolute Priorities 1, 2, and 4, the maximum award amount is $297,601 and the minimum number of participants is 231. Under Absolute Priorities 3 and 5, the maximum award amount is $386,882 and the minimum number of participants is 300. Under Absolute Priority 6, the maximum award amount is $329,961 and the minimum number of participants is 256.

Estimated Number of Awards: 10, as follows: 2 awards each under Absolute Priorities 1, 2, 4 and 6; and 1 award each under Absolute Priorities 3 and 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs and other public and private nonprofit institutions and organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. 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.*

4. *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.

5. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

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*, which contain requirements and information on how to submit an application. 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 DUNS number to the implementation of the 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 program 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 program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 642.31. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* and *Application Review Information* sections of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) 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, which includes the budget narrative and invitational priority, if addressed, to no more than 55 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins.
- Double space all text in the application narrative, and single space titles, headings, footnotes, quotations, references, and captions.
- Use a 12-point font.
- Use an easily readable font such as Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); Part II, the Budget Information Summary form (ED Form 524); Part III–A, the Program Profile form; Part III–B, the one-page Project Abstract form; or Part IV, the Assurances and Certifications. The recommended page limit also does not apply to a table of contents, which we recommend that you include in the application narrative.

5. *Content and Form of Application Submission:* You should indicate the absolute priority addressed in your application both on the one-page abstract and on the Training Program Profile Sheet. You must include your complete response to the selection criteria and absolute priority in the application narrative. Other requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 642.21 and 34 CFR 75.210:

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Quality of the project design.* (10 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(g) *Quality of project services.* (15 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of project services to be provided by the proposed project, the Secretary considers 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.

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 also may 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).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 642.21 and 34 CFR 75.210. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process. Additionally, in accordance with 34 CFR 642.22, the Secretary will award up to 15 prior experience points to eligible applicants by evaluating the applicant's current performance under its expiring Training Program grant. Pursuant to 34 CFR 642.20(d), if there are insufficient funds to fund all applications with the same peer review score within a particular absolute priority, prior experience points, if any, will be added to the averaged peer review score to determine the total score for each application.

Under section 402A(c)(3) of the HEA, the Secretary is not required to make awards under the Training Program in the order of the scores received. Additionally, under 34 CFR 642.23 the Secretary, to the greatest extent possible, makes Training Program awards to projects that will provide training services in all regions of the Nation in order to assure accessibility for prospective training participants.

In the event a tie score still exists after applying prior experience points, the Secretary will select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the Nation, in order to assure accessibility to the greatest number of prospective training participants, consistent with 34 CFR 642.20(e). If the Department determines that all tied applicants have equal capacity to provide training to eligible participants in all regions of the Nation, the Secretary will identify and recommend an award for—

First, the applicant in the funding band that is from an entity not receiving funding under any of the other absolute priorities.

Second, the applicant with the highest average score across all applications.

Within each of the steps of the tie-breaker process, if there is more than one application with the same score and insufficient funding to support these applications, the applicant proposing to serve the greatest number of participants through both their on-site and online trainings will be the final application identified and recommended to receive an award.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program 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.

4. *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.

5. *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 purposes of Department reporting under 34 CFR 75.110, the Department will use the following performance measures to assess the effectiveness and quality of the Training Program: Its cost-effectiveness based on the number of TRIO project personnel receiving training each year; the percentage of Training Program participants that, each year, indicate the training has increased their qualifications and skills in meeting the needs of disadvantaged students; and the percentage of Training Program participants that, each year, indicate the training has increased their knowledge and understanding of the Federal TRIO Programs. All grantees will be required to submit an annual performance report documenting their success in training personnel working on TRIO-funded projects, including the average cost per trainee and the trainees' evaluations of the effectiveness of the training provided. The success of the Training Program also is assessed on the quantitative and qualitative outcomes of the training projects based on project evaluation results.

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, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation grant, 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.

Michelle Asha Cooper,

Acting Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2022–08828 Filed 4–25–22; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: Budget Expense Worksheet

AGENCY: Election Assistance Commission (EAC).

ACTION: Notice; request for comment.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the U.S. Election Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the information collection EAC Budget Expenditures Worksheet (EAC–BEW). The EAC proposes to identify and collect budget and expense activity data for HAVA. The EAC will use this data to ensure grantees are proceeding in a satisfactory manner in meeting the approved goals and purpose of the project.

DATES: Comments must be received by 5 p.m. Eastern on Friday, June 24, 2022.

ADDRESSES: To view the proposed EAC–BEW format, see: *https://www.eac.gov/payments-and-grants/reporting.*

FOR FURTHER INFORMATION CONTACT: For information on the EAC–BEW, contact Kinza Ghaznavi, Office of Grants, Election Assistance Commission, *Grants@eac.gov.* Written comments and recommendations for the proposed information collection should be sent directly to *Grants@eac.gov.* All requests and submissions should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Title and OMB Number

EAC Budget Expenditures Worksheet (EAC–BEW); OMB Number Pending.

Purpose

The EAC Office of Grants Management (EAC/OGM) is responsible for awarding, distributing, monitoring, and providing technical assistance to states and grantees on the use of federal funds. EAC/OGM also reports on how the funds are spent, negotiates indirect cost rates with grantees, and resolves audit findings on the use of HAVA funds.

The EAC–BEW is to be employed for all grants issued under HAVA authority. The EAC–BEW will directly benefit award recipients by making it easier for them to monitor budgets and expenses on their federal grant and cooperative agreement programs through standardization of the types of information found in the worksheet—thereby reducing their administrative effort and costs.

The requirement for grantees to report on performance is OMB grants policy. Specific citations are contained in Code of Federal Regulations TITLE 2, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.

Public Comments

After obtaining and considering public comment, the EAC will prepare the format for final clearance.

The EAC is soliciting public comments on:

- Ways to enhance the quality, utility, and clarity of the information collected from respondents, including through the use of automated collection techniques or other forms of information technology; and
- 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.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Respondents: All EAC grantees and state governments.

Annual Reporting Burden

ANNUAL BURDEN ESTIMATES

EAC grant	Instrument	Total number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
TBD	EAC–BEW	56	1	.5	28
Total		56	1	.5	28

The estimated cost of the annualized cost of this burden is: $658, which is calculated by taking the annualized burden (28 hours) and multiplying by an hourly rate of $23.50 (GS–8/Step 5 hourly basic rate).

Camden Kelliher,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2022–08781 Filed 4–25–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Industrial Technology Innovation Advisory Committee

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

ACTION: Notice of establishment.

SUMMARY: The U.S. Department of Energy (DOE or the Department) announces the establishment of the Industrial Technology Innovation Advisory Committee (Committee), pursuant to the Energy Independence and Security Act of 2007 (EISA) and in accordance with the Federal Advisory Committee Act (FACA) and the rules and regulations in implementation of that Act.

SUPPLEMENTARY INFORMATION: The Committee is established to advise the Secretary of Energy (Secretary) with respect to the Industrial Emissions Reductions Technology Development Program (the program) by identifying and evaluating any technologies being developed by the private sector relating to the focus areas described in of the EISA; identifying technology gaps in the private sector or other Federal agencies in those focus areas, and making recommendations on how to address those gaps; surveying and analyzing factors that prevent the adoption of emissions reduction technologies by the private sector; and recommending technology screening criteria for technology developed under the program to encourage adoption of the technology by the private sector. The Committee shall also develop a strategic plan on how to achieve the program's goals and, in consultation with the Secretary and the Director of the Office of Science and Policy, propose missions and goals for the program consistent with the purposes of the program described in of the EISA.

FOR FURTHER INFORMATION CONTACT: Antonio M. Bouza, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; telephone at (202) 586–4563, or email: *ITIAC@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on April 20, 2022, by Miles Fernandez, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 21, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–08834 Filed 4–25–22; 8:45 am]

BILLING CODE 6450–01–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: CP16–121–001.
Applicants: National Grid LNG.
Description: Abbreviated Application of National Grid LNG, LLC for Limited Amendment to Certificate of Public Convenience and Necessity.
Filed Date: 04/15/2022.
Accession Number: 20220415–5330.
Accession Number: 5 p.m. ET 4/29/22.

Docket Numbers: RP22–826–000.
Applicants: Tres Palacios Gas Storage LLC.
Description: Compliance filing: Annual Report of Blanket Certificate Activities to be effective N/A.
Filed Date: 4/19/22.
Accession Number: 20220419–5123.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–826–000.
Applicants: Tres Palacios Gas Storage LLC.
Description: Compliance filing: Annual Report of Replacement Certificate Facilities to be effective N/A.
Filed Date: 4/19/22.
Accession Number: 20220419–5124.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–828–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Compliance filing: Penalty Crediting Report for 2021 to be effective N/A.
Filed Date: 4/19/22.
Accession Number: 20220419–5125.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–829–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rates—Maine to Emera contract 2432 to be effective 4/20/2022.
Filed Date: 4/19/22.
Accession Number: 20220419–5191.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–830–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement—Macquarie Energy LLC to be effective 4/19/2022.
Filed Date: 4/19/22.
Accession Number: 20220419–5245.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–831–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: § 4(d) Rate Filing: Fuel Tracker Filing 4/20/22 to be effective 6/1/2022.
Filed Date: 4/20/22.
Accession Number: 20220420–5098.
Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–832–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Update to GT&C Section 27 to be effective 5/20/2022.
Filed Date: 4/20/22.
Accession Number: 20220420–5113.
Comment Date: 5 p.m. ET 5/2/22.

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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 20, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08864 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP22–162–000; CP18–549–001]

Equitrans, L.P.; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Swarts Complex Abandonment Project Amendment

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Swarts Complex Abandonment Project Amendment involving abandonment of facilities by Equitrans, L.P. (Equitrans) in Greene County, Pennsylvania. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

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 Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on May 19, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on April 12, 2022, you will need to file those comments in Docket No. CP22–162–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

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 subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Equitrans 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. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also 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 (CP22–162–000) 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 which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Equitrans proposes to plug and abandon five natural gas injection/withdrawal wells (Wells 603791,

603792, 603793, 603795, and 603797) and abandon in place the pipelines associated with the five wells. Equitrans also proposes to disconnect and remove aboveground appurtenances along with a portion of the well line that is within each well site workspace.

On March 20, 2019, the Commission issued an order approving abandonment by sale of eighteen natural gas injection/withdrawal wells and associated well lines and appurtenances at the Swarts Complex under Docket No. CP18–549–000. Equitrans is requesting amendment of this order for authorization to abandon five of the eighteen wells, as described above.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Abandonment of the proposed facilities would disturb about 4.4 acres of land, including about 2.4 acres of temporary workspace and about 2.0 acres of existing permanent or new temporary access roads. Following the abandonment, the permanent access roads would be left intact for future use in right-of-way monitoring. Equitrans would remove the temporary access roads and return the areas to pre-abandonment conditions and use.

NEPA Process and the Environmental Document

Any environmental document 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;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then 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 EA or 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.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–162–000 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).

[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.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[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.

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. 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: April 19, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08839 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–56–000.

Applicants: Big Savage, LLC, Highland North LLC, Patton Wind Farm, LLC, Vitol PA Wind LLC, Vitol Holding B.V.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Big Savage, LLC, et al.

Filed Date: 4/19/22.

Accession Number: 20220419–5360.

Comment Date: 5 p.m. ET 5/10/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–101–000.

Applicants: EdSan 1B Group 1 Edwards, LLC.

Description: EdSan 1B Group 1 Edwards, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/20/22.

Accession Number: 20220420–5219.

Comment Date: 5 p.m. ET 5/11/22.

Docket Numbers: EG22–102–000.

Applicants: EdSan 1B Group 1 Sanborn, LLC.

Description: EdSan 1B Group 1 Sanborn, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/20/22.

Accession Number: 20220420–5221.

Comment Date: 5 p.m. ET 5/11/22.

Docket Numbers: EG22–103–000.

Applicants: EdSan 1B Group 2, LLC.

Description: EdSan 1B Group 2, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/20/22.

Accession Number: 20220420–5227.

Comment Date: 5 p.m. ET 5/11/22.

Docket Numbers: EG22–104–000.

Applicants: EdSan 1B Group 3, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of EdSan 1B Group 3, LLC.

Filed Date: 4/20/22.

Accession Number: 20220420–5230.

Comment Date: 5 p.m. ET 5/11/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1663–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–04–20_SA 3809 ATC-Waterloo CFA to be effective 6/20/2022.

Filed Date: 4/20/22.

Accession Number: 20220420–5122.

Comment Date: 5 p.m. ET 5/11/22.

Docket Numbers: ER22–1664–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Second Amendment to SA 887 to be effective 4/15/2022.

Filed Date: 4/20/22.

Accession Number: 20220420–5201.

Comment Date: 5 p.m. ET 5/11/22.

Docket Numbers: ER22–1665–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to RS 838 to be effective 4/18/2022.

Filed Date: 4/20/22.

Accession Number: 20220420–5226.

Comment Date: 5 p.m. ET 5/11/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–41–000.

Applicants: ITC Midwest LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of ITC Midwest LLC.

Filed Date: 4/19/22.

Accession Number: 20220419–5354.

Comment Date: 5 p.m. ET 5/10/22.

Docket Numbers: ES22–42–000; ES22–43–000.

Applicants: ATC Management Inc., American Transmission Company LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of American Transmission Company LLC, et al.

Filed Date: 4/19/22.

Accession Number: 20220419–5362.

Comment Date: 5 p.m. ET 5/10/22.

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: April 20, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08862 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–512]

Dominion Energy South Carolina, Inc.; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 516–512.

c. *Date Filed:* March 23, 2022.

d. *Applicant:* Dominion Energy South Carolina, Inc.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* The project is located on the Saluda River in Richland, Lexington, Saluda, and Newberry counties, near Columbia, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dan Adams, Senior Lake Management Representative, Dominion Energy South Carolina, Inc., (803) 217–9243, *john.adams@dominionenergy.com.*

i. *FERC Contact:* Mary Karwoski, (678) 245–3027, *mary.karwoski@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 19, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: 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. The first page of any filing should include the docket number P–516–512. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Dominion Energy South Carolina, Inc. requests Commission authorization to modify the existing Putnam's Landing marina to add 77 additional boat slips to accommodate a total of 120 watercraft. The proposed modifications include removal of existing dilapidated docks and installation of a new fixed wooden pier walkway with metal gangway leading to a new 120-slip dock tree; a new fueling/pump-out/handicap dock; dredging of approximately 450 cubic yards (cy) in a 0.3-acre area of Lake Murry; placement of approximately 890 cy of clean fill material for shoreline stabilization; construction of dry dock launch, abutments, and removal and replacement of approximately 1340 linear feet of bulkhead; and construction of a temporary sheet pile dam to dewater 0.05 acres of Lake Murry to facilitate construction of the new dry dock launch. The proposed dock tree would extend approximately 202 feet from the 360-foot full pool elevation of Lake Murray and run parallel to the shoreline, spanning approximately 638 feet of shoreline. Ancillary structures, such as dry dock storage, office buildings, roads, parking lots, and water quality ponds would be constructed in the uplands above the 360-foot full pool elevation.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 19, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08838 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–4–000]

Improving Winter-Readiness of Generating Units; Third Supplemental Notice of Technical Conference

As announced in the Notices of Technical Conference issued in this proceeding on November 18, 2021 and March 10, 2022, the Federal Energy Regulatory Commission (Commission) will convene a Joint Technical Conference with the North American Electric Reliability Corporation (NERC) and the Regional Entities in the above-referenced proceeding on Wednesday, April 27 and Thursday, April 28, 2022 from approximately 11:30 a.m. to 5:30 p.m. Eastern time each day. The conference will be held virtually via WebEx.

The purpose of this conference is to discuss how to improve the winter-readiness of generating units, including best practices, lessons learned, and increased use of the NERC Guidelines, as recommended in the Joint February 2021 Cold Weather Outages Report.[1]

The conference will be open for the public to attend electronically.

[1] *See The February 2021 Cold Weather Outages in Texas and the South Central United States—FERC, NERC and Regional Entity Staff Report* at pp 18, 192 (November 16, 2021), *https://www.ferc.gov/news-events/news/final-report-february-2021-freeze-underscores-winterization-recommendations.*

Registration for the conference is not required and there is no fee for attendance. To join the conference, go to the web Calendar of Events for this event on FERC's website, *www.ferc.gov.* The link for the event will be posted at the top of the calendar page and will ''go live'' just prior to the conference start time. The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Lodie White at *Lodie.White@ferc.gov* or (202) 502–8453. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: April 20, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08863 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2530–057]

Brookfield White Pine Hydro, LLC; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Hiram Hydroelectric Project, located on the Saco River in Oxford and Cumberland counties, Maine, and has prepared a Final Environmental Assessment (FEA) for the project. No federal land is occupied by project works or located within the project boundary.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the FEA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to John Matkowski at (202) 502–8576 or *john.matkowski@ferc.gov.*

Dated: April 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08844 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15241–000]

PacifiCorp; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 13, 2021, PacifiCorp filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of Long Ridge Pumped Storage Project to be located about 3 miles West of Mona, Utah. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new upper reservoir for alternative 1 with a surface area of 277 acres, a total storage capacity of 3,672 acre-feet at a normal maximum operating elevation of 6,500 feet average mean sea level (msl); (2) a new upper reservoir for alternative 2 and 3 with a total storage capacity of 2,798 acre-feet at a normal maximum operating elevation of 6,830 feet msl; (3) a new lower reservoir for alternative 1 with a surface area of 90 acres at a normal maximum operating elevation of 5,220 feet msl; (4) a new lower reservoir for alternative 2 with a surface area of 98 acres at a normal maximum elevation of 5,320 feet msl; (5) a new lower reservoir for alternative 3 with a surface area of 98 acres at a normal maximum elevation of 5,115 feet msl; (6) a 14,784-foot-long tunnel penstock, with a hydraulic head of 1,280 feet, connecting the upper and lower reservoirs to the powerhouse for alternative 1; (7) a 16,368-foot-long tunnel penstock, with a hydraulic head of 1,665 feet, connecting the upper and lower reservoirs to the powerhouse for alternative 2; (8) a 17,424-foot-long tunnel penstock, with a hydraulic head of 1,665 feet, connecting the upper and lower reservoirs to the powerhouse for alternative 3; (9) a new underground powerhouse that would be sited along the western shore of the lower reservoir for alternative 1, 2, and 3 containing three turbine-generator units with a total rated capacity of 500 megawatts; (10) a new 0.8-mile-long, 230-kilovolt (kV) transmission line connecting the powerhouse to PacifiCorp's existing Mona substation for alternative 1; (11) a new 1.2-mile-long, 345-kV transmission line connecting the powerhouse to PacifiCorp's existing Clover substation for alternatives 2 and 3; and (12) appurtenant facilities. The estimated annual power generation at the Long Ridge Pumped Storage would be 1,460 gigawatt-hours.

Applicant Contact: Mr. Tim Hemstreet, Managing Director, Renewable Energy Development PacifiCorp. 825 NE Multnomah, Suite 1800, Portland, OR 97232 *Tim.hemstreet@pacificorp.com.*

FERC Contact: Ousmane Sidibe; Phone: (202) 502–6245.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior

registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: 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. The first page of any filing should include docket number P–15241–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *https://www.ferc.gov/ferc-online/elibrary/overview.* Enter the docket number (P–15241) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08841 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15243–000]

PacifiCorp; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 13, 2021, PacifiCorp filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of Rock Canyon Pumped Storage Project to be located in Emery county, Utah. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new upper reservoir for alternative 1 with a surface area of 48.2 acres and a total storage capacity of 1,902.8 acre-feet at a normal maximum operating elevation of 8,380 feet average mean sea level (msl); (2) a new upper reservoir for alternative 2 with a surface area of 87 acres and a total storage capacity of 2,083 acre-feet at a normal maximum operating elevation of 8,600 feet msl; (3) a new lower reservoir for alternatives 1 and 2 with a surface area of 72 acres and a total storage capacity of 3,119 acre-feet at a normal maximum operating elevation of 6,300 feet ms); (4) a 3,696-foot-long tunnel and 12,672-foot-long penstock, with a hydraulic head of 2,470 feet, connecting the upper and lower reservoirs to the powerhouse for alternative 1; (5) a 10,032-foot-long tunnel penstock, with a hydraulic head of 2,250 feet, connecting the upper and lower reservoirs to the powerhouse for alternative 2; (6) a new underground powerhouse that would be sited along the western shore of the lower reservoir for alternatives 1 and 2 containing three turbine-generator units with a total rated capacity of 500 megawatts; (7) a new 5-mile-long, 345-kilovolt (kV) transmission line connecting the powerhouse to PacifiCorp's existing Emery substation for alternatives 1 and 2; and (8) appurtenant facilities. The estimated annual power generation at the Rock Canyon Pumped Storage would be 1,460 gigawatt-hours.

Applicant Contact: Mr. Tim Hemstreet, Managing Director, Renewable Energy Development PacifiCorp. 825 NE Multnomah, Suite 1800 Portland, OR 97232 *Tim.hemstreet@pacificorp.com.*

FERC Contact: Ousmane Sidibe; Phone: (202) 502–6245.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: 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. The first page of any filing should include docket number P–15243–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *https://www.ferc.gov/ferc-online/elibrary/overview.* Enter the docket number (P–15243) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08845 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10887–000]

Carthage Specialty Paperboard, Inc.; Notice of Authorization for Continued Project Operation

On October 31, 2019, Carthage Specialty Paperboard, Inc., licensee for the Carthage Paper Maker Mill Hydroelectric Project No.10887, filed an Application for a New Minor License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Carthage Paper Maker Mill Hydroelectric Project is located on the Black River, near the Village of Carthage, Jefferson and Lewis Counties, New York.

The license for Project No.10887 was issued for a period ending October 31, 2021. 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 New Minor 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.10887 is issued to Carthage Specialty Paperboard, Inc. for a period effective November 1, 2021 through October 31, 2022 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 October 31, 2022, 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 Carthage Specialty Paperboard, Inc. is authorized to continue operation of the Carthage Paper Maker Mill Hydroelectric Project, until such time as the Commission acts on its application for a New Minor License.

Dated: April 19, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08840 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.15237–000]

PacifiCorp; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 13, 2021, PacifiCorp filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of Barn Canyon Pumped Storage Project to be located about 4 miles North of Helper, Utah. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new upper reservoir with a surface area of 42 acres and a total storage capacity of 986 acre-feet at a normal maximum operating elevation of 8,355 feet average mean sea level (msl); (2) a new lower reservoir with a surface area of 28 acres and a total storage capacity of 1,664 acre-feet at a normal maximum operating elevation of 6,240 feet msl; (3) a 12,672-foot-long penstock, with a hydraulic head of 2,035 feet, connecting the upper and lower reservoirs to the powerhouse; (4) a new underground powerhouse that would be sited along the western shore of the lower reservoir containing three Francis turbine-generator units with a total rated capacity of 300 megawatts; (5) a new 10.2-mile-long, 345-kilovolt (kV) transmission line connecting the powerhouse to PacifiCorp's existing Huntington-Spanish Fork substation constructed in 1979 for alternative 1; (6) a new 0.8-mile-long, 138-kV transmission line to interconnect the powerhouse to PacifiCorp's existing Carbon substation for alternative 2; and (7) appurtenant facilities. The estimated annual power generation at the Barn Canyon Pumped Storage would be 624 gigawatt-hours.

Applicant Contact: Mr. Tim Hemstreet, Managing Director, Renewable Energy Development PacifiCorp. 825 NE Multnomah, Suite 1800, Portland, OR 97232, *Tim.hemstreet@pacificorp.com.*

FERC Contact: Ousmane Sidibe; Phone: (202) 502–6245.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–15237–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *https://www.ferc.gov/ferc-online/elibrary/overview.* Enter the docket number (P–15237) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08842 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5124–022]

Washington Electric Cooperative, Inc.; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the North Branch No. 3 Hydroelectric Project, located on the North Branch of the Winooski River in Washington County, Vermont, and has prepared a Final Environmental Assessment (FEA) for the project. No federal land is occupied by project works or located within the project boundary.

The FEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the FEA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the

document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any questions regarding this notice may be directed to Michael Tust at (202) 502–6522 or *michael.tust@ferc.gov.*

Dated: April 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–08843 Filed 4–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

2025 Resource Pool—Loveland Area Projects, Proposed Power Allocation

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power allocation.

SUMMARY: Western Area Power Administration (WAPA), a Federal Power Marketing Administration of the Department of Energy (DOE), announces its Loveland Area Projects (LAP) 2025 Resource Pool proposed power allocation. WAPA developed the proposed power allocation under its LAP 2025 Power Marketing Initiative (2025 PMI), as published in the **Federal Register** on December 30, 2013.

DATES: The comment period on this Notice of proposed power allocation begins April 26, 2022 and ends at 4:00 p.m., MDT, on June 10, 2022. WAPA will accept comments by email or delivered by U.S. mail. WAPA reserves the right not to consider comments received after the prescribed date and time.

A single public information and comment forum (not to exceed three hours) about the proposed power allocation will be held on Monday, May 23, 2022, at 1:30 p.m., MDT. WAPA will hold the public information and comment forum online. The comment forum will begin immediately following the conclusion of the information forum. The forum will be accessible 15 minutes in advance of the start time by copying and pasting the following link into a web browser: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjA2YTE1NjMtMmI2ZC00MGIyLWE2NWItNjVkMTY2NWJhMzE5%40thread.v2/0?context=%7b%22Tid%22%3a%2231ae220f-b94f-463a-9cfd-15bbc9909df5%22%2c%22Oid%22%3a%22840a7135-304c-46b4-bb91-183fb9ec6880%22%7d.*

ADDRESSES: Send written comments to Barton V. Barnhart, Regional Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986. If submitting comments electronically, please email to Parker Wicks, Contracts and Energy Services Manager, Rocky Mountain Region, Western Area Power Administration, at *pwicks@wapa.gov.* Comments must be received by WAPA within the time required in the **DATES** section. Information about the 2025 Resource Pool, including allocation procedures, is available on WAPA–RMR's website at: *https://www.wapa.gov/regions/RM/PowerMarketing/Pages/2025-Loveland-Area-Projects-Resource-Pool.aspx.*

FOR FURTHER INFORMATION CONTACT: Parker Wicks, Contracts and Energy Services Manager, Rocky Mountain Region, Western Area Power Administration, (970) 461–7202, email *pwicks@wapa.gov.*

SUPPLEMENTARY INFORMATION: The 2025 PMI, as published in the **Federal Register** December 30, 2013 (78 FR 79444), provides the basis for marketing the LAP long-term firm hydroelectric resource beginning October 1, 2024, through September 30, 2054. The 2025 PMI established three resource pools available for reallocation to eligible new preference entities. Reallocations will occur at the beginning of the October 1, 2024, contract term and again every 10 years thereafter on October 1, 2034, and October 1, 2044. Each resource pool contains up to one percent of the marketable resource under contract, at that time.

WAPA notified the public of the 2025 Resource Pool allocation procedures, including the General Eligibility Criteria, and called for applications in the **Federal Register** on September 20, 2021 (86 FR 52145). WAPA accepted applications until 4:00 p.m., MST, November 15, 2021. Review of those applications resulted in this Notice of proposed power allocation.

WAPA seeks comments relevant to the proposed power allocation during the comment period. After considering public comments received, WAPA will publish the Final Power Allocation in the **Federal Register**.

I. 2025 Pool Resources

WAPA will allocate up to one percent of the LAP long-term firm hydroelectric resource available as of October 1, 2024. The amount of the resource that will become available on October 1, 2024, is approximately 6.9 megawatts (MW) for the summer season and 6.1 MW for the winter season. The 2025 Resource Pool will be created by reducing existing customers' allocation by up to one percent.

II. Proposed Power Allocation

In response to WAPA's allocation procedures and call for applications (86 FR 52145), WAPA received 13 applications for the 2025 Resource Pool. WAPA determined that one applicant did not meet the General Eligibility Criteria and therefore was ineligible to receive an allocation. The resource pool will be allocated proportionately by season to the 12 qualified allottees based on average seasonal loads for calendar year 2020. The proposed allocations for the 12 qualified allottees, shown in the table below, are based on the LAP marketable resource currently available and are subject to the minimum (100 kilowatts) and maximum (5,000 kilowatts) allocation criteria. If the LAP marketable resource is adjusted in the future, all allocations may be adjusted accordingly.

Allottees	Proposed LAP 2025 resource pool power allocation			
	Summer kilowatt-hours	Winter kilowatt-hours	Summer kilowatts	Winter kilowatts
City of Alma, KS	1,641,046	1,174,939	1,003	781
City of Blue Mound, KS	219,242	176,015	134	117
Buckley Space Force Base, CO	4,198,329	3,598,531	2,566	2,392
City of Elwood, KS	921,145	648,398	563	431

Allottees	Proposed LAP 2025 resource pool power allocation			
	Summer kilowatt-hours	Winter kilowatt-hours	Summer kilowatts	Winter kilowatts
City of Luray, KS	214,334	156,458	131	104
City of Montezuma, KS	1,353,086	1,036,534	827	689
City of Morrill, KS	163,614	150,440	100	100
Village of Paxton, NE	595,554	570,169	364	379
City of Prescott, KS	163,614	150,440	100	100
City of Robinson, KS	163,614	150,440	100	100
Village of Trenton, NE	571,012	532,559	349	354
City of Wathena, KS	1,097,848	761,228	671	506
Total 2025 Resource Pool	11,302,438	9,106,151	6,908	6,053

All of the 12 qualified allottees reside beyond the boundary of WAPA's LAP transmission system. As a result, delivery of the allocation will require each allottee to obtain additional transmission arrangements, acceptable to WAPA, for delivery of the proposed power allocation to the allottee's point of delivery.

By June 1, 2024, each allottee must have firm delivery arrangements in place to be effective October 1, 2024, unless otherwise agreed to in writing by WAPA. WAPA must receive a letter of commitment from each allottee's serving utility or transmission provider by June 1, 2024, confirming the allottee will be able to receive the benefit of WAPA's 2025 Resource Pool. If WAPA does not receive a commitment letter by June 1, 2024, unless otherwise agreed in writing by WAPA, WAPA will withdraw its offer of an allocation.

III. Regulatory Procedure Requirements

A. Review Under the National Environmental Policy Act (NEPA)

WAPA has determined this action fits within the following categorical exclusion listed in appendix B to subpart D of 10 CFR part 1021.B4.1 (Contracts, policies, and marketing and allocation plans for electric power). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.[1] Specifically, WAPA has determined this rulemaking is consistent with activities identified in part B4, Categorical Exclusions Applicable to Specific Agency Actions (see 10 CFR part 1021, appendix B to subpart D, part B4). A copy of the categorical exclusion determination is available on WAPA–RMR's website at: *https://www.wapa.gov/regions/RM/environment/Pages/CX2021.aspx.* Look for the file entitled ''2021–091 LAP 2025 Resource Pool CX.''

B. Review Under Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), WAPA has received approval from the Office of Management and Budget for the collection of customer information in this rule, under OMB control number 1910–5136.

C. Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on April 5, 2022, by Tracey A. LeBeau, Administrator, Western Area Power Administration, 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 April 21, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–08861 Filed 4–25–22; 8:45 am]

BILLING CODE 6450–01–P

[1] The determination was done in compliance with NEPA (42 U.S.C. 4321–4347); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0163; FRL–9408–03–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses—March 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before May 26, 2022.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol of the EPA registration Number of interest as shown in the body of this document, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

Due to the public health concerns related to COVID–19, 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 and access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD)

(7511M), main telephone number: (202) 566–2427, email address: *BPPDFRNotices@epa.gov;* or Marietta Echeverria, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

A. Notice of Receipt—New Uses

1. *EPA Registration Number:* 352–555; 352–768. *Docket ID number:* EPA–HQ–OPP–2021–0447. *Applicant:* E.I. du Pont de Nemours and Company, 9330 Zionsville Road Indianapolis, IN 46268. *Active ingredient:* Rimsulfuron. *Product type:* Herbicide. *Proposed uses:* Pomegranates; tropical and subtropical, small fruit, edible peel subgroup 23A. *Contact:* RD.

2. *EPA Registration Number:* 7969–311. *Docket ID number:* EPA–HQ–OPP–2022–0234. *Applicant:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. *Active ingredient:* Fluxapyroxad and Pyraclostrobin. *Product type:* Fungicide. *Proposed use:* Coffee, green bean; stevia, dried leaves; and stevia, fresh leaves. *Contact:* RD.

3. *EPA Registration Number:* 7969–312. *Docket ID number:* EPA–HQ–OPP–2022–0234. *Applicant:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. *Active ingredient:* Fluxapyroxad. *Product type:* Fungicide. *Proposed use:* Coffee, green bean; stevia, dried leaves; and stevia, fresh leaves. *Contact:* RD.

4. *EPA File Symbol:* 7969–UIO. *Docket ID number:* EPA–HQ–OPP–2022–0348. *Applicant:* BASF Corporation, 26 Davis Dr., Research Triangle, NC, 27709. *Active ingredient:* Broflanilide. *Product type:* Insecticide. *Proposed Use:* Corn seed treatment. *Contact:* RD.

5. *EPA Registration Numbers:* 86174–3 and 86174–4. *Docket ID number:* EPA–HQ–OPP–2022–0305. *Applicant:* SAN Agrow Holding GmbH, Industriestrasse 21, Herzogenburg 3130, Austria (c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192). *Active ingredients:* *Aureobasidium pullulans* strain DSM 14940 and *Aureobasidium pullulans* strain DSM 14941. *Product type:* Fungicide. *Proposed use:* Aerial application for numerous crops (*e.g.,* legume, pome fruit, stone fruit, and ornamentals) in agricultural settings. *Contact:* BPPD.

6. *EPA Registration Number:* 91746–2. *Docket ID number:* EPA–HQ–OPP–2022–0324. *Applicant:* Belchim Crop Protection US Corporation, 2751 Centreville Road, Suite 100, Wilmington, Delaware 19808. *Active ingredient:* Pyridate. *Product type:* Herbicide. *Proposed use:* Turfgrass and fallow. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 15, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–08792 Filed 4–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–SAN 9599–01–R1]

Notice of Availability of Draft NPDES General Permits for Dewatering and Remediation Activity Discharges in Massachusetts and New Hampshire, Federal Facilities in Vermont, and Indian Country in Connecticut and Rhode Island: The Dewatering and Remediation General Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of DRAFT NPDES General Permits MAG910000, NHG910000, VTG910000, CTG910000, and RIG910000.

SUMMARY: The Director of the Water Division, U.S. Environmental Protection Agency—Region 1 (EPA), is providing a notice of availability of draft National Pollutant Discharge Elimination System (NPDES) general permits for discharges from sites engaged in certain dewatering and remediation activities to certain waters in the Commonwealth of Massachusetts and the State of New Hampshire, sites in Connecticut and Rhode Island located on Indian Country lands, and federal facilities in Vermont. The draft NPDES general permits establish electronic Notice of Intent (NOI), Change Notice of Intent (CNOI), and Notice of Termination (NOT) requirements, discharge limitations and requirements, standard and special conditions, and best management practice (BMP) requirements for sites that discharge 1.0 million gallons per day or less. These general permits replace the Dewatering General Permit (DGP) that expired on April 24, 2020, and the Remediation General Permit (RGP) that expires on April 8, 2022. The Draft General Permit is available on EPA Region 1's website. The fact sheet for the draft general permit sets forth principal facts and the significant factual, legal, methodological, and policy questions considered in the

development of the draft general permit and is also available at this website.

DATES: Comment on the draft general permits must be received on or before May 26, 2022.

ADDRESSES: Comments on the draft DRGP shall be submitted by one of the following methods: (1) Email: *little.shauna@epa.gov;* or (2) Hard Copy: U.S. EPA Region 1, Attn: Shauna Little, 5 Post Office Square, Suite 100, Mail Code OEP06–4, Boston, MA 02109–3912. Due to the COVID–19 National Emergency, if comments are submitted in hard copy form, please also email a copy to the EPA contact above.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft general permits may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays, from Shauna Little, U.S. EPA Region 1, 5 Post Office Square, Suite 100, Mail Code 06–4, Boston, MA 02109–3912; telephone: 617–918–1989; email: *little.shauna@epa.gov.* Following U.S. Centers for Disease Control and Prevention (CDC) and U.S. Office of Personnel Management (OPM) guidance and specific state guidelines impacting our regional offices, EPA's workforce has been directed to telework to help prevent transmission of the coronavirus. While in this workforce telework status, there are practical limitations on the ability of Agency personnel to allow the public to review the administrative record in person at the EPA Boston office. However, any electronically available documents that are part of the administrative record can be requested from the EPA contact above.

SUPPLEMENTARY INFORMATION:

General Information: EPA is proposing to reissue two general permits for discharges from sites engaged in four types of dewatering and remediation activities: (1) Site remediation; (2) Site dewatering; (3) Infrastructure dewatering/remediation; and (4) Material dewatering for four types of wastewaters: (1) Groundwater; (2) Stormwater; (3) Potable water; and (4) Surface water. While the draft general permits were two distinct permits, because of the similarities in both activities and wastewaters, EPA has combined them together in a single document and has provided a single fact sheet. This document refers to the draft general ''permit'' in the singular. The draft general permit includes effluent limitations and requirements based on technology-based considerations, best professional judgment (BPJ), and water quality considerations. The effluent limits established in the draft general permit assure that the surface water quality standards of the receiving water(s) are attained and/or maintained. The permit also contains BMP requirements in order to ensure EPA has the information necessary to ensure compliance and to ensure discharges meet water quality standards.

Obtaining Authorization: To obtain authorization to discharge, operators must submit a complete and accurate NOI containing the information described in the draft general permit using EPA's NPDES eReporting Tool (NeT) to electronically prepare and submit the e-NOI for coverage under the DRGP, unless an operator requests and receives a waiver from EPA Region 1. Operators with existing discharges must submit a NOI within 90 days of the effective date of the final general permit. Operators with new discharges must submit a NOI at least 30 days prior to initiating discharges and following the effective date of the final general permit. The effective date of the final general permit will be specified in the **Federal Register** publication of the Notice of Availability of the final permit. Operators must meet the eligibility requirements of the general permit prior to submission of a NOI. An operator will be authorized to discharge under the general permit upon receipt of written notice from EPA. EPA will authorize the discharge 30 days following submission of a NOI, unless additional information is requested, which will place the 30 day period on hold. If an operator is required to apply for an alternative permit or an individual permit, EPA will inform the operator in writing.

Other Legal Requirements: Endangered Species Act (ESA): In accordance with the ESA, EPA has updated the provisions and necessary actions and documentation related to potential impacts to endangered species from sites seeking coverage under the draft general permit. Concurrently with the public notice of the draft general permit, EPA will initiate an informal consultation with the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) under ESA section 7, through the submission of a letter and biological assessment (BA) summarizing the results of EPA's assessment of the potential effects to endangered and threatened species and their critical habitats under NOAA Fisheries jurisdiction as a result of EPA's issuance of the draft general permit. In this document, EPA has made a preliminary determination that the proposed issuance of the draft general permit is not likely to adversely affect the shortnose sturgeon, Atlantic sturgeon, or designated critical habitat for Atlantic sturgeon, as well as coastal protected whales and sea turtles. EPA will request that NOAA Fisheries review this submittal and inform EPA whether it concurs with this preliminary finding.

In addition, EPA has concluded that the DRGP is consistent with activities analyzed in the USFWS January 5, 2016, Programmatic Biological Opinion (PBO) regarding the threatened northern long-eared bat.

Essential Fish Habitat (EFH): Under the 1996 Amendments (PL 104–267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), EPA is required to consult with NOAA Fisheries if EPA's actions or proposed actions that it funds, permits or undertakes ''may adversely impact any essential fish habitat.'' 16 U.S.C. 1855(b). EPA has determined that the permit action may adversely affect the EFH of designated species. The draft general permit has been conditioned to minimize any impacts that reduce the quality and/or quantity of EFH. Additional mitigation is not warranted under Section 305(b)(2) of the Magnuson-Stevens Act. Concurrent with the public notice of the draft general permit, EPA will initiate consultation with NOAA Fisheries by providing this determination for their review. National Historic Preservation Act (NHPA): Activities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the NHPA are not authorized to discharge under the draft general permit. Operators must review all reasonable information to ensure that activities are not subject to this limitation on coverage and provide certification in the NOI submitted to EPA.

Coastal Zone Management Act (CZMA): The CZMA, l6 U.S.C. 145l *et seq.,* and its implementing regulations (15 CFR part 930) require a determination that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) is consistent with the CZMA. Concurrent with the public notice of the draft general permit, EPA will request that the Executive Office of Environmental Affairs, MA CZM, provide a consistency concurrence that the proposed draft general permit is consistent with the MA CZMPs.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2022–08819 Filed 4–25–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9768–01–OLEM]

Forty-First Update of the Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since 1988, the Environmental Protection Agency (EPA) has maintained a Federal Agency Hazardous Waste Compliance Docket (''Docket'') under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA requires EPA to establish a Docket that contains certain information reported to EPA by Federal facilities that manage hazardous waste or from which a reportable quantity of hazardous substances has been released. This notice identifies the Federal facilities not previously listed on the Docket and identifies Federal facilities reported to EPA since the last update on October 27, 2021. In addition to the list of additions to the Docket, this notice includes a section with revisions of the previous Docket list and a section of Federal facilities that are to be deleted from the Docket. Thus, the revisions in this update include eleven additions, zero deletions, and zero corrections to the Docket since the previous update.

DATES: This list is current as of April 5, 2022.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the Docket and more information on its implementation can be obtained at *http://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket* by clicking on the link for *Cleanups at Federal Facilities* or by contacting Jonathan Tso (*Tso.Jonathan@epa.gov*), Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Restoration and Reuse Office. Additional information on the Docket and a complete list of Docket sites can be obtained at: *https://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket-1.*

SUPPLEMENTARY INFORMATION:

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7.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires EPA to establish the Federal Agency Hazardous Waste Compliance Docket. The Docket contains information on Federal facilities that manage hazardous waste and such information is submitted by Federal agencies to EPA under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937. Additionally, the Docket contains information on Federal facilities with a reportable quantity of hazardous substances that has been released and such information is submitted by Federal agencies to EPA under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of their Federal hazardous waste facilities. CERCLA section 103(a) requires the owner or operator of a vessel or onshore or offshore facility to notify the National Response Center (NRC) of any spill or other release of a hazardous substance that equals or exceeds a reportable quantity (RQ), as defined by CERCLA section 101. Additionally, CERCLA section 103(c) requires facilities that have ''stored, treated, or disposed of'' hazardous wastes and where there is ''known, suspected, or likely releases'' of hazardous substances to report their activities to EPA.

CERCLA section 120(d) requires EPA to take steps to assure that a Preliminary Assessment (PA) be completed for those sites identified in the Docket and that the evaluation and listing of sites with a PA be completed within a reasonable time frame. The PA is designed to provide information for EPA to consider when evaluating the site for potential response action or inclusion on the National Priorities List (NPL).

The Docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a threat to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public. Previous Docket updates are available at *https://www.epa.gov/fedfac/previous-federal-agency-hazardous-waste-compliance-docket-updates.*

This notice provides some background information on the Docket. Additional information on the Docket requirements and implementation are found in the Docket Reference Manual, Federal Agency Hazardous Waste Compliance Docket found at *http://www.epa.gov/fedfac/docket-reference-manual-federal-agency-hazardous-waste-compliance-docket-interim-final* or obtained by calling the Regional Docket Coordinators listed below. This notice also provides changes to the list of sites included on the Docket in three areas: (1) Additions, (2) Deletions, and (3) Corrections. Specifically, additions are newly identified Federal facilities that have been reported to EPA since the last update and now are included on the Docket; the deletions section lists Federal facilities that EPA is deleting from the Docket.[1] The information submitted to EPA on each Federal facility is maintained in the Docket repository located in the EPA Regional office of the Region in which the Federal facility is located; for a description of the information required under those provisions, *see* 53 FR 4280 (February 12, 1988). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each Federal facility.

In prior updates, information was also provided regarding No Further Remedial Action Planned (NFRAP) status changes. However, information on NFRAP and NPL status is no longer being provided separately in the Docket update as it is now available at: *http://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

[1] See Section 3.2 for the criteria for being deleted from the Docket.

2.0 Regional Docket Coordinators

Contact the following Docket Coordinators for information on Regional Docket repositories:

- *US EPA Region 1.* Ross Gilleland (HBS), 5 Post Office Square, Suite 100, Mail Code: 01–5, Boston MA 02109–3912, (617) 918–1188.
- *US EPA Region 2.* Cathy Moyik (ERRD), 290 Broadway, New York, NY 10007–1866, (212) 637–4339.
- *US EPA Region 3.* Joseph Vitello (3HS12), 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3354.
- *US EPA Region 3.* Dawn Fulsher (3HS12), 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3270.
- *US EPA Region 4.* Alayna Famble (9T25), 61 Forsyth St. SW, Atlanta, GA 30303, (404) 564–8444.
- *US EPA Region 5.* David Brauner (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–1526.
- *US EPA Region 6.* Philip Ofosu (6SF–RA), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.
- *US EPA Region 7.* Todd H Davis (SUPRERSP), 11201 Renner Blvd., Lenexa, KS 66219, (913) 551–7749.
- *US EPA Region 8.* Ryan Dunham (EPR–F), 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6627.
- *US EPA Region 9.* Leslie Ramirez (SFD–6–1), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3978.
- *US EPA Region 10.* Ken Marcy, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, OR 97205, (503) 326–3269.

3.0 Revisions of the Previous Docket

This section includes a discussion of the additions, deletions and corrections to the list of Docket facilities since the previous Docket update.

3.1 Additions

These Federal facilities are being added primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). CERCLA section 120, as amended by the Defense Authorization Act of 1997, specifies that EPA take steps to assure that a Preliminary Assessment (PA) be completed within a reasonable time frame for those Federal facilities that are included on the Docket. Among other things, the PA is designed to provide information for EPA to consider when evaluating the site for potential response action or listing on the NPL. This notice includes eleven additions.

3.2 Deletions

There are no statutory or regulatory provisions that address deletion of a facility from the Docket. However, if a facility is incorrectly included on the Docket, it may be deleted from the Docket. The criteria EPA uses in deleting sites from the Docket include: A facility for which there was an incorrect report submitted for hazardous waste activity under RCRA (*e.g.,* 40 CFR 262.44); a facility that was not Federally-owned or operated at the time of the listing; a facility included more than once (*i.e.,* redundant listings); or when multiple facilities are combined under one listing. (*See* Docket Codes (*Reasons for Deletion of Facilities*) for a more refined list of the criteria EPA uses for deleting sites from the Docket.) Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d). This notice includes zero deletions.

3.3 Corrections

Changes necessary to correct the previous Docket are identified by both EPA and Federal agencies. The corrections section may include changes in addresses or spelling, and corrections of the recorded name and ownership of a Federal facility. In addition, changes in the names of Federal facilities may be made to establish consistency in the Docket or between the Superfund Enterprise Management System (SEMS) and the Docket. For the Federal facility for which a correction is entered, the original entry is as it appeared in previous Docket updates. The corrected update is shown directly below, for easy comparison. This notice includes zero corrections.

4.0 Process for Compiling the Updated Docket

In compiling the newly reported Federal facilities for the update being published in this notice, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—the WebEOC, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Act Information System (RCRAInfo), and SEMS—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

EPA assures the quality of the information on the Docket by conducting extensive evaluation of the current Docket list and contacts the other Federal Agency (OFA) with the information obtained from the databases identified above to determine which Federal facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for Federal facilities that were previously reported. For example, state-owned or privately-owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. Representatives of Federal agencies are asked to contact the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice if revisions of this update information are necessary.

5.0 Facilities Not Included

Certain categories of facilities may not be included on the Docket, such as: (1) Federal facilities formerly owned by a Federal agency that at the time of consideration was not Federally-owned or operated; (2) Federal facilities that are small quantity generators (SQGs) that have not, more than once per calendar year, generated more than 1,000 kg of hazardous waste in any single month; (3) Federal facilities that are very small quantity generators (VSQGs) that have never generated more than 100 kg of hazardous waste in any month; (4) Federal facilities that are solely hazardous waste transportation facilities, as reported under RCRA section 3010; and (5) Federal facilities that have mixed mine or mill site ownership.

An EPA policy issued in June 2003 provided guidance for a site-by-site evaluation as to whether ''mixed ownership'' mine or mill sites, typically created as a result of activities conducted pursuant to the General Mining Law of 1872 and never reported under section 103(a) of CERCLA, should be included on the Docket. For purposes of that policy, mixed ownership mine or mill sites are those located partially on private land and partially on public land. This policy is found at *http://www.epa.gov/fedfac/policy-listing-mixed-ownership-mine-or-mill-sites-created-result-general-mining-law-1872.* The policy of not including these facilities may change; facilities now omitted may be added at some point if EPA determines that they should be included.

6.0 Facility NPL Status Reporting, Including NFRAP Status

EPA tracks the NPL status of Federal facilities listed on the Docket. An updated list of the NPL status of all Docket facilities, as well as their NFRAP status, is available at *http://*

www.epa.gov/fedfac/fedfacts or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. In prior updates, information regarding NFRAP status changes was provided separately.

7.0 Information Contained on Docket Listing

The information is provided in three tables. The first table is a list of additional Federal facilities that are being added to the Docket. The second table is a list of Federal facilities that are being deleted from the Docket. The third table is for corrections.

The Federal facilities listed in each table are organized by the date reported. Under each heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and a code.[2]

The statutory provisions under which a Federal facility is reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each Federal facility: For example, Sections 3005, 3010, 3016, 103(c), or Other. ''Other'' has been added as a reporting mechanism to indicate those Federal facilities that otherwise have been identified to have releases or threat of releases of hazardous substances. The National Contingency Plan at 40 CFR 300.405 addresses discovery or notification, outlines what constitutes discovery of a hazardous substance release, and states that a release may be discovered in several ways, including: (1) A report submitted in accordance with section 103(a) of CERCLA, *i.e.,* reportable quantities codified at 40 CFR 302; (2) a report submitted to EPA in accordance with section 103(c) of CERCLA; (3) investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority; (4) notification of a release by a Federal or state permit holder when required by its permit; (5) inventory or survey efforts or random or incidental observation reported by government agencies or the public; (6) submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA; (7) a report submitted in accordance with section 311(b)(5) of the Clean Water Act; and (8) other sources. As a policy matter, EPA generally believes it is appropriate for Federal facilities identified through the CERCLA discovery and notification process to be included on the Docket.

The complete list of Federal facilities that now make up the Docket and the NPL and NFRAP status are available to interested parties and can be obtained at *http://www.epa.gov/fedfac/fedfacts* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. As of the date of this notice, the total number of Federal facilities that appear on the Docket is 2,391.

Gregory Gervais,

Acting Director, Federal Facilities Restoration and Reuse Office, Office of Land and Emergency Management.

7.1 Docket Codes/Reasons for Deletion of Facilities

- *Code 1.* Small-Quantity Generator and Very Small Quantity Generator. Show citation box.
- *Code 2.* Never Federally Owned and/or Operated.
- *Code 3.* Formerly Federally Owned and/or Operated but not at time of listing.
- *Code 4.* No Hazardous Waste Generated.
- *Code 5.* (This code is no longer used.)
- *Code 6.* Redundant Listing/Site on Facility.
- *Code 7.* Combining Sites Into One Facility/Entries Combined.
- *Code 8.* Does Not Fit Facility Definition.

7.2 Docket Codes/Reasons for Addition of Facilities

- *Code 15.* Small-Quantity Generator with either a RCRA 3016 or CERCLA 103 Reporting Mechanism.
- *Code 16.* One Entry Being Split Into Two (or more)/Federal Agency Responsibility Being Split.
- *Code 16A.* NPL site that is part of a Facility already listed on the Docket.
- *Code 17.* New Information Obtained Showing That Facility Should Be Included.
- *Code 18.* Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.
- *Code 19.* Sites Were Combined Into One Facility.
- *Code 19A.* New Currently Federally Owned and/or Operated Facility Site.

7.3 Docket Codes/Types of Corrections of Information About Facilities

- *Code 20.* Reporting Provisions Change.
- *Code 20A.* Typo Correction/Name Change/Address Change.
- *Code 21.* Changing Responsible Federal Agency. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)
- *Code 22.* Changing Responsible Federal Agency and Facility Name. (If applicable, new responsible Federal Agency submits proof of previously performed PA, which is subject to approval by EPA.)
- *Code 24.* Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #41—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
US NAVAL OBSERVATORY	3450 MASSACHUSETTS AVE, NW.	Washington	DC	20392	NAVY	RCRA 3010	17	UPDATE #41.
SAN PEDRO SHOOTING RANGE.	HWY 344	GOLDEN	NM	87047	INTERIOR	RCRA 3010	17	UPDATE #41.
NPS—SPRING HILL RANCH HOUSE.	2480B KANSAS HWY 177	STRONG CITY.	KS	66869	INTERIOR	RCRA 3010	17	UPDATE #41.
USDOE KANSAS CITY NATIONAL SECURITY CAMPUS.	14520 BOTTS RD	KANSAS CITY.	MO	64147	ENERGY	RCRA 3010	17	UPDATE #41.
USDOE KANSAS CITY NATIONAL SECURITY CAMPUS BUILDING 23.	14901 ANDREWS RD	KANSAS CITY.	MO	64147	ENERGY	RCRA 3010	17	UPDATE #41.

[2] Each Federal facility listed in the update has been assigned a code that indicates a specific reason for the addition or deletion. The code precedes this list.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #41—ADDITIONS—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
VA ST LOUIS HEALTHCARE SYSTEM JEFFERSON BARRACKS DIVISION.	1 JEFFERSON BARRACKS DR.	ST LOUIS	MO	63125	VETERANS AFFAIRS.	RCRA 3010	17	UPDATE #41.
US ARMY CORPS OF ENGINEERS LOCK AND DAM 15 IOWA STORAGE YARD.	S PERRY ST @LOCK AND DAM 15.	DAVENPORT	IA	52801	CORPS OF ENGINEER, CIVIL.	RCRA 3010	17	UPDATE #41.
55245 HWY 121	55245 HWY 121	CROFTON	NE	68730	CORPS OF ENGINEER, CIVIL.	WEBEOC	17	UPDATE #41.
OLINDA SUBSTATION	18275 GAS POINTS ROAD	COTTONWOOD.	CA	96022	ENERGY	RCRA 3016	17	UPDATE #41.
DEFENSE FUEL SUPPORT POINT SAN PEDRO.	3171 N GAFFEY ST	SAN PEDRO	CA	90731	NAVY	RCRA 3010	17	UPDATE #41.
US NAVY PUBLIC WORKS	LA POSTA RD	CAMPO	CA	92106	NAVY	RCRA 3010	17	UPDATE #41.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #41—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #41—CORRECTIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date

[FR Doc. 2022–08831 Filed 4–25–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; System of Records

AGENCY: Federal Retirement Thrift Investment Board (FRTIB).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Federal Retirement Thrift Investment Board (FRTIB) proposes to modify an existing system of records. Records contained in this system are used to manage Thrift Savings Plan (TSP) accounts, including ensuring the integrity of the Plan, recording activity concerning the TSP account of each Plan participant, communicating with the participant, spouse, former spouse, and beneficiary concerning the account, and ensuring that he or she receives a correct payment from the Plan.

DATES: This system will become effective upon its publication *in today's* **Federal Register**, with the exception of the routine uses which will be effective on May 26, 2022. FRTIB invites written comments on the routine uses and other aspects of this system of records. Submit any comments by May 26, 2022.

ADDRESSES: You may submit written comments to FRTIB by any one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Fax:* 202–942–1676.
- *Mail or Hand Delivery:* Office of General Counsel, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Dharmesh Vashee, General Counsel and Senior Agency Official for Privacy, Federal Retirement Thrift Investment Board, Office of General Counsel, 77 K Street NE, Suite 1000, Washington, DC 20002, (202) 942–1600. For access to any of the FRTIB's systems of records, contact Amanda Haas, FOIA Officer, Office of General Counsel, at the above address and phone number.

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FRTIB–1 to include the following updates:

Update to System Location: The FRTIB is modifying the System Location to meet requirements of Office of Management and Budget (OMB) Circular A–108.

Update to Categories of Individuals Covered by the System: The FRTIB is modifying the Categories of Individuals Covered by the System to explicitly list members of the uniformed services.

Update to Categories of Records: The FRTIB is modifying the Categories of Records to include information about marital status and spousal information, in order to comply with requirements of Federal Employees' Retirement System Act of 1986 (FERSA) at 5 U.S.C. 8435. Additionally, the FRTIB is specifying that some identification documents will be collected for age verification purposes.

Update to Routine Uses: The FRTIB is adding two routine uses to reflect sharing with the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), and other regulators for the purpose of conducting regulatory exams, transaction inquiries, anti-money laundering investigations, customer complaint reviews, and other regulatory obligations. The FRTIB may also share information within this system of records with mutual fund companies to fulfill regulatory obligations governing redemption fees for redeemable securities and for enforcement of mutual fund policies and relating to frequent and short-term trading. This sharing is required for transactions performed by the broker dealer and clearing firm in relation to the ''Mutual Fund Window'' plan offering, as published at 87 FR 3940 (Jan. 26, 2022). The FRTIB is also modifying the routine use related to investigations and disclosures to third

parties to ensure consistency with other Agency system of records notices.

Update to Publication History: This addition reflects the previous publication of this SORN at 85 FR 53370 (Aug. 28, 2020).

In accordance with 5 U.S.C. 552a(r), the Agency has provided a report to OMB and to Congress on this notice of a modified system of records.

Dharmesh Vashee,

General Counsel and Senior Agency Official for Privacy.

SYSTEM NAME AND NUMBER:

FRTIB–1, Thrift Savings Plan Records.

SECURITY CLASSIFICATION:

This system contains unclassified information.

SYSTEM LOCATION:

These records are located at the office of the entity engaged by the Agency to perform record keeping services for the Thrift Savings Plan (TSP). The agency's current address is 77 K Street NE, Washington, DC 20002. The third-party service provider, Accenture Federal Services, is located at 800 North Glebe Road, Suite 300, Arlington, VA 22203.

SYSTEM MANAGER(S):

Director, Office of Participant Services, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002, (202) 942–1600.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474; Thrift Savings Plan (TSP) Enhancement Act of 2009, Public Law 111–31.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to ensure the integrity of the Plan, to record activity concerning the TSP account of each Plan participant, to communicate with the participant, spouse, former spouse, and beneficiary concerning the account, and to make certain that he or she receives a correct payment from the Plan. Information contained in the system will also be used to comply with the reporting requirements of the TSP Enhancement Act of 2009 and to develop outreach and educational initiatives for participants and beneficiaries.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All participants (which term includes former participants, *i.e.,* participants whose accounts have been closed), as well as spouses, former spouses, and beneficiaries of TSP participants. Participants in the TSP consist of present and former Members of Congress, members of the uniformed services, and Federal employees covered by the Federal Employees' Retirement System Act of 1986, (FERSA) as amended, 5 U.S.C. chapter 84; all present and former Members of Congress and Federal employees covered by the Civil Service Retirement System who elect to contribute to the TSP; Supreme Court Justices, Federal judges, and magistrates who elect to contribute; certain union officials, those individuals described in 5 CFR part 1620, and any other individual for whom an account has been established.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain the following kinds of information: Records of TSP account activity, including account balances, employee contributions, agency automatic (one percent) and agency matching contributions, earnings, interfund transfers, contribution allocation elections, investment status by fund, loan and withdrawal information, employment status, retirement code and whether employee is vested, error correction information, participant's date of birth, email address, phone number, and designated beneficiary; marital status information; records of spousal waivers and consents; powers of attorney and conservatorship and guardianship orders; participant's name, current or former employing agency, and servicing payroll and personnel office; records of Social Security number, TSP account number, TSP PIN, and home address for participants, spouses, former spouses, and beneficiaries and potential beneficiaries; demographic information (*e.g.,* gender, education information, ethnicity, race, etc.); demographic information on uniformed services participants (*e.g.,* grade, service branch, rank, months in rank, occupation information); death certificates; records of bankruptcy actions; information regarding domestic relations court orders to divide the account; child support, child abuse, and alimony orders; information on payments to the participant's spouse, former spouse, or children and their attorneys; information on notices sent to participants, spouses, former spouses, and beneficiaries; and general correspondence. Documents used to verify identity and/or age including: Birth certificate, U.S. passport, driver's license or state-issued ID, or other government-issued ID that can be used to verify identity and/or age.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources: (a) The individual to whom the information pertains; (b) Agency payroll and personnel records; (c) Court orders; or (d) Spouses, former spouses, other family members, beneficiaries, legal guardians, and personal representatives (executors, administrators).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b) and:

1. Routine Use—Tax Enforcement Agencies: To disclose financial data and addresses to Federal, state, and local governmental tax enforcement agencies so that they may enforce applicable tax laws.

2. Routine Use—Designated Annuity Vendor: To disclose to the designated annuity vendor in order to provide TSP participants who have left Federal service with an annuity.

3. Routine Use—Other Retirement Plans: To disclose to sponsors of eligible retirement plans for purposes of transferring the funds in the participant's account to an Individual Retirement Arrangement or into another eligible retirement plan.

4. Routine Use—Spousal Rights: To disclose to current and former spouses and their attorneys in order to protect spousal rights under FERSA and to receive benefits to which they may be entitled.

5. Routine Use—Death Benefits, Beneficiaries: When a participant to whom a record pertains dies, to disclose the following types of information to any potential beneficiary: Information in the participant's record which could have been properly disclosed to the participant when living (unless doing so would constitute a clearly unwarranted invasion of privacy) and the name and relationship of any other person who claims the benefits or who is entitled to share the benefits payable.

6. Routine Use—Death Benefits, Estate Administration: When a participant to whom a record pertains dies, to disclose the following types of information to anyone handling the participant's estate: Information in the participant's record which could have been properly disclosed to the participant when living (unless doing so would constitute a clearly unwarranted invasion of privacy), the name and the relationship of any person who claims the benefits or who is entitled to share the benefits payable, and information necessary for the estate's administration (for example, post-death tax reporting).

7. Routine Use—Beneficiaries, Incompetent or Legal Disability: To disclose information to any person who is named by the participant, spouse, former spouse, or beneficiary of the participant in a power of attorney and to any person who is responsible for the care of the participant or the spouse, former spouse, or beneficiary of the participant to whom a record pertains, and who is found by a court to be incompetent or under other legal disability, information necessary to manage the participant's account and to ensure payment of benefits to which the participant, spouse, former spouse or beneficiary of the participant is entitled.

8. Routine Use—Congressional Inquiries: To disclose information to a congressional office from the record of a participant or of the spouse, former spouse, or beneficiary of a participant in order for that office to respond to a communication from that person.

9. Routine Use—Agency Payroll or Personnel Offices: To disclose to agency payroll or personnel offices in order to calculate benefit projections for individual participants, to calculate error corrections, to reconcile payroll records, and otherwise to ensure the effective operation of the Thrift Savings Plan.

10. Routine Use—Department of Treasury, Payments: To disclose to the Department of the Treasury information necessary to issue checks from accounts of participants in accordance with withdrawal or loan procedures or to make a payment to a spouse, former spouse, child, or his or her attorney, or to a beneficiary.

11. Routine Use—Audit: To disclose to the Department of Labor and to private sector audit firms so that they may perform audits as provided for in FERSA.

12. Routine Use—Parent Locator Service: To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the address of a participant, spouse, former spouse, or beneficiary of the participant for the purpose of enforcing child support obligations against that individual.

13. Routine Use—Investigations, Third Parties: Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations, the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law, rule, regulation, or order.

14. Routine Use—Private Relief Legislation: To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

15. Routine Use—Participant and Third Parties, Health or Safety: If there is a reasonable and credible threat to an individual's health or safety, to disclose to a state, local, or Federal agency, in response to its request, the address of a participant, spouse, former spouse, or beneficiary of the participant and any other information the agency needs to contact that individual concerning the possible threat to his or her health or safety.

16. Routine Use—Litigation, Department of Justice: To disclose information to the Department of Justice, where:

1. The Board or any component of it, or

2. Any employee of the Board in his or her official capacity, or

3. Any employee of the Board in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or

4. The United States (where the Board determines that litigation is likely to affect the agency or any of its components) is a party to litigation or has an interest in such litigation, and the Board determines that use of such records is relevant and necessary to the litigation. However, in each such case, the Board must determine that disclosure of the records to the Department of Justice is a use of the information contained in the records which is compatible with the purpose for which the records were collected.

17. Routine Use—Litigation, Third Parties: In response to a court subpoena, or to appropriate parties engaged in litigation or preparing for possible litigation. Examples include disclosure to potential witnesses for the purpose of securing their testimony to courts, magistrates, or administrative tribunals, to parties and their attorneys in connection with litigation or settlement of disputes, or to individuals seeking information through established discovery procedures in connection with civil, criminal, or regulatory proceedings.

18. Routine Use—Contractors and Third Parties: To disclose to contractors and their employees who have been engaged to assist the Board in performing a contract service or agreement, or who have been engaged to perform other activity related to this system of records and who need access to the records in order to perform the activity. Recipients of TSP records are required to comply with the requirements of the Privacy Act.

19. Routine Use—Agency Personnel/Payroll Offices or Casualty Assistance Officers: To disclose to personnel from agency personnel/payroll offices or to casualty assistance officers when necessary to assist a beneficiary or potential beneficiary.

20. Routine Use—Consumer Reporting Agencies: To disclose to a consumer reporting agency when the Board is trying to collect a debt owed to the Board under the provisions of 5 U.S.C. 3711.

21. Routine Use—Commercial Loan Applications, Quality Control: To disclose to quality control companies when such companies are verifying documents submitted to lenders in connection with participants' commercial loan applications.

22. Routine Use—Federal Agencies, Analysis: To disclose to an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies in support of the function for which the records were collected and maintained.

23. Routine Use—Breach Mitigation and Notification: A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) FRTIB suspects or has confirmed that there has been a breach of the system of records, (2) FRTIB has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FRTIB (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FRTIB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

24. Routine Use—Response to Breach of Other Records: A record from this system may be disclosed to another Federal agency or Federal entity, when FRTIB determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or

national security, resulting from a suspected or confirmed breach.

25. Routine Use—Regulatory Disclosures and Third Parties: To disclose to the U.S. Securities and Exchange Commission; Financial Industry Regulatory Authority; other Self-Regulatory Organizations; Federal, State and Local criminal authorities; and State regulators for the purpose of conducting regulatory exams, transaction inquiries, anti-money laundering investigations, customer complaint reviews, and other regulatory obligations under applicable law.

26. Routine Use—Mutual Fund Companies: To disclose to FRTIB contractors, subcontractors, and mutual fund companies to fulfill regulatory obligations governing redemption fees for redeemable securities, and to provide certain shareholder identity and transaction information for enforcement of mutual fund policies relating to frequent and short-term trading in accordance with applicable laws, rules, and regulations as well as to comply with distribution and shareholder servicing agreements with mutual fund companies and/or their distributors, transfer agents, or other administrators for the provision of relevant and required information relating to mutual fund transactions and holdings.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained on electronic or magnetic media, on microfilm, or in folders.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by Social Security number, TSP account number, and other personal identifiers of the individual to whom they pertain.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

TSP documents are retained for 99 years. Manual records are disposed of by compacting and burning; data on electronic or magnetic media are obliterated by destruction or reuse, or are returned to the employing agency. Call recording records from the Agency's contact center are retained in accordance with NARA General Records Schedule 6.5, Public Customer Services Records, DAA–GRS–2017–0002–0001.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Hard copy records are kept in metal file cabinets in a secure facility, with access limited to those whose official duties require access. Personnel are screened to prevent unauthorized disclosure. Security mechanisms for automatic data processing prevent unauthorized access to the electronic or magnetic media.

RECORD ACCESS PROCEDURES:

Individuals who want notice of whether this system of records contains information pertaining to them and to obtain access to their records may contact the TSP Service Office or their employing agency, as follows:

a. Participants who are current Federal employees may call or write their employing agency for personnel or payroll records regarding the agency's and the participant's contributions and adjustments to contributions. A request to the employing agency must be made in accordance with that agency's Privacy Act regulations or that agency's procedures. For other information regarding their TSP accounts, participants who are Federal employees may call or write the TSP Service Office.

b. Participants who have separated from Federal employment and spouses, former spouses, and beneficiaries of participants may call or write the TSP Service Office.

Individuals calling or writing the TSP Service Office must furnish the following information for their records to be located and identified:

a. Name, including all former names;

b. TSP Account Number or Social Security number; and

c. Other information, if necessary. For example, a participant may need to provide the name and address of the agency, department, or office in which he or she is currently or was formerly employed in the Federal service. A spouse, former spouse, or beneficiary of a participant may need to provide information regarding his or her communications with the TSP Service Office or the Board.

Participants may also inquire whether this system contains records about them and access certain records through the account access section of the TSP website and the ThriftLine (the TSP's automated telephone system). The TSP website is located at *www.tsp.gov.* To use the TSP ThriftLine, the participant must have a touch-tone telephone and call the following number 1–877–968–3778. Hearing-impaired participants should dial 1–877–847–4385. The following information is available on the TSP website and the ThriftLine: Account balance; available loan amount; the status of a monthly withdrawal payment; the current status of a loan or withdrawal application; and an interfund transfer request.

CONTESTING RECORD PROCEDURES:

Individuals who want to amend TSP records about themselves must submit a detailed written explanation as to why information regarding them is inaccurate or incorrect, as follows:

a. Participants who are current Federal employees must write their employing agency to request amendment of personnel records regarding employment status, retirement coverage, vesting code, and TSP service computation date, or payroll records regarding the agency's and the participant's contributions and adjustments to contributions. A request to the employing agency must be made in accordance with that agency's Privacy Act regulations or that agency's procedures. For other information regarding their TSP accounts, participants who are Federal employees must submit a request to the TSP Service Office.

b. Participants who have separated from Federal employment and spouses, former spouses, and beneficiaries of participants must submit a request to the TSP Service Office.

c. Individuals must provide their Social Security number or Account Number and name, and they may also need to provide other information for their records to be located and identified.

The employing agency or the TSP Service Office will follow the procedures set forth in 5 CFR part 1605, Error Correction Regulations, in responding to requests to correct contribution errors.

NOTIFICATION PROCEDURES:

See Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

52 FR 12065 (Apr. 14, 1987); 55 FR 18949 (May 7, 1990); 59 FR 26496 (May 20, 1994); 64 FR 50092 (Sept. 15, 1999); 64 FR 67917 (Dec. 3, 1999); 74 FR 3043 (Jan. 16, 2009); 77 FR 11534 (Feb. 27, 2012); 77 FR 20022 (Apr. 3, 2012); 79 FR 21246 (Apr. 15, 2014); 85 FR 53370 (Aug. 28, 2020).

[FR Doc. 2022–08527 Filed 4–25–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075; Docket No. 2022–0053; Sequence No. 7]

Submission for OMB Review; Government Property

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning government property.

DATES: Submit comments on or before May 26, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0075, Government Property. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. *OMB Control Number, Title, and any Associated Form(s):* 9000–0075, Government Property Standard Forms 1428, and 1429.

B. Need and Uses

This justification supports an extension of OMB Control No. 9000–0075. This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

1. FAR clause 52.245–1, Government Property.

a. Paragraph (f)(1)(ii) requires contractors to document the receipt of Government property.

b. Paragraph (f)(1)(ii)(A) requires contractors to submit a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

c. Paragraph (f)(1)(iii) requires contractors to create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property. Property records shall, unless otherwise approved by the Property Administrator, contain the following:

i. The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.

ii. Quantity received (or fabricated), issued, and balance-on-hand.

iii. Unit acquisition cost.

iv. Unique-item identifier or equivalent (if available and necessary for individual item tracking).

v. Unit of measure.

vi. Accountable contract number or equivalent code designation.

vii. Location.

viii. Disposition.

ix. Posting reference and date of transaction.

x. Date placed in service (if required in accordance with the terms and conditions of the contract).

When approved by the Property Administrator, contractors may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

d. Paragraph (f)(1)(iv) requires contractors to periodically perform, record, and disclose physical inventory results during contract performance, including upon completion or termination of the contract.

e. Paragraph (f)(1)(vii)(B) requires contractors, unless otherwise directed by the Property Administrator, to investigate and report all incidents of Government property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

i. Date of incident (if known).

ii. The data elements required under paragraph (f)(1)(iii)(A) of FAR 52.245–1.

iii. Quantity.

iv. Accountable contract number.

v. A statement indicating current or future need.

vi. Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

vii. All known interests in commingled material of which includes Government material.

viii. Cause and corrective action taken or to be taken to prevent recurrence.

ix. A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.

x. Copies of all supporting documentation.

xi. Last known location.

xii. A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

f. Paragraph (f)(1)(viii) requires contractors to promptly disclose and report Government property in its possession that is excess to contract performance.

g. Paragraph (f)(1)(ix) requires contractors to disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

h. Paragraph (f)(1)(x) requires contractors to perform and report to the Property Administrator contract property closeout.

i. Paragraph (f)(2) requires contractors to establish and maintain Government accounting source data, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

j. Paragraphs (j)(2) and (3) require contractors to submit inventory disposal schedules to the Plant Clearance Officer using the Standard Form (SF) 1428, Inventory Disposal Schedule and if needed the SF 1429, Inventory Disposal Schedule-Continuation Sheet. Paragraph (j)(2)(iv) requires contractors to provide the following information:

i. Any additional information that may facilitate understanding of the property's intended use.

ii. For work-in-progress, the estimated percentage of completion.

iii. For precious metals in raw or bulk form, the type of metal and estimated weight.

iv. For hazardous material or property contaminated with hazardous material, the type of hazardous material.

v. For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width, and length).

2. FAR 52.245–9, Use and Charges. Paragraph (d)(1) of this clause requires contractors submitting a government property rental request to: (1) Identify the property for which rental is requested, (2) propose a rental period, and (3) compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of the clause at FAR 52.245–9.

This information is used to facilitate the management of Government property in the possession of the contractor.

C. Annual Burden

Respondents/Recordkeepers: 4,481.

Total Annual Responses: 8,990,168.

Total Burden Hours: 4,442,877. (2,291,997 reporting hours + 2,150,880 recordkeeping hours).

D. Public Comment

A 60-day notice was published in the **Federal Register** at 87 FR 9353, on February 18, 2022. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0075, Government Property.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–08849 Filed 4–25–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0027; Docket No. 2022–0053; Sequence No. 4]

Submission for OMB Review; Value Engineering Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning value engineering requirements.

DATES: Submit comments on or before May 26, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0027, Value Engineering Requirements. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0027, Value Engineering Requirements.

B. Need and Uses

This justification supports an extension of OMB Control No. 9000–0027. This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

- FAR 52.248–1, Value Engineering; 52.248–2, Value Engineering-Architect-Engineer; and 52.248–3, Value Engineering-Construction.

These clauses require contractors submitting Value Engineering Change Proposals (VECP's) to the Government to provide such details as: (1) A description of the differences between the existing contract requirement and the proposed requirement, and the comparative advantages and disadvantages of each; (2) a list and analysis of contract requirements that must be changed if the VECP is accepted; (3) a detailed cost estimate showing anticipated reductions associated with the VECP; (4) a statement of the time a modification accepting the VECP must be issued to achieve maximum cost reduction, and the effect on contract completion time; and (5) identification of any previous submissions of the VECP; the agencies and contract numbers involved and previous Government actions, if known.

The Government will use the collected information to evaluate the VECP and, if accepted, to arrange for an equitable sharing plan.

C. Annual Burden

Respondents: 109.
Total Annual Responses: 218.
Total Burden Hours: 3,270.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 87 FR 9359, on February 18, 2022. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0027, Value Engineering Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–08848 Filed 4–25–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0079; Docket No. 2022–0053; Sequence No. 6]

Submission for OMB Review; Travel Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding travel costs.

DATES: Submit comments on or before May 26, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0079, Travel Costs. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0079, Travel Costs.

B. Need and Uses

This justification supports an extension of OMB Control No. 9000–0079. This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

1. FAR 31.205–46(a)(3)—In special or unusual situations, costs incurred by a contractor for lodging, meals, and incidental expenses, may exceed the per diem rates in effect as set forth in the Federal Travel Regulation (FTR) for travel in the contiguous 48 United States. The actual costs may be allowed only if the contractor provides the following:

a. FAR 31.205–46(a)(3)(ii)—A written justification for use of the higher amounts approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

b. FAR 31.205–46(a)(3)(iii)—Advance approval from the contracting officer if it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area.

c. FAR 31.205–46(a)(3)(iv)—Documentation to support actual costs incurred including a receipt for each expenditure of $75.00 or more.

2. FAR 31.205–46(c) requires firms to maintain and make available manifest/logs for all flights on company aircraft. As a minimum, the manifest/log must indicate:

a. Date, time, and points of departure;

b. Destination, date, and time of arrival;

c. Name of each passenger and relationship to the contractor

d. Authorization for trip; and

e. Purpose of trip.

The information required by (2)(a) and (b) and the name of each passenger (required by (2)(c)) are recordkeeping requirements already established by Federal Aviation Administration regulations. This information, plus the additional required information, is needed to ensure that costs of owned, chartered, or leased aircraft are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to Government contracts.

The contracting officer will use the information to ensure that the Government does not reimburse contractors for excessive travel costs. Also, the information is used by Government auditors to identify allowable and unallowable costs under Government contracts.

C. Annual Burden

Respondents/Recordkeepers: 3,743.
Total Annual Responses: 33,202.
Total Burden Hours: 11,472. (7,848 reporting hours + 3,624 recordkeeping hours).

D. Public Comment

A 60-day notice was published in the **Federal Register** at 87 FR 9356, on February 18, 2022. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0079, Travel Costs.

Janet Fry,
Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–08850 Filed 4–25–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0055; NIOSH–348]

World Trade Center Health Program; Request for Information

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) within the Centers for Disease Control and Prevention (CDC), an Operating Division of the Department of Health and Human Services (HHS), is soliciting public comment on the scope of an upcoming notice of funding opportunity (NOFO) for FY2023. The scope of the NOFO is the World Trade Center (WTC) Health Program's research interests in lifestyle medicine (such as sustainable health behaviors and lifestyle interventions) used to optimize management and improve outcomes of WTC-related health conditions. The WTC Health Program's research program helps answer critical questions about potential WTC-related physical and mental health conditions as well as

diagnosing and treating health conditions on the List of WTC-Related Health Conditions.

DATES: Comments must be received by May 26, 2022.

ADDRESSES: Comments may be submitted through either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* (follow the instructions for submitting comments), or
- *By Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS: C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226–1998. Attn: Docket No. CDC–2022–0055; NIOSH–348.

Instructions: All written submissions received in response to this notice must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2022–0055; NIOSH–348) for this action. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Do not submit comments by email. CDC does not accept comments by email.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 1090 Tusculum Avenue, MS: C–46, Cincinnati, Ohio 45226; Telephone: (404) 498–2500 (this is not a toll-free number); Email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION: Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347, as amended by Pub. L. 114–113 and Pub. L. 116–59), added Title XXXIII to the Public Health Service (PHS) Act,[1] establishing the WTC Health Program within HHS. The WTC Health Program provides medical monitoring and treatment benefits for certified health conditions on the List of WTC-Related Health Conditions[2] to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders). The Program also provides benefits to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

The Zadroga Act also requires that the Program establish a research program on health conditions resulting from the September 11, 2001, terrorist attacks, addressing the following topics:

- Physical and mental health conditions that may be related to the September 11, 2001, terrorist attacks;
- Diagnosing WTC-related health conditions for which there have been diagnostic uncertainty; and
- Treating WTC-related health conditions for which there have been treatment uncertainty.

Request for Information

Lifestyle medicine is a highly valuable, evidence-informed clinical approach focused on managing and reversing many of the types of chronic diseases certified by the WTC Health Program. By focusing on sustainable health behaviors and lifestyle factors, including six pillars—nutrition and diet, sleep hygiene, stress management and positive psychology, physical activity, social connectedness, and avoidance of substance misuse—lifestyle medicine has the potential to limit disease progression, to prevent development of additional chronic diseases, and to improve health outcomes, overall member well-being, quality of life, and member satisfaction with the Program.

To establish the scope of the WTC Health Program FY2023 lifestyle medicine research, NIOSH seeks to achieve a suitable mix of projects and interventions focusing on sustainable health behaviors and the lifestyle factors, described above. All these influence quality of life, disease progression and recurrence, survival, adverse events, and other health-related outcomes among WTC Health Program members. Specifically, NIOSH seeks input on the following questions pertaining to WTC Health Program research priorities:

(1) What are the primary lifestyle research needs of both responders and survivors?

(2) What are the primary health outcomes associated with WTC-related health conditions that lifestyle research interventions should target?

(3) What are the most important lifestyle factors (*e.g.,* nutrition and diet, sleep hygiene, stress management and positive psychology, physical activity, social connectedness, cognitive function, and avoidance of substance misuse) that need to be addressed within the scope of the research solicitation?

John J. Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2022–08817 Filed 4–25–22; 8:45 am]

BILLING CODE 4163–18–P

[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm-61. Those portions of the James Zadroga 9/11 Health and Compensation Act of 2010 found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

[2] The List of WTC-Related Health Conditions is established in 42 U.S.C. 300mm-22(a)(3)–(4) and 300mm-32(b); additional conditions may be added through rulemaking and the complete list is provided in WTC Health Program regulations at 42 CFR 88.15.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10409]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 26, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open

for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* LTCH CARE Data Set for the Collection of Data Pertaining to the Long-Term Care Hospital Quality Reporting Program; *Use:* We are requesting an extension to the Long-Term Care Hospital Continuity Assessment Record and Evaluation Data Set (LTCH CARE Data Set or LCDS) Version 5.0 that will be effective on October 1, 2022.

On November 2, 2021 the Centers for Medicare & Medicaid Services (CMS) issued a final rule (86 FR 62240) which finalized proposed modifications to the effective date for the reporting of measures and certain standardized patient assessment data in the Long-term Care Hospital Quality Reporting Program (LTCH QRP). Per the final rule CMS will require LTCHs to start collecting assessment data using LCDS Version 5.0 beginning October 1, 2022. The information collection request for LCDS Version 5.0 was re-approved on December 7, 2021 with an October 1, 2022 implementation date. CMS is asking for an extension of the approved LCDS Version 5.0, which currently expires on December 31, 2022.

The LTCH CARE Data Set is used to collect, submit, and report quality data to CMS for compliance with the Long-Term Care Hospital Quality Reporting Program (LTCH QRP). *Form Number:* CMS–10409 (OMB control number: 0938–1163); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 415; *Total Annual Responses:* 204,936; *Total Annual Hours:* 145,831. (For policy questions regarding this collection contact Christy Hughes at 410–786–5662.)

Dated: April 20, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–08823 Filed 4–25–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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: Neurological Sciences Training Initial Review Group NST–1 Study Section (NST–1 Clinician K Application Review).

Date: May 23–24, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 20, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08833 Filed 4–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Engineered Tumor Infiltrating Lymphocytes for Cancer Therapy

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to Iovance Biotherapeutics, Inc. (''Iovance''), headquartered in San Carlos, CA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before May 11, 2022 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Ph.D., Senior Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240)-276–5484; Email: *andy.burke@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

E–170–2009: Inducible Interleukin-12

1. US Provisional Patent Application 61/174,046, filed April 30, 2009 (E–170–2009–0–US–01);

2. International Patent Application PCT/US2010/031988, filed April 22, 2010 (E–170–2009–0–PCT–02);

3. Australian Patent 2010241864, issued June 5, 2014 (E–170–2009–0–AU–03);

4. Canadian Patent 2,760,446, issued January 2, 2018 (E–170–2009–0–CA–04).

5. European Patent 2424887, issued September 30, 2015 (E–170–2009–0–EP–05); and a. Validated in DE, FR and GB

6. United States Patent 8,556,882, issued October 15, 2013 (E–170–2009–0–US–06).

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the following:

''The use of the Licensed Patent Rights to develop, manufacture, distribute, sell, and use autologous tumor infiltrating lymphocyte (TIL) adoptive cell therapy products for the treatment of cancer. Specifically excluded from this Licensed Field of Use are adoptive cell therapy products genetically engineered to express a chimeric antigen receptor and/or T cell receptor.''

E–170–2009 is primarily directed to recombinant constructs for the inducible expression of Interleukin-12 (IL–12). IL–12 has been reported to be an important immunostimulatory cytokine; however, its clinical utility has been constrained, in part, by dose-limiting toxicity following systemic administration. The subject invention potentially addresses this limitation by operatively associating a *n*uclear *f*actor of *a*ctivated *T* cells (NFAT) promoter with the coding sequence for IL–12. TIL engineered to express these constructs produce and secrete IL–12 at the site of antigen binding (*exempli gratia,* in the tumor microenvironment).

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument establishing that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 20, 2022.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2022–08795 Filed 4–25–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0026]

Agency Information Collection Activities; Extension of a Currently Approved Collection: Information Relating to Beneficiary of Private Bill

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until June 27, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1653–0026 in the body of the correspondence, the agency name and Docket ID ICEB–2006–0015. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2006–0015.

FOR FURTHER INFORMATION CONTACT: If you have questions related to this revision, please contact: Ina Farka, ERO Policy Unit, (202) 732–3270, *eropolicy@ice.dhs.gov.* (This is not a toll-free number. Comments are not accepted via telephone message).

SUPPLEMENTARY INFORMATION:

Comment

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Information Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* G–79A; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. This form is used by ICE to obtain information from beneficiaries and/or interested parties in Private Bill cases when requested to report by the Committee on the Judiciary.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden is 100 hours.

Dated: April 21, 2022.

Scott Elmore,

PRA Clearance Officer, U.S. Immigrations and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2022–08856 Filed 4–25–22; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7060–N–03]

60-Day Notice of Proposed Information Collection: Family Options Study 12-Year Follow-Up: Survey Data Collection, OMB Control No.: 2528–0259

AGENCY: Office of the Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 27, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–5000; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Family Options Study 12-Year Follow-up: Survey Data Collection.

OMB Approval Number: 2528–0259.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The purpose of this proposed information collection is to administer a 12-Year Follow-up Survey with the families that enrolled in the U.S. Department of Housing and Urban Development's (HUD) Family Options Study between September 2010 and January 2012.

The Family Options Study is a multi-site experiment designed to test the impacts of different housing and service interventions on homeless families in five key domains: Housing stability, family preservation, adult well-being, child well-being, and self-sufficiency. Both the design and the scale of the study provide a strong basis for conclusions about the relative impacts of the interventions over time, and data collected at two previous points in time, twenty (20) months after random assignment and thirty-seven (37) months after random assignment, yielded powerful evidence regarding the positive impact of providing a non-time-limited housing subsidy to a family experiencing homelessness. It is possible, though, that some effects of the various interventions might change over time or take longer to emerge, particularly for child well-being. Therefore, HUD plans to conduct a follow up survey of study families roughly twelve years after enrollment into the study. The 12-Year Follow-up Survey will attempt to collect information from three separate samples: (1) The 2,241 heads of household who originally enrolled in the study, (2) a sample of 2,220 young children between the ages of 10–17 who currently reside with the head of households, and (3) a new sample of 1,831 ''adult children'' who consist of the young adults who were minor children during the base study period, but who have aged into adulthood over the past twelve years.

This **Federal Register** Notice provides an opportunity to comment on the data collection instruments and associated materials to be administered to the families enrolled in the Family Options Study.

Respondents: Adults and children who are members of the families enrolled in the Family Options Study.

Estimated Number of Respondents: 6,292 respondents (2,241 adult heads of household; 2,220 children ages 10–17; and 1,831 adult children ages 18–30).

Frequency of Response: Once.

Average Hours per Response: Completion the Adult Head of Household Survey is expected to take on average one hour, with the consent form taking an additional 10 minutes or .16 hours per respondent and the Parent Permission Form taking an additional 10 minutes or .16 hours per respondent. Completion of the Child Assent Form will take roughly ten minutes or .16 hours on average and the Child Survey will take 30 minutes on average to complete. Engagement with the adult child sample will take roughly 30 minutes—10 minutes for the enrollment call, 10 minutes for the Adult Child Consent Form, and 10 minutes to explain and complete the Adult Child Information release form. The web-based Adult Child Survey will take approximately 15 minutes to complete per respondent on average.

Total Estimated Burden Hours: 5760.2 hours.

ANNUALIZED BURDEN TABLE

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Adult Head of Household							
Adult Head of Household Consent Form ...	2,241	1	1	.16	358.56	$10.15	$3,639.38
Parent Permission Form	2,241	1	1	.16	358.56	10.15	3,639.38
Adult Head of Household Survey	2,241	1	1	1	2,241	10.15	22,746.15

ANNUALIZED BURDEN TABLE—Continued

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Child (10–17)							
Child Survey (ages 10–17) Assent Form	2,220	1	1	.16	355.20	NA	
Child Survey (ages 10–17)	2,220	1	1	.5	1,110	NA	
Adult Child (18–30)							
Adult Child Enrollment Call (ages 18–30)	1,831	1	1	.16	292.96	10.15	2,973.54
Adult Child Consent Form (ages 18–30)	1,831	1	1	.16	292.96	10.15	2,973.54
Adult Child Information Release Form (ages 18–30)	1,831	1	1	.16	292.96	10.15	2,973.54
Adult Child Survey (ages 18–30)	1,831	1	1	.25	457.75	10.15	4,625.86
Total					5,813.95		43,571.39

B. Solicitation of Public Comment

This notice solicits comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35 and title 42 U.S.C. 5424 note, title 13 U.S.C. Section 8(b), and title 12, U.S.C., section 1701z–1.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2022–08847 Filed 4–25–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–16]

60-Day Notice of Proposed Information Collection: Request for Acceptance of Changes in Approved Drawings and Specifications, OMB Control No.: 2502–0117

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 27, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Request for Acceptance of Changes in Approved Drawings and Specifications.

OMB Approval Number: 2502–0117.

OMB Expiration Date: July 31, 2022.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–92577.

Description of the need for the information and proposed use: Builders/Contractors/Consultants request approval for changes to accepted drawings and specifications of properties as required by home buyers or determined by the Contractor to address previously unknown health and safety issues. Builders/Contractors/Consultants submit the forms to lenders, who review and submit them to HUD for approval.

Respondents: Business.

Estimated Number of Respondents: 15,871.

Estimated Number of Responses: 15,871.

Frequency of Response: On occasion.

Average Hours per Response: 0.5.

Total Estimated Time Burden (Hours): 7,936.

Total Estimated Cost: $359,575.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Janet M. Golrick,

Acting, Chief of Staff, Office of Housing—Federal Housing Administration.

[FR Doc. 2022–08854 Filed 4–25–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–10]

60-Day Notice of Proposed Information Collection: Comprehensive Transactional Forms Supporting FHA's Section 242 Mortgage Insurance Program for Hospitals, OMB Control No.: 2502–0602

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 27, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Comprehensive Transactional Forms Supporting FHA's Section 242 Mortgage Insurance Program for Hospitals.

OMB Approval Number: 2502–0602.

OMB Expiration Date: November 30, 2022.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–2510R, HUD–90032–OHF, HUD–90033–OHF, HUD–91070–OHF, HUD–91071–OHF, HUD–91073–OHF, HUD–91725–OHF, HUD–91725–CERT–OHF, HUD–91725–INST–OHF, HUD–92013–OHF, HUD–92023–OHF, HUD–92070–OHF, HUD–92080–OHF, HUD–92117–OHF, HUD–92205–OHF, HUD–92223–OHF, HUD–92266–OHF, HUD–92322–OHF, HUD–92330–OHF, HUD–92330A–OHF, HUD–92403–OHF, HUD–92403A–OHF, HUD–92415–OHF, HUD–92422–OHF, HUD–92434–OHF, HUD–92441–OHF, HUD–92442–OHF, HUD–92448–OHF, HUD–92452A–OHF, HUD–92452–OHF, HUD–92455–OHF, HUD–92456–OHF, HUD–92464–OHF, HUD–92466–OHF, HUD–92476–OHF, HUD–92476A–OHF, HUD–92476B–OHF, HUD–92479–OHF, HUD–92554–OHF, HUD–92576–OHF, HUD–93305–OHF, HUD–94000–OHF, HUD–94001–OHF.

Description of the need for the information and proposed use:

This collection of information is required specifically for the application and administration of the Department of Housing and Urban Development, Federal Housing Administration Section 242 Hospital Mortgage Insurance Program pursuant to 24 CFR 242, 241, 223(f), and 223(a)(7). The collection is a comprehensive set of HUD documents that are critically needed for processing applications and loan endorsements for FHA mortgage insurance under the Section 242 Hospital Mortgage Insurance Program, for ongoing asset management of such facilities, and other information related to these facilities for loan modifications, construction projects, and physical and environmental reviews. This information is requested and is used by the Office of Healthcare Facilities (OHF) and Office of Architecture and Engineering (OAE) within FHA's Office of Healthcare Programs (OHP).

The purpose for which the information is being collected by HUD is to review Section 242 applications to determine the eligibility of applicant hospitals for FHA mortgage insurance, underwrite insured hospital loans, ensure that the collateral securing each loan is adequate, capture administrative data, process initial/final endorsement, and manage FHA's hospital portfolio. Additional information related to loan modifications, construction projects, and physical and environmental reviews is collected if applicable.

The information being collected consists of various HUD forms that program participants complete with project specifications, technical descriptions, details, and/or signatures that are utilized by HUD during various stages of the application, underwriting, commitment, closing, and asset management processes involved with the administration of FHA's Section 242 mortgage insurance program.

The information is used by HUD staff for internal review of applications to determine if projects qualify for Section 242 hospital mortgage insurance and to manage and monitor the application, commitment, initial/final endorsement,

asset management, and administration processes needed to support hospital projects insured by FHA. Agreements and legal documents are used by HUD staff, lenders, borrowers, construction managers, and depository institutions, when applicable, to process initial/final endorsement of loans. Information reported for ongoing asset management of FHA-insured facilities will be used by HUD staff to monitor and manage risk within the FHA portfolio and ensure ongoing compliance with HUD Program Obligations. Information is also used by HUD staff to determine whether the Program meets its stated goals and management objectives. The information is collected from lenders/mortgage bankers, borrowers/hospital management officials, attorneys, general contractors/construction managers, architects/engineers, agents and others involved in hospital projects, which may, at times include local government entities and other third parties, as well as HUD staff to allow OHF to manage and monitor the application, commitment, initial/final endorsement, asset management, and administration processes needed to support hospital projects insured by FHA.

This collection is needed to update and renew the current collection that was approved for a 36-month period by OMB on November 12, 2019, with an expiration date of November 30, 2022.

Three new forms are being added to this collection that are listed in the table above: HUD–90032–OHF (Lender Narrative—Interest Rate Reduction), HUD–90033–OHF (Lender's Certification in Support of Request for IRR), and HUD–2510R (Release of Regulatory Agreement). The HUD–90033–OHF and HUD–90032–OHF are being added for occasional situations involving interest rate reductions of FHA-insured hospital loans. The forms allow the lender to summarize the rationale for the request and certify that programmatic requirements for interest rate reductions have been met. The documents are based on OHF draft guidance as well as similar forms used by the Section 232 program. The HUD–2510R has been added to facilitate the process regarding the release and discharge of the Regulatory Agreement.

Two forms will be removed from the collection: HUD–91111–OHF (Survey Instructions and Borrower's Certification) and HUD–94128–OHF (Environmental Assessment and Compliance Findings for the Related Laws). The HUD–91111–OHF will be removed from the collection and the information from this form has been combined with HUD–91073–OHF (formally: HUD Survey Instructions and Surveyor's Report; and now renamed: HUD Survey Instructions, Surveyor's Report, and Borrower's Survey Certification). The HUD–94128–OHF will be removed from the collection because HUD's Environmental Review Online System (HEROS) is now used to prepare environmental reviews.

The Public Burden Statement and the Warning have been revised on all forms.

Three documents within the collection are being renewed with only changes to the revised Public Burden Statement and the Warning. The remaining thirty-seven of the forty forms within the collection are being renewed with changes. Revisions include edits that were made to clarify current policies and definitions, reflect updated general accepted accounting standards, or to address inconsistencies across documents.

A summary of the specific changes (beyond the Public Burden Statement and the Warning) made to the revised documents is provided below.

Summary of Changes to Documents

- *HUD–2510R Release of Regulatory Agreement.* New document added to facilitate the process regarding the release and discharge of the Regulatory Agreement. This form will be used by the Office of Hospital Facilities, the Office of Residential Care Facilities, and Multifamily. The Number of Respondents will take the respondents from all three offices into consideration.
- *HUD–90032–OHF Lender Narrative—Interest Rate Reduction.* New document based on an existing Office of Residential Care Facilities application form to request an interest rate reduction, modified for Section 242-insured hospitals.
- *HUD–90033–OHF Lender's Certification in Support of Request for IRR.* New document based on an existing Office of Residential Care Facilities application form to request an interest rate reduction, modified for Section 242-insured hospitals.
- *HUD–91070–OHF Consolidated Certifications Borrower.* Changes were made to the parts of the certification as follows:
  - *Instructions.* Added Feasibility Consultant as an option. Removed N/A from each line to improve readability.
  - *Part VII.* Added a new section, similar to the Supplemental Underwriting section on existing Office of Residential Care Facility form. Specifically, added questions on delinquency of federal debt; legal action and judgements; bankruptcy question; liens (liens must be addressed prior to closing); investigations; and physician involvement.
  - *Part VII.* Re-organized the list of entities. Added additional lines for ''Other'' categories. Made consistent with page 1–2 of the form.
- *HUD–91071–OHF Escrow Agreement for Off-site Facilities.* Changes were made to the sections of the agreement as follows:
  - *Section D.* Added new language to allow for extensions for up to 90 days which must be submitted in advance to HUD and the Lender with a detailed explanation for the extension. This was an issue during the pandemic because the document did not have any specific language to allow for extensions during a shutdown.
  - *Agreement #1 and #8.* Capitalized Depository Institution and added that Depository Institution must be satisfactory to HUD as well as the Lender.
  - *Agreement #5 and #7.* Lender was added as recipient of requested information. Added specific references to documents to be used for disbursements.
- *HUD–91073–OHF HUD Survey Instructions, Surveyor's Report, and Borrower's Survey Certification.* Combined HUD–91111–OHF and HUD–91073–OHF into a new updated HUD–91073–OHF HUD Survey Instructions, Surveyor's Report and Borrower's Certification. Updating ALTA/NSPS Standards to latest version (2021) and revising additional requirements. Clarifying language for when the Borrower's certification can be used. Also updated Table A requirements.
- *HUD–91725–OHF Opinion by Counsel to the Borrower.* Changes were made throughout to add clarity.
- *HUD–91725–INST–OHF Instructions to Opinion of Borrower's Counsel.* Only the Warning has been revised.
- *HUD–91725–CERT–OHF Exhibit A to Opinion of Borrower's Counsel Certification.* Only the Warning has been revised.
- *HUD–92013–OHF Application for Hospital Project Mortgage Insurance.* Changed the document from a Word document to an Excel document. This allows the user to enter data, which is totaled where necessary. Added a Schedule so that 92013-line items may be broken out into components.
- *HUD–92023–OHF Request for Final Endorsement of Credit Instrument.* Changes were made to clarify minor inconsistencies within the document, and an update was added to reflect email submission rather than standard mail.
- *HUD–92070–OHF Lease Addendum.* Removed the Instruction language for brevity, which is consistent

with the existing Office of Residential Care Facilities form. Capitalized Tenant, Landlord, and Lender throughout the document for clarity. Added ''from an FHA Lender (Lender)'' to clearly define Lender in the transaction. Removed the language above the signatures indicating ''certifies under penalty of perjury'' because this language is not customary for a Lease Addendum, as there are no statements or representations provided.

• *HUD–92080–OHF Change of Mortgage Record.* Only the Public Burden Statement and the Warning have been revised.

• *HUD–92117–OHF Borrower's Certification—Full or Partial Completion of Project.* Added language to #5 to clarify that the requirement pertains to the advance.

• *HUD–92205–OHF Borrower's Certificate of Known Costs (Section 242/223f, 242/223(a)(7)).* Adjusted title of form to include ''Insurance Upon Completion,'' to differentiate it from the insurance of advances form (HUD–92330–OHF). Clarified terminology in the Instructions on page 1 to include repairs and limited rehabilitation. Corresponding schedules for each item were added to the table for greater clarity. Additional clarification added, which makes explicit that deferred repairs and deferred limited rehabilitation amounts are to be escrowed. Updated Schedules to explicitly include additional fees and expenses.

• *HUD–92223–OHF Surplus Cash Note.* Changes were made throughout to add clarity. In Section 2, added clarity to the document by combining sections and eliminated reference ''Except as provided in Section 5 below,'' Section 5 was eliminated and added to Section 2. Added clarity to payments due under the Surplus Cash Note by adding ''and per requirements under the Borrower's Regulatory Agreement and Commitment for Insurance (if applicable)'' (Section 4 eliminated as it is now contained in Section 2). Added ''No payments towards the Surplus Cash Note shall be made before final endorsement, unless HUD has approved,'' which incorporates Section 7 and provides for flexibility if approved by HUD. (Section 7 eliminated as it is now contained in Section 2).

• *HUD–92266–OHF Application for Transfer of Physical Assets.* Changes were made to clarify minor inconsistencies within the document and clarify directions as to what entities complete and submit the form.

• *HUD–92322–OHF Intercreditor Agreement.* Changes were made to the sections of the agreement as follows:

▪ *Section 1.14* definition for ''Facility'' changed to reference 24 CFR 242.1.

▪ *Section 1.15* includes ''Pledged Affiliates'' as defined in HUD's loan docs.

▪ *Section 2.3(e)* replaces ''operator or receiver'' with ''entity'' as Operator is typically used in 232.

▪ *Section 2.7(f)(iii)* removed because this subsection references the Section 232 Operator Regulatory Agreement.

▪ *Section 3.4(c)* clarified what costs are due under current mortgage costs.

▪ *Section 3.6(c)* added language that ''notwithstanding any contrary provision contained in the AR Loan Documents, a default under the FHA Loan Documents shall not constitute a default under the AR Loan Documents if no other default occurred under the AR Loan Documents''.

▪ *Section 4.1* changed ''donee'' to ''assignee''.

• *HUD–92330A–OHF Contractor's Certificate of Actual Cost.* Changes were made to the Trade Items, which were updated with latest Construction Specifications Institute (CSI) categories. Also, clarifies that an Attachment A shall be included when/if an Identity of Interest exists.

• *HUD–92330–OHF Borrower's Certificate of Actual Cost.* Added clarification/typographic changes to improve readability, as well as identify whether the HUD–92330A–OHF is accompanying the certification. Renumbered first 5 items in the table for standardization with other forms and processes.

• *HUD–92403A–OHF Borrower's and Architect's Certificate of Payment.* Only the Public Burden Statement and the Warning have been revised.

• *HUD–92403–OHF Application for Insurance of Advance of Mortgage Proceeds.* Updated Instructions to Borrower for electronic submission, to reference budget categories, and add clarity. Updated Instructions to Lender. Replaced the Table to include the Budget Category and references to HUD–92448–OHF, and updated drawings to documents. Updated Instructions to Lender for electronic submission, added Owner cash equity sentence, changed Mortgagor's to Borrower's, and changed escrow to equity. Removed references to an old Handbook 4480.1.

• *HUD–92415–OHF Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance.* Updated wording in introduction to request and Term 1 for continuity. Changed wording in Term 2 to better reflect hospital program policies. Added Term 4 and revised Terms 5 and 7 for clarity, renumbered paragraphs as required. Revised paragraph 8 to match language in Terms 9 and 10 for continuity. Revised Term 9 to add construction manager agreement as an option and revised language for clarification. Added Term 10 regarding permits to clarify this is a requirement. Revised Terms 13 and 14 for continuity and update paragraph references.

• *HUD–92422–OHF Financial and Statistical Data for HUD Reporting.* Changes were made throughout to add clarity.

• *HUD–92434–OHF Lender's Certificate.* Reorganized the introductory section to add clarity and improve readability.

• *HUD–92441–OHF Building Loan Agreement.* Section 4b—clarified who at HUD should receive the information; changed the report deadline from 45 days after quarter end to 40 days to be consistent with similar report required under Regulatory Agreement.

• *HUD–92442–OHF Construction Contract.* Updated definitions paragraph to add clarity.

• *HUD–92448–OHF Contractor's Requisition Project Mortgages.* Changes were made throughout to add clarity.

• *HUD–92452A–OHF Payment Bond.* Updated to include Construction Managers and Project Description requirement.

• *HUD–92452–OHF Performance Bond.* Updated to include Construction Managers and Project Description requirement.

• *HUD–92455–OHF Request for Endorsement of Credit Instrument & Certificate of Lender, Borrower, & General Contractor.* Added Deferred Repairs and Deferred Limited Rehabilitation concepts to existing language, to differentiate Repairs (under 223(a)(7)) and Limited Rehabilitation (under 223(f)) that occur after initial/final endorsement (Deferred). Added paragraph (from Section 242 regulations) regarding required compliance of the Borrower to the Certificate of Borrower section.

• *HUD–92456–OHF Escrow Agreement for Incomplete Construction.* Updated references to related forms; added paragraphs for sources of escrow funds; and added language for use of remaining escrow funds.

• *HUD–92464–OHF Request for Approval of Advance of Escrow Funds.* Added document to be forwarded to HUD as well as the Lender. Changes for documents and supporting data to be submitted electronically to HUD—no longer in duplicates mailed to HUD. Clarified signatories for the Borrower for certain sections.

• *HUD–92466–OHF Regulatory Agreement—Borrower.* Changes were made to sections of the Regulatory Agreement as follows:

▪ Section 8(b)(ii)(1) and 8(b)(ii)(3) for Conditions to be Satisfied During and Following Construction. Expanded the report to include ''deferred work or limited rehabilitation'' for consistency with terminology in this section and clarify terms for Construction or repairs.

▪ Section 10(b) for Property and Operation; Encumbrances. Language changed to allow Borrowers to adjudicate liens, etc. in good faith with HUD's permission.

▪ Section 11(f) for Finances and Financial Records. Changed ''reasonable time'' to ''10 business days'' to better define the timeline to submit the documents. Added ''shall be maintained in accordance with U.S. GAAP'' to differentiate from OHF reporting requirements as required in the OHF Handbook. Although it should be obvious, 24 CFR 5.801 for uniform reporting financial standards for HUD programs does not specifically include the 242/OHF Program. Section 11(f) for Finances and Financial Records.

▪ Section 11(g) for Finances and Financial Records. Added language to allow HUD or its representatives to ask questions on the finances, operation and condition of the property.

▪ Section 13 for Mortgage Reserved Fund (MRF). Added clarifying language on type of account and beneficiary.

▪ Section 19(a)(i) for Additional Indebtedness and Leasing for Long Term Debt: Reordered some of the subsections and added some clarifying language as it relates to proposed debt.

▪ Section 19(d) for Additional Indebtedness—Reporting Requirements: Changed the reporting requirements to an annual report due within 40 days of the Borrower's fiscal year.

▪ Section 45 for Definitions. Clarified definitions.

• *HUD–92476–OHF Escrow Agreement for Deferred Repairs.* Renamed Document from ''Escrow Agreement for Deferred Work'' to ''Escrow Agreement for Deferred Repairs'' to properly reflect the type of work involved. Similar changes were made throughout document. Added language in Section D to allow for extensions of up to 90 days if needed. Revised chart in Exhibit A to reflect a breakout of costs to be covered by the Escrow for Deferred Repairs.

• *HUD–92476A–OHF Escrow Agreement for Deferred Limited Rehabilitation.* Renamed Document from ''Escrow Agreement for Limited Rehabilitation'' to ''Escrow Agreement for Deferred Limited Rehabilitation'' to properly reflect the type of work involved. Similar changes were made throughout document. Added language in Section D to allow for extensions of up to 90 days if needed. Revised chart in Exhibit A to reflect a breakout of costs to be covered by the Escrow for Deferred Limited Rehabilitation.

• *HUD–92476B–OHF Escrow Agreement for Proceeds from Partial Release of Collateral.* Only the Public Burden Statement and the Warning have been revised.

• *HUD–92479–OHF Off-Site Bond—Dual Obligee.* Updated to include Construction Managers and Project Description requirement.

• *HUD–92554–OHF Supplementary Conditions of the Contract for Construction.* Article 1(B) Minimum Wages updated and clarified per program regulations.

• *HUD–92576–OHF Certificate for Need for Health Facility and Assurance of Enforcement of State Standards.* Renamed document. Removed unneeded requests for information.

• *HUD–93305–OHF Agreement and Certification.* Changed wording to reflect regulations for clarity.

• *HUD–94000–OHF Security Instrument/Mortgage/Deed of Trust.* Inserted ''Pledged Affiliates'' where Borrower appears. Updated definitions. Inserted clarifying language to ensure that all project funds are deposited into a DACA. Inserted language in Section 17(b) to allow subordinate liens to be repaid with prior Lender and HUD approval.

HUD–94001–OHF Healthcare Facility Note. In Section 7(a), deleted the language ''or in the Borrower's Security Instrument or in the Borrower's Regulatory Agreement'' because personal liability is not a concept recognized in the Section 242 program, unlike Multifamily and Section 232.

Respondents (*i.e.* affected public): Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 718.

Estimated Number of Responses: 1,302.

Frequency of Response: 70.

Average Hours per Response: 118.

Total Estimated Burden: 73,187 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Janet M. Golrick,

Acting Chief of Staff for Housing, Federal Housing Commissioner, HUD.

[FR Doc. 2022–08846 Filed 4–25–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2021–0008; FXIA16710900000–FF09A10000–212]

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Nineteenth Regular Meeting: Taxa Being Considered for Amendments to the CITES Appendices

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), may propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The nineteenth regular meeting of the Conference of the Parties to CITES (CoP19) is scheduled to be held in Panama City, Panama, November 14–25, 2022. With this notice, we respond to recommendations received from the public concerning proposed amendments to the CITES Appendices (species proposals) that the United States might submit for consideration at CoP19; invite your comments and information on these proposals; and provide information on how U.S. nongovernmental organizations can attend CoP19 as observers.

DATES:

Meeting: The meeting is scheduled to be held in Panama City, Panama, November 14–25, 2022.

Submitting Information and Comments: We will consider written information and comments we receive by May 26, 2022.

ADDRESSES:

Further information: We have posted an extended table version of this notice on our website, at *https://www.fws.gov/program/cites/federal-register-notices,* with text describing in more detail certain proposed actions and explaining the rationale for the tentative U.S. position on these possible proposals. We also describe in that table the information that we are seeking for proposals where the United States is undecided on submission. Copies of the extended table version of the notice are also available from the Division of Scientific Authority (see **FOR FURTHER INFORMATION CONTACT**) or at *https://www.regulations.gov* at Docket No. FWS–HQ–IA–2021–0008.

Comments: You may submit comments pertaining to species proposals for consideration at CoP19 by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2021–0008.
- *Hard copy:* Submit by U.S. mail to Public Comments Processing; Attn: Docket No. FWS–HQ–IA–2021–0008; U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: For information pertaining to species proposals, contact Rosemarie Gnam, Chief, Division of Scientific Authority, at 703–358–1708 (phone); 703–358–2276 (fax); or *scientificauthority@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The United States (or we), as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or the Convention), may propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The nineteenth regular meeting of the Conference of the Parties to CITES (CoP19) is scheduled to be held in Panama City, Panama, November 14–25, 2022. With this notice, we describe proposed amendments to the CITES Appendices (species proposals) that the United States might submit for consideration at CoP19; invite your comments and information on these proposals; and provide information on how U.S. nongovernmental organizations can attend CoP19 as observers.

Background

CITES is an international treaty designed to control and regulate international trade in certain animal and plant species that are affected by trade and are now, or potentially may become, threatened with extinction. These species are included in the Appendices to CITES, which are available on the CITES Secretariat's website at *https://www.cites.org.* Currently there are 184 Parties to CITES—183 countries, including the United States, and one regional economic integration organization, the European Union. The Convention calls for regular biennial meetings of the Conference of the Parties, unless the Conference decides otherwise. At these meetings, the Parties review the implementation of CITES, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the species included in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, as well as resolutions, decisions, and agenda items for consideration by all the Parties. Our regulations governing this public process are found in title 50 of the Code of Federal Regulations at 50 CFR 23.87.

This is our third notice in a series of **Federal Register** notices that, together with an announced public meeting (time and place to be announced), provide you with an opportunity to participate in the development of the U.S. submissions and negotiating positions for the nineteenth regular meeting of the Conference of the Parties to CITES (CoP19), which is scheduled to be held in Panama City, Panama, November 14–25, 2022. We published our first CoP19-related **Federal Register** notice on March 2, 2021 (86 FR 12199). That notice requested information and recommendations on animal and plant species proposals and on proposed resolutions, decisions, and agenda items for the United States to consider submitting for consideration at CoP19; the notice also provided preliminary information on how to request approved observer status for nongovernmental organizations that wish to attend the meeting. We published our second CoP19-related **Federal Register** notice on March 7, 2022 (87 FR 12719); that notice described proposed resolutions, decisions, and agenda items that the United States might submit for consideration at CoP19. Comments received on those two notices may be viewed at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2021–0008.

Recommendations for Species Proposals for the United States to Consider Submitting for CoP19

In response to our March 2021 notice, we received 31 comments with recommendations from 3 individuals and 51 organizations for possible proposals involving more than 600 animal taxa and almost 200 plant taxa for amendments to the CITES Appendices. These commenters include organizations such as the Animal Welfare Institute (AWI), American Herbal Products Association; Center for Biological Diversity; Costa Farms LLC; Forest Based Solutions; Ginseng Board of Wisconsin; Humane Society International; International Wood Products Association; International Union for Conservation of Nature, Species Survival Commission, Specialist Groups; League of American Orchestras; Safari Club International; Safari Club International Foundation; Species Survival Network; Wildlife Conservation Society; World Animal Protection; and World Wildlife Fund. Additionally, the United States may submit three animal species proposals that previously resulted from the Periodic Review Process (Resolution Conf. 14.8 (Rev. CoP17)) by the Animals Committee, and where that Committee recommended that the United States, as a range country for the species being reviewed, bring forward a proposal to amend the Appendices.

We have undertaken initial evaluations of the available trade and biological information on many of these taxa. Based on the information available, we made provisional evaluations of whether to proceed with the development of proposals for species to be included in, removed from, or transferred between the CITES Appendices. We made these evaluations by considering the best information available on the species; the presence, absence, and effectiveness of other mechanisms that may preclude the need for species' inclusion in the CITES Appendices (*e.g.,* range country actions or other international agreements); and

availability of resources. We have also considered the following factors, consistent with the U.S. approach for CoP19 discussed in our March 2, 2021, **Federal Register** notice (86 FR 12199):

(1) Does the proposed action address a serious wildlife or plant trade issue that the United States is experiencing as a range country for species in trade?

(2) Does the proposed action address a serious wildlife or plant trade issue for species not native to the United States?

(3) Does the proposed action provide additional conservation benefit for a species already covered by another international agreement?

Based on our initial evaluations, we have assigned each taxon to one of three categories, which reflects the likelihood of our submitting a proposal. In sections A, B, and C, below, we have listed the current status of each species proposal recommended by the public, as well as species proposals we have been developing on our own from the Periodic Review Process. Please note that we have provided here only a list of taxa and the proposed action of likely, unlikely, or undecided on whether to submit a species proposal for consideration at CoP19. We have posted an extended table version of this notice on our website, at *https://www.fws.gov/program/cites/federal-register-notices,* with text describing in more detail certain proposed actions and explaining the rationale for the tentative U.S. position on these possible proposals. We also describe in this table the information that we are seeking for proposals where the United States is undecided on submission. Copies of the extended table version of the notice are also available from the Division of Scientific Authority at the above address or at *https://www.regulations.gov* at Docket No. FWS–HQ–IA–2021–0008. We note that a number of commenters submitted suggestions for how to approach possible amendment proposals submitted for a variety of taxa. We do not respond specifically to these comments here, and we refer again to the criteria in Resolution Conf. 9.24 (Rev. CoP17) and our regulations (50 CFR 23.89).

We welcome your comments, especially if you are able to provide any additional biological or trade information on these species.

*A. What species proposals will the United States likely submit for consideration at CoP19? **

The taxa in this section have been undergoing review through the periodic review of the CITES Appendices by the Animals Committee (AC), two at AC31 and a third at AC27, in accordance with Resolution Conf. 14.8 (Rev. CoP17). This is a regular process under CITES to evaluate whether listings of taxa in CITES Appendices I and II continue to be appropriate, based on current biological and trade information.

Birds

1. * Short-tailed albatross (*Phoebastria albatrus*)—Transfer from Appendix I to Appendix II
2. * Aleutian cackling goose (*Branta hutchinsii leucopareia*)—Transfer from Appendix I to Appendix II

Reptiles

3. * Puerto Rico boa (*Epicrates inornatus*)—Transfer from Appendix I to Appendix II

*B. On what species proposals is the United States undecided, pending additional information and consultations? **

The United States is still undecided on whether to submit CoP19 proposals for the following taxa. In most cases, we have not completed our consultations with relevant range countries. In other cases, in the immediate future we expect meetings to occur at which participants will generate important recommendations, trade analyses, or biological information on the taxon in question that may be useful to our final decisionmaking.

Plants

1. * American ginseng (*Panax quinquefolius*)—Remove sliced American ginseng roots from the provisions of the Convention and revise annotation as follows: ''Whole ~~and sliced~~ roots and parts of roots, excluding manufactured parts or derivatives, such as *slices,* powders, pills, extracts, tonics, teas and confectionery.''
2. African mahogany (*Afzelia africana*) Fabaceae (legume) family—Add to Appendix I or II
3. *Dipteryx* spp. [12 species], Fabaceae (legume) family—Add to Appendix I or II (co-sponsor/support proposals) [12 species, includes 1 species that would transfer from Appendix III (Nicaragua and Costa Rica)]
4. Ipe (*Handroanthus* spp. [~30+ species]) Bignoniaceae (bignonia) family—Add to Appendix I or II (co-sponsor/support) [~30/35 species]
5. Trumpet trees (*Tabebuia* spp. [~73 species])—Add to Appendix I or II (co-sponsor/support) [~73/74 species]
6. *Roseodendron* spp. [2–3 species]—Add to Appendix I or II (co-sponsor/support) [2–3 species]
7. African mahogany (*Khaya* spp. [5 species])—Add to Appendix I or II (co-sponsor/support) [5 species]
8. *Pterocarpus* spp. [~70 species, but recommendation limited to African species/populations]—Add/transfer to Appendix I or add to Appendix II (co-sponsor/support) [<70 species; *P. erinaceus* and *P. tinctorius* are currently listed on Appendix II]
9. * *Rhodilia* spp. (58 species)—Add the genus to Appendix II with annotation #2.

Mammals

10. * Reindeer/caribou (*Rangifer tarandus*)—Add to Appendix I

Birds

11. Straw-headed bulbul (*Pycnonotus zeylanicus*)—Transfer from Appendix I to Appendix II

Reptiles

12. Freshwater turtles [~348 species, ~185 not listed in CITES or listed as Appendix III]—List all species in at least Appendix II [~185 species]
13. Order Testudines [~348 species, ~185 not listed in CITES or listed as Appendix III]—Include all species not currently listed in Appendix II [~185 species]; transfer threatened or endangered species from Appendix II to Appendix I
14. * Western pond turtle (*Actinemys marmorata*)—Include all species not currently listed in Appendix II
15. * Southwestern pond turtle (*Actinemys pallida*)—Include all species not currently listed in Appendix II
16. * Painted turtle (*Chrysemys picta*) (including *C. p. dorsalis*)—Include all species not currently listed in Appendix II
17. * Chicken turtle (*Deirochelys reticularia*)—Include all species not currently listed in Appendix II
18. * Alabama redbelly turtle (*Pseudemys alabamensis*)—Include all species not currently listed in Appendix II
19. * Eastern river cooter (*Pseudemys concinna*)—Include all species not currently listed in Appendix II

* Indicates species that occur in the United States of America or its territories.

20. * Florida cooter (*Pseudemys floridana*)—Include all species not currently listed in Appendix II
21. * Rio Grande cooter (*Pseudemys gorzugi*)—Include all species not currently listed in Appendix II
22. * Florida redbelly turtle (*Pseudemys nelson*)—Include all species not currently listed in Appendix II
23. * Peninsula cooter (*Pseudemys peninsularis*)—Include all species not currently listed in Appendix II
24. * Northern red-bellied turtle (*Pseudemys rubriventris*)—Include all species not currently listed in Appendix II
25. * Texas river cooter (*Pseudemys texana*)—Include all species not currently listed in Appendix II
26. * Big Bend slider (*Trachemys gaigeae*)—Include all species not currently listed in Appendix II
27. * Razorback musk turtle (*Sternotherus carinatus*)—Include all species not currently listed in Appendix II
28. * Flattened musk turtle (*Sternotherus depressus*)—Include all species not currently listed in Appendix II
29. * Intermediate musk turtle (*Sternotherus intermedius*)—Include all species not currently listed in Appendix II
30. * Loggerhead musk turtle (*Sternotherus minor*)—Include all species not currently listed in Appendix II
31. * Stinkpot turtle (*Sternotherus odoratus*)—Include all species not currently listed in Appendix II
32. * Common snapping turtle (*Chelydra serpentina*)—Include all species not currently listed in Appendix II
33. * Alligator snapping turtle (*Macrochelys temminckii*)—Include all species not currently listed in Appendix II
34. * Cagle's map turtle (*Graptemys caglei*)—Include all species not currently listed in Appendix II
35. * Escambia map turtle (*Graptemys ernsti*)—Include all species not currently listed in Appendix II
36. * Northern map turtle (*Graptemys geographica*)—Include all species not currently listed in Appendix II
37. * Black-knobbed map turtle (*Graptemys nigrinoda*)—Include all species not currently listed in Appendix II
38. * Ringed map turtle (*Graptemys oculifera*)—Include all species not currently listed in Appendix II
39. * Ouachita map turtle (*Graptemys ouachitensis*)—Include all species not currently listed in Appendix II
40. * False map turtle (*Graptemys pseudogeographica*)—Include all species not currently listed in Appendix II
41. * Alabama map turtle (*Graptemys pulchra*)—Include all species not currently listed in Appendix II
42. * Texas map turtle (*Graptemys versa*)—Include all species not currently listed in Appendix II
43. * Florida softshell turtle (*Apalone ferox*)—Include all species not currently listed in Appendix II
44. * Smooth softshell turtle (*Apalone mutica*)—Include all species not currently listed in Appendix II
45. * Spiny softshell turtle (*Apalone spinifera*)—Include all species not currently listed in Appendix II
46. * Suwannee alligator snapping turtle (*Macrochelys suwanniensis*)—Include all species not currently listed in Appendix II
47. * Sabine map turtle (*Graptemys sabinensis*)—Include all species not currently listed in Appendix II
48. * Barbour's map turtle (*Graptemys barbouri*)—Transfer from Appendix III (United States) to Appendix I
49. * Yellow-blotched sawback (*Graptemys flavimaculata*)—Transfer from Appendix III (United States) to Appendix I
50. * Pascagoula map turtle (*Graptemys gibbonsi*)—Transfer from Appendix III (United States) to Appendix I
51. * Pearl River map turtle (*Graptemys pearlensis*)—Transfer from Appendix III (United States) to Appendix I
52. Indian narrow-headed softshell turtle (*Chitra indica*)—Transfer from Appendix III (United States) to Appendix I
53. Mud turtles (*Kinosternon* spp. [~20 species])—Add to Appendix I or II [~20 species]
54. * Arizona mud turtle (*Kinosternon arizonense*)—Add to Appendix II
55. * Striped mud turtle (*Kinosternon baurii*)—Add to Appendix II
56. * Yellow mud turtle (*Kinosternon flavescens*)—Add to Appendix II
57. * Rough-footed mud turtle (*Kinosternon hirtipes*)—Add to Appendix II
58. * Sonoran mud turtle (*Kinosternon sonoriense*)—Add to Appendix II
59. * Eastern mud turtle (*Kinosternon subrubrum*)—Add to Appendix II
60. * Desert horned lizard (*Phrynosoma platyrhinos*)—Add to Appendix II
61. * Timber rattlesnake (*Crotalus horridus*)—Add to Appendix II

Amphibians

62. Harlequin frogs, stubfoot toads (*Atelopus* spp. ~94+ species; 1 species already included in CITES Appendix I: *Atelopus zetek*)—Add to Appendix I
63. Pebas stubfoot toad (*Atelopus spumarius*)—Add to Appendix I

Sharks & Rays

64. * Family Sphyrnidae [9 species, 6 species not currently included in CITES]—*S. media, S. tudes, S. corona, S. gilberti, S. tiburo* and *Eusphyra blochii*—Add all species not currently included in Appendix II [6 species]

Bony Fishes

65. Banggai cardinalfish (*Pterapogon kauderni*)—Add to Appendix II

Invertebrates

Corals

66. * *Corallium* spp. [31 species] and Family Corallidae [>31 species]—Add to Appendix II (Add to Appendix I [AWI]) [3 species]

Sea Cucumbers

67. * Redfish sea cucumbers (*Thelenota* spp. [3 species])—Add to Appendix II (Add to Appendix I [AWI]) [3 species]
68. Brown sea cucumber (*Isostichopus fuscus*)—Transfer from Appendix III (Ecuador) to Appendix I
69. * Chocolate chip sea cucumber (*Isostichopus badionotus*)—Add to Appendix II
70. * Herrmann's sea cucumber (*Stichopus herrmanni*)—Add to Appendix II
71. * Surf redfish (*Actinopyga mauritiana*)—Add to Appendix II
72. Additional sea cucumbers (focus on those in international trade [~70 species] that attract high prices, are experiencing local declines or extirpation, and are readily identifiable)—Add to Appendix II

*C. For which species is the United States unlikely to submit proposals for consideration at CoP19, unless we receive significant additional information? **

The United States does not intend to submit proposals for the following taxa unless we receive significant additional information indicating that a proposal is warranted.

Fungus

73. * Eburiko (*Fomitopsis officinalis*)—Add to Appendix I

Plants

74. * American ginseng (*Panax quinquefolius*)—Amend Appendix II listing to include the annotation: ''Specimens marked and identified

* Indicates species that occur in the United States of America or its territories.

as artificially propagated *Panax quinquefolius* grown under artificial shade are not subject to the provisions of the Convention.''

75. 7 Aloe spp., Family Liliaceae—Annotate to exclude more artificially propagated specimens
76. * Alakai Swamp pritchardia (*Pritchardia minor*) Arecaceae (palm) family—Add to Appendix I
77. * Flynn's loulu (*Pritchardia flynnii*) Arecaceae (palm) family—Add to Appendix I
78. * California lady's slipper (*Cypripedium californicum*) Orchidaceae (orchid) family—Transfer from Appendix II to Appendix I
79. * Mountain lady's slipper (*Cypripedium montanum*) Orchidaceae (orchid) family—Transfer from Appendix II to Appendix I
80. * Sparrow's-egg lady's slipper (*Cypripedium passerinum*) Orchidaceae (orchid) family—Transfer from Appendix II to Appendix I
81. * Texas crested coralroot (*Hexalectris warnockii*) Orchidaceae (orchid) family—Transfer from Appendix II to Appendix I
82. * *Triphora yucatanensis* Orchidaceae (orchid) family—Transfer from Appendix II to Appendix I
83. * Two-keeled hooded orchid (*Galeandra bicarinata*) Orchidaceae (orchid) family—Transfer from Appendix II to Appendix I
84. * Green ash (*Fraxinus pennsylvanica*) Oleaceae (olive) family—Add to Appendix I
85. * Murray plum (*Prunus murrayana*) Roseaceae (rose) family—Add to Appendix I
86. * Rockland morning glory (*Ipomoea tenuissima*) Convolvulaceae (bindweed) family—Add to Appendix I
87. * Walker's manioc (*Manihot walkerae*) Euphorbiaceae family—Add to Appendix I
88. * Butternut (*Juglans cinerea*) Juglandaceae (walnut) family—Add to Appendix I
89. * White ash (*Fraxinus americana*) Oleaceae (olive) family—Add to Appendix I
90. * Lanai sandalwood (*Santalum freycinetianum*) Santalaceae (sandalwood) family—Add to Appendix I
91. * Coast redwood (*Sequoia sempervirens*) Cupressaceae (redwood) family—Add to Appendix I
92. Family Cactaceae [The request was aimed at the cactus family in general, mentioning 6 species as examples]—Annotate to exclude more artificially propagated specimens
93. *Euphorbia* spp. [The request was aimed at the genus, mentioning one species (*Euphorbia lactea*) as an example]—Annotate to exclude more artificially propagated specimens

Animals—General

94. All species that are IUCN-assessed as critically endangered, endangered, and qualifying vulnerable species for which the United States is a range state or is a significant importer, and which are or may be affected by trade—Add to Appendix I or Appendix II (vulnerable qualifying species for the latter)
95. All species that could contribute to the spread of zoonotic disease—Ban all international trade

Mammals

96. * Hooded seal (*Cystophora cristata*)—Add to Appendix I
97. * Sea otter (*Enhydra lutris*)—Transfer from Appendix II to Appendix I (one subspecies, *Enhydra lutris nereis,* is listed in Appendix I)
98. * Walrus (*Odobenus rosmarus*)—Transfer from Appendix III (Canada) to Appendix I
99. * Polar bear (*Ursus maritimus*)—Transfer from Appendix II to Appendix I
100. Bighorn sheep (*Ovis canadensis*)—Mexico population—Remove Mexico's population from Appendix II
101. Malayan porcupine (*Hystrix brachyura*)—Add to Appendix II
102. Hippopotamus (*Hippopotamus amphibius*)—Transfer from Appendix II to Appendix I
103. African lion (*Panthera leo*)—Amend current annotated listing to adopt a zero quota for bones, bone pieces, bone products, claws, skeletons, skulls, and teeth traded for commercial purposes, whether from wild or captive-bred lions
104. Giraffe (*Giraffa camelopardalis* subsp.): Kordofan giraffe (*Giraffa camelopardalis antiquorum*), Nubian giraffe (*G. c. camelopardalis*), West African giraffe (*G. c. peralta*), Reticulated giraffe (*G. c. reticulata*), Rothschild's giraffe (*G. c. rothschildi*), Thornicroft's giraffe (*G. c. thornicrofti*)—Transfer from Appendix II to Appendix I
105. African elephants (*Loxodonta africana*)—Transfer populations in Botswana, Namibia, South Africa, and Zimbabwe from Appendix II to Appendix I
106. Rhinocerotidae—Revisit current international ban on rhinoceros horn
107. Old World monkeys (Genera: Cercopithecus; Colobus; Lophocebus; Miopithecus)—9 species—Transfer from Appendix II to I

Birds

108. * Atlantic puffin (*Fratercula arctica*)—Add to Appendix I
109. * Black-legged kittiwake (*Rissa tridactyla*)—Add to Appendix I
110. * Chinese egret (*Egretta eulophotes*)—Add to Appendix I
111. * Common pochard (*Aythya ferina*)—Add to Appendix I
112. * Evening grosbeak (*Hesperiphona vespertina*)—Add to Appendix I
113. * Florida scrub-jay (*Aphelocoma coerulescens*)—Add to Appendix I
114. * Hawaiian duck (*Anas wyvilliana*)—Add to Appendix I
115. * Java sparrow (*Lonchura oryzivora*)—Transfer from Appendix II to Appendix I
116. * Iiwi (*Drepanis coccinea*)—Add to Appendix I
117. * Long-tailed duck (*Clangula hyemalis*)—Add to Appendix I
118. * Omao (*Myadestes obscurus*)—Add to Appendix I
119. * Snowy owl (*Nyctea scandiaca,* synonym *Bubo scandiacus*)—Transfer from Appendix II to Appendix I
120. * Steller's eider (*Polysticta stelleri*)—Add to Appendix I
121. * Yellow-billed magpie (*Pica nutalli*)—Add to Appendix I
122. Greater green leafbird (*Chloropsis sonnerati*)—Add to Appendix II
123. Black-throated laughingthrush (*Garrulax* (*Ianthocincla*) *chinensis*)—Add to Appendix II
124. Collared laughingthrush (*Trochalopteron yersini*)—Add to Appendix II
125. Magpie-robins and shamas *Copsychus* spp. [7 species]—Add to Appendix II [7 species]
126. Passerine songbirds identified by Parties as species of conservation concern that are subject to unsustainable trade—Support proposals to add to Appendix II or Appendix I depending on conservation status
127. * All Neotropical seed-finches and seedeaters (*Sporophila* spp., Family Thraupidae [~43 species])—Add to Appendix II [~43 species]
128. * White-collared seed eater (*Sporophila morelleti*)—Add to Appendix II

Reptiles

129. * Wood turtle (*Glyptemys insculpta*)—Transfer from Appendix II to Appendix I
130. * Spotted turtle (*Clemmys guttata*)—Transfer from Appendix II to Appendix I
131. * Blanding's turtle (*Emydoidea blandingii*)—Transfer from Appendix II to Appendix I
132. * Diamondback terrapin (*Malaclemys terrapin*)—Transfer from Appendix II to Appendix I
133. * Wattle-necked softshell turtle (*Palea steindachneri*)—Transfer from Appendix II to Appendix I
134. * Red-eared slider (*Trachemys scripta*)—Transfer from Appendix II to Appendix I
135. Mud turtles (*Kinosternon* spp. [~20 species of which 6 occur in the United States] (The remainder include *K. acutum, K. alamosae, K. angustipons, K. chimalhuaca, K. cora, K. creaseri, K. dunni, K. durangoense, K. herrerai, K. integrum, K. leucostomum, K. leucostomum, K. oaxacae, K. scorpioides, K. vogti,* and *K. sonoriense longifemorale*)—Add to Appendix I or II [~20 species]
136. Horned lizards (*Phrynosoma* spp. [21 species—18 to be added to CITES])—Add to Appendix I or II [18 species]
137. Masked water snakes, puff-faced water snakes (*Homalopsis* spp. [5 species])—Add to Appendix II [5 species]
138. Rattlesnakes (*Crotalus* spp. [30 species])—Add to Appendix II [30 species]

Amphibians

139. * Pigeon Mountain salamander (*Plethodon petraeus*)—Add to Appendix I
140. Laos warty newt (*Laotriton laoensis*)—Add to Appendix I
141. Bug-eyed frogs, mossy frogs (*Theloderma* spp.])—Add to Appendix II [~28 species]

Sharks & Rays

142. * Scalloped hammerhead (*Sphyrna lewini*)—Transfer from Appendix II to Appendix I
143. * Great hammerhead (*Sphyrna mokarran*)—Transfer from Appendix II to Appendix I
144. * Smooth hammerhead (*Sphyrna zygaena*)—Transfer from Appendix II to Appendix I
145. Additional shark species [ultimate goal: All sharks ~500+ species]—Add to Appendix II/Support proposals to add to Appendix II
146. * Oceanic whitetip shark (*Carcharhinus longimanus*)—Transfer from Appendix II to Appendix I
147. * Dusky shark (*Carcharhinus obscurus*)—Add to Appendix I
148. * Spinner shark (*Carcharhinus brevipinna*)—Add to Appendix II
149. * Silky shark (*Carcharhinus falciformis*)—Transfer from Appendix II to Appendix I (AWI requests to add to Appendix II, but it's already on Appendix II)
150. * Night shark (*Carcharhinus signatus*)—Add to Appendix I
151. * Sandbar shark (*Carcharhinus plumbeus*)—Add to Appendix II
152. * Basking shark (*Cetorhinus maximus*)—Transfer from Appendix II to Appendix I
153. * Longfin mako (*Isurus paucus*)—Transfer from Appendix II to Appendix I
154. * Shortfin mako (*Isurus oxyrinchus*)—Transfer from Appendix II to Appendix I
155. * Whale shark (*Rhincodon typus*)—Transfer from Appendix II to Appendix I
156. * Common thresher (*Alopias vulpinus*)—Transfer from Appendix II to Appendix I
157. * White shark (*Carcharodon carcharias*)—Transfer from Appendix II to Appendix I
158. * Kitefin shark (*Dalatias licha*)—Add to Appendix I or II
159. * Tope (*Galeorhinus galeus*)—Add to Appendix I
160. * Porbeagle (*Lamna nasu*)—Transfer from Appendix II to Appendix I
161. * Spiny dogfish (*Squalus acanthias*)—Add to Appendix I or II
162. * Atlantic nurse shark (*Ginglymostoma cirratum*)—Add to Appendix II
163. * Gulper shark (*Centrophorus granulosus*)—Add to Appendix I
164. * Mosaic gulper shark (*Centrophorus tessellatus*)—Add to Appendix I
165. * Pacific sharpnose shark (*Rhizoprionodon longurio*)—Add to Appendix II
166. * Atlantic devilray (*Mobula hypostoma*)—Transfer from Appendix II to Appendix I
167. * Sicklefin devilray (*Mobula tarapacana*)—Transfer from Appendix II to Appendix I
168. * Giant manta ray (*Manta birostris,* synonym *Mobula birostris*)—Transfer from Appendix II to Appendix I
169. * Spotted eagle ray (*Aetobatus ocellatus*)—Add to Appendix I
170. * Whitespotted eagle ray (*Aetobatus narinari*)—Add to Appendix II
171. * Bullnose eagle ray (*Myliobatis freminvillii*)—Add to Appendix II
172. * American cownose ray (*Rhinoptera bonasus*)—Add to Appendix II
173. * Spiny butterfly ray (*Gymnura altavela*)—Add to Appendix II
174. * Winter skate (*Leucoraja ocellata*)—Add to Appendix I
175. * Thorny skate (*Amblyraja radiata*)—Add to Appendix I

Bony Fishes

176. * American eel (*Anguilla rostrata*)—Add to Appendix II
177. * Atlantic bluefin tuna (*Thunnus thynnus*)—Add to Appendix I
178. * Pacific bluefin tuna (*Thunnus orientalis*)—Add to Appendix I
179. * Bigeye tuna (*Thunnus obesus*)—Add to Appendix I
180. * Brown-marbled grouper (*Epinephelus fuscoguttatus*)—Add to Appendix I
181. * Camouflage grouper (*Epinephelus polyphekadion*)—Add to Appendix I
182. * Nassau grouper (*Epinephelus striatus*; global and Gulf of Mexico)—Add to Appendix I
183. * Red grouper (*Epinephelus morio*)—Add to Appendix I or II
184. * Black grouper (*Mycteroperca bonaci*)—Add to Appendix I
185. * Yellow-fin grouper [Gulf of Mexico] (*Mycteroperca venenosa*)—Add to Appendix I
186. * Yellowmouth grouper (*Mycteroperca interstitialis*)—Add to Appendix I
187. * Bluefish (*Pomatomus saltatrix*)—Add to Appendix I
188. * Blue marlin (*Makaira nigricans*)—Add to Appendix I
189. * California sheephead (*Semicossyphus pulcher*)—Add to Appendix I
190. * Carolina pygmy sunfish (*Elassoma boehlkei*)—Add to Appendix I
191. Cubera snapper (*Lutjanus cyanopterus*)—Add to Appendix I
192. * Red snapper (*Lutjanus campechanus*)—Add to Appendix I
193. * Golden tilefish (*Lopholatilus chamaeleonticeps*)—Add to Appendix I
194. * Hogfish (*Lachnolaimus maximus*)—Add to Appendix I
195. * Humphead wrasse (*Cheilinus undulatus*)—Add to Appendix I
196. Maya hamlet (*Hypoplectrus maya*)—Add to Appendix I
197. * Mexican blindcat (*Prietella phreatophila*)—Add to Appendix I
198. * Roundnose grenadier (*Coryphaenoides rupestris*)—Add to Appendix I
199. * Squaretail coralgrouper (*Plectropomus areolatus*)—Add to Appendix I

200. * Tarpon (*Megalops atlanticus*)—Add to Appendix I
201. * Vermilion snapper (*Rhomboplites aurorubens*)—Add to Appendix I
202. * Peppermint goby (*Coryphopterus lipernes*)—Add to Appendix I
203. * Glass goby (*Coryphopterus hyalinus*)—Add to Appendix I or II
204. * Masked goby (*Coryphopterus personatus*)—Add to Appendix I or II
205. * Broadstripe goby (*Elacatinus prochilos*)—Add to Appendix I or II
206. * Lined seahorse (*Hippocampus erectus*)—Transfer from Appendix II to Appendix I
207. * Slender seahorse (*Hippocampus reidi*)—Transfer from Appendix II to Appendix I
208. * Thorny seahorse (*Hippocampus histrix*)—Transfer from Appendix II to Appendix I
209. * Spotted seahorse (*Hippocampus kuda*)—Transfer from Appendix II to Appendix I
210. Tiger-tail seahorse (*Hippocampus comes*)—Transfer from Appendix II to Appendix I

Invertebrates

211. Giant armored trapdoor spider (*Liphistius malayanus*)—Add to Appendix I
212. Tarantulas (*Typhochlaena* spp. [5 species])—Add to Appendix I [5 species]
213. * Blue coral (*Heliopora coerulea*)—Transfer from Appendix II to Appendix I
214. * Cactus coral (*Pavona cactus*)—Transfer from Appendix II to Appendix I
215. * Cactus coral (*Pavona decussata*)—Transfer from Appendix II to Appendix I
216. * Daisy coral (*Alveopora allingi*)—Transfer from Appendix II to Appendix I
217. * Daisy coral (*Alveopora verrilliana*)—Transfer from Appendix II to Appendix I
218. * Disc coral (*Turbinaria mesenterina*)—Transfer from Appendix II to Appendix I
219. * Disc coral (*Turbinaria peltata*)—Transfer from Appendix II to Appendix I
220. * Disc coral (*Turbinaria reniformis*)—Transfer from Appendix II to Appendix I
221. * Galaxy coral (*Galaxea astreata*)—Transfer from Appendix II to Appendix I
222. * Hawaiian reef coral (*Montipora dilatata*)—Transfer from Appendix II to Appendix I (Order is listed under Appendix II)
223. * Montipora coral (*Montipora angulata*)—Transfer from Appendix II to Appendix I
224. * Montipora coral (*Montipora calcarea*)—Transfer from Appendix II to Appendix I
225. * Montipora coral (*Montipora caliculata*)—Transfer from Appendix II to Appendix I
226. * Porites coral (*Porites pukoensis*)—Transfer from Appendix II to Appendix I
227. * Porites coral (*Porites horizontalata*)—Transfer from Appendix II to Appendix I
228. * Porites coral (*Porites nigrescens*)—Transfer from Appendix II to Appendix I
229. * Scleractinian coral (*Psammocora stellata*)—Transfer from Appendix II to Appendix I
230. * Staghorn coral (*Acropora acuminata*)—Transfer from Appendix II to Appendix I
231. * Staghorn coral (*Acropora aspera*)—Transfer from Appendix II to Appendix I
232. * Staghorn coral (*Acropora horrida*)—Transfer from Appendix II to Appendix I
233. * Staghorn coral (*Acropora paniculata*)—Transfer from Appendix II to Appendix I
234. * Staghorn coral (*Acropora polystoma*)—Transfer from Appendix II to Appendix I
235. * Staghorn coral (*Acropora vaughani*)—Transfer from Appendix II to Appendix I
236. * Star coral (*Astreopora cucullata*)—Transfer from Appendix II to Appendix I
237. Brown sandfish (*Holothuria spinifera*)—Add to Appendix II
238. Golden sandfish (*Holothuria scabra*)—Add to Appendix II
239. * White teatfish (*Holothuria fuscogilva*)—Add to Appendix II
240. * American horseshoe crab (*Limulus polyphemus*)—Add to Appendix I or II
241. * Black abalone (*Haliotis cracherodii*)—Add to Appendix I
242. * Florida cone (*Conus anabathrum*)—Add to Appendix II
243. Wallace's giant bee (*Megachile pluto,* synonym *Chalicodoma pluto*)—Add to Appendix I

Request for Information and Comments

We invite information and comments concerning any of the possible CoP19 species proposals discussed above. Please note that we are unlikely to submit any suggested species proposals to amend the CITES Appendices that contained no information (or minimal information) for consideration other than species name and Appendix suggestion. We have limited resources with which to analyze and prepare potential species proposals for consideration by the Conference of the Parties to CITES and are unable to prioritize consideration of these recommendations for preparation of U.S. proposals to CoP19 where no information (or minimal information) has been presented demonstrating the CITES criteria are met for the suggested species proposal. We may still consider these possible proposals if we receive information demonstrating the CITES criteria in Resolution Conf. 9.24 (Rev. CoP17) are met.

We note that in our request for information in our first **Federal Register** notice for CoP19 (86 FR 12199–12202, March 2, 2021), we encouraged the submission of information on possible species proposals, including if these species are subject to international trade that is, or may become, detrimental to the survival of the species. We outlined the information that should be submitted, and we included information on the CITES criteria for inclusion of species in Appendices I and II and the format for proposals to amend the Appendices (in Resolution Conf. 9.24 (Rev. CoP17) *https://cites.org/sites/default/files/document/E-Res-09-24-R17.pdf*). We also asked that commenters submit convincing information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of enforcement efforts; and (3) the level of international trade as well as domestic trade in the species, especially trend information.

You must submit your information and comments to us no later than the date specified in **DATES**, above, to ensure that we consider them. We will not consider comments sent by email or fax, or to an address not listed in **ADDRESSES**. Comments and materials received will be posted for public inspection on *https://www.regulations.gov* (see **ADDRESSES**). We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us. If you submit a comment via *https://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *https://www.regulations.gov.* We will make all comments and materials submitted by organizations or

businesses, and by individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Future Actions

We expect the CITES Secretariat to provide us with a provisional agenda for CoP19 within the next several months. Once we receive the provisional agenda, we will publish it in a **Federal Register** notice and provide the Secretariat's website address. We will also provide the provisional agenda on our website, at *https://www.fws.gov/program/cites/conference-parties-cites.*

The United States must submit any proposals to amend Appendix I or II for discussion at CoP19, to the CITES Secretariat 150 days (*i.e.,* by June 17, 2022) prior to the start of the meeting. In order to meet this deadline and to prepare for CoP19, we have developed a tentative U.S. schedule. We will consider all available information and comments we receive during the comment period for this **Federal Register** notice as we decide which species proposal items warrant submission by the United States for consideration by the Parties. Approximately 4 months prior to CoP19, we will post on our website an announcement of the species proposals, draft resolutions, draft decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at CoP19.

Through a series of additional notices and website postings in advance of CoP19, we will inform you about preliminary negotiating positions on resolutions, decisions, and amendments to the Appendices proposed by other Parties for consideration at CoP19. We will also publish an announcement of a public meeting to be held approximately 2 to 3 months prior to CoP19, to receive public input on our positions regarding CoP19 issues. The procedures for developing U.S. documents and negotiating positions for a meeting of the Conference of the Parties to CITES are outlined in 50 CFR 23.87. As noted in paragraph (c) of that section, we may modify or suspend the procedures outlined there if they would interfere with the timely or appropriate development of documents for submission to the CoP and of U.S. negotiating positions.

Authors

The primary author of this notice is Thomas E.J. Leuteritz, Ph.D., Branch Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–08871 Filed 4–25–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–WSFR–2022–0035; FVWF97820900000–XXX–FF09W13000 and FVWF54200900000–XXX–FFO9W13000; OMB Control Number 1018–0088]

Agency Information Collection Activities; National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), we, the U.S. Fish and Wildlife Service (Service), are proposing to revise a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before June 27, 2022.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference OMB Control No. 1018–0088 in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–WSFR–2022–0035.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the information collection request (ICR) at *https://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 its implementing regulations in the Code of Federal Regulations (CFR) at 5 CFR 1320, 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.

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: The information collected for the National Survey of Fishing, Hunting and Wildlife-Associated Recreation (FHWAR) assists the Fish

and Wildlife Service in administering the Wildlife and Sport Fish Restoration grant programs. The 2022 FHWAR survey will provide up-to-date information on the uses and demands for wildlife-related recreation resources and a basis for developing and evaluating programs and projects to meet existing and future needs.

We collect the information in conjunction with carrying out our responsibilities under the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777–777m) and the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669–669i). Under these acts, as amended, we provide approximately $1 billion in grants annually to States for projects that support sport fish and wildlife management and restoration, including:

- Improvement of fish and wildlife habitats,
- Fishing and boating access,
- Fish stocking, and
- Hunting and fishing opportunities.

We also provide grants for aquatic education and hunter education, maintenance of completed projects, and research into problems affecting fish and wildlife resources. These projects help to ensure that the American people have adequate opportunities for fish and wildlife recreation. We conduct the survey about every 5 years. The 2022 FHWAR survey will be the 14th conducted since 1955. We sponsor the survey at the States' request, which is made through the Association of Fish and Wildlife Agencies. We contract with the National Opinion Research Center (NORC) at the University of Chicago, which collects the information using internet, telephone, or mail-in paper-and-pencil instrument (PAPI).

Respondents are invited to take the survey with a mailed letter. NORC will select a sample of sportspersons and wildlife watchers from a household screen and conduct three detailed interviews during the survey year. The survey collects information on the number of days of participation, species of animals sought, and expenditures for trips and equipment. Information on the characteristics of participants includes age, income, sex, education, race, and State of residence. The Wave 3 Freshwater/Saltwater Ratio Questionnaire is designed to get freshwater and saltwater fishing data for coastal states. The Wildlife and Sportfish Restoration Program is required to divide fishing management funds according to the ratio of freshwater and saltwater anglers in each coastal state.

Federal and State agencies use information from the survey to make policy decisions related to fish and wildlife restoration and management. Participation patterns and trend information help identify present and future needs and demands. Land management agencies use the data on expenditures and participation to assess the value of wildlife-related recreational uses of natural resources. Wildlife-related recreation expenditure information is used to estimate the impact on the economy and to support the dedication of tax revenues for fish and wildlife restoration programs.

Proposed Revisions

The 2022 FHWAR does not currently include the questions on birdwatching participation and days of participation that had been asked in previous rounds of the FHWAR. However, due to high interest in the birdwatching data, we are submitting an amendment to add these questions to the survey. These questions will be included in Wave 3 and will ask about participation in birdwatching and days of participation for the 12-month reference period of 2022. The sample will not be affected and will be the same across modes.

Below are the questions we will add to the Wave 3 wildlife watching questionnaire:

- Last year (from January 1 to December 31, 2022), did you closely observe or try to identify birds around your home, meaning the area within a 1-mile radius of your home?
- Last year (from January 1 to December 31, 2022), on how many days did you closely observe or try to identify birds around your home?
- Last year (from January 1 to December 31, 2022), on your wildlife watching trips or outings within the United States, did you closely observe birds?
- Last year (from January 1 to December 31, 2022), on how many days did you closely observe birds on your wildlife watching trips or outings within the United States?

Title of Collection: National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR).

OMB Control Number: 1018–0088.

Form Number: None.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Individuals/households.

Respondent's Obligation: Voluntary.

Frequency of Collection: Screener data collection will be conducted from January through March 2022. The first detailed sportsperson and wildlife-watcher interviews will be conducted in May 2022. The second detailed interviews will be conducted in September 2022. The third and final detailed interviews will be conducted in January 2023.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated number of household responses	Median completion time per response (minutes)	Estimated burden hours *
2022 Screener Survey:			
Screener: Web	27,639	9	4,146
Screener: Phone	1,000	15	250
Screener: PAPI	31,361	10	5,227
2022 Wave 1 Survey:			
Wave Questionnaires: Web	43,068	13	9,331
Wave Questionnaires: Phone	833	22	305
Wave Questionnaires: PAPI	6,972	14	1,627
2022 Wave 2 Survey:			
Wave Questionnaires: Web	32,173	13	6,971
Wave Questionnaires: Phone	833	22	305
Wave Questionnaires: PAPI	3,645	14	851
2022 Wave 3 Survey:			
Wave Questionnaires: Web	46,773	13	10,134
Wave Questionnaires: Phone	950	22	348
Wave Questionnaires: PAPI	11,811	14	2,756

Activity	Estimated number of household responses	Median completion time per response (minutes)	Estimated burden hours *
Wave 3 Fishing Only Questionnaire	13,500	3	675
Grand Total:	220,558		42,926

* Rounded.

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.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–08763 Filed 4–25–22; 8:45 am]

BILLING CODE 4333–15–P

NATIONAL INDIAN GAMING COMMISSION

Notice of Approved Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of Class III tribal gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

DATES: This notice is applicable April 26, 2022.

FOR FURTHER INFORMATION CONTACT: Tearanie McCain, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register** is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Beginning September 30, 2021, the NIGC will publish the notice of approved gaming ordinances quarterly, by March 31, June 30, September 30, and December 31 of each year.

Every approved tribal gaming ordinance, every approved ordinance amendment, and the approval thereof, will be posted on the Commission's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances within five (5) business days of approval. Also, the Commission will make copies of approved Class III ordinances available to the public upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Tearanie McCain, C/O Department of the Interior, 1849 C Street NW, MS #1621, Washington, DC 20240.

The following constitutes a consolidated list of all Tribes for which the Chairman has approved tribal gaming ordinances authorizing Class III gaming.

1. Absentee-Shawnee Tribe of Indian of Oklahoma
2. Agua Caliente Band of Cahuilla Indians
3. Ak-Chin Indian Community of the Maricopa Indian Reservation
4. Alabama-Quassarte Tribal Town
5. Alturas Indian Rancheria
6. Apache Tribe of Oklahoma
7. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation
8. Augustine Band of Cahuilla Indians
9. Bad River Band of Lake Superior Tribe of Chippewa Indians
10. Barona Group of Captain Grande Band of Mission Indians
11. Bay Mills Indian Community
12. Bear River Band of Rohnerville Rancheria
13. Berry Creek Rancheria of Tyme Maidu Indians
14. Big Lagoon Rancheria
15. Big Pine Band of Owens Valley Paiute Shoshone Indians
16. Big Sandy Rancheria Band of Western Mono Indians
17. Big Valley Band of Pomo Indians
18. Bishop Paiute Tribe
19. Blackfeet Tribe
20. Blue Lake Rancheria of California
21. Bois Forte Band of the Minnesota Chippewa Tribe
22. Buena Vista Rancheria of Me-Wuk Indians
23. Burns Paiute Tribe
24. Cabazon Band of Mission Indians
25. Cachil DeHe Band of Wintun Indians of the Colusa Indian Community
26. Caddo Nation of Oklahoma
27. Cahto Indian Tribe of the Laytonville Rancheria
28. Cahuilla Band of Mission Indians
29. California Valley Miwok Tribe
30. Campo Band of Diegueno Mission Indians
31. Catawba Indian Nation
32. Chemehuevi Indian Tribe
33. Cher-Ae Heights Indian Community of the Trinidad Rancheria
34. Cherokee Nation of Oklahoma
35. Cheyenne and Arapaho Tribes
36. Cheyenne River Sioux Tribe
37. Chickasaw Nation of Oklahoma
38. Chicken Ranch Rancheria of Me-Wuk Indians
39. Chippewa-Cree Tribe of the Rocky Boy's Reservation
40. Chitimacha Tribe of Louisiana
41. Choctaw Nation of Oklahoma
42. Citizen Potawatomi Nation
43. Cloverdale Rancheria of Pomo Indians
44. Cocopah Indian Tribe
45. Coeur d'Alene Tribe
46. Colorado River Indian Tribes
47. Comanche Nation of Oklahoma
48. Confederated Salish and Kootenai Tribes of the Flathead Reservation
49. Confederated Tribes and Bands of the Yakama Nation
50. Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon
51. Confederated Tribes of the Chehalis Reservation
52. Confederated Tribes of the Colville Reservation

53. Confederated Tribes of the Grand Ronde Community of Oregon
54. Confederated Tribes of Siletz Indians of Oregon
55. Confederated Tribes of the Umatilla Reservation
56. Confederated Tribes of the Warm Springs Reservation
57. Coquille Indian Tribe
58. Coushatta Tribe of Louisiana
59. Cow Creek Band of Umpqua Indians of Oregon
60. Cowlitz Indian Tribe
61. Coyote Valley Band of Pomo Indians of California
62. Crow Creek Sioux Tribe
63. Crow Indian Tribe of Montana
64. Delaware Tribe of Western Oklahoma
65. Delaware Tribe of Indians
66. Dry Creek Rancheria of Pomo Indians of California
67. Eastern Band of Cherokee Indians
68. Eastern Shawnee Tribe of Oklahoma
69. Eastern Shoshone Tribe of the Wind River Indian Reservation
70. Elem Indian Colony of Pomo Indians
71. Elk Valley Rancheria
72. Ely Shoshone Tribe of Nevada
73. Enterprise Rancheria of the Maidu Indians of California
74. Ewiiaapaayp Band of Kumeyaay Indians
75. Fallon Paiute-Shoshone Tribes
76. Federated Indians of Graton Rancheria
77. Flandreau Santee Sioux Tribe of South Dakota
78. Fond du Lac Band of Lake Superior Chippewa
79. Forest County Potawatomi Community
80. Fort Belknap Indian Community
81. Fort Independence Indian Community of Paiute Indians
82. Fort McDermitt Paiute-Shoshone Tribe of Nevada and Oregon
83. Fort McDowell Yavapai Nation
84. Fort Mojave Indian Tribe of Arizona, California and Nevada
85. Fort Sill Apache Tribe of Oklahoma
86. Gila River Indian Community
87. Grand Portage Band of Chippewa Indians
88. Grand Traverse Band of Ottawa and Chippewa Indians
89. Greenville Rancheria of Maidu Indians of California
90. Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
91. Guidiville Band of Pomo Indians
92. Habematolel Pomo of Upper Lake
93. Hannahville Indian Community
94. Ho-Chunk Nation of Wisconsin
95. Hoopa Valley Tribe
96. Hopland Band of Pomo Indians
97. Hualapai Indian Tribe
98. Huron Potawatomi, Inc.
99. Iipay Nation of Santa Ysabel of California
100. Ione Band of Miwok Indians
101. Iowa Tribe of Kansas and Nebraska
102. Iowa Tribe of Oklahoma
103. Jackson Rancheria Band of Miwuk Indians
104. Jamestown S'Klallam Tribe of Washington
105. Jamul Band of Mission Indians
106. Jena Band of Choctaw Indians
107. Jicarilla Apache Nation
108. Kaibab Band of Paiute Indians
109. Kalispel Tribe of Indians
110. Karuk Tribe
111. Kashia Band of Pomo Indians of the Stewarts Point Reservation
112. Kaw Nation
113. Keweenaw Bay Indian Community
114. Kialegee Tribal Town
115. Kickapoo Traditional Tribe of Texas
116. Kickapoo Tribe of Indians in Kansas
117. Kickapoo Tribe of Oklahoma
118. Kiowa Tribe of Oklahoma
119. Klamath Tribes
120. Klawock Cooperative Association
121. Kootenai Tribe of Idaho
122. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
123. Lac du Flambeau Band of Lake Superior Chippewa Indians
124. Lac Vieux Desert Band of Lake Superior Chippewa Indians
125. La Jolla Band of Luiseno Indians
126. La Posta Band of Mission Indians
127. Las Vegas Paiute Tribe
128. Leech Lake Band of Chippewa Indians
129. Little River Band of Ottawa Indians
130. Little Traverse Bay Bands of Odawa Indians
131. Lower Brule Sioux Tribe
132. Lower Elwha Klallam Tribe
133. Lower Sioux Indian Community
134. Lummi Indian Tribe
135. Lytton Rancheria of California
136. Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria
137. Manzanita Band of Mission Indians
138. Mashantucket Pequot Tribe
139. Mashpee Wampanoag Tribe
140. Match-E-Be-Nash-She-Wish Band of the Potawatomi Indians of Michigan
141. Mechoopda Indian Tribe of Chico Rancheria
142. Menominee Indian Tribe of Wisconsin
143. Mescalero Apache Tribe
144. Miami Tribe of Oklahoma
145. Middletown Rancheria of Pomo Indians
146. Mille Lacs Band of Ojibwe
147. Mississippi Band of Choctaw Indians
148. Moapa Band of Paiute Indians
149. Modoc Tribe of Oklahoma
150. Mohegan Indian Tribe of Connecticut
151. Mooretown Rancheria of Maidu Indians
152. Morongo Band of Mission Indians
153. Muckleshoot Indian Tribe
154. Muscogee (Creek) Nation
155. Narragansett Indian Tribe
156. Navajo Nation
157. Nez Perce Tribe
158. Nisqually Indian Tribe
159. Nooksack Indian Tribe
160. North Fork Rancheria of Mono Indians of California
161. Northern Arapaho Tribe of the Wind River Indians
162. Northern Cheyenne Tribe
163. Nottawaseppi Huron Band of Potawatomi
164. Oglala Sioux Tribe
165. Ohkay Owingeh Pueblo of San Juan
166. Omaha Tribe of Nebraska
167. Oneida Nation of New York
168. Oneida Tribe of Indians of Wisconsin
169. Osage Nation
170. Otoe-Missouri Tribe of Indians
171. Ottawa Tribe of Oklahoma
172. Paiute-Shoshone Indians of the Bishop Community
173. Pala Band of Luiseno Mission Indians
174. Pascua Yaqui Tribe of Arizona
175. Paskenta Band of Nomlaki Indians
176. Pauma Band of Mission Indians
177. Pawnee Nation of Oklahoma
178. Pechanga Band of Mission Indians
179. Peoria Tribe of Indians of Oklahoma
180. Picayune Rancheria of Chukchansi Indians
181. Pinoleville Band of Pomo Indians
182. Pit River Tribe
183. Poarch Band Creek Indians
184. Pokagon Band of Potawatomi Indians of Michigan
185. Ponca Tribe of Oklahoma
186. Ponca Tribe of Nebraska
187. Port Gamble S'Klallam Tribe
188. Prairie Band of Potawatomi Nation
189. Prairie Island Indian Community
190. Pueblo of Acoma
191. Pueblo of Isleta
192. Pueblo of Jemez
193. Pueblo of Laguna
194. Pueblo of Nambe
195. Pueblo of Picuris
196. Pueblo of Pojoaque
197. Pueblo of San Felipe
198. Pueblo of Sandia
199. Pueblo of Santa Ana
200. Pueblo of Santa Clara
201. Pueblo of Santo Domingo
202. Pueblo of Taos
203. Pueblo of Tesuque
204. Puyallup Tribe of Indians
205. Pyramid Lake Paiute Tribe
206. Quapaw Tribe of Indians

207. Quartz Valley Indian Community
208. Quechan Tribe of Fort Yuma Indian Reservation
209. Quileute Tribe
210. Quinault Indian Nation
211. Red Cliff Band of Lake Superior Chippewa Indians
212. Red Cliff, Sokaogon Chippewa and Lac Courte Oreilles Band
213. Red Lake Band of Chippewa Indians
214. Redding Rancheria
215. Redwood Valley Rancheria of Pomo Indians
216. Reno-Sparks Indian Colony
217. Resighini Rancheria of Coast Indian Community
218. Rincon Band of Luiseno Mission Indians
219. Robinson Rancheria of Pomo Indians
220. Rosebud Sioux Tribe
221. Round Valley Indian Tribe
222. Sac & Fox Nation of Oklahoma
223. Sac & Fox Tribe of Mississippi in Iowa
224. Sac & Fox Nation of Missouri in Kansas and Nebraska
225. Saginaw Chippewa Indian Tribe of Michigan
226. Salt River Pima-Maricopa Indian Community
227. Samish Indian Tribe
228. San Carlos Apache Tribe
229. San Manual Band of Mission Indians
230. San Pasqual Band of Diegueno Mission Indians
231. Santa Rosa Rancheria Tachi-Yokut Tribe
232. Santa Ynez Band of Chumash Mission Indians
233. Santa Ysabel Band of Diegueno Mission Indians
234. Sauk-Suiattle Indian Tribe
235. Sault Ste. Marie Tribe of Chippewa Indians
236. Scotts Valley Band of Pomo Indians
237. Seminole Nation of Oklahoma
238. Seminole Tribe of Florida
239. Seneca Nation of Indians of New York
240. Seneca-Cayuga Tribe of Oklahoma
241. Shakopee Mdewakanton Sioux Community
242. Shawnee Tribe
243. Sherwood Valley Rancheria of Pomo Indians
244. Shingle Springs Band of Miwuk Indians
245. Shinnecock Indian Nation
246. Shoalwater Bay Indian Tribe
247. Shoshone Tribe of the Wind River Reservation
248. Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho
249. Shoshone-Paiute Tribe of the Duck Valley Indian Reservation
250. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
251. Skokomish Indian Tribe
252. Smith River Rancheria
253. Snoqualmie Tribe
254. Soboba Band of Luiseno Indians
255. Sokaogon Chippewa Community
256. Southern Ute Indian Tribe
257. Sprite Lake Tribe
258. Spokane Tribe of Indians
259. Squaxin Island Tribe
260. St. Croix Chippewa Indians of Wisconsin
261. St. Regis Mohawk Tribe
262. Standing Rock Sioux Tribe
263. Stillaguamish Tribe of Indians
264. Stockbridge-Munsee Community
265. Suquamish Tribe of the Port Madison Reservation
266. Susanville Indian Rancheria
267. Swinomish Indian Tribal Community
268. Sycuan Band of Diegueno Mission Indians
269. Table Mountain Rancheria
270. Te-Moak Tribe of Western Shoshone Indians of Nevada
271. Thlopthlocco Tribal Town
272. Three Affiliated Tribes of the Fort Berthold Reservation
273. Timbisha Shoshone Tribe
274. Tohono O'odham Nation
275. Tolowa Dee-ni' Nation
276. Tonkawa Tribe of Oklahoma
277. Tonto Apache Tribe
278. Torres Martinez Desert Cahuilla Indians
279. Tulalip Tribes of Washington
280. Tule River Tribe
281. Tunica-Biloxi Indians of Louisiana
282. Tuolumne Band of Me-Wuk Indians
283. Turtle Mountain Band of Chippewa Indians
284. Twenty-Nine Palms Band of Mission Indians
285. United Auburn Indian Community
286. Upper Sioux Community
287. Upper Skagit Indian Tribe of Washington
288. Ute Mountain Ute Tribe
289. U-tu-Utu-Gwaitu Paiute Tribe of Benton Paiute Reservation
290. Viejas Band of Kumeyaay Indians
291. Wampanoag Tribe of Gay Head
292. Washoe Tribe of Nevada and California
293. White Earth Band of Chippewa Indians
294. White Mountain Apache Tribe
295. Wichita and Affiliated Tribes of Oklahoma
296. Wilton Rancheria
297. Winnebago Tribe of Nebraska
298. Wiyot Tribe of Table Bluff Reservation
299. Wyandotte Nation of Oklahoma
300. Yankton Sioux Tribe
301. Yavapai Apache Nation of the Camp Verde Indian Reservation
302. Yavapai-Prescott Indian Tribe
303. Yerington Paiute Tribe
304. Yocha-De-He Wintun Nation
305. Yurok Tribe

National Indian Gaming Commission.

Michael Hoenig,

General Counsel.

[FR Doc. 2022–08853 Filed 4–25–22; 8:45 am]

BILLING CODE 7565–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Computer Network Security Equipment and Systems, Related Software, Components Thereof, and Products Containing Same DN 3614;* 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 Centripetal Network, Inc. on April 19, 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 computer network security equipment and systems, related software, components thereof, and products containing same. The complainant names as respondent: Keysight Technologies, Inc. of Santa Rosa, CA. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order; 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 respondent, 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. 3614'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 20, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–08818 Filed 4–25–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed Collection Comments Requested; New Collection: National Pretrial Reporting Program (NPRP)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 87, Number 31, page 8607, on Tuesday, February 15, 2022, allowing a 60-day comment period. Following publication of the 60-day notice, BJS received three comments. The first comment recommended use of a specific technology as a means to ease the burden on data providers. The second comment recommended the inclusion of people charged with misdemeanors. BJS did not make these changes; BJS has technology suitable to this data collection and misdemeanors would expand the scope of this data collection beyond what BJS feels can be achieved in this iteration. The third comment suggested a focus on electronic monitoring as a condition of release, which BJS feels the current data collection adequately addresses.

DATES: Comments are encouraged and will be accepted for 30 days until June 27, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The Title of the Form/Collection:* The National Pretrial Reporting Program (NPRP).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Data Extraction Guide is NPRP–1. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be local general jurisdiction courts, jails and pretrial services agencies or their information technology (IT) staff. Among other responsibilities, the Bureau of Justice Statistics is charged with collecting data regarding the prosecution of crimes by state and federal offices. The NPRP will focus on the pretrial phase of felony case processing in large counties. This effort will collect information from jails, pretrial services agencies and general jurisdiction courts by requesting data extracts associated with felony filings from case management systems. A total of 125 of the largest 200 counties in the U.S. will be sampled with the top 75 counties sampled with certainty.

BJS will request complete case-level records from the 125 sampled counties and connect data files within jurisdictions through defendant identifiers. The files will then be linked to defendant criminal histories for a comprehensive data file on pretrial release and detention. BJS is requesting that the extracts include all felony cases filed in 2019. BJS is also requesting that the extracts include arrest charges, defendant demographics, pretrial release decisions, pretrial misconduct, case disposition and sentencing. Local jails, pretrial services agencies and courts can provide the data extracts in any format.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS will send a data extraction guide to a total of 375 agencies within 125 jurisdictions (one court, one jail, and one pretrial service agency for each county). The expected burden placed on each agency is about 16 hours per agency for data extraction and 10 hours to explain any data inconsistencies or to answer questions of the data collection team.

(6) An estimate of the total public burden (in hours) associated with the collection: The total respondent burden is approximately 9,750 burden hours for the 375 agencies.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 21, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–08860 Filed 4–25–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of cancellation and rescheduling a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given to cancel the public meeting of the ACA previously scheduled for Thursday, April 28, 2022. The meeting has been re-scheduled for Monday, May 16, 2022, and will be held in-person at the U.S. Department of Labor (DOL), Frances Perkins Building, 200 Constitution Avenue NW, Washington, DC 20210. All meetings of the ACA are open to the public.

DATES: The meeting will begin at approximately 10:00 a.m. Eastern Daylight Time on Monday, May 16, 2022, and adjourn at approximately 5:00 p.m. Due to evolving COVID 19 safety protocols, members of the public are asked to join the meeting virtually so that the Department can effectively manage the number of in-person participants. The DOL can accommodate 3,000 virtual participants. For any member of the public unable to join the meeting virtually on Monday, May 16, 2022, please note that a meeting summary will be posted on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer, Mr. John V. Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room C–5321, Washington, DC 20210; Email: *Advisory CommitteeonApprenticeship@dol.gov;* Telephone: (202) 693–2796 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The ACA is a discretionary committee reestablished by the Secretary of Labor on May 4, 2021, in accordance with FACA (5 U.S.C. app. 2 section 10), as amended in 5 U.S.C. app. 2, and its implementing regulations (41 CFR 101–6 and 102–3). The first meeting of the ACA was held on Wednesday, October 6, 2021; the second meeting of the ACA was held on Wednesday, January 26, 2022; and the third meeting is being held on Monday, May 16, 2022.

Instructions To Attend the Meeting

All meetings are open to the public. To promote greater access, webinar and audio conference technology will be used to support public participation in the meeting. The login instructions outlined below will also be posted prominently on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings.* If individuals have special needs and/or disabilities that will require special accommodations, please contact Kenya Huckaby at (202) 693–3795 or via email at *huckaby.kenya@dol.gov* no later than Monday, May 9, 2022.

Virtual Log-In Instructions: Members of the public should join the meeting virtually using the link below. Please use the access code if you are joining by phone and use the event password if you are joining by computer.

Link: https://usdolevents.webex.com/usdolevents/j.phpMTID=m647e892b37421c5f37431b836ab6ff56.

Telephone Users: VoIP or dial 877–465–7975; Access code: 2761 990 0648.

Computer Users: Event password: Welcome!24.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd via email at *AdvisoryCommitteeonApprenticeship@dol.gov* using the subject line ''May 2022 ACA Meeting.'' Such submissions will be included in the record for the meeting if received by Monday, May 9, 2022. See below regarding members of the public wishing to speak at the ACA meeting.

Purpose of the Meeting and Topics To Be Discussed

The primary purpose of the May 16th meeting is for the ACA to discuss and approve the final Six-Month Interim report. Anticipated agenda topics for this meeting include the following:

- Subcommittee Final Presentations and Discussion
- Departmental Remarks
- Full Committee Vote on Six-Month Interim Report
- Federal Workforce Initiatives
- Road Map Ahead and Implications for Future Topics
- Public Comment
- Adjourn

The agenda and meeting logistics may need to be updated should priority items emerge between the time of this publication and the scheduled date of the ACA meeting. All meeting updates will be posted to the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings.* Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Officer, Mr. John V. Ladd, via email at *Advisory CommitteeonApprenticeship@dol.gov,* by Monday, May 9, 2022. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–08791 Filed 4–25–22; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of an Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice includes the summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before May 26, 2022.

ADDRESSES: You may submit your comments identified by the Docket No. MSHA–2022–0021 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0021.
2. *Facsimile:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *petitionsformodification@dol.gov* (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor (Secretary) determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–006–C.

Petitioner: ICG Beckley, LLC, P.O. Box 49, Eccles, West Virginia 25836.

Mine: Beckley Pocahontas Mine, MSHA ID No. 46–05252, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.312 (c), Mine Fan Examination and Records.

Modification Request: The petitioner requests a modification of the existing mandatory standard, 30 CFR 75.312 (c), as it relates to examination requirements. ICG Beckley, LLC is requesting a petition for modification for the following reasons (1) Beckley Pocahontas Mine produces 4.9M cubic feet of methane according to the last total liberation results and (2) Stopping the 2,500 horsepower (HP) motor can create unnecessary electrical and mechanical wear on the motor.

The petitioner states in lieu of shutting the fan down, the following measures will be implemented:

(a) A dispatcher is on duty at all times that persons are underground.

(b) The fan signal is located in the dispatcher's office where it is easily heard.

(c) The existing automatic fan signal device is a Circular Chart Recorder.

(d) The fan signal is activated when the fan pressure falls below 3 inches of water gauge as measured by the chart recorder.

(e) A back-up fan that provides the same quantity of air as the main fan and can easily be started is provided and ready for use.

(f) Both the main mine fan and back-up fan have operating pressures of approximately 6 inches of water gauge as measured by the chart recorder.

(g) A ball valve will be installed in the tubing connecting the fan ductwork to the chart recorder to permit continuous monitoring of the fan pressure while the fan is running.

(h) During the 31-day check in accordance with 30 CFR 75.312 (c), the ball valve to the fan ductwork will be closed allowing the pressure to the chart recorder to drop and signal the alarm.

(i) The fan pressure signal will be tested by closing the ball valve to simulate pressure loss.

(j) Twice per year, the fan signal will be tested by shutting the fan down in accordance with 30 CFR 75.312 (c).

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the applicable standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–08829 Filed 4–25–22; 8:45 am]

BILLING CODE 4520–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (22–032)]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

Ref.: 87 FR 21671–21672.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning. This meeting was announced in the **Federal Register** on April 12, 2022 (see reference above).

DATES: Tuesday, May 3, 2022, 9:00 a.m.–5:00 p.m.; and Wednesday, May 4, 2022, 8:00 a.m.–12:00 p.m., Eastern Time.

ADDRESSES: Due to current COVID–19 issues affecting NASA Headquarters occupancy, public attendance will be virtual only. See dial-in and Webex information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355 or *karshelia.kinard@nasa.gov.*

SUPPLEMENTARY INFORMATION: As noted above, this meeting is virtual and will take place telephonically and via Webex. Any interested person must use a touch-tone phone to participate in this meeting. The Webex connectivity information for each day is provided below. For audio, when you join the Webex event, you may use your computer or provide your phone number to receive a call back, otherwise, call the U.S. toll conference number listed for each day.

On Tuesday, May 3, the event address for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m0afaa930581f437b424591c939afbe52.* The event number is 2761 111 3129 and the event password is MCkiXzM@385 (62549961 from phones). If needed, the U.S. toll conference number is 1–415–527–5035 or 1–929–251–9612 and access code is 2761 111 3129.

On Wednesday, May 4, the event address for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m3da7d2f15271487a78503d5d51db7879.* The event number is 2760 394 0075 and the event password is paPvE8PA@54 (72783872 from phones). If needed, the U.S. toll conference number is 1–415–527–5035 or 1–929–251–9612 and access code is 2760 394 0075.

The agenda for the meeting includes the following topics:

—Science Mission Directorate (SMD) Missions, Programs and Activities

It is imperative that the meeting be held on these dates due to the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–08880 Filed 4–25–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by May 26, 2022. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, at the above address, 703–292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2023–001

1. *Applicant:* Michelle Shero, 266 Woods Hole Rd., Woods Hole, MA 02543.

Activity for Which Permit is Requested: Take, Harmful Interference, Import into USA, Export From USA. The applicant requests an Antarctic Conservation Permit authorizing activities associated marine mammal research in Antarctica. Proposed research activities involve conducting physiological studies on Weddell seals (*Leptonychotes weddellii*) in Erebus Bay, McMurdo Sound, to determine factors that contribute to lifetime reproductive success and overall fitness. The applicant would capture, and handle 26 adult-pup pairs each year over the course of the reproductive cycle. Adult Weddell seals will be handled 5 times per season at different points in their reproductive cycle and pups will be handled 3 times between parturition and post-weaning each year. Each capture will involve sedation, health exams, sample collection, ultrasound and possibly the deployment of dive instruments. Sampling procedures include blood and tissue sampling, weighing, flipper tagging, ultrasound and taking of morphometric measurements. The applicant also proposes importing and any salvaged tissue or scat collected opportunistically during research activities.

Location: Erebus Bay, McMurdo Sound, Antarctica.

Dates of Permitted Activities: October 2, 2022–September 30, 2027.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–08883 Filed 4–25–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received and permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of a requested permit modification issued.

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–7420; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF), as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2020–013) to Dr. Nicholas Teets on January 2, 2020. The issued permit allows the permit holder and agents to access sites along the Antarctic Peninsula, including ASPAs 108, 126, and 134, to collect midges (*Belgica antarctica*) for physiology and genetic studies.

A recent modification to this permit, dated January 17, 2021, included ASPA 149 to the list of protected areas authorized for entry under this permit.

Now the applicant proposes a modification to extend the expiration date of the permit, which is set to expire July 1, 2022. Unforeseen circumstances due to the COVID–19 pandemic resulted in delayed fieldwork which will now be conducted during the 2022–2023 Antarctic research season.

The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

DATES: January 2, 2020–July 1, 2023.

The permit modification was issued on April 15, 2022.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–08884 Filed 4–25–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, May 10, 2022.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW, Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

68241 Aviation Investigative Report—Collision into Terrain, Safari Aviation Inc., Airbus AS350 B2, N985SA, Kekaha, Hawaii, December 26, 2019, ANC20MA010.

CONTACT PERSON FOR MORE INFORMATION: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

Media Information Contact: Eric Weiss email at *eric.weiss@ntsb.gov* or at (202) 314–6100.

Any press and public attending in person must comply with the COVID–19 guidelines and may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, May 4, 2022.

Additional Information: The public is invited to attend the Safety Board's meeting live by webcast at the Web address *http://ntsb.windrosemedia.com.* Further information about attending in person will be posted on *www.ntsb.gov* and NTSB social media sites closer to the event date.

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

The National Transportation Safety Board is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Dated: Friday, April 22, 2022.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2022–08945 Filed 4–22–22; 4:15 pm]

BILLING CODE 7533–01–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: Thursday, May 5, 2022, at 9:00 a.m.; Thursday, May 5, 2022, at 4:00 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, in the Benjamin Franklin Room.

STATUS: Thursday, May 5, 2022, at 9:00 a.m.—Closed. Thursday, May 5, 2022, at 4:00 p.m.—Open.

MATTERS TO BE CONSIDERED:

Thursday, May 5, 2022, at 9:00 a.m. (Closed)

1. Strategic Issues.
2. Financial and Operational Matters.
3. Personnel Matters.
4. Executive Session.
5. Administrative Items.

Thursday, May 5, 2022, at 4:00 p.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.

3. Approval of the Minutes.
4. Committee Reports.
5. Quarterly Financial Report.
6. Quarterly Service Performance Report.
7. Approval of Tentative Agenda for August 9 Meeting.

A public comment period will begin immediately following the adjournment of the open session on May 5, 2022. During the public comment period, which shall not exceed 45 minutes, members of the public may comment on any item or subject listed on the agenda for the open session above. Additionally, the public will be given the option to join the public comment session and participate via teleconference. Registration of speakers at the public comment period is required. Should you wish to participate via teleconference, you will be required to give your first and last name, a valid email address to send an invite and a phone number to reach you should a technical issue arise. Speakers may register online at *https://www.surveymonkey.com/r/bog-05-05-2022.* No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes. Registration for the public comment period, either in person or via teleconference, will end on May 3 at 5 p.m. ET. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2022–09013 Filed 4–22–22; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94764; File No. SR–NYSEArca–2022–22]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.37AP–O

April 20, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 8, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.37AP–O (Market Maker Quotations). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rule 6.37AP–O to clarify the Exchange's handling of certain Market Maker quotations on Pillar as set forth below.[4]

Rule 6.37AP–O(a)(1) provides that the term ''quote'' or ''quotation'' means ''a bid or offer sent by a Market Maker that is not sent as an order,'' [5] and that ''[a] quotation sent by a Market Maker will replace a previously displayed same-side quotation that was sent from the same order/quote entry port of that Market Maker.'' Thus, under the current rule, any Market Maker quotations in a given option series would be replaced, *i.e.,* ''updated,'' when that Market Maker sends a subsequent same-side quote in the same series from the same quote entry port.

The Exchange proposes to modify Rule 6.37AP–O(a)(1) to make clear that ''[i]f multiple same-side quotations are submitted via the same quote entry port, the Exchange will display the Market Maker's most recent same-side quotation.'' [6] This proposed additional detail is designed to clarify the Exchange's handling of successive Market Maker quotations (from the same quote entry port in the same side and series) should a Market Maker's quotations queue during a period of excessive message traffic. No system, including Pillar, has unlimited capacity. As such, the Exchange seeks to clarify that, should the Exchange be in receipt of multiple same-side quotations in the same series from the same Market Maker, the Exchange would display only the most recent quotation to ensure accurate representation of that Market Maker's quoting interest.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change to specify the Exchange handling of successive quotations in the same option series would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors. This proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 6.37AP–O describes Market Maker quoting obligations, including defining ''quotation,'' describing the treatment of each such quotation, and specifying Market Maker and LMM quoting obligations. The Exchange notes that because it has not yet migrated to the Pillar platform, Rule 6.37A–O continues to apply to the Market Maker quotations, which rule is not being modified by this filing. At the time of this filing, the Exchange has not announced the planned migration date(s) for Pillar but will do so via Trader Update.

[5] Rule 6.37AP–O(a)(2) provides that a Market Maker may designate either a Non-Routable Limit Order or an ALO Order as a quote and such quotes would be processed as described in Rule 6.62P–O(e).

[6] *See* proposed Rule 6.37AP–O(a)(1).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

additional detail would clarify the Exchange's handling of multiple Market Maker quotations (from the same quote entry port in the same side and series) should a Market Maker's quotations queue during a period of excessive message traffic. No system, including Pillar, has unlimited capacity. The Exchange therefore believes that displaying only the most recent Market Maker quote when it is in receipt of multiple same-side quotations in the same series from such Market Maker, would protect investors and the public interest by ensuring accurate representation of that Market Maker's quoting interest. The Exchange also believes that the proposed change would add clarity and transparency to Exchange rules making them easier to navigate and comprehend.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather to clarify the Exchange's handling of certain Market Maker quotations. The proposed change would apply to all similarly-situated Market Makers and would inure to the benefit of all market participants because the proposed rule change is designed to ensure accurate representation of a Market Maker's quoting interest, particularly at times of excessive quote message traffic.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [13] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2022–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2022–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEArca–2022–22 and should be submitted on or before May 17, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08801 Filed 4–25–22; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94761; File No. SR–BX–2022–008]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Clearly Erroneous Pilot Until July 20, 2022

April 20, 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 April 18, 2022, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, 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

The Exchange proposes to extend the current pilot program related to BX Equity 11, Rule 11890 (Clearly Erroneous Transactions) to the close of business on July 20, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the proposed rule change is to extend the current pilot program related to Equity 11, Rule 11890, Clearly Erroneous Transactions, to the close of business on July 20, 2022. The pilot program is currently due to expire on April 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Equity 11, Rule 11890 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[3] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[4] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[5]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan'').[6] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[7] In light of that change, the Exchange amended Equity 11, Rule 11890 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[8] Subsequently, the Exchange amended Rule 11890 to extend the pilot's effectiveness to the close of business on April 20, 2022.[9]

The Exchange now proposes to amend Equity 11, Rule 11890 to extend the pilot's effectiveness for a further three months until the close of business on July 20, 2022. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.[10] In such an event, the remaining sections of Rule 11890 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 11890.

The Exchange does not propose any additional changes to Equity 11, Rule 11890. Extending the effectiveness of Rule 11890 for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Equity 11, Rule 11890 for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–BX–2010–040).

[4] *See* Securities Exchange Act Release No. 68818 (February 1, 2013), 78 FR 9100 (February 7, 2013) (SR–BX–2013–010).

[5] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–BX–2014–021).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[7] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019). (approving Eighteenth Amendment to LULD Plan).

[8] *See* Securities Exchange Act Release No. 85613 (April 11, 2019), 84 FR 16077 (April 17, 2019) (SR–BX–2019–009).

[9] *See* Securities Exchange Act Release No. 93328 (October 14, 2021), 86 FR 58116 (October 20, 2021) (SR–BX–2021–046).

[10] *See* notes 3—5, *supra.* The prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2022–008 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–BX–2022–008. 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–BX–2022–008 and should be submitted on or before May 17, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08798 Filed 4–25–22; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94763; File No. SR–NASDAQ–2022–033]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Clearly Erroneous Pilot Until July 20, 2022

April 20, 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 April 18, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, 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

The Exchange proposes to extend the current pilot program related to Nasdaq Equity 11, Rule 11890 (Clearly Erroneous Transactions) to the close of business on July 20, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 the proposed rule change is to extend the current pilot program related to Equity 11, Rule 11890, Clearly Erroneous Transactions, to the close of business on July 20, 2022. The pilot program is currently due to expire on April 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Equity 11, Rule 11890 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[3] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[4] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[5]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan'').[6] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[7] In light of that change, the Exchange amended Equity 11, Rule 11890 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[8] Subsequently, the Exchange amended Rule 11890 to extend the pilot's effectiveness to the close of business on April 20, 2022.[9]

The Exchange now proposes to amend Equity 11, Rule 11890 to extend the pilot's effectiveness for a further three months until the close of business on July 20, 2022. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.[10] In such an event, the remaining sections of Rule 11890 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 11890.

The Exchange does not propose any additional changes to Equity 11, Rule 11890. Extending the effectiveness of Rule 11890 for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Equity 11, Rule 11890 for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NASDAQ–2010–076).

[4] *See* Securities Exchange Act Release No. 68819 (February 1, 2013), 78 FR 9438 (February 8, 2013) (SR–NASDAQ–2013–022).

[5] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NASDAQ–2014–044).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[7] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[8] *See* Securities Exchange Act Release No. 85603 (April 11, 2019), 84 FR 16064 (April 17, 2019) (SR–NASDAQ–2019–028).

[9] *See* Securities Exchange Act Release No. 93361 (October 15, 2021), 86 FR 58370 (October 21, 2021) (SR–NASDAQ–2021–080).

[10] *See* notes 3–5, *supra*. The prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–033 and should be submitted on or before May 17, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08800 Filed 4–25–22; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94762; File No. SR–ICEEU–2022–009]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

April 20, 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 April 12, 2022, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4)(ii) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to amend Part N of its Delivery Procedures (''Delivery Procedures'' or ''Procedures'') to include delivery specifications applicable to a new ICE Futures Europe futures contract, the ICE Deliverable Carbon Credit Contract, and to make certain conforming changes elsewhere in the Delivery Procedures. Such contracts would be settled by delivery of qualifying carbon credits through a Registry approved by the Clearing House and in the same manner as delivery under ICE Deliverable US Emissions Contracts.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend Part N of its Delivery Procedures to include delivery procedures applicable to settlement of a new ICE Futures Europe futures contract, the ICE Futures Europe Carbon Credit Contract, which will be cleared by ICE Clear Europe. The amendments to Part N would detail settlement procedures applicable to ICE Futures Europe Carbon Credit Contracts (i) for which physical delivery is specified as being ''Applicable'' in the relevant Contract Terms, and (ii) which go to physical delivery on the expiry date (such contracts ''ICE Deliverable Carbon Credit Contracts''). The amendments would make certain other clarifications to Part N, which also addresses ICE Deliverable US Emissions Contracts, as well as conforming changes elsewhere in the Delivery Procedures. As a result of the amendments, settlement under ICE Deliverable Carbon Credit Contracts would generally be made under the same delivery procedures as settlement under ICE Deliverable US Emissions Contracts, except as noted in the amended procedures.

The amendments to Part N would clarify that the definition of ''Allowance'' means any and all transferrable or assignable interests (in property, equity, contract or otherwise) in an instrument, certificate, permit, asset, security, right, contract or allowance that is designed as a deliverable instrument for an ICE Deliverable US Emissions Contract in the relevant Contract Terms.

A parallel definition of ''Carbon Credit'' would be added for the ICE Deliverable Carbon Credit Contract, which would provide that such any and all transferrable or assignable interests (in property, equity, contract or otherwise) in an instrument, certificate, permit, asset, security, right, contract or allowance that is designed as a deliverable instrument for an ICE Deliverable Carbon Contract in the relevant Contract Terms.

The definition of ''Registry'' and the details about the procedures relating to bilateral delivery (*i.e.,* delivery directly between a seller and buyer, rather than through a Clearing House account) through a Registry approved by the Clearing House would be updated to apply to the physical delivery of Carbon Credits under ICE Deliverable Carbon Credit Contracts (as applicable) in addition to the physical delivery of Allowances under US Emissions Contracts (as applicable).

The discussion about the Clearing House's processes with respect to Exchange for Physicals (EFPs) and Exchange for Swaps (EFSs) would be updated to apply to EFPs and EFSs made in accordance with ICE Futures Europe Rules and Procedures (to address the ICE Deliverable Carbon Credit Contracts) in addition to ICE Futures US Rules and procedures (as applicable).

The amendments would add a new paragraph 2.6 to the Delivery Specifications section which specifies that, for the avoidance of doubt, (i) the Registry would be a Delivery Facility; and (ii) Allowances and Carbon Credits shall be Deliverables (both changes tie the delivery specifications to relevant defined terms used in the Rules).

The amendments would update the discussion of limitations of liability for the Clearing House and ICE Futures US to also apply to ICE Futures Europe (as the exchange for the ICE Deliverable Carbon Credit Contracts).

Finally, the section describing and providing a Delivery Timetable detailing processes and timing related to the delivery of Allowances under ICE Deliverable US Emissions Contracts would be updated to apply to delivery of Carbon Credits under the ICE Deliverable Carbon Credit Contracts as well (as applicable).

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures are consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Delivery Procedures are designed to establish delivery procedures relating to new ICE Delivery Carbon Credit Contracts to be traded on ICE Futures Europe and cleared at ICE Clear Europe, under which physical delivery will be made through the Registry approved by the Clearing House. The amendments would also set out the role, responsibilities and liabilities of the Clearing House, Clearing Members and designated transferors and transferees in the physical delivery process, in line with Delivery Procedures for other types of ICE Futures US Emissions Contracts, particularly the ICE Deliverable US Emissions Contracts. ICE Deliverable Carbon Credit Contracts will be supported by ICE Clear Europe's existing F&O financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contracts and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.[7] (In ICE Clear Europe's view,

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).[8])

In addition, Rule 17Ad–22(e)(10)[9] provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries.'' As discussed above, the amendments would include in Part N procedures applicable to the settlement of ICE Deliverable Carbon Credit Contracts that are to be settled by delivery through a Registry approved by the Clearing House. The procedures would address, among other matters and in line with the procedures applicable to ICE Deliverable US Emissions Contracts, bilateral delivery specifications for ICE Deliverable Carbon Credit Contracts, limitation of liability for the Clearing House and ICE Futures Europe in respect of the delivery of such contracts, and certain other documentation and timing matters, consistent with the requirements of the Clearing House. Clearance of the ICE Deliverable Carbon Credit Contracts would be supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad–22(e)(10).[10]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments to the Delivery Procedures are intended to establish delivery procedures for a new contract to be traded on ICE Futures Europe and cleared at ICE Clear Europe, the ICE Deliverable Carbon Credit Contracts. Delivery of ICE Deliverable Carbon Credit Contracts will be made through a Registry approved by the Clearing House. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in the new contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and paragraph (f) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2022–009 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–ICEEU–2022–009. 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2022–009 and should be submitted on or before May 17, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08799 Filed 4–25–22; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(10).

[10] 17 CFR 240.17Ad–22(e)(10).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–019, OMB Control No. 3235–0012]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 15b1–1/Form BD

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 15b1–1 (17 CFR 240.15b1–1) and Form BD (17 CFR 249.501) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form BD is the application form used by firms to apply to the Commission for registration as a broker-dealer, as required by Rule 15b1–1. Form BD also is used by firms other than banks and registered broker-dealers to apply to the Commission for registration as a municipal securities dealer or a government securities broker-dealer. In addition, Form BD is used to change information contained in a previous Form BD filing that becomes inaccurate.

The total industry-wide annual time burden imposed by Form BD is approximately 3,703 hours, based on approximately 9,842 responses (175 initial filings + 9,667 amendments). Each application filed on Form BD requires approximately 2.75 hours to complete and each amended Form BD requires approximately 20 minutes to complete. (175×2.75 hours = 481 hours; $9{,}667 \times 0.33333333$ hours = 3,222 hours; 481 hours + 3,222 hours = 3,703 hours.) The staff believes that a broker-dealer would have a Compliance Manager complete and file both applications and amendments on Form BD at a cost of approximately $344/hour. Consequently, the staff estimates that the total internal cost of compliance associated with the annual time burden is approximately $1,273,832 per year ($344 × 3,703).

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers, and government securities broker-dealers, and where the Commission, other regulators, and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers, and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

Completing and filing Form BD is mandatory in order to engage in broker-dealer activity. Compliance with Rule 15b1–1 does not involve the collection of confidential information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by June 27, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 20, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08778 Filed 4–25–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94765; File No. SR–Phlx–2022–19]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Clearly Erroneous Pilot Until July 20, 2022

April 20, 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 April 18, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Phlx Equity 4, Rule 3312 (Clearly Erroneous Transactions) to the close of business on July 20, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the proposed rule change is to extend the current pilot program related to Equity 4, Rule 3312, Clearly Erroneous Transactions, to the close of business on July 20, 2022. The pilot program is currently due to expire on April 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Equity 4, Rule 3312 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NASDAQ–2010–076).

Following this, on September 30, 2010, the Exchange adopted changes to conform its Rule 3312 to Nasdaq's and BX's rules 11890.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan'').[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In light of that change, the Exchange amended Equity 4, Rule 3312 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[9] Subsequently, the Exchange amended Rule 3312 to extend the pilot's effectiveness to the close of business on April 20, 2022.[10]

The Exchange now proposes to amend Equity 4, Rule 3312 to extend the pilot's effectiveness for a further three months until the close of business on July 20, 2022. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.[11] In such an event, the remaining sections of Rule 3312 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 3312.

The Exchange does not propose any additional changes to Equity 4, Rule 3312. Extending the effectiveness of Rule 3312 for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Equity 4, Rule 3312 for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

[4] *See* Securities Exchange Act Release No. 63023 (September 30, 2010), 75 FR 61802 (October 6, 2010) (SR–Phlx–2010–125).

[5] *See* Securities Exchange Act Release No. 68820 (February 1, 2013), 78 FR 9436 (February 8, 2013) (SR–Phlx–2013–12).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–Phlx–2014–27).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[9] *See* Securities Exchange Act Release No. 85632 (April 11, 2019), 84 FR 16057 (April 17, 2019) (SR–Phlx–2019–14).

[10] *See* Securities Exchange Act Release No. 93330 (October 14, 2021), 86 FR 58128 (October 20, 2021) (SR–Phlx–2021–61).

[11] *See* notes 3–6, *supra*. The prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the

Continued

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–19 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–Phlx–2022–19. 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–Phlx–2022–19 and should be submitted on or before May 17, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08802 Filed 4–25–22; 8:45 am]

BILLING CODE 8011–01–P

Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

SBA Council on Underserved Communities Meeting

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the second meeting of the SBA Council on Underserved Communities. The meeting will be in person for Council members and streamed live to the public.

DATES: The meeting will be held on Wednesday, May 4th, 2022, from 10:00 a.m. to 12:30 p.m. Eastern Standard Time.

ADDRESSES: The Council on Underserved Communities will meet at The U.S. Small Business Administration, 409 3rd Street SW, Washington DC and live streamed on Zoom for the public. To Register sign up here: *https://www.zoomgov.com/webinar/register/WN_VA0osYA-Rxe08i0i2gC_ZA.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., appendix 2), SBA announces the meeting of the SBA Council on Underserved Communities (the ''Council''). The Council is tasked with providing advice, ideas and opinions on SBA programs and services and issues of interest to small businesses in underserved communities. For more information, please visit *http://www.sba.gov/cuc.*

The purpose of the meeting is to provide the Council with information on SBA's efforts to support small businesses in underserved communities, as well as provide an opportunity for the Council to discuss its goals for the coming months. The Council will provide insights based on information they have heard from their communities and discuss areas of interest for further research and recommendation development.

FOR FURTHER INFORMATION CONTACT: The meeting will be live streamed to the public, and anyone wishing to submit questions to the SBA Council on Underserved Communities can do so by submitting them via email to *underservedcouncil@sba.gov,* Additionally, if you need accommodations because of a disability or require additional information, please contact Bajeyah Eaddy, SBA, Office of the Administrator, 409 Third Street SW, Washington, DC 20416, 202–941–5997 or *Bajeyah.Eaddy@sba.gov.*

Dated: April 20, 2022.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–08807 Filed 4–25–22; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17406 and #17407; ARKANSAS Disaster Number AR–00121]

Administrative Declaration of a Disaster for the State of Arkansas

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Arkansas dated 04/20/2022.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/30/2022.

DATES: Issued on 04/20/2022.

Physical Loan Application Deadline Date: 06/20/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 01/20/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Washington

Contiguous Counties:

Arkansas: Benton, Crawford, Madison

Oklahoma: Adair

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438
Businesses with Credit Available Elsewhere	5.880
Businesses without Credit Available Elsewhere	2.940
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.940
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17406 C and for economic injury is 17407 0.

The States which received an EIDL Declaration # is Arkansas, Oklahoma.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–08794 Filed 4–25–22; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Safety Oversight and Certification Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Safety Oversight and Certification Advisory Committee (SOCAC) meeting.

SUMMARY: This notice announces a meeting of the SOCAC.

DATES: The meeting will be held on May 24, 2022, from 1:00 p.m. to 4:00 p.m. Eastern Time.

Requests to attend the meeting must be received by May 10, 2022.

Requests for accommodations to a disability must be received by May 10, 2022.

Requests to submit written materials to be reviewed during the meeting must be received no later than May 10, 2022.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue SW, Washington, DC 20591, as well as virtually. If FAA is unable to hold the meeting in person due to circumstances outside of its control, FAA will notify registrants on how to attend the meeting virtually and post any updates on the FAA Committee website. Members of the public who wish to observe the meeting must RSVP by emailing *9-awa-arm-socac@faa.gov.* Information on the committee and copies of the meeting minutes will be available on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/.*

FOR FURTHER INFORMATION CONTACT: Natalie Mitchell-Funderburk, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–0254; email *9-awa-arm-socac@faa.gov.* Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The SOCAC was created under the Federal Advisory Committee Act (FACA), in accordance with the FAA Reauthorization Act of 2018, Public Law 115–254, to provide advice to the Secretary on policy-level issues facing the aviation community that are related to FAA safety oversight and certification programs and activities.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Ratification of the December 2021 Meeting Minutes
- FAA Updates
  - ➢ FAA Update on Certification & Oversight Reform
  - ➢ ODA Expert Panel

Additional information will be posted on the committee's website listed in the **ADDRESSES** section at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public for virtual or in person attendance on a first-come, first served basis, as space is limited. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section and provide the following information: full legal name, country of citizenship, and name of your industry association or applicable affiliation. When registration is confirmed, FAA will email registrants to provide meeting access information in a timely manner prior to the meeting. The U.S. Department of Transportation 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. Any member of the public may present a written statement to the committee at any time by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC.

Timothy R. Adams,

Deputy Executive Director, Office of Rulemaking.

[FR Doc. 2022–08851 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0193]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: ICAO CO_2 Certification Database

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 the Office of Management and Budget (OMB) approval for a new information collection. The collection involves the possibility for airplane manufacturers for which the airplane is subject to the applicability of Annex 16, Volume III of the Convention on Civil Aviation (hereinafter the ''Chicago Convention'') to submit electronically CO_2 Certification Database (CO_2DB) Datasheet(s) to the FAA. The information to be collected will be necessary because of FAA's commitment to help (a) provide publicly available data on the CO_2 Metric Value (MV) which represents a measure of fuel burn performance of airplane types against CO_2 technology/design standards, (b) track and communicate the improvement in airplane CO_2 MVs over time and (c) provide an incentive to improve the CO_2 MV of airplane types.

DATES: Written comments should be submitted by June 27, 2022.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Laszlo Windhoffer at (202) 267–4741, or by email at: *Laszlo.Windhoffer@faa.gov.*

SUPPLEMENTARY INFORMATION: Appendix A ''Supporting Statement A''.

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. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: ICAO CO_2 Certification Database (CO_2DB).

Form Numbers: Not applicable.

Type of Review: Clearance of a new information collection.

Background: In March 2017, the International Civil Aviation Organization (ICAO) Council adopted the Volume III of Annex 16 of the Chicago Convention (Environmental Protection) for the implementation of a new airplane CO_2 emissions standard. The Standard will apply to new airplane type designs from 2020, and to airplane type designs already in-production as of 2023. Those in-production airplane which by 2028 do not meet the standard will no longer be able to be produced unless their designs are sufficiently modified to comply with the in-production standard.

To support the implementation of Annex 16 Volume III, ICAO agreed that, similar to noise and engine emissions, an ICAO CO_2 Certification Database (CO_2DB) should be developed and continuously maintained in a publicly accessible manner. The U.S. Federal Aviation Administration will host the new database on behalf of ICAO.

The aim of the CO_2DB is to (a) Provide publicly available data on the CO_2 Metric Value (MV) which represents a measure of fuel burn performance of airplane types against CO_2 technology/design standards, (b) Track and communicate the improvement in airplane CO_2 MVs over time and (c) Provide an incentive to improve the CO_2 MV of airplane types.

The collection of data towards the CO_2DB is expected to leverage the Airplane Airworthiness Certification process, which includes; airplane performance measurement, computation of relevant metrics (*e.g.,* CO_2 MV) and submission of the information to the Certificating Authority (CA) of the State of Design. As part of the airworthiness certification process, the data/information is reviewed by the CA and approved. Given that the submission of information into the CO_2DB is voluntary, it is expected that the applicant (*e.g.,* airplane manufacturer) will decide to submit a CO_2DB Datasheet to its CA and ultimately to the U.S. FAA. If the applicant decides to submit information to the CO_2DB, the applicant will prepare a CO_2DB Datasheet by using the CO_2DB Datasheet Template that will be publicly available via the CO_2DB web page expected to be hosted on the FAA Office of Environment and Energy website.

Once the U.S. FAA collects the CO_2DB Datasheets it may conduct an information check to identify any gross errors or mistakes. Similar to other ICAO environment databases, the entity submitting the information (in this case the applicant) will be solely responsible for the accuracy of the information. If there are any questions about submissions, the U.S. FAA will communicate with the applicant to attempt to address any issues.

CO_2DB Datasheets will then be integrated into the CO_2DB and the records of changes will be updated. It is expected that the database will be available for download in a common table format (*e.g.,* Microsoft Excel file) as well as a collection of the submitted CO_2DB Datasheets. Additional background and supporting information will also be available on the CO_2DB website along with a Support Function communication mechanism (*e.g.,* email address).

Respondents: Respondents will be airplane manufacturers (or ''applicants'') subject to the applicability of Annex 16, Volume III of the Chicago Convention. From the outset, FAA expects about 3 U.S. airplane applicants to submit CO_2DB Datasheets for their certified airplanes. It should be noted that additional respondents from outside the United States (*i.e.,* Airplane Manufacturers for which the Certificating Authority is another ICAO Member State than the United States) are expected to submit CO_2DB Datasheets to the CO_2DB for their certified airplane. These non-US applicants were assumed to be outside the scope of the burden analysis contained in Supporting Statement A and were therefore not included as respondents.

Frequency: If they decide to submit information to the CO_2DB, the manufacturers will submit data after the certification of an airplane. It is expected that manufacturers would submit one CO_2DB Datasheet for each airplane model. As described in Supporting Statement A and based on historical frequency of airplane certification, each U.S. manufacturer could be expected to certificate up to two new models every three years. Thus, in mathematical terms, the FAA would expect to receive an average of

two thirds of one datasheet per year and per respondent.

Estimated Average Burden per Response: It is expected that filling and submitting a CO_2DB Datasheet could take approximately 5 hours.

Estimated Total Annual Burden: Based on the above, FAA expects that the annual submission of CO_2DB Datasheet by U.S. airplane manufacturers could take approximately 5 hours for an average of 2 submissions per year across 3 manufacturers.

Issued in Washington, DC on April 20, 2022.

Julie Marks,

Acting Executive Director, Office of Environment and Energy.

Appendix A: Supporting Statement A for the ICAO CO_2 Certification Database

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

On March 6, 2017 the United States (through its International Civil Aviation Organization [ICAO] Council Member) voted to adopt Annex 16, Vol. III of the Chicago Convention. Annex 16, Vol. III contains the Standards and Recommended Practices (SARPs) relating to the implementation of the airplane CO_2 standard.

The ICAO standard applies to (1) Subsonic jet aeroplanes, (2) All propeller-driven aeroplanes, (3) Derived versions of non-CO_2-certified subsonic jet aeroplanes, (4) Derived versions of non-CO_2 certified propeller-driven aeroplanes and (5) Individual non-CO_2-certified subsonic jet aeroplanes and propeller-driven aeroplanes. The standard applies to new airplane type designs submitted for certification after January 1, 2020, and to airplane type designs already in-production as of 2023. After January 1, 2028, airplanes that do not meet the standard may no longer be produced unless their designs are sufficiently modified.

Airplane manufacturers in the U.S. and other ICAO countries are required to show compliance with the ICAO standard at the time of airplane certification.

In February 2016, members of ICAO's Committee on Aviation Environmental Protection (CAEP) agreed that, similar to noise and engine emissions, an ICAO CO_2 Certification Database (CO_2DB) should be developed and continuously maintained in a publicly accessible manner. Information submission to the CO_2DB is done by manufacturers and by the certificating authority of the State of airplane design on a voluntary basis. It is not a requirement or standard contained in Annex 16 Volume III. The United States (FAA) agreed to host the database on behalf of ICAO.

The aim of the CO_2DB is to:

(a) Provide publicly available data on the CO_2 metric value (MV) for each certificated airplane model; MV represents a measure of fuel burn performance of airplane types against CO_2 technology/design standards.

(b) Track and communicate improvements in airplane CO_2 MVs over time.

(c) Provide an incentive to manufacturers to improve the CO_2 MV of each airplane type.

Attachments:

- Annex 16, Vol. III

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The data expected to be submitted for the CO_2DB is generated during the airworthiness certification process, which includes airplane performance measurement, computation of relevant metrics (*e.g.,* CO_2 MV) and submission of the information to the Certificating Authority (CA) of the State of Design. As part of the airworthiness certification process, the data and information are reviewed and approved by each CA.

Since submission of information to the CO_2DB is voluntary, it is the decision of the certification applicant (*e.g.,* manufacturer) to decide whether to submit CO_2DB data to its CA and ultimately to the FAA for inclusion in the database. If the applicant decides to submit information to the CO_2DB, the applicant prepares a datasheet using the CO_2DB Datasheet Template that will be available on the CO_2DB website. The template is a one-page document that requires identification of the airplane type design, whether it is a new type design or in-production, and includes airframe, engine, and propeller information

Following the decision by the certification applicant to submit to the CO_2DB, each CA will review the applicant's CO_2DB datasheet to ensure that it conforms to the database requirements. The CA will then submit the CO_2DB datasheet(s) to the FAA.

Once the FAA collects the CO_2DB datasheets, it may choose to conduct an information check to identify any gross errors or mistakes; this process is optional for the FAA as the CA remains responsible for the accuracy of the information and data contained in the CO_2DB datasheets it submits to the FAA). If there are any concerns about submissions, the FAA will communicate with the CA in an attempt to address any issues.

The FAA will integrate the datasheets into the CO_2DB and update the records of changes. The plan is to have the database available for download in a common table format (*e.g.,* Microsoft Excel file), and as a file of the submitted CO_2DB datasheets. Additional background and supporting information will also be available on the CO_2DB website along with a Support Function communication mechanism with the FAA (*e.g.,* email address).

The submission of CO_2DB datasheets will take place on an ad-hoc (not regular or recurring) basis after an airplane is certificated. One submission is expected for each airplane model following its initial type certification, and again if an airplane model is modified and it requires a recertification for CO_2 in accordance with the regulations of the State of design.

Attachment:

- CO_2DB Datasheet template

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The CO_2DB datasheet template is a Microsoft Excel-based template, which maximizes convenience for certification applicants (*i.e.,* manufacturers) and the Certificating Authority of the State of design. The application is in widespread use and allows ease of data entry. The CO_2DB datasheets will be submitted electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The CO_2 certification requirement is new in ICAO Annex 16. The conforming U.S. regulatory requirements are in process. At present, airplane certification data submitted to and collected by the FAA does not include airplane level CO_2 certification data as defined in Annex 16, Vol. III.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection will not involve small businesses or small entities.

Note: As described in section 1, the CO_2 certification requirements apply to airplane manufacturers that are generally not considered small businesses or small entities. In addition, Certificating Authorities of the State of design are government entities, not small businesses or small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

As described in section 1, information submission to the CO_2DB is done by manufacturers and the Certificating Authority of the State of design on a voluntary basis. There are no impacts to the airworthiness of an airplane if the CO_2 certification data is not reported to the CO_2DB. The aim of the CO_2DB is to: (a) Provide publicly available data on the CO_2 MV which represents a measure of fuel burn performance of airplane types against CO_2 technology/design standards; (b) Track and communicate improvements in airplane CO_2 MVs over time; and (c) Provide an incentive to improve the CO_2 MV of airplane types. The absence of CO_2 certification data in the CO_2DB would limit transparency and comparison across airplanes types and the industry worldwide.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- *Requiring respondents to report information to the agency more often than quarterly;*

None. Data is submitted voluntarily by airplane manufacturers only when airplanes are required to demonstrate compliance with the CO_2 standard.

- *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*

None. Submission is voluntary.

- *requiring respondents to submit more than an original and two copies of any*

document; requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

None.

• *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*

None.

• *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*

None.

• *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*

None.

• *requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

None.

8. Provide information on the PRA **Federal Register** Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Not applicable.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

N/A. The FAA will not be providing any payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No assurance given. Entities submitting information understand that it is a voluntary submission to a publicly available database.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

N/A. This collection does not contain any questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

• Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices. * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.

• Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under item 13.

Number of respondents (total): The FAA expects up to three U.S. airplane manufacturers to potentially submit a voluntary CO_2 certification datasheet each year. Based on agency participation with ICAO in developing the airplane CO_2 standards, the agency expects up to 12–20 non-U.S. airplane manufacturers to submit data annually, with no effect on U.S. respondents.

Frequency of submission of CO_2 certification datasheet per respondent:

▪ Each manufacturer decides whether to submit information to the CO_2DB following certification of an airplane model, with one datasheet for each airplane model. Based on the number of airplanes certificated from 1900–2019, each U.S. manufacturer could be expected to certificate up to two new models every three years. Thus, in mathematical terms, the FAA would expect to receive an average of two thirds of one datasheet from each U.S. manufacturer each year.

Hour burden per year (total): The FAA estimates that filling and submitting two (2) CO_2 certification datasheets (*i.e.,* 2 responses) would take a total of five (5) hours per year.

▪ It is estimated that the respondent will take a total of 2.5 hours to prepare and submit a CO_2 certification datasheet. The breakdown of this burden is 1 hour to fill out the datasheet, 0.5 hour for record keeping associated with the CO_2 certification, and 1 hour to disclose and submit the datasheet to the FAA.

Summary (annual numbers)	Reporting	Recordkeeping	Disclosure
Number of respondents *(U.S. respondents only)*	3	3	3
Number of responses per respondent	2/3	2/3	2/3
Time per Response	1	0.50	1
Total number of responses	2	2	2
Total burden (hours)	2	1	2

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.

Overall, this collection is estimated to result in the following:

▪ The total cost to all manufacturers of filling and submitting two CO_2 certification datasheets would be approximately $298 per year.

CO_2DB submission annualized cost (total): Based on hourly cost assumptions described in the section below: ''Explanation of CO_2 certification datasheet submission burden'', the total estimated cost for filling and submitting a CO_2 certification datasheet is approximately $149 per individual datasheet submission.

Explanation of CO_2 certification datasheet submission burden: The hourly rates for the preparation and submission of a CO_2 certification datasheet are based on a mix of wage rates that include a 50% burden on General and Operations Managers (11–1021) with an hourly rate of $59.35 and a 50% burden on a Management Analysts (13–1110) with an hourly rate of $44.92. The fully loaded rate of $74.96 was calculated using a multiplier of 1.44 based on the United States average of wage and salaries and benefits for private industry workers [U.S. BLS 2018].

Note.—The information submitted on the CO_2 certification datasheet is expected to be part of the certification data that will be gathered and recorded as part of airplane CO_2 certification requirements. The CO_2 data would be reported voluntarily for inclusion in the CO_2DB. With the exception of filling out the datasheet, there are no additional costs of collecting information in support of submissions to the CO_2DB.

Note.—The FAA notes that 12 to 20 additional manufacturers are eligible to submit airplane data into the CO_2DB. Since these are non-U.S. manufacturers that will submit to their own CAs, the FAA has no means to estimate the cost burden on these entities. This lack of information and the voluntary nature of the submission have led to our exclusion of them from this assessment.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

Estimated annualized cost to the Federal government: The total estimated costs to the Federal government related to the CO_2 certification datasheets are expected to range

from $3480 to $4600 per year all of which is expected to be considered as operating (recurring) cost.

Note.—The range of cost estimates above includes expected processing of submissions from non-U.S. manufacturers the FAA finds would be eligible to submit CO_2 certification datasheets.

Explanation of how annualized cost to the Federal government was estimated:

- Estimates of costs to the Federal government include; cost of collecting electronically submitted CO_2 certification datasheets, reviewing them, adding them to the database, publishing the database, and supporting the electronic reporting systems.
- The collection of the CO_2 certification datasheets are assumed to take 1 hour per CO_2 certification datasheet submitted.
- The review of CO_2 certification datasheets is estimated to require 4 hours for each CO_2 certification datasheet submitted.
- The electronic publication of the CO_2DB is estimated to require 8 hours per publication. Assuming 4 publications per year, the total burden to publish the CO_2DB is estimated to be 32 hours per year.
- The hourly rate ($42.67) for collecting, reviewing CO_2 certification datasheets and managing and publishing the CO_2DB are based on a mix of wage rates including a 10% burden on GS–15 with hourly rate of $57.09 and 90% burden on a GS–13 with hourly rate of $41.07 (where $42.67 is calculated as the weighted sum of; $57.09 multiplied by 0.1 and $41.07 multiplied by 0.9).

15. Explain the reasons for any program changes or adjustments.

This is a new collection; therefore, it is not a program change.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Upon receipt a new or revised CO_2DB datasheet, the FAA will integrate it into the CO_2DB and the record of changes will be updated. Data integration is a simple transfer of the limited amount of data contained in the one-page CO_2DB datasheet into a single master table.

The FAA expects that the database will be available for download in a common table format as a Microsoft Excel file). The database will also include the submitted CO_2DB datasheets in pdf format for review.

Additional background and supporting information related to the development and implementation of the CO_2DB will also be available on the CO_2DB website along with a Support Function communication mechanism (email address). Similarly to other publicly available ICAO databases hosted by other national aviation authorities, this supplemental information on FAA's website will provide detailed guidance for entities planning to provide a submission to the CO_2DB.

The CO_2DB will be published on an ad-hoc basis based on the receipt of CO_2DB datasheets. For context, similar ICAO Environmental databases are published a few times per year:

- For the ICAO Engine Emissions databank hosted and maintained by the European Aviation Safety Agency, the frequency of publication varied over time with an average of slightly more than twice a year. There are no specific/regular update patterns throughout the years (*i.e.,* updates have been published throughout the year except in August).
- For the ICAO NoisedB hosted and maintained by the French Civil Aviation Authority, the frequency of publication has been 3 to 4 times per year.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

FAA is seeking approval not to display an expiration date for the CO_2DB datasheet template. The applicability of the ICAO standard in Annex 16 Vol. III is permanent. The information requested on the CO_2DB datasheet template is not expected to change, but manufacturers may need to submit new or updated CO_2DB datasheets for new airplane certifications or modifications, or they may need to amend existing database information. FAA requests approval not to display an expiration date that may confuse an international process.

18. Explain each exception to the topics of the certification statement identified in ''Certification for Paperwork Reduction Act Submissions.''

There are no exceptions to the certification statement.

[FR Doc. 2022–08826 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0010]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 27, 2022.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2022–0010 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Spencer Stevens, Office of Planning, Environment, and Realty, 202–366–6221 and Reena Mathews Office of Planning, Environment, and Realty, 202–366–2076 Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Complete Streets Assessment.

Background: The Federal Highway Administration is committed to a Complete Streets approach that is safe, and feels safe, for everyone using the street. The Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), Section 11206, defines Complete Streets standards or policies as those which ''ensure the safe and adequate accommodation of all users of the transportation system, including pedestrians, bicyclists, public transportation users, children, older individuals, individuals with disabilities, motorists, and freight vehicles.''

While many jurisdictions across the United States have adopted Complete Streets policies directing their transportation agencies to routinely plan, design, build, and operate safe street networks for everyone, the FHWA would like to establish a baseline inventory both the enabling policies and implementation strategies for Complete Streets at the statewide level.

Through the survey, FHWA will assess the capabilities across the 50 State Departments of Transportation, as well as Washington, DC, and Puerto Rico (52 State DOTs) and establish a ''national baseline'' of Complete Streets practices. The information collected through this assessment will help better understand where FHWA can conduct research, develop additional technical

assistance, and develop tools to improve the implementation of Complete Streets at the State level.

FHWA plans to conduct the survey on a voluntary-response basis, utilizing an electronic survey platform. This is planned as a one-time information collection, and FHWA estimates that the survey will take approximately one hour to complete. The survey will consist of both multiple-choice and short-answer question formats.

Respondents: 52 State DOTs.

Frequency: Once.

Estimated Average Burden per Response: Approximately 60 minutes per respondent.

Estimated Total Annual Burden Hours: Approximately 52 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 23 U.S.C. 134 and 135; and 23 CFR chapter 1, subchapter E, part 450.

Dated: April 21, 2022.

Michael Howell,

FHWA Information Collection Officers.

[FR Doc. 2022–08876 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans) and the United States Forest Service (Plumas National Forest) to issue a special use permit to Caltrans.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, State Route 70, postmiles 46.0 to 47.0, approximately 4.3 miles northeast of the town of Pulga in the County Butte, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 23, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans District 3: Laura Loeffler, Branch Chief, Caltrans Office of Environmental Management M–1 California Department of Transportation-District 3, 703 B Street, Marysville, CA 95901. Office Hours: 8:00 a.m.–5:00 p.m., Pacific Standard Time, telephone (530) 821–4937 or email *laura.loeffler@dot.ca.gov* For FHWA, contact Shawn Oliver at (916) 498–5048 or email *Shawn.Oliver@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Restore and repair damaged section of roadway by raising the existing vertical alignment by approximately five feet, shoulder widening, replacing Bear Creek Bridge (No. 12–0039), protecting the embankment with rock slope protection and installing a retaining wall to safeguard against future flooding. The project occurs on the east bank North Fork Feather River within the Feather River Canyon in eastern Butte County, approximately 4.3 miles northeast of the town of Pulga, on State Route 70, post miles 46.0 and 47.0. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA/Finding of No Significant Impact, FONSI), approved on April 6, 2022, and in other documents in the Caltrans' project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEAS and FONSI can be viewed and downloaded from the project website at *https://dot.ca.gov/caltrans-near-me/district-3/d3-programs/d3-environmental/d3-environmental-docs/d3-butte-count.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations (40 CFR 1500 *et seq.,* 23 CFR 771);
2. National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.;*
3. Federal-Aid Highway Act, (23 U.S.C. 109, as amended by FAST Act Section 1404(a), Public Law 114–94, and 23 U.S.C. 128);
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141);
5. Clean Air Act, as amended (42 U.S.C. 7401 *et seq.* (Transportation Conformity, 40 CFR part 93);
6. Clean Water Act of 1977 *(33 U.S.C.* 1251 *et seq.*);
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987);
8. Federal Land Policy and Management Act of 1976, Public Law 94–579;
9. Noise Control Act of 1972;
10. Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);
11. Endangered Species Act of 1973 (16 U.S.C. 1531–1544 and Section 1536);
12. Executive Order 11990, Protection of Wetlands;
13. Executive Order 13186, Migratory Birds;
14. Fish and Wildlife Coordination Act of 1934, as amended;
15. Executive Order 13112, Invasive Species;
16. Executive Order 11988, Floodplain Management;
17. Title VI of the Civil Rights Act of 1964, as amended;
18. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations.
19. Department of transportation Act of 1966, Section 4(f) (49 U.S.C. 303 and 23 U.S.C. 138);
20. National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108 *et seq.*)

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Dated: April 20, 2022.

Christina Leach,

Acting Director, Planning, Environment and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2022–08825 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0177]

Parts and Accessories Necessary for Safe Operation; Exemption Renewal for the Flatbed Carrier Safety Group

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA renews the Flatbed Carrier Safety Group's (FCSG) exemption which allows the securement of metal coils on a flatbed vehicle, in a sided vehicle, or in an intermodal container loaded with eyes crosswise, grouped in rows, in which the coils are loaded to contact each other in the longitudinal direction. Motor carriers may continue to use the pre-January 1, 2004, cargo securement regulations for the transportation of groups of metal coils with eyes crosswise, as this loading configuration is not currently covered under the Agency's commodity-specific rules for securing metal coils in the Code of Federal Regulations. The Agency has concluded that granting this exemption renewal will likely maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. The Agency welcomes public comments on the renewal.

DATES: This decision is effective April 26, 2022. Comments must be received on or before May 26, 2022.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2010–0177 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA–2010–0177). Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL 14—FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2010–0177), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2010–0177'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption from the Federal Motor Carrier Safety Regulations for a 5-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FCSG has requested a five-year extension of the current exemption in Docket No. FMCSA–2010–0177.

III. Background

FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations for a five-year period (49 U.S.C. 31315(b)(2)) if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption'' (49 U.S.C. 31315(b)(1); see also 49 U.S.C. 31136(e)). FCSG has requested a five-year extension for the exemption from 49 CFR 393.120 to allow motor carriers to comply with the pre-January 1, 2004, cargo securement regulations (then at 49 CFR 393.100(c)) for the transportation of groups of metal coils with eyes crosswise. The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Current Regulation(s) Requirements

Currently, 49 CFR 393.120 specifies requirements for the securement of one or more metal coils which, individually or grouped together, weigh 5,000 pounds or more. Metal coils can be transported with eyes vertical, lengthwise, or crosswise.

Unlike the requirements for securing coils with eyes vertical (49 CFR 393.120(b)) and lengthwise (49 CFR 393.120(d)), the current securement

requirements for coils with eyes crosswise (49 CFR 393.120(c)) only speak of *individual coils;* there are no specific requirements for securing *rows of coils.* As such, a motor carrier transporting a row of coils with eyes crosswise must secure each coil as an individual coil in accordance with 49 CFR 393.120(c).

FCSG noted that the regulations in place prior to January 1, 2004, directly addressed the securement of groups of coils loaded with eyes crosswise. Section 393.100(c) previously read as follows:

(c)(3)(ii) *Coils with eyes crosswise:* Each coil or transverse row of coils loaded side by side and having approximately the same outside diameters must be secured by—

(a) A tiedown assembly through the eye of each coil, restricting against forward motion and making an angle of less than 45° with the horizontal when viewed from the side of the vehicle;

(b) A tiedown assembly through the eye of each coil, restricting against rearward motion and making an angle of less than 45° with the horizontal when viewed from the side of the vehicle; and

(c) Timbers, having a nominal cross section of 4 x 4 inches or more and a length which is at least 75 percent of the width of the coil or row of coils, tightly placed against both the front and rear sides of the coil or row of coils and restrained to prevent movement of the coil or coils in the forward and rearward directions.

(d) If coils are loaded to contact each other in the longitudinal direction and relative motion between coils, and between coils and the vehicle, is prevented by tiedown assemblies and timbers—

(1) Only the foremost and rearmost coils must be secured with timbers; and

(2) A single tiedown assembly, restricting against forward motion, may be used to secure any coil except the rearmost one, which must be restrained against rearward motion.

Application for Renewal of Exemption

FCSG applied for an exemption from 49 CFR 393.120 in 2010 to allow motor carriers to comply with the pre-January 1, 2004, cargo securement regulations for the transportation of groups of metal coils with eyes crosswise. FMCSA granted the exemption on April 14, 2011 (76 FR 20867) and renewed it on June 11, 2013 (78 FR 35087), June 4, 2015 (80 FR 31956), and again on April 21, 2017 (82 FR 18810). The exemption expires on April 13, 2022.

IV. Equivalent Level of Safety Analysis

FMCSA is not aware of any evidence showing that compliance with the pre-January 1, 2004, cargo securement regulations for the transportation of groups of metal coils with eyes crosswise, in accordance with the conditions of the original exemption, has resulted in any degradation in safety. The Agency believes that extending the exemption for a period of 5 years will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because the metal coils are grouped and secured together in the longitudinal direction, *i.e.,* ''unitized,'' with the cargo securement system meeting all of the aggregate working load limit requirements of 49 CFR 393.106(d).

V. Exemption Decision

A. Grant of Exemption

FMCSA renews the exemption for a period of 5 years subject to the terms and conditions of this decision. The renewal outlined in this notice extends the exemption from April 13, 2022, through April 13, 2027.

B. Applicability of Exemption

The exemption is restricted to motor carriers that haul metal coils with eyes crosswise in rows in which the coils are loaded to contact each other in the longitudinal direction.

C. Terms and Conditions

Motor carriers covered by the exemption must meet the following requirements while still meeting the aggregate working load limit requirements of 49 CFR 393.106(d).

Coils with eyes crosswise: If coils are loaded to contact each other in the longitudinal direction, and relative motion between coils, and between coils and the vehicle, is prevented by tiedown assemblies and timbers:

(1) Only the foremost and rearmost coils must be secured with timbers having a nominal cross section of 4 x 4 inches or more and a length which is at least 75 percent of the width of the coil or row of coils, tightly placed against both the front and rear sides of the row of coils and restrained to prevent movement of the coils in the forward and rearward directions; and

(2) The first and last coils in a row of coils must be secured with a tiedown assembly restricting against forward and rearward motion, respectively. Each additional coil in the row of coils must be secured to the trailer using a tiedown assembly.

D. Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Notification to FMCSA

Motor carriers covered by the exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5T) involving any of its CMVs operating under the terms of this exemption. The notification must include the following information:

(a) Name of the exemption: ''FCSG'';

(b) Name of the operating motor carrier;

(c) Date of the accident;

(d) City or town, and State, in which the accident occurred, or closest to the accident scene;

(e) Driver's name and license number;

(f) Vehicle number and State license number;

(g) Number of individuals suffering physical injury;

(h) Number of fatalities;

(i) The police-reported cause of the accident;

(j) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and

(k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

F. Termination

The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objects of 49 U.S.C. 31136(e) and 31315.

VI. Request for Comments

FMCSA requests comments from parties with data concerning the safety record of motor carriers transporting groups of metal coils with eyes crosswise, in accordance with the conditions of the exemption. The Agency will evaluate adverse evidence

submitted during the comment period and at any time during the 5-year period of the exemption. If safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b)(1), FMCSA will take immediate steps to revoke the FCSG exemption.

Robin Hutcheson,

Deputy Administrator.

[FR Doc. 2022–08806 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0076]

Deepwater Port License Application: New Fortress Energy Louisiana FLNG LLC

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The U.S. Coast Guard (USCG), in coordination with the Maritime Administration (MARAD), will prepare an environmental impact statement (EIS) as part of the environmental review of the New Fortress Energy Louisiana FLNG LLC (Applicant) deepwater port license application. The application proposes the ownership, construction, operation and eventual decommissioning of an offshore natural gas export deepwater port, known as New Fortress Energy Louisiana FLNG, that would be located in Federal waters approximately 16 nautical miles off the southeast coast of Grand Isle, Louisiana in a water depth of approximately 30 meters. The deepwater port would allow for the loading of liquefied natural gas (LNG) trading carriers. This Notice of Intent (NOI) requests public participation in the scoping process, provides information on how to participate and announces an informational virtual open house and virtual public meeting. Pursuant to the criteria provided in the Deepwater Port Act of 1974, as amended, Louisiana is the designated Adjacent Coastal State (ACS) for this application.

DATES: The public meeting will be held virtually, on May 11, 2022, from 6:00 p.m. to 8:00 p.m. Central Standard Time (CST). The virtual public meeting will be preceded by a virtual open house from 4:00 p.m. to 6:00 p.m. CST. The public meeting may end later than the stated time, depending on the number of persons who wish to make a comment on the record. Additionally, materials submitted in response to this request for comments on the New Fortress Energy Louisiana FLNG deepwater port license application must be submitted to the *www.regulations.gov* website or the Federal Docket Management Facility as detailed in the **ADDRESSES** section below by the close of the comment period.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0076 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0076 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* The Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2022–0076, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590. Due to flexible work schedules in response to COVID–19, call 202–493–0402 to determine facility hours prior to hand delivery.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, and/or a telephone number in a cover page so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Barton, Maritime Administration, telephone 202–366–0302, email: *Brian.Barton@dot.gov,* or Ms. Galia Kaplan, U.S. Coast Guard, telephone: 202–372–1567, email: *Galia.Kaplan@uscg.mil.* For questions regarding viewing the Docket, call Docket Operations, telephone: 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

We encourage you to attend the informational open house and virtual public meeting to learn about, and comment on, the proposed deepwater port. You will have the opportunity to submit comments on the scope and significance of the issues related to the proposed deepwater port that should be addressed in the EIS.

Speaker registration is available online *http://louisianaflngnepaprocess.com/* or by calling 1–877–589–8895. Speakers at the virtual public meeting will be recognized in the following order: Elected officials, public agencies, individuals or groups in the sign-up order and then anyone else who wishes to speak.

In order to allow everyone a chance to speak at a public meeting, we may limit speaker time, extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded and/or transcribed for inclusion in the public docket.

You may submit written material though docket submission or by contacting the MARAD or USCG project manager identified in **FOR FURTHER INFORMATION CONTACT** either in place of, or in addition to, speaking. Written material should include your name and address and will be included in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management Facility website (see **ADDRESSES**).

If you plan to participate in the open house or public meeting and need special assistance such as sign language interpretation, non-English language translator services or other reasonable accommodation, please notify MARAD or the USCG (see **FOR FURTHER INFORMATION CONTACT**) at least 5 business days in advance of the public meeting. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comment on this proposal. The comments may relate to, but are not limited to, the environmental impact of the proposed action. All comments will be accepted. The public meeting is not the only opportunity you have to comment on the New Fortress Energy Louisiana FLNG deepwater port license application. In addition to, or in place of, attending a meeting, you may submit comments directly to the Federal Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the 30-day scoping period.

The license application, comments and associated documentation, as well as the draft and final EISs (when published), are available for viewing at the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2022–0076.

Public comment submissions should include:

- Docket number MARAD–2022–0076.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronically (preferred for processing) to the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2022–0076.
- By mail to the Federal Docket Management Facility (MARAD–2022–0076), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- By fax to the Federal Docket Management Facility at 202 366–9826.

Faxed or mailed submissions must be unbound, no larger than 8½ by 11 inches and suitable for copying and electronic scanning. The format of electronic submissions should also be no larger than 8½ by 11 inches. If you mail your submission and want to know when it reaches the Federal Docket Management Facility, please include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments, all submissions will be posted, without change, to the FDMS website (*http://www.regulations.gov*) and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS website and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see Privacy Act. You may view docket submissions at the Federal Docket Management Facility or electronically on the FDMS website.

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, including the application review process, and the receipt of the current application for the proposed New Fortress Energy Louisiana FLNG deepwater port appears in the New Fortress Energy Louisiana FLNG Notice of Application, April 26, 2022 edition of the **Federal Register**. The ''Summary of the Application'' from that publication is reprinted below for your convenience.

Consideration of a deepwater port license application includes review of the proposed deepwater port's impact on the natural and human environment. For the proposed deepwater port, MARAD and the USCG are the co-lead Federal agencies for determining the scope of this review, and in this case, it has been determined that review must include preparation of an EIS. This NOI is required by 40 CFR 1501.7. It briefly describes the proposed action, possible alternatives and our proposed scoping process. You can address any questions about the proposed action, the scoping process or the EIS to the MARAD or USCG project managers identified in this notice (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), (2) evaluation of proposed deepwater port and onshore site/pipeline route alternatives or (3) denying the application, which for purposes of environmental review is the ''no-action'' alternative.

Summary of the Application

The application proposes the ownership, construction, operation, and eventual decommissioning of the New Fortress Energy (''NFE'') Louisiana FLNG deepwater port (''DWP'') terminal to be located approximately 16 nautical miles off the southeast coast of Grand Isle, Louisiana. The project proposes to source domestic natural gas from multiple supply hubs in the Southeast Louisiana local market, liquify, and export as LNG up to 2.8 million tonnes per annum (MTPA), from a deepwater port located in federal waters off Louisiana.

The project will involve the installation of two nominal 1.4 MTPA liquefaction systems (FLNG1 and FLNG2) installed in the West Delta Outer Continental Shelf Lease Block 38 (''WD–38'') in approximately 30 meters (98 feet) of water. Each system will contain three platforms consisting of natural gas processing, natural gas liquefaction, and utilities and accommodations. FLNG1 will incorporate self-elevating platforms (otherwise known as jack-up platforms or rigs), and FLNG2, which will be located adjacent to FLNG1, will utilize fixed platform structures. An additional self-elevating platform will house feed gas compressors. Other than temporary construction staging areas, there are no onshore facilities associated with the Project. Staging for construction, if needed, will utilize existing staging, laydown, and warehouse space near Port Fourchon, Port Sulphur, or Venice.

The feed gas supply to the project will be transported to the WD–38 site via the existing Kinetica Energy Express, LLC (''Kinetica'') offshore natural gas pipeline system and two newly constructed, 24-inch pipeline laterals connecting the Kinetica pipeline system to the Project. The Kinetica pipeline has been in continuous natural gas service since it was placed in service. The pipeline pressure is currently operating at 750 pounds per square inch (''psi'') with an onshore Maximum Allowable Operating Pressure (''MAOP'') of 1,000 psi and an offshore MAOP of 1,250 psi.

Both FLNG1 and FLNG2 will be connected to a single Floating LNG Storage Unit (''FSU'') via a flexible, partially submerged, 220-meter cryogenic hose transfer system. The FSU will be positioned approximately 107 meters (350 feet) from the FLNGs. To export the LNG, the FSU will receive one (1) commercially traded LNG carrier (LNGC) at a time, which will have a nominal cargo capacity of approximately 125,000 m3 to 160,000 m3. The LNGCs will berth along the starboard side of the FSU and receive the LNG cargo through a ship-to-ship transfer cargo transfer system. The LNGC will approach the DWP and depart from the DWP using an extension to the established safety fairway, which serves maritime traffic calling at the Louisiana Offshore Oil Port. Approximately 40 LNGCs will call on the Project per year.

For more information, please contact either Mr. Brian Barton, MARAD, or Ms. Galia Kaplan, as listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the EIS. Scoping begins with this notice, continues through the public comment period (see **DATES**), and ends when USCG and MARAD have completed the following actions:

- Invites the participation of Federal, state, and local agencies, any affected Indian tribe, the Applicant, and other interested persons;
- Determines the actions, alternatives and impacts described in 40 CFR 1508.25;
- Identifies and eliminates from detailed study, those issues that are not significant or that have been covered elsewhere;
- Identifies other relevant permitting, environmental review and consultation requirements;

• Indicates the relationship between timing of the environmental review and other aspects of the application process; and

• At its discretion, exercises the options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, USCG and MARAD will prepare a draft EIS. When complete, MARAD will publish a **Federal Register** notice announcing public availability of the Draft EIS. (If you want that notice to be sent to you, please contact the MARAD or USCG project manager identified in **FOR FURTHER INFORMATION CONTACT**). You will have an opportunity to review and comment on the Draft EIS. MARAD, the USCG, and other appropriate cooperating agencies will consider the received comments and then prepare the Final EIS. As with the Draft EIS, we will announce the availability of the Final EIS and give you an opportunity for review and comment. The Act requires a final public hearing be held in the ACS. Its purpose is to receive comments on matters related to whether or not a deepwater port license should be issued to the applicant by the Maritime Administrator. The final public hearing will be held after the Final EIS is made available for public review and comment.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT''s compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93).

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–08857 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Notice of Funding Opportunity for America's Marine Highway Projects

AGENCY: Maritime Administration, DOT.

ACTION: Notice of funding opportunity.

SUMMARY: This notice announces the availability of funding for grants and establishes selection criteria and application requirements for the America's Marine Highway Program (''AMHP''). The purpose of this program is to make grants available to previously designated Marine Highway Projects that support the development and expansion of documented vessels or port and landside infrastructure. The Department also seeks eligible grant projects that will strengthen American supply chains. The U.S. Department of Transportation (''DOT'' or ''Department'') will award Marine Highway Grants to implement projects or components of projects previously designated by the Secretary of Transportation (''Secretary'') under the AMHP. Only Marine Highway Projects the Secretary designates before the Notice of Funding Opportunity (''NOFO'') closing date are eligible for funding as described in this notice. This notice is amended on April 21, 2022 to reflect additional funding made available under the Consolidated Appropriations Act, 2022 and associated requirements.

DATES: Applications must be received by the Maritime Administration (''MARAD'') by 5:00 p.m. Eastern Time on June 17, 2022.

ADDRESSES: Grant applications must be submitted electronically using *Grants.gov* (*https://www.grants.gov*). Please be aware that you must complete the *Grants.gov* registration process before submitting your application and that the registration process usually takes 2 to 4 weeks to complete. Applicants are strongly encouraged to make submissions in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Fred Jones, Office of Ports & Waterways Planning, Room W21–311, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, phone 202–366–1123, or email *Fred.Jones@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during regular business hours.

SUPPLEMENTARY INFORMATION: Each section of this notice contains information and instructions relevant to the Marine Highway Grants application process. All applicants should read this notice in its entirety so that they have the information they need to submit eligible and competitive applications. Applications received after the deadline will not be considered except in the case of unforeseen technical difficulties as outlined below in Section D.6.

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A. Program Description

The Secretary, in accordance with 46 U.S.C. 55601, established a marine highway transportation grant program to implement projects or components of designated Marine Highway Projects that provide a coordinated and capable alternative to landside transportation or that promote marine highway transportation. The primary goal of the AMHP is to expand the use of the nation's navigable waters to relieve landside congestion, reduce air emissions, and generate other public benefits by increasing the efficiency of the surface transportation system, and Marine Highway Grants will be awarded to further this purpose.

The Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021) (''Bipartisan Infrastructure Law'' or ''BIL'') appropriated $25,000,000 to be awarded by the Department for Marine Highway Grants. On March 15, 2022, the Consolidated Appropriations Act, 2022 (Pub. L. 117–103, ''FY 2022 Appropriations Act'') appropriated an additional $14,819,000 for the FY 2022 AMHP. Therefore, a total of $39,819,000 in funding is now available for the FY 2022 AMHP. This notice solicits applications for projects to be funded under the AMHP, and includes the funding appropriated by the BIL in addition to the funding appropriated for the AMHP under the FY 2022 Appropriations Act. The grant funds currently available are for projects related to vessels documented under 46 U.S.C. Chapter 121 and port and landside infrastructure. Section E of this notice, which outlines the Marine Highway Grants selection criteria, describes the process for selecting projects that further this goal. Section F.3. describes progress and performance reporting requirements for selected projects, including the relationship between that reporting and the program's selection criteria.

Since this program was created, more than $51.7 million has been awarded through competitive grants to implement projects or components of projects designated under 46 U.S.C. 55601. Throughout the program, these discretionary grants have been awarded

to projects that have supported the development and expansion of documented vessels and port and landside infrastructure, consistent with DOT's strategic infrastructure goals.[1] The AMHP continues to align with the Department's strategic goals by guiding investments for port and landside infrastructure that expand the use of the nation's navigable waters.[2] The FY 2022 AMHP round will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investment and Jobs Act* (86 FR 64335), which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards, which helps combat the crisis of climate change, coordinate effectively with State, local, Tribal, and territorial government partners, and support the Administration's Justice40 Initiative goal that 40% of the overall benefits from Federal investments in climate and clean energy flow to disadvantaged communities.

The expectations of this notice also reflect the goal of strengthening American supply chains. This vision is consistent with the President's Port Action Plan, which calls for rapid action to relieve supply chain constraints at American ports through significant investments in the near, medium, and long term,[3] and the program will seek projects that address supply chain disruptions.

This round of AMHP grant funding also highlights the Administration's priorities to invest in infrastructure projects that advance the goals of Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619), Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009), and Executive Order 14025, *Worker Organizing and Empowerment* (86 FR 22829) by, for example: Proactively addressing equity[4] for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty, inequality, and barriers to opportunity; alleviating surface transportation congestion; and creating good paying jobs with the free and fair choice to join a union.

The America's Marine Highway Program Office (Program Office) follows a three-step approach when supporting investment opportunities for marine highway transportation services. The first step is designation of a Marine Highway Route by the Secretary. The Department accepts Marine Highway Route Designation requests at any time from Route Sponsors. Once a Route is designated, the second step is designation as a Marine Highway Project by the Secretary. Marine Highway Projects represent concepts for new services or expansions of existing marine highway services on designated Marine Highway Routes that use documented vessels and mitigate landside congestion or promote marine highway transportation. MARAD announces by notice in the **Federal Register** open season periods to allow Project Applicants opportunities to submit Marine Highway Project Designation applications. A Project Applicant must receive a Project Designation to then become eligible for Marine Highway Grant funding for that Project, the third step referenced above. Marine Highway Grant funding (the subject of this NOFO) is provided to successful public and private sector applicants as funds are appropriated by Congress.

The America's Marine Highway Grant program is described in the Federal Assistance Listings with Assistance Listings Number 20.816.

B. Federal Award Information

The total funding available for awards under this NOFO is $38,624,430. This amount represents $25,000,000 from available BIL funds and $14,819,000 from available FY 2022 Appropriations Act funds, less $1,194,570 ($750,000 from BIL funds and $444,570 from FY 2022 Appropriations Act funds) for grant administration and oversight as permitted under 49 U.S.C. 109(i).

Applicants should note that the two funding streams (BIL funding and FY 2022 Appropriations Act funding) have the same funding restrictions and requirements. Congress has requested that MARAD give preference to projects that reduce air emissions and vehicle miles traveled, other than for grant applications related to noncontiguous trade as defined in 46 U.S.C. 53501(4). Consolidated Appropriations Act, 2022 (Pub. L. 117–103, Explanatory Statement, Division L, 168 Cong. Rec. H3039 (daily ed. March 9, 2022)). Applicants should carefully consider how to address the climate change and decarbonization criterion, as discussed further in Section D.2.vi.(D) and Section E.1., to increase their project's competitiveness.

MARAD will seek to obtain the maximum benefit from the available funding by awarding grants to as many qualified projects as possible; however, per 46 U.S.C. 55601(g)(3), MARAD shall give preference to those projects or components that present the most financially viable transportation services and require the lowest percentage of Federal share of costs. Depending on the characteristics of the pool of qualified applications, it is possible MARAD may award all funds to a single project. MARAD may also award grant funds to support a portion of a project described in an application by selecting a discrete component(s). If this solicitation does not result in the award and obligation of all available funds, MARAD may publish additional solicitations.

MARAD will administer each Marine Highway Grant pursuant to a grant agreement with the successful applicant, and the start date and period of performance for each award will be outlined in each grant agreement. Marine Highway Grant funds will be administered on a reimbursable basis. Unless authorized in writing by MARAD as allowable ''pre-award costs''[5] and incurred after the Department's announcement of Marine Highway Grant awards, any costs incurred prior to MARAD's obligation of funds for a project are ineligible for reimbursement and are ineligible to count as match for cost share requirements. Obligation occurs when a selected applicant and MARAD enter into a written grant agreement after the applicant has satisfied applicable administrative requirements, including

[1] See U.S. Department of Transportation Strategic Plan for FY 2018–2022 (Feb. 2018) at *https://www.transportation.gov/administrations/office-policy/dot-strategic-plan-fy2018-2022.*

[2] See U.S. Department of Transportation Strategic Framework FY 2022–2026 (Dec. 2021) at *https://www.transportation.gov/administrations/office-policy/fy2022-2026-strategic-framework.*

[3] The President's Port Action Plan may be found here: *https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/09/fact-sheet-the-biden-harris-action-plan-for-americas-ports-and-waterways/.*

[4] Executive Order 13985 defines ''equity'' as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

[5] Pre-award costs are only costs incurred directly pursuant to the negotiation and anticipation of the Marine Highway grant award where such costs are necessary for efficient and timely performance of the scope of work, as determined and pre-approved in writing by MARAD.

environmental review requirements, such as those under the National Environmental Policy Act (NEPA), and civil rights requirements, including those under Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. MARAD seeks to obligate FY 2022 AMH funds under this notice by September 30, 2025 and expects grant recipients to expend funds within five years of obligation. As part of the review and selection process described in Section E.2., MARAD will consider a project's likelihood of obligating funds by September 30, 2025 and liquidation of these obligations within five years after the date of obligation.

MARAD reserves the right to revoke any award of Marine Highway Grant funds and to award such funds to another project to the extent that such funds are not expended in a timely or acceptable manner and in accordance with the project schedule and requirements detailed in the grant agreement.

Prior recipients of Marine Highway Grants may apply for funding to support additional phases of a designated project. However, to be competitive, the grant applicant should demonstrate the extent to which the previously funded project phase has met estimated project schedules and budget, as well as the ability to realize the benefits expected for the new award.

C. Eligibility Information

To be selected for a Marine Highway Grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project.

1. Eligible Applicants

Eligible Applicants for funding available under this notice are original Project Applicants of projects that the Secretary has previously designated as Marine Highway Projects or substitute applicants. A substitute applicant can be either a public entity or a private-sector entity that has been referred to the Program Office by the original Project Applicant in a written letter of support. This letter of support must be included as an attachment to the application for funding. Original Project Applicants are defined as those public entities named by the Secretary in original designated projects. Eligible applicants must have operational or administrative areas of responsibility that are adjacent to or near the relevant designated Marine Highway Project. Eligible Applicants include State governments (including State departments of transportation), metropolitan planning organizations, port authorities, and tribal governments, or private sector operators of marine highway services within designated Marine Highway Projects. Private-sector applicants should refer to Section D.2.vi.(G) for additional documentation that must be submitted to support an eligibility determination.

Eligible Applicants are encouraged to develop coalitions and public/private partnerships, which might include vessel owners and operators; third-party logistics providers; trucking companies; shippers; railroads; port authorities; state, regional, and local transportation planners; environmental organizations; impacted communities; or any combination of entities working in collaboration on a single grant application that can be submitted by the original Project Applicant or their designated substitute. All successful grant applicants, whether they are public or private entities, must comply with all Federal requirements, including the necessary NEPA review and documentation.

If multiple Eligible Applicants submit a joint grant application, they must identify in the application a lead Eligible Applicant as the primary point of contact. Joint grant applications must include a description of the roles and responsibilities of each applicant, including designating the one entity that will receive the Federal funds directly from MARAD, and must include a signed letter of support from each Eligible Applicant as an attachment. Refer to Section D.5., *Funding Restrictions,* for more information.

2. Cost Sharing or Matching

An Eligible Applicant must provide at least 20 percent of grant project costs from non-Federal sources. Non-Federal sources include State funds originating from programs funded by State revenue, local funds originating from State or local revenue-funded programs, or private funds. The application should demonstrate, such as through a commitment letter or other documentation, the sources of these non-Federal funds. Preference will be given to those projects that provide a larger percentage of costs from non-Federal sources. MARAD will not consider previously incurred costs or previously expended or encumbered funds towards the matching requirement for any project. Matching funds are subject to the same Federal requirements described in Section F.2. as Federally awarded funds, including applicable domestic content requirements. Refer to Section D.2. for information on documenting cost sharing in the application.

For each project that receives a Marine Highway Grant award, the terms of the award will require the recipient to complete the project using at least the level of non-Federal funding that was specified in the application. If the actual costs of the project are greater than the costs estimated in the application, the recipient will be responsible for increasing the non-Federal contribution. If the actual costs of the project are less than the costs estimated in the application, the Department may reduce the Federal contribution.

3. Other

i. Eligible Projects

(A) Capital Projects

Pursuant to the BIL and the FY 2022 Appropriations Act, eligible projects proposed for funding must support the development and expansion of vessels documented under 46 U.S.C. Chapter 121 or port and landside infrastructure. Only projects or their components that the Secretary has designated as Marine Highway Projects by the closing date of this notice are eligible for this round of grant funding. The current list of designated Marine Highway Projects can be found on the MARAD website at: *https://cms.marad.dot.gov/sites/marad.dot.gov/files/2021-08/AMH%20Project%20Designations%20Aug%202021.pdf.*

Improvements to Federally owned facilities are ineligible under the Marine Highway Grant program.

(B) Planning Projects

Grant funds may also be requested for eligible project planning activities; however, market-related studies are ineligible to receive Marine Highway Grants. Activities eligible for funding under Marine Highway planning grants are related to the planning, preparation, or design—including site design, engineering drawings, cost estimation, feasibility analysis, environmental review, permitting, and preliminary engineering and design work—of eligible documented vessel or port and landside infrastructure projects.

ii. Application Limit

Each applicant may submit no more than one grant application per designated project.

D. Application and Submission Information

1. Address To Request Application Package

This announcement contains all the information needed for applicants to

apply for this funding opportunity. Applications may be found at and must be submitted through *Grants.gov.*

2. Content and Form of Application Submission

The application must include the Standard Form 424 (Application for Federal Assistance), which can be found on *Grants.gov,* and the Project Narrative. MARAD recommends that the Project Narrative follows the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. First Page of Project Narrative	See D.2.i.
II. Project Description	See D.2.ii.
III. Project Location	See D.2.iii.
IV. Grant Funds, Sources, and Uses of Project Funds	See D.2.iv.
V. Selection Criteria	See D.2.v. and E.1.
VI. Other Application Requirements	See D.2.vi.

The Project Narrative should include the information necessary for MARAD to determine that the project satisfies the requirements described in Sections B and C, and to assess the selection criteria specified in Section E.1., including a detailed project description, location, and budget. To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by MARAD. Applicants are strongly encouraged to provide quantitative information, including baseline information, that demonstrates a project's merits and economic viability. MARAD may ask any applicant to supplement data in its application but expects applications to be complete upon submission. Incomplete applications may not be considered for an award.

The Project Narrative should also include a table of contents, maps, and graphics, as appropriate, to make the information easier to review. MARAD recommends that the Project Narrative be prepared with standard formatting preferences (a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins, and the narrative text in one column only). The Project Narrative may not exceed 12 pages in length, excluding the table of contents and appendices. The only substantive portions that may exceed the 12-page limit are documents supporting assertions or conclusions made in the 12-page Project Narrative. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials. It is important to ensure that the website links are currently active, accessible, and working. If supporting documents are submitted, applicants should clearly identify within the Project Narrative the relevant portion of the Project Narrative that each supporting document supports. MARAD recommends using appropriately descriptive file names (*e.g.,* ''Project Narrative,'' ''Maps,'' ''Letters of Support'') for all attachments. At the applicant's discretion, relevant materials provided previously in support of a Marine Highway Project application may be referenced, updated, or described as unchanged. To the extent documents provided previously are referenced, they need not be resubmitted in support of a Marine Highway Grant application.

To ensure the Project Narrative is sufficiently detailed and informative, MARAD recommends applications include the following sections:

i. First Page of Project Narrative

The first page of the Project Narrative should provide the following items of information:

(A) Marine Highway Designated Project name and the original Project Applicant (as stated on the Marine Highway Program's list of Designated Projects);

(B) Primary point of contact, including the name, phone number, email address, and business address of the primary point of contact for the Eligible Applicant. If submitting a joint application, the primary point of contact should be for the lead Eligible Applicant;

(C) Total amount of the proposed grant project cost in dollars and the amount of Federal grant funds the applicant is seeking, along with sources and share of matching funds;

(D) Executive Summary, which should include an outline of the background of the project, the need for the project, and how the grant funding will be applied in the context of the service referenced in the original Project Designation application;

(E) The public and private partners engaged in the Marine Highway Project;

(F) The Unique Entity Identifier (UEI) Number[6] associated with the application—Marine Highway Grant Recipients and their first-tier sub-awardees must obtain UEI numbers, which are available in *SAM.gov;* and

(G) Evidence of registration with the System for Award Management (SAM) at *https://www.SAM.gov.*

ii. Project Description

The next section of the application should provide a description of the project. The project description must be in paragraph form providing a high-level view of the overall project and its major components. This section should discuss the project's history, including a description of any previously completed components. The applicant may use this section to place the project into a broader context of other transportation infrastructure investments being pursued by the grant applicant, and, if applicable, how it will benefit communities in rural areas. The project description should be sufficiently detailed so that the NEPA class of action can be determined without additional requests for information.

This section should also include a timeline for implementing the project, including identifying major project milestones. The project schedule should be sufficiently detailed to demonstrate that the project can complete construction and expend all funds within five years after obligation. See Section B.

Additionally, if a project addresses regional or national supply chain delays on the freight transportation network or strengthens supply chain resiliency, this section of the application should include sufficient information to enable evaluation of: (i) An existing or anticipated regional or national supply chain delay and (ii) how the project will address the identified delay. Applications should also address how quickly the project can mitigate the supply chain delay or strengthen supply chain resiliency.

[6] On April 4, 2022, the Federal government will stop using the Data Universal Numbering System (DUNS) number to uniquely identify entities. At that point, entities doing business with the Federal government will use a Unique Entity Identifier (UEI) created in *SAM.gov.* If your entity is currently registered in *SAM.gov,* your UEI has already been assigned and is viewable in *SAM.gov.* This includes inactive registrations.

This section should also describe whether the project addresses equity and barriers to opportunity. Applicants are encouraged to describe credible planning activities and actions to resolve potential inequities and barriers to equal opportunity in the project as reflected in Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009). For example, the applicant should describe: How the project incorporates an equity impact analysis; how the project adopts an equity and inclusion program/plan or implementation of equity-focused policies related to project procurement, material sourcing, construction, inspection, or other activities designed to ensure racial equity in the overall project delivery and implementation; or documentation of equity-focused community outreach and public engagement in the project's planning and project elements in underserved communities, including Historically Disadvantaged Communities. DOT has been developing a definition of Historically Disadvantaged Communities as part of its implementation of the Justice40 Initiative and will use that definition for the purpose of this NOFO. Consistent with OMB's Interim Guidance for the Justice40 Initiative,[7] Historically Disadvantaged Communities include (a) certain qualifying census tracts, (b) any Tribal land, or (c) any territory or possession of the United States. Additionally, DOT is providing a mapping tool to assist applicants in identifying whether a project is located in a Historically Disadvantaged Community at Transportation Disadvantaged Census Tracts.[8] Any policies, plans, and outreach documentation related to advancing equity or removing barriers to opportunity should be briefly discussed and provided as an appendix to the Project Narrative.

Consistent with the Department's Rural Opportunities to Use Transportation for Economic Success (ROUTES) Initiative (*https://www.transportation.gov/rural*), the Department encourages applicants to describe how activities proposed in their applications would address the unique challenges facing rural transportation networks, regardless of the geographic location of those activities.

iii. Project Location

This section of the application should describe the project location, including a detailed geographical description of the proposed project, a map of the project's location and connections to existing transportation infrastructure, and geospatial data describing the project location.

The application should also identify:

(A) Whether the project is located in a Federally designated community development zone[9] such as a qualified Opportunity Zone;[10] Empowerment Zone;[11] Promise Zone;[12] or Choice Neighborhood;[13]

(B) whether the project is located in a Historically Disadvantaged Community, including the relevant census tract(s) (as defined in Section D.2.ii.); and

(C) whether the project is located in a 2010 Census-designated urban area[14] or rural area.[15]

iv. Grant Funds, Sources, and Uses of Project Funds

This section of the application should describe the project's budget (*i.e.,* the project scope that includes Marine Highway funding and non-Federal cost share). The budget should not include any previously incurred expenses. At a minimum, it should include:

(A) Project costs;

(B) The sources and amounts of funds to be used for project costs;

(C) For non-Federal funds to be used for eligible project costs, documentation of funding commitments should be referenced here and included as an appendix to the application;

(D) For other Federal (non-AMHP) funds to be used for eligible project costs, the amounts, nature, and sources of any required non-Federal match for those funds; and

(E) A budget showing how each source of funds will be spent. The budget should show how each funding source will share in each project component, and present that data in dollars and percentages. Funding sources should be grouped into three categories: Non-Federal; Marine Highway Grant funding; and other Federal. A letter of commitment from each funding source should be an attachment to the application. If the project contains individual components, the budget should separate the costs of each project component. The budget should sufficiently demonstrate that the project satisfies the statutory cost-sharing requirements described in Section C.2.

v. Selection Criteria

This section of the application should demonstrate how the project proposed for grant funding aligns with the criteria described below and in Section E.1. MARAD encourages applicants to address each criterion, or expressly state that the project does not address the criterion. Applicants are not required to follow a specific format, but MARAD recommends applicants address each criterion separately using the outline suggested below and provide a clear discussion that assists project evaluators in evaluating how each project meets the selection criteria. Guidance describing how MARAD will evaluate projects against the selection criteria is in Section E.1. of this notice. Applicants also should review that section before considering how to organize and complete their applications. To minimize redundant information in an application, MARAD encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

(A) Primary Selection Criteria

(1) This section of the application should demonstrate the extent to which the project is financially viable. Per 46 U.S.C. 55601(g)(3), preference will be given to projects or components that present the most financially viable transportation services.

[7] *https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf.*

[8] Information on DOT's Disadvantaged Census Tract tool (Transportation Disadvantaged Census Tracts) can be found at: *https://usdot.maps.arcgis.com/apps/dashboards/d6f90dfcc8b44525b04c7ce748a3674a.* For technical assistance in using this tool, please contact *gmo@dot.gov* or the AMHP contact.

[9] For projects that are located in a Federally designated community development zone, the applicant must identify the zone and provide related identifying data (such as the Opportunity Zone number).

[10] See *https://opportunityzones.hud.gov/.*

[11] See *https://www.hud.gov/hudprograms/empowerment_zones.*

[12] See *https://www.hud.gov/program_offices/field_policy_mgt/fieldpolicymgtpz.*

[13] See *https://www.hud.gov/program_offices/public_indian_housing/programs/ph/cn.*

[14] For the purpose of this NOFO, a project is designated as urban if it is located within (or on the boundary of) a Census-designated urbanized area (UA) that had a population greater than 50,000 in the 2010 Census. Lists of 2010 UAs as defined by the Census Bureau are available on the Census Bureau website at *https://www.census.gov/geographies/reference-maps/2010/geo/2010-census-urban-areas.html.* For the purpose of this NOFO, the definition of urban and rural is based on the 2010 Census-designated urban areas since urban areas have not been designated for the 2020 Census at the time of this NOFO publication.

[15] MARAD will consider a project to be in a rural area if the majority of the project (determined by geographic location(s) where the majority of the money is to be spent) is located outside of a Census-designated urbanized area with a population of 50,000 or greater. Grant funds utilized in an urbanized area border, including an intersection with an urbanized area, will be considered urban for the purposes of the Marine Highway Grants program.

(2) This section of the application should demonstrate that the funds received will be spent efficiently and effectively.

(3) This section of the application should demonstrate that a market exists for the services of the proposed project as evidenced by contracts or written statements of intent from potential customers.

(4) This section of the application should describe the public benefits anticipated by the proposed grant project, as outlined in 46 CFR 393.3(c)(8), and described below. The public benefits described in the relevant Marine Highway Project Designation application may be referenced, updated, or described as unchanged. Applicants will need to clearly demonstrate that the original public benefits outlined in the original Project Designation application apply to the specific grant funding request associated with this notice, and provide any updates or supplemental information regarding the original public benefits, as necessary. To the extent referenced, this information need not be resubmitted in support of a Marine Highway Grant application. Applicants should organize the external net cost savings and public benefits of the proposed grant project based on the following six categories:

i. Emissions benefits;

ii. Energy savings;

iii. Landside transportation infrastructure maintenance savings;

iv. Economic competitiveness;

v. Safety improvements; and

vi. System resiliency and redundancy.

vi. Other Application Requirements

(A) National Environmental Policy Act (NEPA) Requirements

(1) Information about the NEPA status of the Project. Projects selected for grant award must comply with NEPA and any other applicable environmental laws. The application should include sufficient detail on the project in order for MARAD to determine the NEPA class of action. The application should indicate the anticipated NEPA level of review for the project and describe any environmental analysis in progress or completed. This includes Categorical Exclusion, Environmental Assessment/Finding of No Significant Impact, or Environmental Impact Statement/Record of Decision. The applicant should review the Maritime Administration Manual of Orders MAO 600–1 (available at *https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/environment-security-safety/office-environment/596/mao600-001-0.pdf*) prior to submission. The application should detail the type of NEPA review underway, where the project is in the process, provide a website link or other reference to copies of any environmental documents prepared, and indicate the anticipated date of completion of all milestones and of the final NEPA determination. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements. The applicant should be aware that the final determination of NEPA class of action will be made by MARAD after grant award announcement. The successful applicant will be responsible for the completion of MARAD's NEPA documentation, in collaboration with MARAD's Office of Environmental Compliance, prior to execution of the grant agreement.

(2) Environmental Permits and Reviews. The application should demonstrate receipt (or reasonably anticipated receipt) of all environmental permits and approvals necessary, such as Army Corps of Engineers permits. Additionally, the successful applicant, in collaboration with MARAD, will be responsible for the completion of Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, and Section 7 of the Endangered Species Act, 16 U.S.C. 1531, consultations prior to completing NEPA. Applications should also identify any additional Federal, State, and local permits and approvals necessary for project completion.

(B) Other Federal, State, and Local Actions

An application must indicate whether a proposed project is likely to require actions by other agencies, indicate the status of such actions, provide a website link or other reference to materials submitted to the other agencies, and demonstrate compliance with other Federal, state, or local regulations and permits as applicable. This section should also include a description of whether the project is dependent on, or affected by, U.S. Army Corps of Engineers investment as well as the U.S. Army Corps of Engineers planned activities as it relates to the project.

(C) Domestic Preference

If a project intends to use any product with foreign content or of foreign origin, this information should be listed and addressed in the application. Applications should expressly address how the applicant plans to comply with domestic preference requirements and the applicant's current efforts and planned efforts to maximize domestic content. If an applicant anticipates any potential foreign-content issues with its proposed project, applications should demonstrate that the domestic source is not available and how that determination was reached.

(D) Addressing Climate Change and Decarbonization

MARAD seeks to fund projects under the AMHP that proactively consider climate change and align with the President's greenhouse gas reduction goals and promote energy efficiency. As part of the Department's implementation of Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619), MARAD also seeks to fund projects that address environmental justice, particularly for communities that disproportionally experience climate change-related consequences. In support of this priority, applications should address whether the project has incorporated climate change and environmental justice [16] in project planning and/or design components, particularly for communities that disproportionally experience climate change-related consequences. To address the planning element of this criterion, the application should describe what specific climate change or environmental justice activities have been completed or are planned for the project. This could include identifying how emissions reductions will specifically benefit disadvantaged communities or to what extent it will create employment opportunities and economic benefits to the local community. The application should indicate whether a project is incorporated in a climate action plan, whether an equitable development plan has been prepared, and whether (and how) the results of planning tools such as DOT's Disadvantaged Census Tract tool or EPA's EJSCREEN have been incorporated into the project.[17]

To address whether the project has incorporated climate change and environmental justice in the design components, the application should

[16] Environmental justice, as defined by the Environmental Protection Agency, is 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.

[17] The EJSCREEN tool can be found on the EPA site: *https://ejscreen.epa.gov/mapper/.*

describe specific and direct ways that the project will mitigate or reduce climate change impacts. This may include a description of how the project incorporates multimodal infrastructure to reduce climate impacts, such as by ensuring that cargo is moved by the most climate-efficient/friendly mode of transportation. This section should also describe ways that the project reduces emissions or uses technology to increase energy efficiency, and whether the proposed grant project demonstrates a movement towards lower carbon emissions or near-zero emissions. This may include, but is not limited to:

(1) The use of alternative, low carbon fuels for vessels or cargo handling equipment;

(2) The use of alternative technologies, such as fuels cells, batteries, hybrid systems, etc. for vessels or cargo handling equipment;

(3) The procurement or leasing of low or no emission cargo-handling equipment that make greater reductions in energy consumption and harmful emissions than comparable equipment;

(4) The use of port-based alternative energy sources such as low carbon-powered microgrids or charging stations; and/or

(5) Best practices that promote low carbon/energy efficiency cargo movement or handling operations.

For applications for grant projects other than those related to noncontiguous trade, this section should also describe ways that the project proposed for grant funding—as opposed to the overall Designated Marine Highway Project—reduces commercial vehicle miles traveled (VMT). An applicant can demonstrate that its proposed grant project reduces VMT by: (1) Calculating the increase in cargo, by tonnage, that will be transported on the marine highway if the proposed project is implemented; (2) calculating the increase in cargo, by tonnage, and subsequent increase in VMT, that would be transported by commercial motor vehicles on the nation's roadways if the proposed grant project could not be implemented; and (3) calculating the overall difference in cargo moved, by tonnage, from the nation's roadways to the marine highway, and the subsequent reduction in commercial VMT that will result upon completion of the proposed grant project.

MARAD will consider an application to be related to noncontiguous trade if the proposed grant project includes noncontiguous trade as defined in 46 U.S.C. 53501(4).[18] Applicants should state in this section whether the proposed grant project is related to noncontiguous trade, and, if so, describe the noncontiguous trade.

Applicants should refer to Section E.1. for more information on how this criterion will be evaluated and used to award projects for AMHP grants.

(E) Certification Requirements

For an application to be considered for a grant award, the Chief Executive Officer, or equivalent, of the Eligible Applicant is required to certify, in writing, the following:

(1) That, except as noted in this grant application, nothing has changed from the original application for formal designation as a Marine Highway Project; and

(2) The Eligible Applicant will administer the project and any funds received will be spent efficiently and effectively; and

(3) The Eligible Applicant will provide information, data, and reports as required.

(F) Protection of Confidential Commercial Information

Eligible Applicants should submit, as part of or in support of applications, publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards to the extent possible. If an application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (i) Note on the front cover that the submission contains ''Confidential Commercial Information (CCI)''; (ii) mark each affected page ''CCI''; and (iii) highlight or otherwise denote the CCI portions. MARAD will protect such information from disclosure to the extent allowed under applicable law. In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

[18] The term ''noncontiguous trade'' means: (A) Trade between one of the contiguous 48 states; and Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and (B) trade between a place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and another place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States.

(G) Additional Application Information Needed From All Private-Sector Applicants, Including Previous Recipients of AMHP Grant Funding

(1) Written letter of support from the original Project Applicant stating that the private entity has been referred by the original Project Applicant for the relevant designated Marine Highway Project.

(2) A description of the entity including location of the headquarters; a description of the entity's assets (tugs, barges, etc.); years in operation; ownership; customer base; and website address, if any.

(3) Unique Entity Identifier of the parent company (when applicable): Data Universal Numbering System (DUNS + 4 number).

(4) The most recent year-end audited, reviewed, or compiled financial statements, prepared by a certified public accountant (CPA), per U.S. generally accepted accounting principles (not tax-based accounting financial statements). If CPA prepared financial statements are not available, provide the most recent financial statement for the entity. Do not provide tax returns.

(5) Statement regarding the relationship between applicants and any parents, subsidiaries, or affiliates, if any such entity is going to provide a portion of the matching funds.

(6) Evidence documenting applicant's ability to make proposed matching requirement (loan agreement, commitment from investors, cash on balance sheet, etc.).

(7) Pro-forma financial statements reflecting financial condition at beginning of period; effect on balance sheet of grant and matching funds (*e.g.,* a decrease in cash or increase in debt, additional equity and an increase in fixed assets); and impact on company's projected financial condition (balance sheet) of completion of project, showing that company will have sufficient financial resources to remain in business.

(8) Statement regarding whether during the past five years, the applicant or any predecessor or related company has been in bankruptcy or in reorganization under Chapter 11 of the Bankruptcy Code, or in any insolvency or reorganization proceedings, and whether any substantial property of the applicant or any predecessor or related company has been acquired in any such proceeding or has been subject to foreclosure or receivership during such period. If so, give details.

(9) Additional information may be requested as deemed necessary by

MARAD to facilitate and complete its review of the application. If such information is not provided, MARAD may deem the application incomplete and cease processing it.

(10) Company Officer's certification of each of the following:

i. That the company operates in the geographic location of the designated Marine Highway Project;

ii. That the applicant has the authority to carry out the proposed project; and

iii. That the applicant has not, and will not, make any prohibited payments out of the requested grant, in accordance with the Department of Transportation's regulation restricting lobbying, 49 CFR part 20.

3. Unique Entity Identifier and System for Award Management (SAM)

MARAD will not make an award to an applicant until the applicant has complied with all applicable Unique Entity Identifier and SAM requirements. Each applicant must be registered in SAM before applying, provide a valid Unique Entity Identifier number in its application, and maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. Applicants may register with the SAM at *www.SAM.gov.* If an applicant has not fully complied with the requirements by the time MARAD is ready to make an award, MARAD may determine that the applicant is not qualified to receive a Federal award under this program.

4. Submission Dates and Times

Applications must be submitted to *Grants.gov* by 5:00 p.m. Eastern Time on June 17, 2022.

5. Funding Restrictions

Grant funds may only be used for the purposes described in this notice and may not be used as an operating subsidy. Market-related studies are ineligible for Marine Highway Grant funds, as are improvements to Federally owned facilities.

MARAD will not consider previously incurred costs or previously expended or encumbered funds towards the matching requirement for any project. Unless authorized by MARAD in writing after MARAD's announcement of Marine Highway Grant awards, any costs incurred before a grant agreement is executed will not be reimbursed and will not count towards cost share requirements.

Federal award recipients and sub-recipients are prohibited from obligating or expending grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115–232 (National Defense Authorization Act for Fiscal Year 2019) and 2 CFR 200.216 & 200.471.

6. Other Submission Requirements

Grant applications must be submitted electronically using *Grants.gov* (*https://www.grants.gov*). To submit an application through *Grants.gov*, applicants must:

i. Obtain a Unique Entity Identifier (UEI) number;

ii. Register with the System for Award Management (SAM) at *www.SAM.gov;*

iii. Create a *Grants.gov* username and password; and

iv. Complete Authorized Organization Representative (AOR) registration in *Grants.gov*. The E-Business Point of Contact (POC) at the applicant's organization must respond to the registration email from *Grants.gov* and login at *Grants.gov* to authorize the applicant as the AOR. Please note that there can be more than one AOR for an organization.

Please note that the *Grants.gov* registration process usually takes 2–4 weeks to complete and the Department will not consider late applications that are the result of a failure to register or comply with *Grants.gov* applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at *https://www.grants.gov/applicants/applicant-faqs.html.* If applicants experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Service Support Hotline at 1 (800) 518–4726.

Late applications that are the result of failure to register or comply with *Grants.gov* application requirements in a timely manner will not be considered. Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact *MH@dot.gov* or Fred Jones at (202) 366–1123 prior to the deadline with the username of the registrant and details of the technical issue experienced. The applicant must provide: (i) Details of the technical issue experienced; (ii) screen capture(s) of the technical issue experienced along with the corresponding ''Grant tracking number'' that is provided via *Grants.gov*; (iii) the ''Legal Name'' for the applicant that was provided in the SF–424; (iv) the name and contact information for the person to be contacted on matters involving submission that is included on the SF–424; (v) the Unique Entity Identifier number associated with the application; and (vi) the *Grants.gov* Help Desk Tracking Number.

E. Application Review Information

1. Selection Criteria

This section specifies the criteria that MARAD will use to evaluate and award applications for Marine Highway Grants. These criteria incorporate the statutory requirements for this program, as well as Departmental and programmatic priorities.

When reviewing grant applications, MARAD will consider how the proposed service could satisfy, in whole or in part, 46 U.S.C. 55601(b)(1) and (3) and the following criteria found at 46 U.S.C. 55601(g)(2)(B):

i. The project is financially viable;

ii. The funds received will be spent efficiently and effectively; and

iii. A market exists for the services of the proposed project as evidenced by contracts or written statements of intent from potential customers.

MARAD will also consider how the proposed request for funding outlined in the grant application supports the elements of 46 CFR 393.3(c)(8) (Public benefits) as a key programmatic objective.

In awarding grants under the program, MARAD will give preference to those projects or components that present the most financially viable marine highway transportation services and require the lowest total percentage Federal share of the costs.

After applying the above criteria, in support of Departmental priorities related to climate change, including advancing the goals outlined in Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619), MARAD will evaluate whether the project incorporates climate change, environmental justice, and decarbonization activities in project planning and/or design elements. MARAD will give preference to projects that demonstrate a movement towards lower carbon emissions or near-zero emissions, as described in Section D.2.vi.(D). MARAD will also give preference to projects that reduce air emissions and vehicle miles traveled when awarding grants, other than for grant applications related to noncontiguous trade as defined in 46 U.S.C. 53501(4). For projects that are not

related to noncontiguous trade, a proposed project that reduces both air emissions and VMT is more competitive than a comparable project that only reduces one or neither. Evaluation of whether a project reduces air emissions and vehicle miles traveled will not affect MARAD's decision in awarding grants for projects related to noncontiguous trade; however, MARAD will still consider the extent to which these projects address the climate change and decarbonization criterion described in Section D.2.vi.(D), such as by using environmental justice tools like EJSCREEN or addressing the goals outlined in Executive Order 14008. Applicants must specify in their narrative whether their proposed grant project is related to noncontiguous trade and provide sufficient information so that MARAD can verify the claim.

In support of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009), MARAD will also consider the extent to which applications address equity and the removal of barriers to opportunity through the activities described in Section D.2.ii., such as meaningful, equity-focused community outreach and public engagement of underserved communities, and adoption of an equity and inclusion program or plan or equity-focused policies related to the proposed project.

In addition, since the AMHP is intended to create transportation options that enhance supply chain reliance, MARAD will consider how a project improves the supply chain. Reviewers will consider the extent to which information in the narrative demonstrates how the project positively impacts the supply chain, as described further in Section D.2.ii. For example, reviewers will consider whether a project proposes elements that improve transportation links to critical infrastructure, promotes lower-carbon supply chain infrastructure, or invests in supply chain reliability improvements. Projects that have significant regional or national supply chain system impacts will be more competitive than ones that do not.

DOT will consider whether a project is located within a Historically Disadvantaged Community or a Federally designated community development zone (a qualified opportunity zone, Empowerment Zone, Promise Zone, or Choice Neighborhood). Applicants must specify in their narrative which zone (or zones) the project is in and provide sufficient identifying information (such as the Opportunity Zone tract number) so that reviewers can verify the claim. A project located in a Historically Disadvantaged Community or a Federally designated community development zone is more competitive than a similar project that is not. The Department will rely on applicant-supplied information to assist in making this assessment and will only consider this if the applicant expressly identifies the designation in their application.

MARAD will also consider a project's likelihood of obligating funds by September 30, 2025 and liquidation of these obligations within five years after the date of obligation.

2. Review and Selection Process

Upon receipt, MARAD will conduct a technical review to evaluate applications using the criteria outlined above. Upon completion of the technical review, MARAD will forward the applications to an inter-agency review team (Intermodal Review Team). The Intermodal Review Team will include members of MARAD, other Department of Transportation Operating Administrations, and representatives from the Office of the Secretary of Transportation. The Intermodal Review Team will review and provide comments to the Program Office for each application based on the criteria set forth above. The Program Office will use those comments to inform the recommendations that will be made to the Maritime Administrator and the Secretary.

3. Federal Awardee Performance and Integrity Information System (FAPIIS) Check

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold of $250,000 (*see* 2 CFR 200.88 Simplified Acquisition Threshold), MARAD will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (*see* 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. MARAD will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in Section E, the Secretary will announce the selected grant award recipients. The award announcement will be posted on the MARAD website (*https://www.maritime.dot.gov*).

Recipients of an award will not receive lump-sum cash disbursements at the time of award announcement or obligation of funds. Instead, Marine Highway Grant funds will reimburse recipients only after grant agreements have been executed, allowable expenses are incurred, and valid requests for reimbursement have been submitted and approved by the MARAD grants officer. Marine Highway Grant recipients must adhere to applicable requirements and follow established procedures to receive reimbursement. Unless authorized in writing by MARAD, an expense incurred before a grant agreement is executed will not be reimbursed or count towards cost share requirements.

2. Administrative and National Policy Requirements

All awards must be administered pursuant to the ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' found at 2 CFR part 200, as adopted by the Department at 2 CFR part 1201. All procurement transactions for the acquisition of property or services under the Federal award must be conducted in a manner providing full and open competition unless MARAD authorizes a noncompetitive procurement in accordance with 2 CFR 200.320(c). Federal wage rate requirements included at 40 U.S.C. 3141–3148 apply to all projects receiving funds under this program and apply to all parts of the project, whether funded with Federal funds or non-Federal funds. Additionally, other applicable Federal laws, Executive Orders, and any rules, regulations, and requirements of MARAD will apply to projects that receive Marine Highway Grants. Amounts awarded under this notice from the BIL that are not expended by the grant recipient shall remain available to DOT until September 30, 2032 for use for grants under this program. Funds awarded under the FY 2022 Appropriations Act remain available until expended for grants under this program.

As expressed in Executive Order 14005, *Ensuring the Future is Made in All of America by All of America's Workers* (86 FR 7475), it is the policy of the executive branch to use terms and conditions of Federal financial assistance awards to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Consistent with the requirements of the Build America, Buy America Act (Pub. L. 117–58, Division G, Title IX, Subtitle A, November 15, 2021), no amounts made available through this NOFO may be obligated for a project unless all iron, steel, manufactured products, and construction materials used in the project are produced in the United States. Depending on other funding streams, the project may be subject to separate ''Buy America'' requirements.

All recipients must comply with the requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, and their implementing regulations. Applicants should review these civil rights statutes carefully to ensure full compliance with these obligations. These requirements apply to recipients as well as all subrecipients. The successful applicant will be responsible for implementing an effective and compliant Title VI and Section 504 program under the technical assistance from MARAD's Office of Civil Rights.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Department determines that a recipient has failed to comply with applicable Federal requirements, the Department may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

3. Reporting

a. Progress Reporting on Grant Activities

Award recipients are required to submit quarterly reports, signed by officers of the recipients, to the Program Office to keep MARAD informed of all activities during the reporting period. The reports will indicate progress made, planned activities for the next reporting period, and a listing of any purchases made with grant funds during the reporting period. In addition, the report will include an explanation of any deviation from the projected budget and timeline. Quarterly reports will also contain, at a minimum, the following: (i) A statement as to whether the award recipient has used the grant funds consistent with the terms contemplated in the grant agreement; (ii) if applicable, a description of the budgeted activities not procured by recipient; (iii) if applicable, the rationale for recipient's failure to execute the budgeted activities; (iv) if applicable, an explanation as to how and when recipient intends to accomplish the purposes of the grant agreement; and (v) a budget summary showing funds expended since commencement, anticipated expenditures for the next reporting period, and expenditures compared to overall budget.

b. Performance Reporting

Award recipients will also collect information and report on a project's observed performance with respect to the relevant long-term outcomes that are expected to be achieved through the project. Performance indicators will not include formal goals or targets, but will include observed measures under baseline (pre-project) as well as post-implementation outcomes for an agreed-upon timeline, and will be used to evaluate and compare projects and monitor the results that grant funds achieve to the intended long-term outcomes of the AMHP. Performance reporting continues for several years after the project is completed, and MARAD does not provide Marine Highway Grant funding specifically for performance reporting.

c. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of 2 CFR Appendix XII to Part 200. This is a statutory requirement under Section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by Section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

To ensure applicants receive accurate information about eligibility, the program, or in response to other questions, applicants are encouraged to contact MARAD directly, rather than through intermediaries or third parties. Please see contact information in the **FOR FURTHER INFORMATION CONTACT** section above.

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2022–08830 Filed 4–25–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions

Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On April 20, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. GADETSKIY, Yevgeniy Yuryevich (Cyrillic: ГАДЕЦКИЙ, Евгений Юрьевич) (a.k.a. GADETSKI, Evgeni Yurevich; a.k.a. GADETSKII, Evgenii Yuryevich), Russia; DOB 24 Oct 1978; POB Russia; nationality Russia; Gender Male; Tax ID No. 482609144935 (Russia) (individual) [RUSSIA-EO14024] (Linked To: SPETSINVESTSERVIS OOO).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249 (Apr. 15, 2021) (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of Spetsinvestservis OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. LESHCHENKO, Mikhail Aleksandrovich, Russia; DOB 20 Mar 1975; POB Naberezhnye Chelny, Russia; nationality Russia; Gender Male; National ID No. 4508512143 (Russia) (individual) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY MARSHAL.GLOBAL).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Joint Stock Company Marshal.Global, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. MARKOV, Ilya Anatolyevich (Cyrillic: МАРКОВ, Илья Анатольевич) (a.k.a. MARKOV, Ilya Anatolevich), Russia; DOB 30 Aug 1976; nationality Russia; Gender Male; Tax ID No. 773208907206 (Russia) (individual) [RUSSIA-EO14024] (Linked To: LIMITED LIABILITY COMPANY VLADEKS KHOLDING).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of

Limited Liability Company Vladeks Kholding, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. NECHIPORUK, Roman Viktorovich (Cyrillic: НЕЧИПОРУК, Роман Викторович), Russia; DOB 21 Feb 1980; nationality Russia; Gender Male; Tax ID No. 503605049681 (Russia) (individual) [RUSSIA-EO14024] (Linked To: IMPERIYA 19-31 OOO).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Imperiya 19-31 OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. TYURINA, Natalya Aleksandrovna (Cyrillic: ТЮРИНА, Наталья Александровна), Russia; DOB 12 Mar 1971; nationality Russia; Gender Female; Tax ID No. 772908211099 (Russia) (individual) [RUSSIA-EO14024] (Linked To: TSARGRAD-MEDIA OOO; Linked To: TSARGRAD PARK OOO).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Tsargrad-Media OOO and Tsargrad Park OOO, persons whose property and interests in property are blocked pursuant to E.O. 14024.

6. MALOFEYEV, Konstantin (Cyrillic: МАЛОФЕЕВ, Константин) (a.k.a. MALOFEEV, Konstantin Valerevich; a.k.a. MALOFEEV, Konstantin Valerievich; a.k.a. MALOFEEV, Konstantin Valeryevich), Fian 4-2, Puschino 142290, Russia; DOB 03 Jul 1974; POB Pushchino, Moscow, Russia; nationality Russia; Gender Male; National ID No. 4604189321 (Russia) (individual) [UKRAINE-EO13660] [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

7. KUPRIYANOV, Alexey Aleksandrovich (a.k.a. KUPRIYANOV, Aleksey Aleksandrovich), Russia; DOB 18 Feb 1981; POB Ryazan, Russia; nationality Russia; Gender Male; National ID No. 622905256403 (Russia) (individual) [RUSSIA-EO14024] (Linked To: AUTONOMOUS NONCOMMERCIAL ORGANIZATION FOR THE STUDY AND DEVELOPMENT OF INTERNATIONAL COOPERATION IN THE ECONOMIC SPHERE INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Autonomous Noncommercial Organization for the Study and Development of International Cooperation in the Economic Sphere International

Agency of Sovereign Development, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. MELIKOV, Nikita, Russia; DOB 30 Mar 1994; nationality Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: AUTONOMOUS NONCOMMERCIAL ORGANIZATION FOR THE STUDY AND DEVELOPMENT OF INTERNATIONAL COOPERATION IN THE ECONOMIC SPHERE INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Autonomous Noncommercial Organization for the Study and Development of International Cooperation in the Economic Sphere International Agency of Sovereign Development, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. OKULOV, Aleksandr (a.k.a. OKULOV, Alexander Fiodorovich), Russia; Romania; Dubai, United Arab Emirates; DOB 06 Dec 1981; nationality Russia; alt. nationality Moldova; Gender Male (individual) [RUSSIA-EO14024] (Linked To: AUTONOMOUS NONCOMMERCIAL ORGANIZATION FOR THE STUDY AND DEVELOPMENT OF INTERNATIONAL COOPERATION IN THE ECONOMIC SPHERE INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Autonomous Noncommercial Organization for the Study and Development of International Cooperation in the Economic Sphere International Agency of Sovereign Development, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. SAMOYLOV, Artem, Russia; DOB 07 Jul 1989; nationality Russia; Gender Male (individual) [RUSSIA-EO14024] (Linked To: AUTONOMOUS NONCOMMERCIAL ORGANIZATION FOR THE STUDY AND DEVELOPMENT OF INTERNATIONAL COOPERATION IN THE ECONOMIC SPHERE INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Autonomous Noncommercial Organization for the Study and Development of International Cooperation in the Economic Sphere International Agency of Sovereign Development, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. SUBBOTIN, Alexey Anatolyevich (a.k.a. SUBBOTIN, Aleksey Anatolyevich), Russia; DOB 07 Mar 1975; POB Nyandoma, Russia; nationality Russia; Gender Male; National ID No. 1100109762 (Russia) (individual) [RUSSIA-EO14024] (Linked To: AUTONOMOUS NONCOMMERCIAL ORGANIZATION FOR THE STUDY AND DEVELOPMENT OF INTERNATIONAL COOPERATION IN THE ECONOMIC SPHERE INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Autonomous Noncommercial Organization for the Study and Development of International Cooperation in the Economic Sphere International Agency of Sovereign Development, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. MALOFEYEV, Kirill Konstantinovich (Cyrillic: МАЛОФЕЕВ, Кирилл Константинович) (a.k.a. MALOFEEV, Kirill Konstantinovich; a.k.a. "Likkrit"), Tvardovskogo Str 18 2 142, Moscow 123458, Russia; DOB 04 Oct 1995; POB Moscow, Russia; nationality Russia; Gender Male; National ID No. 4515477394 (Russia); Tax ID No. 772078537711 (Russia) (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

13. KUZMIN, Pavel Vladimirovich, Verhnie Polya Street, 14 Build 1, Apt. 300, Moscow 109341, Russia; DOB 27 Dec 1981; POB Uzlovaya, Russia; nationality Russia; Gender Male; National ID No. 7003029772 (Russia) (individual) [RUSSIA-EO14024] (Linked To: MALOFEYEV, Konstantin; Linked To: TSARGRAD OOO).

    Designated pursuant to sections 1(a)(iii)(C) and 1(a)(vii) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024, and for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Konstantin Malofeyev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

14. YAKUSHEV, Mikhail Ilich (Cyrillic: ЯКУШЕВ, Михаил Ильич), Russia; DOB 26 Nov 1959; POB Moscow, Russia; nationality Russia; Gender Male; National ID No. 4507855726 (Russia) (individual) [RUSSIA-EO14024] (Linked To: AUTONOMOUS NONCOMMERCIAL ORGANIZATION FOR THE STUDY AND DEVELOPMENT OF INTERNATIONAL COOPERATION IN THE ECONOMIC SPHERE INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT; Linked To: ANALITICHESKI TSENTR KATEKHON OOO).

Designated pursuant to sections 1(a)(iii)(C) and 1(a)(vii) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Analiticheski Tsentr Katekhon OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024, and for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Autonomous Noncommercial Organization for the Study and Development of International Cooperation in the Economic Sphere International Agency of Sovereign Development, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Entities

1. PUBLIC JOINT STOCK COMPANY TRANSKAPITALBANK (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО ТРАНСКАПИТАЛБАНК) (a.k.a. JOINT STOCK BANK TRANSCAPITALBANK; f.k.a. JOINT STOCK COMMERCIAL BANK TRANSCAPITALBANK (CLOSED JOINT STOCK COMPANY); f.k.a. OPEN JOINT STOCK BANK TRANSCAPITALBANK; a.k.a. PJSC TRANSKAPITALBANK; a.k.a. TKB BANK PJSC (Cyrillic: ТКБ БАНК ПАО); a.k.a. TRANSCAPITALBANK PJSC; a.k.a. TRANSKAPITALBANK; a.k.a. "TKB PJSC"), 27/35, Voroncovskaya Ul., Moscow 109147, Russia; Bldg. 1, 24/2, Pokrovka str., Moscow 105062, Russia; SWIFT/BIC TJSCRUMM; Website www.tkbbank.ru; alt. Website tkbbank.com; Organization Established Date 1992; Target Type Financial Institution; Tax ID No. 7709129705 (Russia); Registration Number 1027739186970 (Russia) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

2. JOINT STOCK COMPANY INVESTTRADEBANK (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО ИНВЕСТТОРГБАНК) (a.k.a. INVESTTRADEBANK JSC (Cyrillic: ИНВЕСТТОРГБАНК АО); a.k.a. JOINT STOCK COMMERCIAL BANK INVESTMENT TRADE BANK; f.k.a. OJSC INVESTTRADEBANK; f.k.a. PJSC INVESTTRADEBANK; f.k.a. PUBLIC JOINT STOCK COMPANY INVESTTRADEBANK), 45 Dubininskaya Str, Moscow 115054, Russia (Cyrillic: УЛ. ДУБИНИНСКАЯ, Д.45, ГОРОД МОСКВА 115054, Russia); SWIFT/BIC JSCVRUM2; Website itb.ru; Organization Established Date 1994; Target Type Financial Institution; Tax ID No. 7717002773 (Russia); Registration Number 1027739543182 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY TRANSKAPITALBANK).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Transkapitalbank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. ANALITICHESKI TSENTR KATEKHON OOO (a.k.a. ANALITICHESKII TSENTR KATEKHON; a.k.a. KATEHON), ul. Gorbunova d. 2, str. 3, e 9 pom II of 89, Moscow 121596, Russia; Organization Established Date 11 Feb 2016; Organization Type: Management consultancy activities; Tax ID No. 9710007769 (Russia); Registration Number 1167746154432 (Russia) [RUSSIA-EO14024] (Linked To: TSARGRAD OOO).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. EKOFERMA ZARECHE OOO (a.k.a. EKOFERMA ZARECHYE), Administrativnoe Zdanie, d. Spas-Teshilovo, Serpukhov 142260, Russia; Organization Established Date 15 Mar 2012; Organization Type: Support activities for animal production; Tax ID No. 5077026547 (Russia); Registration Number 1125043000928 (Russia) [RUSSIA-EO14024] (Linked To: IMENIE TSARGRAD OOO).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Imenie Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. IMENIE TSARGRAD OOO, Pr-d Nagatinskii 1-1 d. 4, et 2 of 220, Moscow 117105, Russia; Organization Established Date 08 Nov 2006; Organization Type: Real estate activities on a fee or contract basis; Tax ID No. 7718611440 (Russia); Registration Number 1067759325150 (Russia) [RUSSIA-EO14024] (Linked To: TSARGRAD OOO).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. IMPERIYA 19-31 OOO (a.k.a. LIMITED LIABILITY COMPANY EMPIRE 19-31), ul. Novoselov 25/2, floor 2, komnata 4, d. Alfimovo, Stupino 142860, Russia; Organization Established Date 09 Nov 2010; Organization Type: Real estate activities on a fee or contract basis; Tax ID No. 7703731504 (Russia); Registration Number 1107746906970 (Russia) [RUSSIA-EO14024] (Linked To: IMENIE TSARGRAD OOO).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Imenie Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. KONTUR OOO, ul. Novoselov d. 25/2, floor 2, komnata 26, d. Alfimovo, Stupino 142860, Russia; Organization Established Date 14 May 2014; Organization Type: Real estate activities on a fee or contract basis; Tax ID No.

5077029058 (Russia); Registration Number 1145043002345 (Russia) [RUSSIA-EO14024] (Linked To: IMPERIYA 19-31 OOO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Imperiya 19-31 OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. KURORT LIVADIYA OOO, ul. Baturina d. 44, Livadia 298655, Ukraine; Organization Established Date 05 Feb 2016; Organization Type: Other human health activities; Tax ID No. 9102204257 (Russia); Registration Number 1169102055451 (Russia) [RUSSIA-EO14024] (Linked To: TSARGRAD OOO).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. KURORT TSARGRAD SPAS-TESHILOVO OOO (f.k.a. UPRAVLYAYUSHCHAYA KOMPANIYA UST-KACHKA ZAKRYTOE AKTSIONERNOE OBSHCHESTVO), D. Spas-Teshilovo, Serpukhov 142260, Russia; Organization Established Date 11 Apr 2005; Organization Type: Other human health activities; Tax ID No. 5043066510 (Russia); Registration Number 1195074004377 (Russia) [RUSSIA-EO14024] (Linked To: IMENIE TSARGRAD OOO).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Imenie Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. PROIZVODSTVENNO-STROITELNAYA KOMPANIYA SNM (a.k.a. "PSK SNM"; a.k.a. "SNM OOO"), d. 3, d. Spas-Teshilovo, Serpukhov 142260, Russia; Organization Established Date 24 Apr 2002; Organization Type: Real estate activities on a fee or contract basis; Tax ID No. 5077014693 (Russia); Registration Number 1035011800328 (Russia) [RUSSIA-EO14024] (Linked To: IMENIE TSARGRAD OOO).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Imenie Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. SPETSINVESTSERVIS OOO, B-r Novinskii d. 31, e 5 pom. I komn 1A, Moscow 123242, Russia; Organization Established Date 13 Sep 2018; Organization Type: Maintenance and repair of motor vehicles; Tax ID No. 7703465348 (Russia); Registration Number 1187746811120 (Russia) [RUSSIA-EO14024] (Linked To: MALOFEYEV, Konstantin).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Konstantin Malofeyev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. TESHILOVO OOO, d. 3, d. Spas-Teshilovo, Serpukhov 142260, Russia; Organization Established Date 11 Jun 1992; Organization Type: Real estate activities with own or leased property; Tax ID No. 5077017574 (Russia); Registration Number 1055011104895 (Russia) [RUSSIA-EO14024] (Linked To: MALOFEYEV, Konstantin).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Konstantin Malofeyev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

13. TSARGRAD OOO, B-r Novinskiy d. 31, office 5-01, Moscow 123242, Russia; Organization Established Date 17 Mar 2015; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c.; Tax ID No. 7703226533 (Russia); Registration Number 1157746244017 (Russia) [RUSSIA-EO14024] (Linked To: MALOFEYEV, Konstantin).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Konstantin Malofeyev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

14. TSARGRAD PARK OOO, d. 3, d. Spas-Teshilovo, Serpukhov 142260, Russia; Organization Established Date 30 Nov 2016; Organization Type: Management consultancy activities; Tax ID No. 5043059992 (Russia); Registration Number 1165043053372 (Russia) [RUSSIA-EO14024] (Linked To: IMENIE TSARGRAD OOO).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Imenie Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

15. TSARGRAD-KULTURA OOO (a.k.a. TSARGRAD-CULTURE LLC), per. Partiinyi d. 1, k. 57 str. 3, floor 1, pom/komn I/16, Moscow 115093, Russia; Organization Established Date 07 Sep 2021; Organization Type: Other amusement and recreation activities; Tax ID No. 9725058950 (Russia); Registration Number 1217700417550 (Russia) [RUSSIA-EO14024] (Linked To: TSARGRAD-MEDIA OOO).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tsargrad-Media OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

16. TSARGRAD-MEDIA OOO, B-r Novinskii d. 31, office 5-01, Moscow 123242, Russia; Organization Established Date 30 Sep 2015; Organization Type: Motion picture, video and television programme production activities; Tax ID No.

7703398765 (Russia); Registration Number 1157746897604 (Russia) [RUSSIA-EO14024] (Linked To: TSARGRAD OOO).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

17. TUREYA OOO, proezd Nagatinskii 1-1 d. 4, office 221, Moscow 117105, Russia; Organization Established Date 26 Nov 2004; Organization Type: Real estate activities on a fee or contract basis; Tax ID No. 7736514110 (Russia); Registration Number 1047796905640 (Russia) [RUSSIA-EO14024] (Linked To: IMPERIYA 19-31 OOO).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Imperiya 19-31 OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

18. ZARECHE-OKA OOO (a.k.a. ZARECHYE-OKA), pl. 178 Aviapolka d. 4, s. Lipitsy, Serpukhov 142261, Russia; Organization Established Date 19 Dec 2001; Organization Type: Growing of vegetables and melons, roots and tubers; Tax ID No. 5077014333 (Russia); Registration Number 1025007774538 (Russia) [RUSSIA-EO14024] (Linked To: IMENIE TSARGRAD OOO).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Imenie Tsargrad OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024.

19. BITRIVER AG, Baarerstrasse 135, Zug 6300, Switzerland; Organization Established Date 14 Apr 2021; Tax ID No. 412633295 (Switzerland); Registration Number CH-170.3.045.713-7 (Switzerland) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

20. OOO BITRIVER RUS (a.k.a. BITRIVER RUS), d. 11B ofis 1, Bratsk 665709, Russia; Organization Established Date 15 Nov 2017; Tax ID No. 3805731961 (Russia); Registration Number 1173850041749 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

21. OOO BITRIVER-B (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU BITRIVER-B), 1 Ter. Tor Buryatiya, Mukhorshibirski Raion, Buryatiya Resp., Russia; Organization Established Date 10 Aug 2020; Tax ID No. 0314888570 (Russia); Government Gazette Number 45184457 (Russia);

Registration Number 1200300013165 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

22. OOO BITRIVER-K (a.k.a. BITRIVER-K, LLC), zd. 7 k. 1 pom. 2 kom. 213, ul. Tranzitnaya, Zheleznogorsk, Kransoyarski Kr. 662970, Russia; Organization Established Date 25 Jan 2021; Tax ID No. 2452048315 (Russia); Government Gazette Number 10690098 (Russia); Registration Number 1212400001197 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

23. OOO BITRIVER-NORTH (a.k.a. BITRIVER-NORTH LLC; a.k.a. BITRIVER-SEVER, OOO), Ul. Ozernaya D. 50A, Office 1, Norilsk 663321, Russia; Organization Established Date 15 Jun 2020; Tax ID No. 6658535180 (Russia); Government Gazette Number 44503601 (Russia); Registration Number 1206600031945 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

24. OOO BITRIVER-TURMA (a.k.a. BITRIVER-TURMA, LLC), Ul. Stroitelnaya D. 12, Pomeshch. 1004, Turma 665760, Russia; Organization Established Date 02 Sep 2021; Tax ID No. 3805736568 (Russia); Registration Number 1213800018596 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

25. OOO EVEREST GRUP (a.k.a. EVEREST GRUP; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU EVEREST GRUP), d. 37 k. A ofis 8, ul. Rigachina, Petrozavodsk 185005, Russia; Organization Established Date 27 Jul 2015; Tax ID No. 1001299201 (Russia); Registration Number 1151001009158 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

26. OOO MANAGEMENT COMPANY BITRIVER (a.k.a. MC BITRIVER, LLC; a.k.a. UK BITRIVER, LLC), Ul. Annenskaya D. 17, Str. 1, Office 1.18, Moscow 127521, Russia; Organization Established Date 22 Sep 2021; Tax ID No. 9715406566 (Russia); Registration Number 1217700448448 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

27. OOO SIBIRSKIE MINERALY (a.k.a. GOK SIBIRSKIE MINERALY; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU GORNO-OBOGATITELNY KOMBINAT SIBIRSKIE MINERALY), 1, ul. Tsentralnaya, Ak-Dovurak, Tyva Resp. 668050, Russia; Organization Established Date 12 May 2011; Tax ID No. 1718002246 (Russia); alt. Tax ID No. 1718002246 (Russia); Government Gazette Number 94545591 (Russia); Registration Number 1111722000060 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

28. OOO TORGOVY DOM ASBEST (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU TD ASBEST), d. 37 k. A ofis 20, ul. Rigachina, Petrozavodsk, Kareliya Resp. 185005, Russia; Organization Established Date 12 Aug 2015; Tax ID No. 1001299770 (Russia); Government Gazette Number 12859420 (Russia); Registration Number 1151001009972 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

29. OOO TUVAASBEST (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU GORNO-OBOGATITELNY KOMBINAT TUVAASBEST), 1, ul. Tsentralnaya, Ak-Dovurak, Tyva Resp. 668050, Russia; Organization Established Date 09 Jun 2015; Tax ID No. 1718002461 (Russia); Government Gazette Number 09058314 (Russia); Registration Number 1151722000154 (Russia) [RUSSIA-EO14024] (Linked To: BITRIVER AG).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, of having acted or purported to act for or on behalf of, directly or indirectly, Bitriver AG, a person whose property and interests in property are blocked pursuant to E.O. 14024.

30. AGENT DE ASIGURARE LIDER ASIG SOCIETATE CU RASPUNDERE LIMITATA, Str. Eminescu M., 35, Chisinau 2000, Moldova; Organization

Established Date 02 Sep 2010; Registration Number 1010600030711 (Moldova) [RUSSIA-EO14024] (Linked To: OKULOV, Aleksandr).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Aleksandr Okulov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

31. OKAF TRADING SOCIETATEA CU RASPUNDERE LIMITATA (f.k.a. SOCIETATEA CU RASPUNDERE LIMITATA PROGLOBAL WORK; a.k.a. SRL OKAF TRADING), str. Mihai Eminescu, 35, Chisinau MD2012, Moldova; Organization Established Date 17 Dec 2015; Registration Number 1015600042010 (Moldova) [RUSSIA-EO14024] (Linked To: OKULOV, Aleksandr).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Aleksandr Okulov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

32. ORGANIZATIA DE CREDITARE NEBANCARA LIDER LEASING SRL, Str. Eminescu M., 35, Chisinau 2000, Moldova; Organization Established Date 24 May 2011; Registration Number 101160001911 (Moldova) [RUSSIA-EO14024] (Linked To: OKULOV, Aleksandr).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Aleksandr Okulov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

33. SOCIETATEA CU RASPUNDERE LIMITATA PROJECT INVEST COMPANY, Str. Eminescu Mihai, 35, Chisinau 2000, Moldova; Organization Established Date 01 Jan 2017; Registration Number 1017600005284 (Moldova) [RUSSIA-EO14024] (Linked To: OKULOV, Aleksandr).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Aleksandr Okulov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

34. JOINT STOCK COMPANY MARSHAL.GLOBAL (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО МАРШАЛ.ГЛОБАЛ) (a.k.a. JSC MARSHAL.GLOBAL (Cyrillic: АО МАРШАЛ.ГЛОБАЛ)), ul. Krasnobogatyrskaya, d. 6, str. 6, et 1 komn 23, Moscow 107564, Russia; Organization Established Date 31 Oct 2017; Tax ID No. 7703436139 (Russia); Registration Number 5177746148784 (Russia) [RUSSIA-EO14024].

    Designated pursuant to sections 1(a)(i) and 1(a)(ii)(G) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being responsible for or complicit in, or having

directly or indirectly engaged or attempted to engage in deceptive or structured transactions or dealings to circumvent any United States sanctions, including through the use of digital currencies or assets or the use of physical assets, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation.

35. AUTONOMOUS NONCOMMERCIAL ORGANIZATION FOR THE STUDY AND DEVELOPMENT OF INTERNATIONAL COOPERATION IN THE ECONOMIC SPHERE INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT (Cyrillic: АВТОНОМНАЯ НЕКОММЕРЧЕСКАЯ ОРГАНИЗАЦИЯ ПО ИЗУЧЕНИЮ И РАЗВИТИЮ МЕЖДУНАРОДНОГО СОТРУДНИЧЕСТВА В ЭКОНОМИЧЕСКОЙ СФЕРЕ МЕЖДУНАРОДНОЕ АГЕНТСТВО СУВЕРЕННОГО РАЗВИТИЯ) (a.k.a. ANO INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT (Cyrillic: АНО МЕЖДУНАРОДНОЕ АГЕНТСТВО СУВЕРЕННОГО РАЗВИТИЯ); a.k.a. INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT RBK), Prospekt Mira, dom 19, stroeniye 1, E/Pom/K/Of 1/I/6/17U, Moscow 129090, Russia; Organization Established Date 14 May 2020; Tax ID No. 9702016897 (Russia); Registration Number 120770165727 (Russia) [RUSSIA-EO14024] (Linked To: MALOFEYEV, Konstantin).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Konstantin Malofeyev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

36. ALL-RUSSIAN PUBLIC ORGANIZATION SOCIETY FOR THE PROMOTION OF RUSSIAN HISTORICAL DEVELOPMENT TSARGRAD (Cyrillic: ОБЩЕРОССИЙСКАЯ ОБЩЕСТВЕННАЯ ОРГАНИЗАЦИЯ ОБЩЕСТВО СОДЕЙСТВИЯ РУССКОМУ ИСТОРИЧЕСКОМУ РАЗВИТИЮ ЦАРЬГРАД) (f.k.a. ALL-RUSSIAN PUBLIC ORGANIZATION SOCIETY FOR THE DEVELOPMENT OF RUSSIAN HISTORICAL EDUCATION DOUBLE-HEADED EAGLE (Cyrillic: ОБЩЕРОССИЙСКАЯ ОБЩЕСТВЕННАЯ ОРГАНИЗАЦИЯ ОБЩЕСТВО РАЗВИТИЯ РУССКОГО ИСТОРИЧЕСКОГО ПРОСВЕЩЕНИЯ ДВУГЛАВЫЙ ОРЕЛ); a.k.a. ALL-RUSSIAN PUBLIC ORGANIZATION TSARGRAD (Cyrillic: ОБЩЕРОССИЙСКАЯ ОБЩЕСТВЕННАЯ ОРГАНИЗАЦИЯ ЦАРЬГРАД); f.k.a. DOUBLE HEADED EAGLE SOCIETY; f.k.a. SOCIETY OF THE DOUBLE-HEADED EAGLE FOR THE PROPAGATION OF RUSSIAN HISTORICAL ENLIGHTENMENT; a.k.a. TSARGRAD SOCIETY (Cyrillic: ОБЩЕСТВО ЦАРЬГРАД)), 1s3 Partynniy pereulok, Moscow 115093, Russia; kom. 51, pomeshch. 1, d. 1, k. 57, str. 3, Per Partynniy, Intra-Urban Area Danilovskiy, Moscow 115093, Russia; Organization Established Date 01 Nov 2015; Tax ID No. 7743141413 (Russia); Registration Number 1167700052618 (Russia) [RUSSIA-EO14024] (Linked To: MALOFEYEV, Konstantin).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Konstantin Malofeyev, a person whose property and interests in

property are blocked pursuant to E.O. 14024.

37. LIMITED LIABILITY COMPANY RUSSIAN DIGITAL SOLUTIONS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ РУССКИЕ ЦИФРОВЫЕ РЕШЕНИЯ) (a.k.a. LLC RUS.DIGITAL; a.k.a. LLC RUS.TSIFRA (Cyrillic: ООО РУС.ЦИФРА); a.k.a. RUSSKIE TSIFROVYE RESHENIYA), ul. Vyatskaya, d. 70, pomeshch./floor 1/4, kom. #5, Moscow 127015, Russia; Organization Established Date 11 Feb 2021; Tax ID No. 7714468703 (Russia); Registration Number 1217700056991 (Russia) [RUSSIA-EO14024] (Linked To: MALOFEYEV, Kirill Konstantinovich).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Kirill Konstantinovich Malofeyev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

38. LIMITED LIABILITY COMPANY VLADEKS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ВЛАДЕКС) (a.k.a. LLC VLADEKS (Cyrillic: ООО ВЛАДЕКС); a.k.a. "VLADEX"), ul. Volkhovskaya, d. 29, office 505, Vladivostok 690018, Russia; Organization Established Date 22 Mar 2018; Tax ID No. 2543123270 (Russia); Registration Number 1182536008710 (Russia) [RUSSIA-EO14024] (Linked To: MALOFEYEV, Kirill Konstantinovich).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Kirill Konstantinovich Malofeyev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

39. LIMITED LIABILITY COMPANY VLADEKS KHOLDING (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ВЛАДЕКС ХОЛДИНГ) (a.k.a. LLC VLADEKS KHOLDING (Cyrillic: ООО ВЛАДЕКС ХОЛДИНГ)), ul. Arbat, d. 6/2, e 4, pom. I, k 1, of 48, Moscow 119019, Russia; Organization Established Date 06 Jul 2018; Tax ID No. 7704457928 (Russia); Registration Number 1187746643370 (Russia) [RUSSIA-EO14024] (Linked To: MALOFEYEV, Kirill Konstantinovich).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Kirill Konstantinovich Malofeyev, a person whose property and interests in property are blocked pursuant to E.O. 14024.

40. MGI PTE LTD (f.k.a. LARK HOLDINGS PTE LTD; f.k.a. SINO RS ADVISORY PTE LTD), 77 Robinson Road #16-00, Singapore 068896, Singapore; Organization Established Date 26 Feb 2015; Registration Number 201505110K (Singapore) [RUSSIA-EO14024] (Linked To: AUTONOMOUS NONCOMMERCIAL ORGANIZATION FOR THE STUDY AND DEVELOPMENT OF INTERNATIONAL COOPERATION IN THE ECONOMIC SPHERE INTERNATIONAL AGENCY OF SOVEREIGN DEVELOPMENT).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Autonomous Noncommercial Organization for the Study and Development of International Cooperation in the Economic Sphere International Agency of Sovereign Development, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Dated: April 20, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–08821 Filed 4–25–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending March 31, 2022. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABERCROMBIE	JOHN	N
ABEYGUNAWARDANA	SHIHAN	C
ABHISHEK	FNU	
ADAM	LESLEY	E
ADAMS	JOHN	R
ADVANI	ABHISHEK	PASHUPATI
ALAYOUBI	ABDULFATAH	M
ALBERTI	CHRISTIAN	P
ALHARBI	ABDULLAH	SAUD
ALKINS	BRIGITTE	
AMARAL	ALLAN	
AMOEDO	NOELIA	
ANDERSON	DAVID	A
ANDERSON	ELKE	
ANDERSON	ROBERT	E
ARBID	RAMI	
ASAHINA	MAKI	
ASHTON	RICHARD	I
ASTLE	LYNN	S
BA	SOULEYMANE	M
BAIRLE	CHANTAL	I
BAKSH	EYAL	
BALLENGER	EMMA	LOUISE
BAO	JIE	
BARDE	BARBARA	ANN
BARMECHA	RAKESH	
BAUMANN	MIWA	ESTELLE
BELL	MICHAEL	
BENEDICTSSON	ANNE	MARIE
BENN	ERIC	C
BENNETT	MARIE	
BETTENCOURT	JOAO	BAPTISTA
BEYLIER BEURTON	VERONIQUE	MADELEINE
BIEGER	JACQUELINE	JUNE
BLACLARD	PIERRE	P
BLAIR	DEBORAH	C
BLOK	RIEUWERT	
BLOK	RONALD	
BLUM	MICHAEL	
BOBILLO	ANDREA	
BOGUSZ	IRENA	KRYSTYNA
BONGAERTS	BIANCA	ELINE
BORROMEO	PAOLO	MAXIMO F
BOSCHMANS	PETER	KAREL
BOURDON	NATHALIE	M
BOURQUE	LINUS	CLAUDE
BOUVIER	PASCAL	GEORGES

Last name	First name	Middle name/initials
BRANDER	CAROLINE	SARAH
BRANGER	GREGOIRE	JEAN MARIE
BREMNESS	NADA	GAY
BRENDEL–EVAN	SILKE	
BRIENZ	DEBORAH	D
BROWN	LISA	YILDIZ
BROWNLEE	EUAN	JAMES
BRUCKMANN	CAROLINE	LOUISE
BSEISU	ASHRAF	A
BUCHHOLZ	TIM	
BURLEY	KUMIKO	Y
BURTNIK	ANGELA	LILLIAN
BUSSAT	JULIEN	
BUTERA	SALVATORE	PAOLO
CAESAR	ROHAN	CRANE
CALATO	MARIA–ANNA	LUISE
CAMPBELL	ANDREW	JAMES
CARR	DAVID	
CARTER	JULIE	
CHAN	CHRISTOPHER	LAP BUN
CHANG	WAYNE	
CHAUHAN	CHETANYA	SHANTILAL
CHEN	TERENCE	B N
CHENG	HOI	LAM
CHEW	JIN	YANG
CHO	SE	HYOUNG
CHO	YONG–HOON	
CHOI	HYOSUNG	
CHOI	JUNG	HWAN
CHOI	KYONGSUN	
CHON	HAEWON	
CHU	SHIOU–YEN	
CHUN	YOUNGSAM	
CLARK	MICHAELA	TESS
CLARK III	THEODORE	CHARLES
CLUEIT	GARY	RAYMOND
CLUEIT	SUSAN	MARY
COHEN	RONEN	
COLBORN	JAMES	E
COLLIN–DUFRESNE	PIERRE	K
COLUSSI	GIAN	DONATO
COMI	AILEEN	CHRISTYN
CONNOLLY	DANIEL	THOMAS
COOKES	KRISTIAN	M
COOPER	DAVID	DALE
CORK	HOWARD	ERIC
CORROCHANO	EDGARD	
COTTERILL	BRUCE	RICHARD
COTTERILL	PHEBE	LOUISA
COUTTS	KEREN	ANNA
COUTU	BERNARD	T
CREA	LORRAINE	PATRICIA
CROMBEEN	JANET	ELIZABETH
CROMWELL–AHRENS	CHRISTINE	
CUI	AIDI	
CUNLIFFE	JANICE	ANGELA
CUNLIFFE	SARAH	JAYNE
DAGAN	NIR	
DAHAN	MARIE	LURE
DAI	PEIHONG	
DALBOKOVA	SVETLA	IVANOVA
DALLAL	ROBERT	SALMAN
D'AMBROSIO	ALEXANDRE	S
DAMOISEAUX	LUKE	LEONARD
DART	COLIN	STEPHEN
DAVID	BEN	
DAVID	DANIEL	
DE JONG	DAVID	THEODOOR
DEAN	JANET	DENISE
DEAN	PAUL	ANTHONY
DEBALEAU	PAULA	MARIE
DEN HEETEN	KARIN	E
DEVJANI	JYOTI	RAHUL
DEVJANI	RAHUL	TIRATH

Last name	First name	Middle name/initials
DONALD	SUSAN	VAILA
DUCHARME	YVES	
DYSON	SACHIKO	O
DZIURAWIEC	SUZANNE	
EARLY	ROBIN	KENNETH
EGOROVA	MARINA	NA
EILERS THOMES	JONI	COLLEEN
ELLFOLK	KARL	ROGER
ENSBERG	PETER	
ETO	MASUMI	
FARNER	NATHALIE	MARIE HELENE
FAUDON	PATRICK	MICHAEL ERICH
FISCHER	MAARTEN	MICHIEL
FLENK	BENJAMIN	JAMES
FLEURY	NICOLE	ANGELE MARIE-THERESE MONTAVILLE
FLORES VAN ONLANGS	MIRYAM	VERONICA
FOO	MAO	CHING
FORD	CHERYL	LYNNE
FORSSEN	BJORN	HENRY
FOX	THELMA	MAE
FRASCO	TONI	SUZANNE
FRECHETTE	CORINE	
FREUND	DOV	ABRAHAM
FRY	SHINOBU	
FTAYA	SARAH	MARGARET
FULLER	MAXWELL	JAMES
FUNATSUBO	FUMIKO	
GAJULAPALLE	NAVEEN	KUMAR
GALLAGHER	CATHERINE	MOYRA
GALLIMORE-SOARES DE JESUS	MARY	KATE
GENZO	LISE	MAREE
GEORGI	ROBERT	EDWARD JAY
GIULIANI	EDWARD	
GLEISER	VIKTORIA	
GOEPFERT	MARIO	
GONSALVES	ANTHONY	OLIVER
GOOD	ELLEN	L SHEARER
GOSS	TRACY	GRANT
GOUW	DONINDA	ANN
GRIFFITHS	DYLAN	
GUENTHER	LISA	NOELLE
GUZMAN RODRIUEZ	BLANCA	
HADDEN	KELLY	ANN
HAGEGARD	LENNART	OSKAR
HAGENBUCH	JOERG	
HALL	EVELYN	A
HAMPSON	CHRISTOPHER	CHARLES
HANZ	HEIKE	MARIA
HARDING	CHRISTINE	RUTH
HARKNESS	DAWN	PATRICIA
HARRIES	CHRISTOPHER	JOHN
HARROLD	GLORIA	THELMA
HATCHER	KATHY	JANE
HAUG	JOCHEN	ALEXANDER
HAY	JONATHAN	CHARLES
HAY	KAREN	C
HAYASHI	HISAYO	
HAYASHIDA	NOBUKO	
HEINRICH	ANDREAS	JOACHIM
HERGERSBERG	CHRISTOPH	HEINRICH LUDWIG
HERTACH	KASPAR	
HIEMSTRA	NATHALIE	CATHERINE
HIGHGATE HINES	STEPHANIE	CORRINE
HILDY	PAULA	JANE
HILLER–BROUGHTON	JACQUELINE	MARY
HINDSON	ERIN	PATRICIA
HINDSON	TREVOR	DAVID
HOENIG	JULIAN	CHRISTOPH
HOEPPLI	DIETER	M
HOEPPLI BRECHBUEHL	VERENA	
HOFFMANN	JEAN	MARC HENRI
HOLLMAN	DIANE	MARIE BOOT
HOLLMAN	TERRENCE	CHRISTOPHER
HOMAYOUNI	ALIREZA	

Last name	First name	Middle name/initials
HORNE	DOROTHY	ANNE
HOU	HANRU	
HOWES	HELEN	A
HOYLE	DAVID	JOHN
HSU	AUSTIN	
HUANG	WEI	
HUBSHER	ROBERT	A
HUEBNER	CHRISTIANE	JUSTINE
HUIJGEN	RUTGER	NICOLAAS
HUMPHRIES	NICHOLAS	CHARLES
HUNG	SHAO–HUNG	
HUSCHILT	PAUL	MICHAEL
IBARAKI	MICHIKO	
ICHIKI	KEIKO	
ICHIKI	KOICHI	
IGUCHI	TADAHITO	
INGENDAHL	ANGELIKA	U
INNES	CATHERINE	MARGARET
IRISBEKOV	TALGAT	
ISHIHARA	AKIYOSHI	
ISHIKAWA	MAMI	
ISHIKAWA	YOSHINOBU	
ISOMURA	NORIHISA	
ITO	YUKI	
IWAIZUMI	MISA	
IWAIZUMI	MITSUYASU	
IYER	SOWMYA	RAMANI
JACOBSEN	LORI	HELEN
JAKOBSSON	ANNA–MARIA	MAGDALENA
JAMES	ADRIAN	CHARLES
JHAVERI	HARSH	
JIANG	GONGSHENG	
JIANG	MUCHUAN	
JORDAN	CALLY	E
JORDAN	ROBERT	J
JORDAN	TOBIAS	
JOUANNO	EVELINE	NATHATLIE ANDREE
JUBENVILLE	FIONA	M
KADOTA	HARUMI	
KALIL	SANDRA	
KALISKI	SUSAN	MARIA
KAMBE	TAKEHIKO	
KAMBE	YOKO	
KAMPE	JOHAN	MIKAEL AKE
KAMPEN	FRANK	THEODORE
KARAKAS	OGUZHAN	
KATO	RIE	
KATSUMA	TAKASHI	
KAWAKAMI	FUMIKO	
KE	LIN	
KEAN	SIMON	JOHN
KENDRICK	DONALD	GEOFFREY
KESTER	SUSAN	MARY
KHINAST	JOHANNES	GREGOR
KIELTY	ANDREW	
KIELTY	SUSANNA	MARIA
KIGUCHI	YUMIKO	
KIM	SEHEE	
KIM	SINAE	
KING	LUCY	AMANDA
KITTSON	PAUL	DONOVAN
KOESTLBAUER	JOHANNA	E
KOLT	SYLVIA	MARLENE
KOTSOPOULOS	JAMES	
KRANTZ	MATTHIAS	CHRISTIAN
KRUNGLEVICIUTE	VAIVA	
KUGITA	AKIKO	
KUMAGAI	JUNKO	
KUMAGAI	YOSHIHIRO	
LAHERA	NICHOLAS	
LAN	SHU	LIN
LAUTER	SENTA	MONIKA
LAWLESS	CATHERINE	E
LAWLESS	ROBERT	J

Last name	First name	Middle name/initials
LAWLOR–HAWKINS	MARY	HELENA
LAZZER	BARRY	NEIL
LEBLANC	ANDRE	J
LEE	GUY	
LEE	HOON	KOOG
LEE	JONGHO	
LEE	JYH–EN	
LEE	KATHERINE	L
LEEGSTRA	SASKIA	A.
LEES	MONICA	N
LESSA	ANA	BEATRIZ
LETTIERI–BECK	ANNA	
LEUNISSEN	SERGIO	A
LEWIS	RALPH	CARSTEN
LINDSTROEM	SIGNE	ULRIKA
LISSI	ELENA	
LIU	HUI	
LLOTT	WENDY	K
LONG	DENISE	THERESE
LOPEZ MEJIA	ENRIQUE	
LOUNDS	ANDREW	CHARLES
LOZOVIK	YEVGENIY	L
LU	JACQUELINE	WEN TING
LU	PEIQI	
LU	SHIYU	
LU	YUNQIANG	
LUBAVIN	DANIEL	
LUEDTKE	MARTGIN	ECKEHARD
LUEDTKE	SISSEL	
LUGERT	CHRIS	SANDRO
LUK	KIN	CHUNG
MAMILLAPALLE	NAGA	LAKSHMI
MANIAN	SHANKAR	
MANN	GARY	MICHAEL
MARCHETTI	KAREN	
MARILL	PHILIPPE	ROBERT
MARLAND	PHILIPPA	
MARRIOTT	IVETTE	
MATSUO	SHOI	
MATSUOKA	CHIAKI	
MATTHEWS	HILARY	SUSAN
MATTHEWS	JUDITH	MARIE
MAUERHOFER	KATHARINA	A
MAY	BRIAN	WILLIAM
MAYR	MICHAEL	ANDREAS SYLVESTER
MCARTHUR	ROBERT	JAMES
MCAULIFFE	IAN	MARK
MCKEAN	GERALDINE	ELIZABETH
MENDELSON	PRISCILLA	LOUISE
MEULEMA	ELIZABETH	MARIA
MEYBAUM	LAURA	
MEYBAUM	MONA	
MEYER	MICHAEL	
MEYER	ROLF	WILHELM
MILLER	GREGORY	CHARLES
MILLOT	BENOIT	
MIYANO	YOKO	
MIYASAKA	SATOSHI	
MOERSCHEL	MATHIAS	PETER
MOFFATT	NICHOLAS	HUNTER
MOLLOY	SCOTT	L
MONAHAN	CATHERINE	G
MONTGOMERY	JOHN	YOUNG
MONTGOMERY	MARGARET	JANE
MOODYCLIFFE	TIMOTHY	IAN
MORE	DWIGHT	EVAN
MORIKAWA	YUKO	
MORITA	KENSEI	
MORITA	MINOBU	
MORRIS	WAYNE	ANTHONY
MORTON	STEPHEN	CHARLES
MOSCHITZ	JULIUS	
MOTT	SPENCER	J
MOULD	ANDREW	PETER

Last name	First name	Middle name/initials
MUELLER	MAYA	ALENA
MUELLER	ROOPINDER	J
MUELLER	RUDOLF	PAUL
MULVEY	DANIEL	J
MURATA	AKIHIRO	
MURATA	TOMOKO	
MUSHKIN	STANISLAV	
MYERS	LINDSAY	D
NAAZ	AFSHAN	
NAGASUBRAMANIAN	HARIPRIYA	
NAKAGAWA	TSUTOMU	
NAKAMURA	KAORU	
NEISH	STEPHEN	ANDREW
NESS	GAYLE	HEATHER
NEWLANDS	ELSPETH	LAURIE
NG	CHEE	C
NICHOLS	KEVIN	WILLIAM
NICHOLS–GOUDSMID	JOYCE	
NIEDERHAUSER	VERENA	
NIEDERHAUSER	WALTER	
NOEL	JEAN–FRANCOIS	G
NOORDERMEER	MARCEL	PETER ALEXANDER
NORTON	SINDEN	MARIE
NOVO	LUIS	FERNANDO MENDES MARQUES
NUNN	DAVID	PHILIP
OFFNER	JAN	E
OH	OCK	JA
OHARA	MASAYO	
OHNSTAD	MIKAL	
OKI	JUNJI	
OKI	MIEKO	
OLSSON	CARMEN	SORAJA
OLSSON	JENS	MARCUS
OP DEN CAMP	JOHN	V
ORMEN DELLA CORTE	HANDE	
ORTEGA	SEBASTIAN	
OWEN	ALEXANDRA	
OWEN	DAVID	BARRIE
PAENAKHORN	AMORN	
PAK	YOUNKUY	
PALSTRA	THOMAS	T
PAQUIN–COUTU	LISE	
PARENT	MARC	
PARK	SEON	YEONG
PARK	YOUNG	SOO
PARKES	ANDREW	JOHN
PARTCH	RONALD	MAURICE
PAUL	NILS	KARL
PEACOCK	MARK	ROBERT
PEDERSEN	HEINER	NIELS
PERMAN	GEORGE	RAYMOND
PETTY	RUTA	
PHILLIPS	NANCY	LOUISE
PHILLIPS	ROSELYN	O
PHILLIPS	SAYOKO	
PIEDIMONTE BODINI	ANDREA	
PIPER	MAUREEN	ANNE
PLASTERS	STACEY	DORANN
POWELL	DEBORAH	JOAN
POWELL	JAMES	T
PRAVETZ	JAMES	DAVID
PRECHT	EVA	ELISABETH
PRUTTON	SUSAN	
PUTLITZ	TILLMANN	
QUINN	KATHI	SUE
RAFAILIDIS	THEMISTOKLIS	
RAFN	MATHIAS	WILLIAM
RANCOURT	LOUISE	
RASHEVSKY	VLADISLAV	
REIDY	JAMES	DALE
RENAULT BENHADDAD	GENEVIEVE	C
RENSHAW	SIMON	JOHN
RICHARDSON	JAMES	ANTHONY
ROBBIANI	DAVIDE	

Last name	First name	Middle name/initials
ROBERT	CATHERINE	
ROBERTSON	DONALD	J
ROBINSON	SHAUN	A
ROELL	CASPAR	ROBERT DEAN
ROPERS	MEIKE	
ROSE	KIM	SHARON
ROSS	IAN	FRASER
RUSSELL	IRENE	E
RYDER–COOK	ALLAN	S
SABATINI	ANNETTE	STELLA
SAITO	YUMI	
SALIM	SONIA	
SALVATORE	JULIA	
SAMOU	JEAN	BLAISE
SAMPSON	ADRIAN	DEREK
SAN MIGUEL GIL	IGNACIO	
SANCHEZ	JENNIFER	MARGARET
SANTRAC	SLOBODAN	
SARATHY	SARASWATHI	
SASAKI	AKIKO	
SASAKI	YUKIO	
SATO	KAZUKO	
SAUER	MILTON	DWIGHT
SAUNDERS	GEORGE	
SCHERBAUM	CHRISTINE	AGNES
SCHMALZ	RACHEL	SUZANNE
SCHOENTHAL	NORA	
SCHOUTEN	DIRK	JAN
SCHROYENS	DANIEL	EDWARD
SCHUMANN	DIRK	
SCHWETHELM	LUKAS	DANIEL
SCURFIELD	PAUL	M
SEHN	JODI	MARIA
SENG	KHENG	HWA
SENG	MARVIN	
SERRATT	DON	MARK
SHAKED	RIVI	
SHALLWANI	SADAF	
SHAPIRO	LAWRENCE	CYRIL
SHELBOURNE	JULIAN	PETER
SHIBULAL	SHRUTI	
SHIMA	TEPPEI	
SHIMIZU	AYAKO	
SHIOTA	KAZUAKI	
SIEBEL	EDWIN	ALEXANDER
SIN	YOUNG	DAE
SINGER	NATHALIE	FRIDA
SIOMS	MARIA	FIONA
SLITER	SANDRA	LYNN
SMITH	ALASTAIR	JOHN
SMITH	ERIN	CHARLOTTE
SMITH	TANIA	M
SPENCE HIRSH	HELEN	JOAN
STAMBOULI	YOUCEF	
STAMENOV	VALERIY	P
STANDART	SALLY	
STROFFEKOVA POLAKOVA	KATARINA	
STUMP	DAVID	M
SULLIVAN	MICHAEL	JOHN
SUTER	KARIN	M
TAKAHASHI	AKIKO	
TAKAHASHI	GAYLE	JOY
TAKAHASHI	YOKO	T
TAKAISHI	HIDEYA	
TAMAI	AYAKO	
TANAKA	TOSHIYUKI	
TANG	ERQING	
TANGUAY	MARYSE	
TEMELKURAN	BARIS	
THOM	JAMES	COLIN
THOMAS	SUSAN	R
THOMAS	YOSHIKO	
THORING	CODY	
TITZE	CHRISTIAN	ANDREAS

Last name	First name	Middle name/initials
TORIDE	MARIKO	
TOSA	SACHIKO	
TRYHORN	LEE	MICHELLE
TSUEI	LIH LIH	
TURNBULL	KARIN	CHISHOLM
ULMER–HAEDERLI	SUSANNE	ELISABETH
UNCLES	STEFANIE	JUTTA
VAJK LE GALL	MOIRA	SUZANNE
VAN DEN BRINK	JEAN–MARCUS	
VAN DEN HAM	CORNELUS	JAN PETRUS
VAN GENT	PETRA	MARIANNE
VAN GENT	ROBERTUS	WILHELMUS
VAN LOON	KAREL	A J
VAN ZELM	BAS	BENJAMIN
VELEV	DIMITAR	VASILEV
VERNON	ADELE	ANNE
VERSAVEL	MARIA	A
VICAT–BLANC	PASCALE	SIMONE
VILANOVA	MARIA	
VON FELTEN	DOMINIC	
VON MALTZAHN	CHRISTOPHER	EBERHARD FREIHERR
VROMEN	EDWARD	GUILLAUME HELENE
WADA	AIKO	
WADA	HIDEAKI	
WAGNER	MARIA	TROKOUDES
WAJS	RICHARD	
WALLOP WILIAM–POWLETT	PATRICK	HENRY
WALTON	CONNER	RITCHIE
WANG	DANWEI	
WANG	JUNXIAO	
WANG	YA	
WARKENTIN	MICHAEL	LINH
WATANABE	MOEKA	
WATSON	KAREN	FRANCES
WEIR	DONALD	FREDERICK
WENDEL	CARINA	
WESTER	DANIEL	J
WILCOX	KAYLA	ANNE
WILCOX	LEIGH	
WILSON	HELEN	
WILSON	ROBERT	
WINTERNITZ	CHARLEY	ROSE
WISEMAN	MAUREEN	SUSAN
WOIWODE	YOSHIKO	
WOO	CHUL	HEE
WORTHMANN	PATRIK	
WRIGHT	MATTHEW	PATRICK
XAVIER	AROKIA	INIAN
XUE	CHUN	
YAMADA	YASHUISA	
YAMAMOTO	REIKO	
YAMAMOTO	TSUNEYUKI	
YANG	HONG	
YANG	SHIN–YA	E
YASUKAWA	TOMOKO	
YIP	KONG	LOONG JEFFREY
YONG	KRISTEN	JANE
YOON	HANGKEE	
YOSHIDA	AKINORI	
YOSHIDA	AKIRA	
YOSHIDA	HANAE	
YOSHIDA	KENJI	
YOSHIDA	NATSUYO	
YOUK	JUNG	SIM
YOUNGER	BRETT	CARSON
YUSUF	HUMA	
ZACHARIAS	MARC	
ZAIMOKUYA	KINUKO	
ZAPATA	MARCO	
ZEHAVI	LIMOR	HADAS
ZHANG	BOYAN	
ZHANG	FAN	
ZHANG	JING	
ZHANG	XINRU	

Last name	First name	Middle name/initials
ZHANG	YINGLU	
ZHOU	SIYUAN	
ZIPPLIESS	HANS	FRANK

Dated: April 20, 2022.

Steven B. Levine,

Manager Team 1940, CSDC—Compliance Support, Development & Communications, LB&I: WEIIC: IIC: T4.

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BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) is seeking new members to serve on the Internal Revenue Service Advisory Council (IRSAC). Applications are currently being accepted for appointments that will begin in January 2023. IRSAC members are drawn from substantially diverse backgrounds representing a cross-section of the taxpaying public with substantial, disparate experience in: Tax preparation for individuals, small businesses and large, multi-national corporations; tax-exempt and government entities; information reporting; and taxpayer or consumer advocacy. Nominations of qualified individuals may come from individuals or organizations; applications should describe and document the proposed member's qualifications for IRSAC.

DATES: Applications must be received on or before June 3, 2022.

ADDRESSES: Applications should be submitted to IRS National Public Liaison via email to *publicliaison@irs.gov* or electronic fax to 855–811–8021. Application packages are available on the IRS website at *https://www.irs.gov/irsac.*

FOR FURTHER INFORMATION CONTACT: Victoria White at 267–941–6379 (not a toll-free number) or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: In particular, the IRSAC is seeking applicants with knowledge and background in some of the following areas:

Individual Wage & Investment—Knowledge of tax law application/tax preparation experience, income tax issues related to refundable credits, the audit process, and/or how information returns are used and integrated for compliance; experience educating on tax issues and topics, with multi-lingual taxpayer communications, with taxpayer advocacy or contact center operations, marketing/applying industry benchmarks to operations, with tax software industry, and/or with the creation or use of diverse information returns used to report income, deductions, withholding, or other information for tax purposes; familiarity with IRS tax forms and publications; familiarity with IRS's online applications (*e.g.,* Online Account, EITC Assistant, etc.); financial services information technology background with knowledge of technology innovations in public and private customer service sectors.

Small Business & Self-Employed—Knowledge or experience with virtual currency/cryptocurrency and/or peer to peer payment applications; knowledge of passthrough entities and/or fiduciary tax; experience with online or digital businesses, audit representation, and/or educating on tax issues and topics; knowledge base and/or background related to Collection activities; experience as a practitioner in one or more underserved communities (*e.g.,* where English is not the first language); experience with digitalization systems, tools or processes; marketing experience to help with ideas for increasing uptake of digital tools offered by the IRS.

Large Business & International—Experience as a certified public accountant or tax attorney working in or for a large, sophisticated multinational organization; experience working in-house at a major firm dealing with tax planning for complex organizations including large multinational corporations and large partnerships.

Tax Exempt & Government Entities—Experience with exempt organizations; experience with employee plans.

Information Reporting—Payment processors (*i.e.,* Credit Card processors), Colleges/Universities and/or multinational corporations with experience filing information returns.

The IRSAC serves as an advisory body to the Commissioner of Internal Revenue and provides an organized public forum for discussion of relevant tax administration issues between IRS officials and representatives of the public. The IRSAC proposes enhancements to IRS operations, recommends administrative and policy changes to improve taxpayer service, compliance and tax administration, discusses relevant information reporting issues, addresses matters concerning tax-exempt and government entities, and conveys the public's perception of professional standards and best practices for tax professionals.

IRSAC holds approximately four, two-day working sessions and at least one public meeting per year. Members are not paid for their services; any travel expenses are reimbursed within federal government guidelines.

Appointed by the Commissioner of Internal Revenue with the concurrence of the Secretary of the Treasury, IRSAC members will serve three-year terms to allow for a rotation in membership which ensures that different perspectives are represented. In accordance with the Department of Treasury Directive 21–03, a clearance process, including a tax compliance check and a practitioner check with the IRS Office of Professional Responsibility, will be conducted. In addition, all applicants deemed ''Best Qualified'' shall undergo a Federal Bureau of Investigation fingerprint check.

The IRSAC is authorized under the Federal Advisory Committee Act, Public Law 92–463. The first Advisory Group to the Commissioner of Internal Revenue—the Commissioner's Advisory Group—was established in 1953 as a ''national policy and/or issue advisory committee.'' Renamed in 1998, the Internal Revenue Service Advisory Council (IRSAC) reflects the agency-wide scope of its focus as an advisory body to the entire agency.

All applicants will be sent an acknowledgment of receipt.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees. Therefore, the IRS extends particular encouragement to nominations from such appropriately qualified candidates.

Dated: April 20, 2022.

John A. Lipold,

Designated Federal Official, IRSAC.

[FR Doc. 2022–08766 Filed 4–25–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Application, Evaluation Design Plan, Reports, and Recordkeeping for the Social Impact Partnerships To Pay for Results Act (SIPPRA) Grant Program

AGENCY: Office of Economic Policy, Department of the Treasury (Treasury).

ACTION: Notice and request for comments.

SUMMARY: Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and affected federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995. Treasury's Office of Economic Policy is soliciting comments concerning the application, evaluation design plan, report, and recordkeeping forms to be used for the Social Impact Partnerships to Pay for Results Act (SIPPRA).

DATES: Written comments must be received on or before June 27, 2022 to be assured of consideration. This process is conducted in accordance with 5 CFR part 1320.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agency Information Collection Activities; Proposed Collection; Comment Request; Application, Evaluation Design Plan, Reports, and Recordkeeping for the Social Impact Partnerships to Pay for Results Act (SIPPRA) Grant Program.

Office of Management and Budget (OMB) Control Number: 1505–0260.

Type of Review: Revision of a currently approved collection.

Description: SIPPRA, enacted February 9, 2018, amends Title XX of the Social Security Act, 42 U.S.C. 1397 *et seq.,* to provide $100 million in funding to implement social impact partnership projects'' (projects) and feasibility studies for such projects. SIPPRA authorizes the Secretary of the Treasury to enter into award agreements with state or local governments for projects or feasibility studies. Treasury, in consultation with other federal agencies, administers the SIPPRA grant program.

SIPPRA authorizes Treasury to conduct a request for proposals for projects, make award determinations, and enter into project award agreements. Treasury intends to publish a Notice of Funding Availability (NOFA) seeking applications for projects and anticipates that ten or more persons will respond to its NOFA announcing availability of funding for SIPPRA projects.

Although Treasury is asking applicants to use the SF–424 and SF–425 families of common forms for their applications and reports, Treasury also expects to solicit additional detailed information from applicants to effectively and efficiently assess and evaluate whether applications for projects comply with statutory requirements. This request includes only the burden for this additional information. The burden for the SF–424 forms is covered under OMB Control Numbers 4040–0004, 4040–0006, 4040–0007, 4040–0008, 4040–0009, 4040–0010, and 4040–0013. The burden for the SF–425 form is covered under OMB Control Number 4040–0014. The additional information includes the following components:

- *SAM.gov* registration;
- Notice of Intent to Apply (optional);
- Project Narrative, to include an Executive Summary;
- Project Narrative Attachments, to include project budget, narrative statement addressing partnership agreements, an estimate of the value to the federal government of the interventions being proposed in the project, partner qualifications, independent evaluator qualifications, evaluation design plan, independent evaluator contract, outcome valuation (for which Treasury's SIPPRA website will provide guidance to assist applicants), legal compliance, and (optional) additional supporting documentation such as a preexisting feasibility study;
- Treasury Office of Civil Rights and Diversity Assurances and Certifications, Terms and Conditions, and Compliance Data;
- Additional documentation related to Title VI of the Civil Rights Act;
- Copy of application proposing privileged or confidential information to be redacted;
- Administrative Reporting, including a Quarterly Performance Report, Evaluation Progress Reports, and Final Evaluation Report; and
- Records Retention requirements.

Use of the Data

The information collected under this NOFA: (1) Identifies eligible recipients and activities; (2) helps identify which applications sufficiently address all statutory requirements and which proposed projects are the most competitive; (3) determines the appropriate amount of funding; (4) allows evaluation of compliance with SIPPRA and Federal laws and policies on grants *(e.g., Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR part 200, (herein OMB Uniform Guidance); Title VI of the Civil Rights Act);* (5) tracks recipients' progress; and (6) collects statutorily mandated reports prepared by recipients' contracted independent evaluators.

- The Notice of Intent is optional; it will assist Treasury and the Federal Interagency Council on Social Impact Partnerships (Interagency Council) in estimating the number of applications to be received, and thus, enable them to conduct intake and evaluation of applications as efficiently and economically as possible.
- The application Executive Summary will assist Treasury and the Interagency Council in streamlining the processing of applications and in optimizing the eligibility phase of application review. The application standard forms, Project Narrative, and Project Narrative attachment components of the grant application are intended to provide Treasury with the information necessary to properly evaluate and assess whether applications include statutorily mandated information. Additionally, certain components of the application, in particular the evaluation design plan and outcome valuation, will enable the Interagency Council to determine whether to make statutorily mandated certifications regarding the proposed projects.
- *SAM.gov* registration is required under the OMB Uniform Guidance.
- To comply with the OMB Uniform Guidance performance and financial monitoring and reporting requirements, 2 CFR 200.328–200.330, Treasury intends to require a quarterly

performance and annual financial report from grant recipients. SIPPRA requires that recipients submit progress reports prepared by an independent evaluator on a periodic basis and before the scheduled time of outcome payments. 42 U.S.C. 1397n–4(d). SIPPRA also requires that recipients submit a final report prepared by an independent evaluator within six months of a project's completion. 42 U.S.C. 1397n–4(e). Per the statute, Treasury will use these reports to determine if outcome payments are warranted.

• Treasury intends to require recipients under this NOFA to comply with the OMB Uniform Guidance's record retention requirement, *2 CFR 200.334,* which requires them to maintain records for three years after grant close-out.

SIPPRA establishes a Commission on Social Impact Partnerships (Commission) whose principal obligation is to make recommendations to Treasury regarding the funding of SIPPRA projects and feasibility studies. 42 U.S.C. 1397n–6. The Commission is subject to the provisions of the Federal Advisory Committee Act (FACA), which generally requires that documents made available to the Commission be made available for public inspection and copying. 5 U.S.C. app. section 10(b). Treasury may provide to the Commission all complete applications received under this NOFA from eligible applicants and would make all such applications available for public inspection and copying. However, FACA also provides that trade secrets and commercial or financial information that is privileged or confidential (confidential business information) under the Freedom of Information Act (FOIA) need not be made publicly available. *5 U.S.C. 552(b)(4).* To assist Treasury in complying with FACA's public disclosure requirements while protecting confidential business information in accordance with FOIA, Treasury expects to request applicants to propose redactions of confidential business information. An applicant may omit pages for which it does not propose any redactions. Treasury expects to review the redactions proposed by each applicant.

Also, applicants must provide qualifications of key project personnel and partners. Applicants may voluntarily provide curriculum vitae for key project personnel and partners, but the application will not require that personally identifiable information (PII) is collected.

Planned Revisions to the Data Collection

For several reasons, Treasury expects to make a number of changes in the second SIPPRA NOFA relative to the first SIPPRA NOFA. Treasury understands that Congress intended for SIPPRA to be a demonstration program, which suggests that trying different strategies and approaches in the second NOFA and comparing them to those used in the first NOFA may be consistent with congressional intent. Treasury also believes that the revisions it plans may increase the number of applications it receives, reduce the burden on applicants and stakeholders, reduce application review time, and enhance the success of projects. Treasury is interested in receiving comments on applicants' experiences with the application process under the first NOFA and suggestions on revisions Treasury should consider in the second NOFA to make the application and application review process more user-friendly and efficient. The most salient revisions Treasury plans to make in the second NOFA are addressed below.

• Treasury anticipates providing more guidance, expanded FAQs, and additional online resources to prospective applicants for the second NOFA. More specifically, Treasury plans to expand its guidance on evaluation plan design, causal impact measurement requirements, and quasi-experimental design criteria. Treasury anticipates the guidance it plans to provide in the second NOFA will reduce applicants' burden during the application process and recipients' burden throughout the project performance period. Treasury also anticipates this guidance will be one means by which Treasury and the Interagency Council may be able to reduce application review time.

• Treasury also plans to replace the outcome valuation methodology, budget impact analysis, required in the first NOFA, with a different methodology, benefit-cost analysis. Treasury is planning on making this change because testing different approaches to value determination may help broaden insights in valuation practices in the pay for success field.

• Through its outreach with Federal agencies and external stakeholders, Treasury has identified the need to make the application and the application review process more efficient for all parties. Treasury invites suggestions and specific strategies and efficiencies that Treasury may incorporate into the second NOFA that will increase administrative efficiencies to the extent permitted under the statute and other federal laws and regulations.

• Under the first NOFA, Treasury provided applicants three months from the date of NOFA publication in the **Federal Register** to submit their applications. In the second NOFA, Treasury anticipates providing approximately five months from the date of publication for applicants to submit their applications. Treasury is interested in learning whether prospective applicants favor a shorter window of time to submit their applications, which would leave more time for project implementation, or conversely, if they favor a longer application timeframe (*e.g.,* five or six months), which would give applicants more time to submit their applications, but less time for project implementation. (The statute does not permit Treasury to obligate funds beyond February 2028. Treasury is interested in an approach that provides an applicant sufficient time to submit an application while still providing sufficient project implementation time.)

Affected Public: State, Local, or Tribal Governments.

Estimated Number of Respondents: 25.

Frequency of Response: Once; on occasion.

Estimated Total Number of Annual Responses: 25.

Estimated Time per Response: 359 hours.

Estimated Total Annual Burden Hours: 8,975 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments may become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Catherine Wolfram,

Deputy Assistant Secretary of Climate and Energy Economics.

[FR Doc. 2022–08858 Filed 4–25–22; 8:45 am]

BILLING CODE 4810–AK–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on May 12, 2022 on ''China's Activities and Influence in South and Central Asia.''

DATES: The hearing is scheduled for Thursday, May 12, 2022 at 9:30 a.m.

ADDRESSES: This hearing will be held with panelists and Commissioners participating in-person or online via videoconference. Members of the audience will be able to view a live webcast via the Commission's website at *www.uscc.gov.* Also, please check the Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This is the fifth public hearing the Commission will hold during its 2022 report cycle. This hearing will address China's activities and influence in South Asia and Central Asia and the implications for U.S. interests. The hearing will start by examining China's economic goals and security concerns in Pakistan and Afghanistan as well as shifts in China's policy toward the region since the return of Taliban rule in Afghanistan. Next, the hearing will evaluate China's growing presence as an economic and security partner in Central Asia and the implications for the China-Russia relationship. The hearing will then explore China's growing influence in continental South Asia, including how it shapes China-India competition and affects states near the Sino-Indian border such as Nepal, Bhutan, and Bangladesh. Finally, the hearing will examine China's strategic interests and advances in the Indian Ocean, including its economic engagement with Sri Lanka and the Maldives.

The hearing will be co-chaired by Commissioner Carolyn Bartholomew and Commissioner Randall Schriver. Any interested party may file a written statement by May 12, 2022 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: April 20, 2022.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2022–08796 Filed 4–25–22; 8:45 am]

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Part II

Department of Justice

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 447, 478, and 479

Definition of ''Frame or Receiver'' and Identification of Firearms; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Parts 447, 478, and 479

[Docket No. 2021R–05F; AG Order No. 5374–2022]

RIN 1140–AA54

Definition of "Frame or Receiver" and Identification of Firearms

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (''Department'') is amending Bureau of Alcohol, Tobacco, Firearms, and Explosives (''ATF'') regulations to remove and replace the regulatory definitions of ''firearm frame or receiver'' and ''frame or receiver'' because the current regulations fail to capture the full meaning of those terms. The Department is also amending ATF's definitions of ''firearm'' and ''gunsmith'' to clarify the meaning of those terms, and to provide definitions of terms such as ''complete weapon,'' ''complete muffler or silencer device,'' ''multi-piece frame or receiver,'' ''privately made firearm,'' and ''readily'' for purposes of clarity given advancements in firearms technology. Further, the Department is amending ATF's regulations on marking and recordkeeping that are necessary to implement these new or amended definitions.

DATES: This rule is effective August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Vivian Chu, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Ave. NE, Washington, DC 20226; telephone: (202) 648–7070.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Summary of the Regulatory Action

There are no statutory definitions for the terms ''frame'' or ''receiver'' in the Gun Control Act of 1968 (''GCA'') or the National Firearms Act of 1934 (''NFA''). To implement these statutes, the terms ''firearm frame or receiver'' and ''frame or receiver'' were defined in regulations to mean ''[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.'' 27 CFR 478.11 (implementing GCA, Title I); 27 CFR 479.11 [1] (implementing GCA, Title II). These definitions were meant to provide direction as to which portion of a weapon is the frame or receiver for purposes of licensing, serialization, and recordkeeping, thereby ensuring that a component necessary for the functioning of the weapon could be traced if later involved in a crime.

However, a restrictive application of these definitions would not describe the frame or receiver of most firearms currently in circulation in the United States. Most modern weapon designs, including semiautomatic rifles and pistols with detachable magazines, have a split or multi-piece receiver where the relevant fire control components are housed by more than one part of the weapon (*e.g.,* the upper receiver and lower receiver of an AR–15 rifle), or incorporate a striker to fire the weapon, rather than a hammer.

In the past few years, some courts have treated the regulatory definition of ''firearm frame or receiver'' as inflexible when applied to the lower portion of the AR–15-type rifle, one of the most popular firearms in the United States. If broadly followed, that result could mean that as many as 90 percent of all firearms (*i.e.,* with split frames or receivers, or striker-fired) in the United States would not have any frame or receiver subject to regulation. Furthermore, technological advances have also made it easier for companies to sell firearm parts kits, standalone frame or receiver parts, and easy-to-complete frames or receivers to unlicensed persons, without maintaining any records or conducting a background check. These parts kits, standalone frame or receiver parts, or partially complete frames or receivers enable individuals to make firearms quickly and easily. Such privately made firearms (''PMFs''), when made for personal use, are not required by the GCA to have a serial number placed on the frame or receiver, making it difficult for law enforcement to determine where, by whom, or when they were manufactured, and to whom they were sold or otherwise transferred. Because of the difficulty with tracing illegally sold or distributed PMFs, those firearms are also commonly referred to as ''ghost guns.''

For these many reasons, ATF is promulgating a rule that would bring clarity to the definition of ''frame or receiver'' by providing an updated, more comprehensive definition. On May 21, 2021, the Department published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register**, 86 FR 27720, proposing to redefine the term ''frame or receiver'' as that which provides housing or a structure to hold or integrate one or more fire control components. In light of the comments received, this final rule revises the proposed definition of ''frame or receiver'' so that a ''frame'' is applicable to a handgun, and variants thereof, and a ''receiver'' is applicable to a rifle, shotgun, or projectile weapon other than a handgun, and variants thereof. Moreover, ''frame or receiver'' will be defined to describe only a single part

[1] The definition of ''frame or receiver'' in section 479.11 differs slightly from the definition in section 478.11 in that it omits an Oxford comma between ''bolt or breechblock'' and ''firing mechanism.''

that provides housing or a structure for one specific, primary fire control component of weapons that expel a projectile, or one specific, primary internal sound reduction component of firearm mufflers or silencers. The final rule also defines the meaning of ''variants'' and ''variants thereof.'' The final rule provides detailed examples along with pictures identifying the frame or receiver of a variety of common models under the updated definition. The final rule also exempts from the new definitions and marking requirements existing split frame or receiver designs in which a part was previously classified by ATF as the firearm ''frame or receiver'' and provides examples and pictures of select exempted frames or receivers, such as AR–15/M–16 variant firearms. The only exception to ''grandfathering'' will be for partially complete, disassembled, or nonfunctional frames or receivers, including weapon or frame or receiver parts kits, that ATF did not classify as firearm ''frames or receivers'' as defined prior to this rule.

The final rule also specifies, with more clarity and examples than the NPRM, how these terms apply to multi-piece frames or receivers (*i.e.,* those that may be disassembled into multiple modular subparts), to firearm mufflers and silencers, to partially complete, disassembled, or nonfunctional frames or receivers, including frame or receiver parts kits, and to frames or receivers that are destroyed. The final rule also provides detailed examples of when such items are considered readily completed, assembled, restored, or otherwise ''converted'' to function as a frame or receiver. At the same time, the final rule makes clear that articles that have not yet reached a stage of manufacture where they are clearly identifiable as an unfinished component of a frame or receiver (*e.g.,* unformed blocks of metal, liquid polymers, or other raw materials) are not frames or receivers.

Consistent with the GCA, and to ensure proper licensing, marking, recordkeeping, and background checks with respect to certain weapon parts kits, the final rule adopts the proposed clarification of the term ''firearm'' to include weapon (*e.g.,* pistol, revolver, rifle, or shotgun) parts kits that are designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive. This rule also finalizes, with minor changes, the proposed definition of ''privately made firearm.'' It amends the regulations to require that all firearms privately manufactured or ''made'' by nonlicensees without identifying markings that are taken into inventory by licensees be identified (or marked) and recorded so that they may be traced by law enforcement through their records if they are later involved in crime. As with the NPRM, the final rule does not mandate unlicensed persons to mark their own PMFs for personal use, or when they occasionally acquire them for a personal collection or sell or transfer them from a personal collection to unlicensed in-State residents consistent with Federal, State, and local law.

In addition, the rule finalizes the proposed amendments to the term ''gunsmith'' to include persons who engage in the business of identifying firearms for nonlicensees, thus ensuring greater access to professional marking services for PMFs. The final rule clarifies the gunsmithing rules proposed in the NPRM by stating the following: (1) Licensed firearms dealers (in addition to licensed manufacturers and importers) may conduct same-day adjustments or repairs of all firearms, including PMFs, without taking them into inventory, provided they are returned to the person from whom they were received; (2) nonlicensees may mark PMFs for a licensee under the licensee's direct supervision; and (3) licensees may adopt an existing unique identification number previously placed on a PMF by a nonlicensee under certain conditions.

In response to comments, the final rule permits licensed manufacturers to adopt the serial number and other identifying markings previously placed on a firearm without a variance from ATF, provided the firearm has not been sold, shipped, or otherwise disposed of to a person who is not a licensed manufacturer, superseding ATF Ruling 2009–5. The rule permits licensed manufacturers to perform gunsmithing services on existing, marked firearms without marking or obtaining a marking variance, superseding ATF Ruling 2010–10. It also finalizes, with some modifications, the proposed definition of the term ''importer's or manufacturer's serial number'' to help ensure that the serial number and associated identifying markings required to be placed on a firearm, including those placed on a PMF or an ATF-issued serial number,[2] are considered the ''importer's or manufacturer's serial number'' protected by 18 U.S.C. 922(k), which prohibits possession or receipt of a firearm that has had the importer's or manufacturer's serial number removed, obliterated, or altered.

The final rule adopts, with minor clarifying changes, the proposed clarifications to the marking and recordkeeping requirements for licensees. First, the rule finalizes the definitions for ''complete weapon'' and ''complete muffler or silencer device,'' and adds a new definition for ''multi-piece frame or receiver'' under the new definition of ''frame or receiver.'' The rule also specifies a reasonable time period in which a complete weapon or a complete muffler or silencer device, or the frame or receiver of a weapon or device (including a modular subpart of a multi-piece frame or receiver), must be marked with a serial number and other identifying information and recorded. Second, the rule finalizes the proposed updates to the information required to be marked on the frame or receiver, clarifies the meaning of the marking terms ''identify,'' ''legibly,'' and ''conspicuously,'' and authorizes firearms licensees to adopt identifying markings in the manufacturing process. Third, the rule finalizes the proposal to require all licensees to consolidate their records of manufacture, acquisition, and disposition of firearms, and to eliminate duplicate recordkeeping entries. Fourth, with respect to parts defined as firearm mufflers or silencers, which are difficult to mark and record, this rule finalizes with minor clarifying changes the proposed amendments that allow for them to be transferred between licensees qualified under the NFA for purposes of further manufacture or repair of complete devices without immediately marking and registering them in the National Firearms Registration and Transfer Record (''NFRTR''). Fifth, the rule finalizes with minor clarifying changes the proposed amendments that set forth the process by which persons may voluntarily seek a determination from ATF on whether an item or kit they wish to manufacture or possess is a firearm or armor piercing ammunition subject to marking, recordkeeping, and other applicable Federal laws and regulations. These amendments to the regulations will help ensure that firearms can be traced efficiently and effectively by law enforcement through the records of licensees, and help prevent the acquisition of easy-to-complete firearms by prohibited persons and terrorists.

Lastly, the rule finalizes with minor changes the proposed requirement that all licensees retain their records until the business or licensed activity is discontinued, either on paper or in an

[2] ATF occasionally issues serial numbers for placement on firearms in which the serial numbers were not originally placed, *see* 26 U.S.C. 5842(b), or were accidentally removed, damaged, or worn due to routine use or other innocent reason.

electronic format approved by the Director of ATF (''Director''), at the business or collection premises readily accessible for inspection. This includes authorization of licensees to store their ''closed out'' paper records and forms older than 20 years at a separate warehouse, which would be considered part of the business or collection premises for this purpose and subject to inspection. These provisions will enhance public safety by ensuring that acquisition and disposition records of all active licensees are not destroyed after 20 years and will remain available to law enforcement for tracing purposes.

B. Summary of Costs and Benefits

The final rule clarifies which firearms are subject to regulation under the GCA and NFA and associated licensing, marking, and recordkeeping requirements. The rule requires persons who engage in the business of dealing in weapon and frame or receiver parts kits defined as firearms to be licensed, mark the frames or receivers within such kits with serial numbers and other marks of identification, and maintain records of their acquisition and disposition. The provisions of these statutes and implementing regulations are designed to increase public safety by, among other things, preventing prohibited persons from acquiring firearms and allowing law enforcement to trace firearms involved in crime.

To minimize disruption and cost to the licensed firearms industry as much as possible, and in keeping with the public safety goals of the rule, this rule grandfathers existing complete frame or receiver designs previously determined by the Director to be the firearm ''frame or receiver'' of a given weapon. It does not grandfather partially complete, disassembled, or nonfunctional frames or receivers, including weapon or frame or receiver parts kits, that ATF did not classify as firearm ''frames or receivers'' as previously defined. ATF estimates that the 7 percent annualized cost of this rule is $14.3 million.

II. Background

The Attorney General is responsible for enforcing the Gun Control Act of 1968, as amended, and the National Firearms Act of 1934, as amended.[3] This responsibility includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA. *See* 18 U.S.C. 926(a); 26 U.S.C. 7801(a)(2)(A), 7805(a).[4] Congress and the Attorney General have delegated the responsibility for administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(b)(1), (c)(1); 28 CFR 0.130(a)(1)–(2); T.D. Order No. 221(2)(a), (d), 37 FR 11696–97 (June 10, 1972). Accordingly, the Department and ATF have promulgated regulations to implement the GCA and NFA. *See* 27 CFR parts 478, 479.

On May 21, 2021, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (''NPRM'') entitled ''Definition of 'Frame or Receiver' and Identification of Firearms,'' 86 FR 27720, proposing changes to various regulations in 27 CFR parts 447, 478, and 479. The comment period for the proposed rule concluded on August 19, 2021, and ATF received 290,031 comments.

The NPRM provided a comprehensive explanation of the passage of the Federal Firearms Act of 1938 (''FFA''), Public Law 75–785, 52 Stat. 1250, its repeal, and the subsequent legislative history and context leading to Congress's passage of the GCA in 1968, as well as the promulgation of the definitions for ''frame or receiver'' that ATF and the firearms industry have relied on for more than 50 years.[5] 86 FR at 27720–21. The GCA at 18 U.S.C. 921(a)(3) defines the term ''firearm'' to include not only a weapon that will, is designed to, or may readily be converted to expel a projectile, but also the ''frame'' or ''receiver'' of any such weapon. 18 U.S.C. 921(a)(3)(A), (B). Because frames or receivers are included in the definition of ''firearm,'' any person who engages in the business of manufacturing, importing, or dealing in frames or receivers must obtain a license from ATF. 18 U.S.C. 922(a)(1)(A), 923(a). Each licensed manufacturer or importer must ''identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer.''[6] 18 U.S.C. 923(i); *see* 27 CFR 478.92, 479.102. Licensed manufacturers and importers must also maintain permanent records of production or importation, as well as their receipt, sale, or other disposition of firearms, including frames or receivers. 18 U.S.C. 923(g)(1)(A); 27 CFR 478.122, 478.123.

The GCA does not define the terms ''frame'' or ''receiver'' to implement the statute, but frames or receivers are the primary structural components of a firearm to which fire control components are attached.[7] After the GCA was enacted, the terms ''firearm frame or receiver'' and ''frame or receiver'' were defined as ''that part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.'' 27 CFR 478.11 (implementing GCA, Title I);[8] 27 CFR 479.11 (implementing GCA, Title II).[9] The intent in promulgating these definitions was to inform the public and industry as to which portion of a firearm was the frame or receiver for purposes of licensing, serialization, and recordkeeping, thus ensuring that a necessary component of the weapon could be traced if later involved in a crime.

The NPRM discussed that at the time the regulatory definitions were promulgated, single-framed firearms such as revolvers and break-open shotguns were far more prevalent for civilian (*i.e.,* not military or law enforcement) use in the United States than split receiver weapons, such as semiautomatic rifles and pistols with detachable magazines. Single-framed firearms incorporate the hammer, bolt or breechblock, and firing mechanism within the same housing. 86 FR at

[3] NFA provisions still refer to the ''Secretary of the Treasury.'' *See generally* 26 U.S.C. ch. 53. However, the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, for ease of reference, this final rule refers to the Attorney General throughout.

[4] *See also* footnote 82, *infra,* for specific grants of rulemaking authority.

[5] The Omnibus Crime Control and Safe Streets Act of 1968 repealed the FFA and was then incorporated into and expanded by the GCA. Public Law 90–351, secs. 906–07, 82 Stat. 197, 234–35 (1968); Public Law 90–618, 82 Stat. 1213 (1968).

[6] Additionally, a firearm frame or receiver that is not a component part of a complete weapon at the time it is sold, shipped, or disposed of must be identified in the manner prescribed with a serial number and all of the other required markings. 27 CFR 478.92(a)(2), 479.102(e); ATF Rul. 2012–1.

[7] *See* Webster's Third New International Dictionary 902, 1894 (1971) (a ''frame'' is ''the basic unit of a handgun which serves as a mounting for the barrel and operating parts of the arm''; ''receiver'' means ''the metal frame in which the action of a firearm is fitted and to which the breech end of the barrel is attached''); John Olson, Olson's Encyclopedia of Small Arms 72 (1985) (the term ''frame'' means ''the basic structure and principal component of a firearm''); Steindler's New Firearms Dictionary, p. 209 (1985) (''receiver'' means ''that part of a rifle or shotgun . . . that houses the bolt, firing pin, mainspring, trigger group, and magazine or ammunition feed system. The barrel is threaded into the somewhat enlarged forward part of the receiver, called the receiver ring. At the rear of the receiver, the butt or stock is fastened. In semiautomatic pistols, the frame or housing is sometimes referred to as the receiver'').

[8] *See* 33 FR 18558 (Dec. 14, 1968) (formerly 26 CFR 178.11).

[9] *See* 36 FR 14257 (Aug. 3, 1971) (formerly 26 CFR 179.11).

27721. Over time, split receiver firearms became popular for civilian use, such as the AR–15 semiautomatic rifle (upper receiver and lower receiver), Glock semiautomatic pistol (upper slide assembly and lower grip module), and Sig Sauer P320 pistol (M17/18 as adopted by the U.S. military) (upper slide assembly, chassis, and lower grip module). And more firearm manufacturers began incorporating a striker-fired mechanism, rather than a ''hammer,'' in the firing design, such as in the Glock pistol. *Id.*

A. ATF's Application of the Definitions to Split Frames and Receivers

The NPRM explained that ATF's regulatory definitions of ''frame or receiver'' do not expressly capture these types of firearms (*i.e.,* split frames or receivers) that now constitute the majority of firearms in the United States.[10] However, ATF's position has long been that the weapon ''should be examined with a view toward determining if [either] the upper or lower half of the receiver more nearly fits the legal definition of 'receiver,' '' and more specifically, for machineguns, whether the upper or lower portion has the ability to accept machinegun parts.[11] [12] The NPRM listed the variety of factors ATF has considered when making determinations for firearm classifications under the GCA and NFA regarding which part of a firearm is the frame or receiver, given that neither a split nor a multi-piece receiver has a portion of its design that falls within the precise wording of the existing regulatory definition. 86 FR at 27721.

Indeed, the current definitions were never intended, or understood, to be exhaustive. The Department discussed in the NPRM the existing law and congressional intent recognizing that the definition of ''frame or receiver'' need not be limited to a strict application of the regulation. *Id.* at 27721–22. At the time the current definitions were adopted, there were numerous models of firearms that did not contain a part that fully met the regulatory definition of ''frame or receiver,'' such as the Colt 1911, FN–FAL, and the AR–15/M–16, all of which were originally manufactured almost exclusively for military use. ATF has long applied the factors stated in the NPRM when determining which component of those weapons qualifies as the frame or receiver.[13]

While ATF for decades has classified the lower receiver of the AR–15 rifle as a ''frame or receiver,'' some courts recently have treated the regulatory definition as inflexible when applied to the lower portion of the AR–15-type rifle, which is the semiautomatic version of the M–16-type machinegun originally designed for the U.S. military. That was because those courts have read the regulatory definition to mean that the lower portion of the AR–15 is not a ''frame or receiver,'' as it provides housing only for the hammer and firing mechanism, not the bolt or breechblock. *See United States* v. *Rowold,* 429 F. Supp. 3d 469, 475–76 (N.D. Ohio 2019). (''The language of the regulatory definition in § 478.11 lends itself to only one interpretation: Namely, that under the GCA, the receiver of a firearm must be a single unit that holds three, not two components: (1) The hammer, (2) the bolt or breechblock, and (3) the firing mechanism.''); *see also United States* v. *Roh,* 8:14–cr–00167–JVS, Minute Order p. 6 (C.D. Cal. July 27, 2020); *United States* v. *Jimenez,* 191 F. Supp. 3d 1038, 1041 (N.D. Cal. 2016).

The NPRM explained that, if broadly followed, these courts' interpretation of ATF's regulations could mean that as many as 90 percent of all firearms now in the United States would not have any frame or receiver subject to regulation under the current definitions.[14] Those firearms would include numerous widely available models, such as Glock-type and Sig Sauer P320[15] pistols, that do not utilize a hammer—a named component in the existing regulatory definition—in the firing sequence. Such a narrow interpretation of what constitutes a frame or receiver would allow persons to avoid obtaining a license to engage in the business of manufacturing or importing upper or lower frames or receivers, which would further allow those persons to avoid the GCA's marking, recordkeeping, and background check requirements pertaining to upper or lower frames or receivers. *See* 86 FR at 27722. In turn, prohibited persons may more easily and without a background check acquire upper and lower receivers that can quickly be assembled into semiautomatic weapons.[16] Moreover, law enforcement's ability to trace semiautomatic firearms later used in crime would be severely impeded if no portion of split or multi-piece frames or receivers were subject to any existing regulations as described. This result would undermine the intent of Congress in requiring the frame or receiver of every firearm to be identified, *see* 18 U.S.C. 923(i), and regulated as a firearm, *see* 18 U.S.C. 921(a)(3)(B).

B. Privately Made Firearms

The NPRM explained that technological advances have also made it easier for companies to sell firearm parts kits, standalone frame or receiver parts, or partially complete frames or receivers to unlicensed persons, posing significant challenges to the regulation of frames and receivers and enabling prohibited individuals to easily make firearms at home, especially if aided by personally owned equipment or 3D printers. These privately made firearms, commonly referred to as ''ghost guns,'' are not required by the GCA to have a

[10] *United States* v. *Rowold,* 429 F. Supp. 3d 469 (N.D. Ohio 2019), Testimony of ATF Firearms Enforcement Officer Daniel Hoffman at Doc. No. 60, Hrg. Tr., Page ID 557 (approximately 10 percent of currently manufactured firearms in the United States include at least three components in the frame or receiver definition), and Defense Expert Daniel O'Kelly at Doc. No. 60, Hrg. Tr., Page ID 482 (''90 some percent of [semiautomatic pistols] do not have a part which has more than one of these four elements in it and, therefore, don't qualify, according to the definition in the CFR.'').

[11] ATF Internal Revenue Service Memorandum #21208 (Mar. 1, 1971) (lower portion of the M–16 is the frame or receiver because it comes closest to meeting the definition of frame or receiver in 26 CFR 178.11 (now 27 CFR 478.11), and is the receiver of a machinegun as defined in the NFA); ATF Memorandum #22334 (Jan. 24, 1977) (upper half of the FN–FAL rifle is the frame or receiver because it was designed to accept the components that allow fully automatic fire). The ability to accept machinegun parts is considered because both the GCA and the NFA regulate machinegun receivers as ''machineguns.'' *See* 18 U.S.C. 921(a)(23); 26 U.S.C. 5845(b) (''The term [''machinegun''] shall also include the frame or receiver of any such weapon [which shoots is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger].'').

[12] Regulations implementing the relevant statutes spell the term ''machine gun'' rather than ''machinegun.'' *E.g.,* 27 CFR 478.11, 479.11. For convenience, this rule uses ''machinegun,'' except when quoting a source to the contrary.

[13] *See* footnote 11, *supra.*

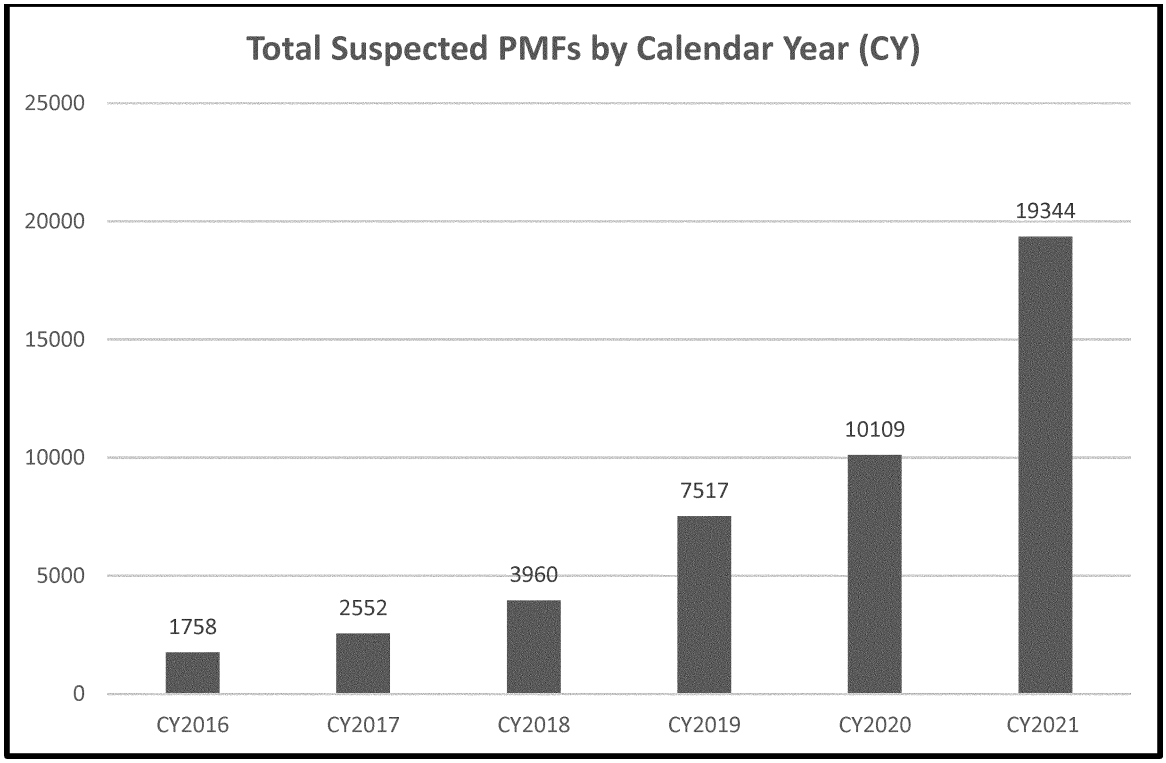
[14] *See* footnote 10, *supra.*

[15] The United States military services have adopted variants of the Sig Sauer P320 as their official sidearm, and are in the process of purchasing up to 500,000 of these striker-fired pistols. Matthew Cox & Hope Hodge Seck, *Army Picks Sig Sauer's P320 Handgun to Replace M9 Service Pistol, Military.com* (Jan. 19, 2017), *available at https://www.military.com/daily-news/2017/01/19/army-picks-sig-sauer-replace-m9-service-pistol.html* (last visited Mar. 22, 2022); Jared Keller, *Every U.S. military branch is about to get its hands on the Army's new sidearm of choice,* Taskandpurpose.com (Nov. 18, 2020), *available at https://taskandpurpose.com/military-tech/modular-handgun-system-fielding* (last visited Mar. 22, 2022) (Sig Sauer delivered its 200,000th P320-variant pistol to the military despite the obstacles posed by the novel coronavirus).

[16] *See* Jake Bleiberg & Stefanie Dazio, *Design of AR–15 could derail charges tied to popular rifle, APnews.com* (Jan. 13, 2020), *available at https://apnews.com/article/396bbedbf4963a28bda99e7793ee6366* (last visited Mar. 22, 2022); Dan Morse & Jasmine Hilton, *Magruder [High School] student bought 'ghost gun' components online before wounding classmate,* Wash. Post (Jan. 24, 2022), *available at https://www.washingtonpost.com/dc-md-va/2022/01/24/magruder-shooting-teen-jailed* (last visited Mar. 22, 2022).

serial number placed on the frame or receiver when made for personal use. When PMFs are relinquished by their owners, enter commerce, and are later recovered and submitted for tracing, the absence of markings on PMFs makes it extremely difficult for law enforcement to determine where, by whom, or when they were manufactured, and to whom they were sold or otherwise disposed.

The NPRM discussed the substantial increase in the number of PMFs recovered from crime scenes throughout the country in recent years.[17] From January 1, 2016, through December 31, 2021, there were approximately 45,240 suspected PMFs reported to ATF as having been recovered by law enforcement from potential crime scenes, including 692 homicides or attempted homicides (*not* including suicides), and which ATF attempted to trace. Broken down by calendar year, the total annual numbers of suspected PMFs recovered show significant proliferation over the past six years: 2016: *1,758;* 2017: *2,552;* 2018: *3,960;* 2019: *7,517;* 2020: *10,109;* 2021: *19,344.*[18] [19]



Numerous criminal cases have been brought by the Department to counter the illegal trafficking of unserialized privately completed and assembled weapons, the possession of such

[17] 86 FR at 27722 n.17. *See also* Erik von Ancken, *Untraceable 'Ghost Guns' sold across Central Florida,* WKMG–TV Orlando (Nov. 15, 2016), *available at https://www.clickorlando.com/getting-results/2016/11/15/untraceable-ghost-guns-sold-across-central-florida* (last visited Mar. 22, 2022); Nicholas J. Simons, *Ghost Guns: A Haunting New Reality,* Rockefeller Institute of Justice (2021), *available at https://rockinst.org/wp-content/uploads/2021/04/210413-Ghost-Guns-web.pdf* (last visited Mar. 22, 2022); Travis Taniguchi *et al., The Proliferation of Ghost Guns: Regulation Gaps and Challenges for Law Enforcement,* National Police Foundation (2021), *available at https://www.policefoundation.org/wp-content/uploads/2021/08/NPF_The-Proliferation-of-Ghost-Guns_Final_2021.pdf* (last visited Mar. 22, 2022); Shanzeh Ahmad & Jeremy Gorner, *'We're seeing an explosion:' Sheriff Tom Dart, state Sen. Jacqueline Collins take aim at ghost guns, propose legislation to ban the untraceable weapons,* Chi. Trib. (Oct. 14, 2021), *available at https://www.chicagotribune.com/news/breaking/ct-cook-county-sheriff-dart-ghost-gun-legislation-20211014-whvwjv5aangmtaje27gpllqtvu-story.html* (last visited Mar. 22, 2022); Brian X. McCrone, *'3 Pipes Turned into a Shotgun': Nearly 1-in-10 Guns Seized in Philly Are Homemade,* NBC10 Philadelphia (Oct. 7, 2021), *available at https://www.nbcphiladelphia.com/news/local/three-metal-pipes-turned-into-a-shotgun-nearly-1-in-10-guns-seized-in-philly-are-homemade/2983066* (last visited Mar. 22, 2022); Kevin Rector, *LAPD declares 'ghost guns' an 'epidemic,' citing 400% increase in seizures,* L.A. Times (Oct. 15, 2021), *available at https://www.latimes.com/california/story/2021-10-15/lapd-says-ghost-guns-an-epidemic-with-seizures-up-400-since-2017* (last visited Mar. 22, 2022); Glenn Thrush, *'Ghost Guns': Firearm Kits Bought Online Fuel Epidemic of Violence,* N.Y. Times (Nov. 14, 2021), *available at https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html* (last visited Mar. 22. 2022).

[18] Source: ATF Office of Strategic Intelligence and Information. These numbers (as of January 21, 2022) are likely far lower than the actual number of PMFs recovered from crime scenes because some law enforcement departments incorrectly trace some PMFs as commercially manufactured firearms, or may not see a need to use their resources to attempt to trace firearms with no serial numbers or other identifiable markings. The term ''suspected PMF'' is used because of the difficulty of getting law enforcement officials to uniformly enter PMF trace information into ATF's electronic tracing system (''eTrace''), resulting in reporting inconsistencies of PMFs involved in crime. For example, often PMFs resemble commercially manufactured firearms, or incorporate parts from commercially manufactured firearms bearing that manufacturer's name, so some firearms suspected of being PMFs were entered into eTrace using a commercial manufacturer's name rather than as one privately made by individuals. The term ''potential crime scenes'' is used because ATF does not know if the firearm being traced by the law enforcement agency was found at a crime scene as opposed to one recovered by law enforcement that had been stolen or otherwise not from the scene of a crime. This is because the recovery location or correlated crime is not always communicated by the agency to ATF in the tracing process.

[19] The total number of suspected PMFs is greater than the 23,906 originally queried and reported as of March 4, 2021, in the NPRM, 86 FR at 27722–23, due, not only to the addition of CY 2021 data, but also to traces being updated with more specificity regarding the firearm description since that date, and the inclusion of all suspected PMFs recovered within this time frame regardless of when the trace was entered.

weapons by prohibited persons, and other related Federal crimes.[20]

[20] 86 FR 27723 n.19. *See also Dark Web Gun Trafficker from Nevada County Pleads Guilty to Unlawful Dealing in Firearms,* DOJ/OPA (June 22, 2018), *available at https://www.justice.gov/usao-edca/pr/dark-web-gun-trafficker-nevada-county-pleads-guilty-unlawful-dealing-firearms; Burlington Man Pleads Guilty to Ammunition Charge,* DOJ/OPA (Dec. 12, 2018), *available at https://www.justice.gov/usao-ma/pr/burlington-man-pleads-guilty-ammunition-charge; Burlington Man Sentenced For Ammunition Charge,* DOJ/OPA (Mar. 19, 2019), *available at https://www.justice.gov/usao-ma/pr/burlington-man-sentenced-ammunition-charge; Indiana Residents Indicted on Terrorism and Firearms Charges,* DOJ/OPA (July 11, 2019), *available at https://www.justice.gov/opa/pr/indiana-residents-indicted-terrorism-and-firearms-charges; Las Vegas Man Charged For Illegally Engaging In The Business Of Manufacturing Machine Guns Without A License,* DOJ/OPA (Sept. 4, 2019), *available at https://www.justice.gov/usao-nv/pr/las-vegas-man-charged-illegally-engaging-business-manufacturing-machine-guns-without; Two Stockton Residents Sentenced for Firearms Offenses,* DOJ/OPA (Nov. 21, 2019), *available at https://www.justice.gov/usao-edca/pr/two-stockton-residents-sentenced-firearms-offenses; Denver Gang Member Sentenced To Over 15 Years In Federal Prison For Making And Selling Dozens Of High Powered Guns, Including Machine Guns And Silencers,* DOJ/OPA (Nov. 22, 2019), *available at https://www.justice.gov/usao-co/pr/denver-gang-member-sentenced-over-15-years-federal-prison-making-and-selling-dozens-high; Cedar Rapids Man Pleads Guilty to Drug Trafficking and Possessing Machineguns and a Pipe Bomb,* DOJ/OPA (Jan. 21, 2020), *available at https://www.justice.gov/usao-ndia/pr/cedar-rapids-man-pleads-guilty-drug-trafficking-and-possessing-machineguns-and-pipe; Indictment Charges 15 Members of a Los Angeles Drug Trafficking Ring that Distributed Heroin, Methamphetamine and Cocaine,* DOJ/OPA (Feb. 12, 2020), *available at https://www.justice.gov/usao-cdca/pr/indictment-charges-15-members-los-angeles-drug-trafficking-ring-distributed-heroin; 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Seven Defendants Arrested and Charged in Conspiracy to Possess and Carry Firearms in Furtherance of Drug Trafficking,* DOJ/OPA (Sept. 3, 2020), *available at https://www.justice.gov/usao-dc/pr/seven-defendants-arrested-and-charged-conspiracy-possess-and-carry-firearms-furtherance; Takedown Completes Arrests of 15 Alleged Drug Traffickers in Syracuse Area,* DOJ/OPA (Sept. 17, 2020), *available at https://www.justice.gov/usao-ndny/pr/takedown-completes-arrests-15-alleged-drug-traffickers-syracuse-area; Three Members of Gardena Street Gang Charged in Federal Racketeering Case Alleging Murder of Man Outside His Home,* DOJ/OPA (Dec. 2, 2020), *available at https://www.justice.gov/usao-cdca/pr/three-members-gardena-street-gang-charged-federal-racketeering-case-alleging-murder-man; Syracuse Man Pleads Guilty to Brokering Illegal Gun Sales,* DOJ/OPA (Dec. 9, 2020), *available at https://www.justice.gov/usao-ndny/pr/syracuse-man-pleads-guilty-brokering-illegal-gun-sales; Gang Member Sentenced to More Than 7 Years in Prison for Gun and Drug Offenses,* DOJ/OPA (Feb. 17, 2021), *available at https://www.justice.gov/usao-ct/pr/gang-member-sentenced-more-7-years-prison-gun-and-drug-offenses; 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Septuagenarian charged with manufacturing ''ghost guns'',* DOJ/OPA (June 15, 2021), *available at https://www.justice.gov/usao-sdtx/pr/septuagenarian-charged-manufacturing-ghost-guns; Convicted Gun Trafficker Pleads Guilty to Firearms Charges,* DOJ/OPA (June 22, 2021), *available at https://www.justice.gov/usao-ndny/pr/convicted-gun-trafficker-pleads-guilty-firearms-charges; Barnstable Man Charged with Firearm Trafficking,* DOJ/OPA (June 22, 2021), *available at https://www.justice.gov/usao-ma/pr/barnstable-man-charged-firearm-trafficking; Laplace Man Pleads Guilty to Being Felon in Possession of Ammunition,* DOJ/OPA (June 25, 2021), *available at https://www.justice.gov/usao-edla/pr/laplace-man-pleads-guilty-being-felon-possession-ammunition; Felon Pleads Guilty to Possession of Ghost Guns and Conspiracy to Commit Wire Fraud,* DOJ/OPA (June 28, 2021), *available at https://www.justice.gov/usao-md/pr/felon-pleads-guilty-possession-ghost-guns-and-conspiracy-commit-wire-fraud; Syracuse Man Sentenced to Seven Years in Federal Prison for Brokering Illegal Gun Sales,* DOJ/OPA (July 8, 2021), *available at https://www.justice.gov/usao-ndny/pr/syracuse-man-sentenced-seven-years-federal-prison-brokering-illegal-gun-sales; 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D.C. 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The problem of untraceable firearms being acquired and used by violent criminals and terrorists is international in scope.[21] The NPRM highlighted Congress's concern, based on intelligence reports from the Department of Homeland Security (''DHS''), the Federal Bureau of Investigation (''FBI''), and the National Counterterrorism Center (''NCTC''), that untraceable firearms pose a challenge to law enforcement's ability to investigate crimes and that ''wide availability of ghost guns and the emergence of functional 3D-printed guns are a homeland security threat.'' [22] Numerous criminal investigations and studies have also demonstrated these concerns,[23] while several States and municipalities have banned or severely restricted unserialized or 3D-printed firearms.[24]

earlier-shooting; Brooklyn Felon Sentenced to 48 Months' Imprisonment for Possessing Arsenal of Weapons Including ''Ghost Guns'', DOJ/OPA (Oct. 12, 2021), *available at https://www.justice.gov/usao-edny/pr/brooklyn-felon-sentenced-48-months-imprisonment-possessing-arsenal-weapons-including; Syracuse Man Pleads Guilty to Unlawfully Possessing and Selling Firearms and Ammunition,* DOJ/OPA (Oct. 15, 2021), *available at https://www.justice.gov/usao-ndny/pr/syracuse-man-pleads-guilty-unlawfully-possessing-and-selling-firearms-and-ammunition; Two Men Indicted for Firearms Trafficking,* DOJ/OPA (Oct. 28, 2021), *available at https://www.justice.gov/usao-edca/pr/two-men-indicted-firearms-trafficking; Tattoo Shop Owner Sentenced to Prison for Possessing Unlicensed Firearms at his Business,* DOJ/OPA (Oct. 28, 2021), *available at https://www.justice.gov/usao-wdpa/pr/tattoo-shop-owner-sentenced-prison-possessing-unlicensed-firearms-his-business; Mexican National Charged with Possessing Firearms, Methamphetamine in Checked Luggage at MSP Airport,* DOJ/OPA (Nov. 2, 2021), *available at https://www.justice.gov/usao-mn/pr/mexican-national-charged-possessing-firearms-methamphetamine-checked-luggage-msp-airport; Lawrence Man Arrested on Firearms and Narcotics Charges,* DOJ/OPA (Nov. 4, 2021), *available at https://www.justice.gov/usao-ma/pr/lawrence-man-arrested-firearms-and-narcotics-charges; Colchester Man Sentenced to 34 Months in Federal Prison for Illegally Possessing Machinegun,* DOJ/OPA (Nov. 12, 2021), *available at https://www.justice.gov/usao-ct/pr/colchester-man-sentenced-34-months-federal-prison-illegally-possessing-machinegun; Ocean County Man Charged with Illegally Possessing Loaded Semi-Automatic Rifle,* DOJ/OPA (Nov. 16, 2021), *available at https://www.justice.gov/usao-nj/pr/ocean-county-man-charged-illegally-possessing-loaded-semi-automatic-rifle; New Haven Gang Member Charged with Federal Firearm and Narcotics Offenses,* DOJ/OPA (Nov. 17, 2021), *available at https://www.justice.gov/usao-ct/pr/new-haven-gang-member-charged-federal-firearm-and-narcotics-offenses;* Edmund H. Mahony, *Gang task force accuses two East Hartford men of using 3D printers to manufacture and sell hard-to-track 'ghost guns,'* Hartford Courant (Jan. 7, 2022), *available at https://www.courant.com/news/connecticut/hc-news-ghost-gun-arrests-20220107-20220107-hqa4ggdygvfxdemh7kihaocqxy-story.html* (last visited Mar. 22, 2022).

[21] *Firearms using 3D-printed components seized in Sweden,* Armament Research Services (May 19, 2017), *available at https://armamentresearch.com/3d-printed-firearms-seized-in-sweden* (last visited Mar. 22, 2022); Lizzie Dearden, *Use of 3D printed guns in German synagogue shooting must act as warning to security services, experts say, independent.co.uk* (Oct. 11, 2019), *available at https://www.independent.co.uk/news/world/europe/3d-gun-print-germany-synagogue-shooting-stephan-balliet-neo-nazi-a9152746.html* (last visited Mar. 22, 2022); G. Hays, *Multiple 3D-printed Firearms Seized in Sydney, Australia,* Armament Research Services (Aug. 11, 2020), *available at https://armamentresearch.com/multiple-3d-printed-firearms-seized-in-sydney-australia* (last visited Mar. 22, 2022); *Glock ghost guns up for grabs on the dark web,* Australian National University (Mar. 23, 2021), *available at https://www.anu.edu.au/news/all-news/glock-ghost-guns-up-for-grabs-on-the-dark-web* (last visited Mar. 22, 2022); *Spain dismantles workshop making 3D-printed weapons,* BBC (Apr. 19, 2021), *available at https://www.bbc.com/news/world-europe-56798743* (last visited Mar. 22, 2022); Liam Reilly & Alaa Elassar, *A Rhode Island man was arrested for allegedly selling 'ghost guns' and trafficking firearms to the Dominican Republic,* CNN (Jan. 9, 2022), *available at https://www.cnn.com/2022/01/09/us/rhode-island-ghost-guns-dominican-republic/index.html* (last visited Mar. 22, 2022).

[22] H.R. Rep. No. 116–88, at 2 (2019). The House Report cited a January 11, 2019 Joint Intelligence Bulletin issued by DHS, FBI, and NCTC concluding that ''these rapidly evolving technologies pose an ongoing, metastasizing challenge to law enforcement in understanding, tracking, and tracing ghost guns,'' and an April 22, 2019 DHS intelligence assessment that ''repeated the warning that ghost guns pose an urgent and evolving threat to the homeland, particularly in the hands of ideologically motivated lone wolf actors.'' *Id.*

[23] Paul Ingram, *CBP: 3–D-printed full-auto rifle seized at Lukeville crossing, tucsonsentinel.com* (Feb. 8, 2016), *available at http://www.tucsonsentinel.com/local/report/020816_3d_printed_gun/cbp-3-d-printed-full-auto-rifle-seized-lukeville-crossing* (last visited Mar. 22, 2022); *Dark Web Gun Trafficker from Nevada County Pleads Guilty to Unlawful Dealing in Firearms,* DOJ/OPA (June 22, 2018), *available at https://www.justice.gov/usao-edca/pr/dark-web-gun-trafficker-nevada-county-pleads-guilty-unlawful-dealing-firearms;* Mahita Gajanan, *The TSA Has Found 3D-Printed Guns at Airport Checkpoints 4 Times Since 2016,* Time (Aug. 2, 2018), *available at https://time.com/5356179/3d-printed-guns-tsa* (last visited Mar. 22, 2022); *Grass Valley Man Sentenced to 5 Years in Prison for Unlawfully Manufacturing Ghost Guns and Selling Them on Dark Web,* DOJ/OPA (Sept. 21, 2018), *available at https://www.justice.gov/usao-edca/pr/grass-valley-man-sentenced-5-years-prison-unlawfully-manufacturing-ghost-guns-and; Indiana Residents Indicted on Terrorism and Firearms Charges,* DOJ/OPA (July 11, 2019), *available at https://www.justice.gov/opa/pr/indiana-residents-indicted-terrorism-and-firearms-charges; Fishers residents indicted on terrorism and firearms charges,* DOJ/OPA (July 12, 2019), *available at https://www.justice.gov/usao-sdin/pr/fishers-residents-indicted-terrorism-and-firearms-charges;* Brandi Vincent, *TSA Confiscated 3D-Printed Guns at Raleigh-Durham International Airport, nextgov.com* (Mar. 4, 2020), *available at https://www.nextgov.com/emerging-tech/2020/03/tsa-confiscated-3d-printed-guns-raleigh-durham-international-airport/163533* (last visited Mar. 22, 2022); *Man Sentenced for Attempting to Board International Flight with a Loaded Firearm,* DOJ/OPA (Mar. 12, 2021), *available at https://www.justice.gov/usao-sdca/pr/man-sentenced-attempting-board-international-flight-loaded-firearm;* Lizzie Dearden, *Police issue warning over terrorist use of 3D-printed guns as UK neo-Nazi jailed,* MSN News (June 14, 2021), *available at https://www.msn.com/en-gb/news/uknews/police-issue-warning-over-terrorist-use-of-3d-printed-guns-as-uk-neo-nazi-jailed/ar-AAL2G36* (last visited Mar. 22. 2022); Davide Sher, *Oceanian media report seizures of 3D printed guns, submachine guns,* 3D Printing Media Network (June 22, 2021), *https://www.3dprintingmedia.network/oceanian-media-report-seizures-of-3d-printed-guns-submachine-guns* (last visited Mar. 22, 2022); Dr. Yannick Veilleux-Lepage, *CTRL, HATE, PRINT: Terrorists and the appeal of 3D-printed weapons,* International Centre for Counter-Terrorism (July 13, 2021), *available at https://icct.nl/publication/ctrl-hate-print-terrorists-and-the-appeal-of-3d-printed-weapons* (last visited Mar. 22, 2022); Chuck Goudie *et al., Al Qaeda launches 1st public campaign in 4 years to encourage lone wolf terrorist attacks,* ABC7 Chicago (July 29, 2021), *available at https://abc7chicago.com/al-qaeda-terrorism-terrorist-attack-inspire-magazine/10918191* (last visited Mar. 22, 2022); Huder Abbasi, *What's behind far-right trend of using 3D tech to make guns?, Aljazeera.com* (July 31, 2021), *available at https://www.aljazeera.com/news/2021/7/31/what-behind-far-right-trend-using-3d-tech-make-guns* (last visited Mar. 22, 2022); Fergus Hunter, *Alleged right-wing extremist charged over blueprint to 3D-print a gun,* The Sydney Morning Herald (Sept. 13, 2021), *available at https://www.smh.com.au/national/nsw/alleged-right-wing-extremist-arrested-over-blueprint-to-3d-print-a-gun-20210913-p58r80.html* (last visited Mar. 22, 2022); *Mexican National Charged with Possessing Firearms, Methamphetamine in Checked Luggage at MSP Airport,* DOJ/OPA (Nov. 2, 2021), *available at https://www.justice.gov/usao-mn/pr/mexican-national-charged-possessing-firearms-methamphetamine-checked-luggage-msp-airport.*

[24] *See* Cal. Penal Code. sec. 29180 (prohibiting ownership of firearms that do not bear a serial number or other mark of identification provided by the State); Conn. Gen. Stat. sec. 29–36a(a) (prohibiting manufacture of firearms without permanently affixing serial numbers issued by the State); Del. Code Ann. tit. 11 secs. 1459A, 1462 (prohibiting possession of an unfinished frame or receiver with no serial number and untraceable firearms); DC Code sec. 7–2504.08(a) (prohibiting licensees from selling firearms without serial numbers); Haw. Rev. Stat. sec. 134–10.2 (prohibiting unlicensed persons from producing, purchasing, or possessing 3D-printed or parts kit firearms without a serial number); Mass. Gen. Laws Ch. 269 sec. 11E (prohibiting manufacture or delivery of unserialized firearms to licensed dealer); N.J. Stat. Ann. sec. 2C:39–3(n) (prohibiting possession of firearms manufactured or assembled without serial number); N.Y. Penal Law secs. 265.50, 265.55 (prohibiting manufacture/possession of undetectable firearms); R.I. Gen. Laws sec. 11–47–8(e) (prohibiting possession of ''a ghost gun or an undetectable firearm or any firearm produced by a 3D printing process''); Va. Code. Ann. sec. 18.2–308.5 (prohibiting possession of undetectable firearms); Wash. Rev. Code sec. 9.41.190 (prohibiting the manufacture with intent to sell of undetectable and untraceable firearms); *see also Bill to ban ghost guns passes in Maryland House, heads to Gov. Hogan's desk, wjla.com* (Mar. 29, 2022), *available at https://wjla.com/news/local/ghost-guns-ban-bill-passes-maryland-house-maryland-governor-larry-hogan-signs-gun-control* (last visited Apr. 3, 2022); Zenon Evans, *Philadelphia Becomes First City To Ban 3D-Printed Gun Manufacturing, Reason.com* (Nov. 22, 2013), *available at https://reason.com/2013/11/22/philadelphia-becomes-first-city-to-ban-3* (last visited Mar. 22, 2022); *Council unanimously approves Ghost Guns Bill, restricting the sale [or] transfer of ghost guns to minors, Montgomerycountymd.gov* (Apr. 6, 2021), *available at https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail.aspx?Item_ID=34040&Dept=1* (last visited Mar. 22, 2022); Chris Gros, *Mayor Gloria signs ban on ghost guns in San Diego,* CBS8 (Sept. 23, 2021), *available at https://www.cbs8.com/article/news/local/mayor-gloria-signs-ban-on-ghost-guns-in-san-diego/509-*

Courts have recognized that the information licensees are required to record and maintain under the GCA ''enable[s] federal authorities both to enforce the law's verification measures and to trace firearms used in crimes.'' *Abramski* v. *United States,* 573 U.S. 169, 173 (2014) (citing H.R. Rep. No. 1577, 90th Cong., 2d Sess., 14 (1968)). At least one court has also concluded that ATF has a statutory duty pursuant to the GCA to trace firearms to keep them out of the hands of criminals and other prohibited persons. *Blaustein & Reich, Inc.* v. *Buckles,* 220 F. Supp. 2d 535, 537 (E.D. Va. 2002). This duty includes assisting State and local law enforcement in their efforts to control the traffic of firearms within their borders.[25] Indeed, as of January 2022, there are approximately 8,674 law enforcement agencies, including 49 agencies from 46 foreign countries, that use eTrace, a web-based application administered by ATF that allows authorized law enforcement agencies to submit and conduct comprehensive traces of recovered crime guns and develop long-term strategies on how best to reduce firearms-related crime, firearms trafficking, and violence in their communities.[26]

As discussed in the NPRM, tracing is an integral tool for Federal, State, local, and international law enforcement agencies to utilize in their criminal investigations, and the proliferation of untraceable firearms severely undermines this process. 86 FR at 27724–25. The NPRM described the overall process that ATF engages in when tracing firearms submitted by law enforcement. *Id.* at 27724. The Department stressed how ATF relies on the recordkeeping required to be maintained by licensees in order to locate the first unlicensed person who acquired the recovered firearm from a licensed dealer.[27] This information can help find the perpetrator or provide valuable leads that help to solve the crime. Thus, for a successful trace to be conducted, an accurate firearm description is necessary and required to be recorded by a person licensed to engage in the business of manufacturing, importing, or dealing in firearms, or by a licensed collector of curio or relic firearms, regardless of whether it is a business or personal firearm of the licensee.[28]

Because PMFs lack serial numbers and other markings from a licensed manufacturer, ATF has found it extremely difficult to successfully complete traces of PMFs. Out of the approximately 45,240 submitted traces of suspected PMFs mentioned above, ATF could only successfully complete approximately 445 of those attempted traces to an individual unlicensed purchaser.[29] Successful traces of PMFs have been completed in these rare instances primarily because licensees who acquired PMFs sometimes recorded a serial number that had been voluntarily engraved by the manufacturer on a commercially produced handgun slide, barrel, or another firearm part, which are not required by the GCA to be marked.

In the NPRM, the Department noted that, with the rapid emergence of PMFs in recent years, licensees have sought clarity from ATF on how PMFs may be accepted and recorded. 86 FR at 27724–25. Licensees engaged in the business of dealing in firearms are subject to various recording and reporting requirements, including completion of a Firearms Acquisition and Disposition Record (''A&D Record'') to record their firearms inventory,[30] a Firearms Transaction Record, ATF Form 4473 (''Form 4473''), for disposition of a firearm to an unlicensed person,[31] a Federal Firearms Licensee Theft/Loss Report, ATF Form 3310.11, upon discovery of the theft or loss of firearms,[32] and a Report of Multiple Sale or Other Disposition of Pistols and Revolvers, ATF Form 3310.4, to document sales or other dispositions of multiple pistols or revolvers within five consecutive business days to the same person.[33] These forms require licensees to record the manufacturer and importer (if any), model (if designated), serial number, type, and caliber or gauge of the firearm.

As applied to PMFs, licensees acquiring them might only record a ''type'' of firearm (*e.g.,* pistol, revolver, rifle, or shotgun) in their A&D records and on Forms 4473. With such limited information, it will become increasingly difficult, if not impossible, for licensees and ATF (during inspections) to match accurately and reliably the PMFs in the firearms inventory with those recorded in required A&D records, or to determine whether the PMFs recorded as disposed on Forms 4473 are those recorded as disposed in the A&D records.[34] Likewise, licensees and ATF

ddd5f49d-29dc-42a6-8f2c-41f17381718f (last visited Mar. 22, 2022); Julia Wick, *L.A. City Council votes to ban 'ghost guns', Police1.com* (Dec. 1, 2021), *available at https://www.police1.com/gun-legislation-law-enforcement/articles/la-city-council-votes-to-ban-ghost-guns-8Rre0xK860ryrYud* (last visited Mar. 22, 2022); Hannah Metzger, *Denver outlaws owning, manufacturing 'ghost guns' in city, denvergazette.com* (Jan. 3, 2022), *available at https://denvergazette.com/news/government/denver-outlaws-owning-manufacturing-ghost-guns-in-city/article_88799392-6d04-11ec-9da0-134e7e7be5f2.html* (last visited Mar. 22, 2022); Jakob Rodgers, *Oakland joins growing list of California cities to ban ghost guns, mercurynews.com* (Jan. 18, 2022), *available at https://www.mercurynews.com/2022/01/18/oakland-joins-growing-list-of-california-cities-to-ban-ghost-guns* (last visited Mar. 22, 2022).

[25] *See* Public Law 90–351, sec. 901(a), 82 Stat. 212, 225–26 (1968); 18 U.S.C. 922(b)(2) (prohibiting licensees from selling or delivering any firearm to any person in a State where the purchase or possession by such person of such firearm would be in violation of any State law or published ordinance applicable at the place of sale, delivery, or other disposition); 18 U.S.C. 922(t)(2), (4) (NICS background check denied if receipt of firearm by transferee would violate State law); 18 U.S.C. 923(d)(1)(F) (requiring license applicants to certify compliance with the requirements of State and local law applicable to the conduct of business).

[26] Fact Sheet, eTrace: Internet-Based Firearms Tracing and Analysis, ATF (Sept. 2021), *available at https://www.atf.gov/resource-center/fact-sheet/fact-sheet-etrace-internet-based-firearms-tracing-and-analysis.*

[27] Licensees must respond to ATF trace requests within 24 hours. 18 U.S.C. 923(g)(7); *see also J&G Sales Ltd.* v. *Truscott,* 473 F.3d 1043, 1045–46 (9th Cir. 2007) (describing the tracing process).

[28] *See* 18 U.S.C. 923(c); 27 CFR 478.125a(a)(4) (licensed manufacturers, importers, and dealers must record in a bound volume a complete description of firearms disposed of from their personal collections); 18 U.S.C. 923(g)(1)(A), (D); 27 CFR 478.125(e), (f) (licensed dealer and collector disposition records must contain a complete description of the firearm); 132 Cong. Rec. 15229 (1986) (Statement of Rep. Hughes) (''In order for the law enforcement Firearm Tracing Program to operate, some minimal level of recordkeeping is required [for sales from dealers' personal collections]. Otherwise, we will not have tracing capability. This provision simply requires that a bound volume be maintained by the dealer of the sales of firearms which would include a complete description of the firearm, including its manufacturer, model number, and its serial number and the verified name, address, and date of birth of the purchaser. This is only a minimal inconvenience for the dealer, yet obtaining and recording this information is critical to avoid serious damage to the Firearm Tracing Program.'').

[29] Source: ATF Office of Strategic Intelligence and Information. These numbers (as of January 21, 2022) include traces for both U.S. and international law enforcement agencies.

[30] 27 CFR 478.125(e).

[31] 18 U.S.C. 923(g)(1)(A); 27 CFR 478.124.

[32] 18 U.S.C. 923(g)(6); 27 CFR 478.39a(b).

[33] 18 U.S.C. 923(g)(3)(A); 27 CFR 478.126a. Pursuant to 18 U.S.C. 923(g)(5)(A), licensed dealers along the Southwest U.S. border are also required by demand letter to report to ATF multiple sales of certain rifles during five consecutive business days to the same person on ATF Form 3310.12, including the rifle's serial number, manufacturer, importer, model, and caliber. Also under that statute, licensed dealers with 25 or more trace requests with a ''time-to-crime'' of three years or less must report to ATF the acquisition date, model, caliber or gauge, and the serial number of a secondhand firearm transferred by the dealer.

[34] In *United States* v. *Biswell,* 406 U.S. 311, 315–16 (1972), the Supreme Court explained that ''close scrutiny of [firearms] traffic is undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders. Large interests are at stake, and inspection is a crucial part of the regulatory scheme, since it assures that weapons are distributed through regular channels and in a traceable manner and makes possible the prevention of sales to undesirable customers and

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will have difficulty accurately determining which PMFs were stolen or lost from inventory. It will also be difficult for police to locate stolen PMFs in the business inventories of pawnbrokers, for example,[35] or to return any recovered stolen or lost PMFs to their rightful owners.

Assuming a PMF can be successfully traced to a Federal firearms licensee (''FFL'') or that a correct Form 4473 can be located, the NPRM explained that the ATF Form 4473 is the primary evidence used to prosecute straw purchasers who buy firearms from FFLs typically on behalf of prohibited persons, such as felons or illegal firearms traffickers, and other persons who could use the firearms to commit violent crimes.[36] The form is typically the key evidence that the straw purchaser who bought the firearm (and who can pass a background check) made a false statement to the FFL concerning the identity of the actual purchaser when acquiring that firearm, in violation of 18 U.S.C. 922(a)(6) and 924(a)(1)(A), or State law.[37] But as unmarked and difficult-to-trace PMFs are transacted throughout the commercial marketplace, law enforcement will have difficulties prosecuting straw purchasers for making false statements because it will be harder to prove that the firearms acquired under false pretenses on a Form 4473 were the ones found in the hands of the true purchaser.[38] Likewise, the absence of identifying firearm information on multiple sales forms and theft/loss reports makes it more difficult for ATF to identify firearms traffickers and thieves.[39]

C. Advanced Notice of Proposed Rulemaking on Identification Markings Placed on Firearm Silencers and Firearm Mufflers

The NPRM noted that on May 4, 2016, the Department published an advance notice of proposed rulemaking (''ANPRM'') in the **Federal Register**. 86 FR 27728 n.50 (citing 81 FR 26764). The ANPRM was issued in response to a petition filed on behalf of the National Firearms Act Trade and Collectors Association (''NFATCA''), a trade group representing the firearms and import community. The petitioner requested that the relevant regulations be amended to require that a silencer be marked on the outer tube as opposed to other locations, such as an end cap that might be damaged when a projectile passes through it, unless a variance is granted by the Director on a case-by-case basis for good cause. ATF found that the petitioner raised valid concerns.

Under the GCA, licensed manufacturers and importers must identify the frame or receiver of each firearm, including a firearm muffler or silencer, with a serial number in accordance with regulations. 18 U.S.C. 921(a)(3)(C), 923(i). The NFA requires firearm manufacturers, importers, and makers to identify each firearm, including a firearm muffler or silencer, with a serial number and such other identification as may be prescribed by regulations. 26 U.S.C. 5842(a), 5845(a)(7). Because the NFA defines each individual part of a firearm muffler or silencer as a ''firearm''[40] that must be registered in the NFRTR, the regulations currently assume that every part defined as a silencer must be marked in order to be registered, and expressly require that each part be marked whenever sold, shipped, or otherwise disposed of even though it may have been installed by a qualified licensee within a complete muffler or silencer device.[41]

The ANPRM explained that, along with industry members, ATF considers the term ''outer tube'' to mean the largest external part of a silencer and is that portion of a silencer that encapsulates all components of the silencing unit, and which contains and controls the expansion of the escaping gases. 81 FR at 26765. ATF explained that placing all required markings on the outer tube of a completed firearm silencer or firearm muffler is the accepted industry standard. In addition, ATF discussed that requiring identification markings to be placed on a single part provides consistency of markings throughout the industry and eliminates the need to re-mark a device in the event an end cap bearing the markings is damaged and requires replacement. ATF believed that a more specific marking requirement for firearm silencers, such as the outer tube, would lead to greater uniformity, improve public safety, and decrease firearms crimes, including firearms trafficking. *See id.*

The ANPRM was used to solicit comments to determine if an amendment to the regulations that would require placement of

the detection of the origin of particular firearms'' (citation omitted).

[35] Most states require pawnbrokers to record or report any serial number and other identifying markings on pawned merchandise so that police can determine their origin. *See* Ala. Code sec. 5–19A–3(1); Alaska Stat. sec. 08.76.180(a)(4); Ariz. Rev. Stat. sec. 44–1625(C)(5); Colo. Rev. Stat. sec. 29–11.9–103(1); Conn. Gen. Stat. sec. 21–41(c); Del. Code Ann. tit. 24, sec. 2302(a)(1)(b); D.C. Code sec. 47–2884.11(d); Fla. Stat. sec. 538.04(1)(b)(3), (9); Ga. Code sec. 44–12–132(4); Haw. Rev. Stat. sec. 445–134.11(c)(10); 205 Ill. Comp. Stat. 510/5(a); Ind. Code sec. 28–7–5–19(a)(4); Ky. Rev. Stat. Ann. Sec. 226.040(1)(d)(7); La. Stat. Ann. sec. 37:1782(16)(a); Mass. Gen. Laws ch. 140 sec. 79; Mich. Comp. Laws sec. 446.205(5)(1), (4); Minn. Stat. sec. 325J.04(Sub.1)(1); Miss. Code Ann. sec. 75–67–305(1)(a)(iii), (ix); Mo. Rev. Stat. sec. 367.040(4)(6)(b); Neb. Rev. Stat. sec. 69–204(3); N.M. Stat. Ann. sec. 56–12–9(A)(3); N.C. Gen. Stat. sec. 66–391(b)(1); Ohio Rev. Code Ann. sec. 4727.07; Okla. Stat. tit. 59 sec. 1509(D)(h); S.C. Code Ann. sec. 40–39–80(B)(1)(l)(iii), (ix); Tenn. Code Ann. sec. 45–6–209(b)(1)(C), (H); Tex. Fin. Code Ann. sec. 371.157(4); Utah Code Ann. sec. 13–32a–104(1)(h)(i)(A); Va. Code Ann. sec. 54.1–4009(A)(1); Wash. Rev. Code sec. 19.60.020(1)(e); W. Va. Code sec. 47–26–2(b)(1); Wis. Stat. sec. 134.71(8)(c)(2).

[36] *See United States* v. *Marzzarella,* 614 F.3d 85, 100 (3d Cir. 2010) (''The direct tracing of the chain of custody of firearms involved in crimes is one useful means by which serial numbers assist law enforcement. But serial number tracing also provides agencies with vital criminology statistics—including a detailed picture of the geographical source areas for firearms trafficking and ''time-to-crime'' statistics which measure the time between a firearm's initial retail sale and its recovery in a crime—as well as allowing for the identification of individual dealers involved in the trafficking of firearms and the matching of ballistics data with recovered firearms'' (footnotes omitted).); *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers,* ATF at 1, 26 (2000) (serial number obliteration is a clear indicator of firearms trafficking to, among other criminals, armed narcotics traffickers).

[37] *See, e.g., Abramski* v. *United States,* 573 U.S. 169, 192 (2014); *Marshall* v. *Virginia,* 822 SE2d 389, 392–93 (Va. Ct. App. 2019); *Shirley* v. *Glass,* 297 Kan. 888 (2013); *Pennsylvania* v. *Baxter,* 956 A.2d 465, 472 (Pa. Super. Ct. 2008).

[38] *See, e.g., United States* v. *Powell,* 467 F. Supp. 3d 360, 368, 374 (E.D. Va. 2020) (indictment charging false statements on ATF Form 4473 in connection with the purchase of specific handguns listed by date of purchase, make, caliber, model, serial number, and name of FFL); *United States* v. *McCurdy,* 634 F. Supp. 2d 118, 121–22, 126 (D. Me. 2009) (denial of a motion for a new trial discussing whether the firearm sold as documented on the ATF Form 4473 and the firearm introduced at trial were the same).

[39] The lack of firearm description information in theft/loss reports makes it difficult for ATF to match recovered firearms with those reported as lost or stolen, thereby hindering ATF's efforts to enforce the numerous provisions of the GCA that prohibit thefts. *See* 18 U.S.C. 922(i) (transporting or shipping stolen firearms in interstate or foreign commerce); 18 U.S.C. 922(j) (receiving, possessing, concealing, storing, bartering, selling, disposing, or pledging or accepting as security for a loan any stolen firearm which has moved in interstate or foreign commerce); 18 U.S.C. 922(u) (stealing a firearm that has been shipped or transported in interstate or foreign commerce from the person or premises of an FFL); 18 U.S.C. 924(*l*) (stealing a firearm which is moving in or has moved in interstate commerce); 18 U.S.C. 924(m) (stealing a firearm from a licensee).

[40] A firearm ''muffler or silencer'' is defined to include ''any combination of parts'' designed and intended for the use in assembling or fabricating a firearm silencer or muffler and ''any part intended only for use in such assembly or fabrication.'' 18 U.S.C. 921(a)(24); 26 U.S.C. 5845(a)(7); 27 CFR 478.11, 479.11. This rule defines the term ''complete muffler or silencer device'' not to exempt individual silencer parts from the definition of firearm ''muffler or silencer'' subject to the requirements of the NFA, but to advise industry members when those individual silencer parts must be marked and registered in the NFRTR when they are used in assembling, fabricating, or repairing a muffler or silencer device.

[41] *See* 27 CFR 479.101(b), 478.92(a)(4)(iii), 479.102(f)(1).

identification markings on the outer tube of firearm silencers and mufflers was warranted. In response to the ANPRM, ATF received 48 comments. A few commenters supported issuance of a proposed rule because they believed it would not violate any constitutional rights under the Second Amendment, would enhance public safety for the reasons ATF stated, and would reduce confusion within the industry without being a financial burden because it is already a standard practice with many manufacturers. The majority of commenters expressed opposition and did not want ATF to proceed with any further rulemaking. Specific reasons for their objection to a proposed rule included a belief that: (1) ATF lacks legal authority to specify where markings on silencers must be located and that such a rule would violate the Second Amendment; (2) the initial NFATCA petition is outdated; (3) there is no data to support that a new rule would enhance public safety or reduce firearms trafficking; (4) a new regulation is unnecessary as the industry is already complying; (5) it is not feasible to comply with marking on the outer tube of the silencer with specific designs; (6) the proposed idea hinders technological advances and future designs; (7) it would create confusion and definitional problems because the definition of outer tube is outdated; and (8) the industry and public would incur financial burdens.

Other commenters offered suggestions about outer tube replacement options especially because silencer tubes wear out over time. They suggested that a rule would be reasonable if ATF authorizes manufacturers to repair or replace damaged silencer tubes and engrave the new tube with the original serial number. Commenters also suggested alternative locations for silencer markings such as on end caps. They believed that markings should be placed on the major portion of the silencer, which could be the end cap or any section of the tube. They stressed that the outer tube is thin and there is a greater risk of burning through the metal when engraving and that end caps have greater thickness to work with when engraving.

Based on further review and the comments received in response to the ANPRM, ATF incorporated a proposed definition of ''frame or receiver'' as it applies to firearm mufflers and silencers in the NPRM to clarify when and how silencer parts are to be marked and registered. 86 FR 27720.

III. Notice of Proposed Rulemaking

On May 21, 2021, the Department published in the **Federal Register** an NPRM entitled ''Definition of 'Frame or Receiver' and Identification of Firearms,'' 86 FR 27720, proposing changes to various regulations in 27 CFR parts 447, 478, and 479. Overall, the NPRM proposed amending ATF's regulations to clarify the definition of ''firearm'' and to provide a more comprehensive definition of ''frame or receiver'' so that these terms more accurately reflect how most modern-day firearms are produced and function, and so that the courts, the firearms industry, and the public at large would no longer misinterpret the term to mean that most firearms in circulation have no parts identifiable as a frame or receiver. The NPRM also proposed new terms and definitions to account for technological developments and modern terminology in the firearms industry, as well as proposed amendments to the marking and recordkeeping requirements that would be necessary to implement these definitions.

A. Definition of ''Firearm''

In the NPRM, the Department proposed adding a sentence at the end of the definition of ''firearm'' in 27 CFR 478.11 to reflect existing case law, providing that ''[t]he term shall include a weapon parts kit that is designed to or may readily be assembled, completed, converted, or restored to expel a projectile by the action of an explosive.'' However, the proposed amendment was not intended to affect the classification of a weapon, including a weapon parts kit, in which the frame or receiver (as defined in the proposed rule) of such weapon is properly destroyed. *See* 86 FR at 27726, 27729–30. Therefore, another sentence was proposed to be added at the end of the definition of ''firearm'' to provide that ''[t]he term shall not include a weapon, including a weapon parts kit, in which each part defined as a frame or receiver of such weapon is destroyed.'' *Id.* at 27726.

The Department explained in the NPRM that ''firearm'' as defined under the GCA, 18 U.S.C. 921(a)(3) and 27 CFR 478.11, includes inoperable weapons even though they will not expel a projectile by the action of an explosive at the time of sale or distribution if they are ''*designed to*'' [42] or ''*may readily be converted*'' [43] to expel a projectile by the

[42] Numerous courts have held that weapons *designed to* expel a projectile by the action of an explosive are ''firearms'' under 18 U.S.C. 921(a)(3)(A) even if they cannot expel a projectile in their present form or configuration. *See, e.g., United States* v. *Hardin,* 889 F.3d 945, 946–47, 949 (8th Cir. 2018) (pistol with broken trigger and numerous missing internal parts was a weapon designed to expel a projectile by the action of an explosive); *United States* v. *Dotson,* 712 F.3d 369, 370–71 (7th Cir. 2013) (saying, in ruling that a pistol with corroded, missing, and broken components was a ''firearm,'' that ''[a]n airplane is designed to fly; a defect in manufacture or maintenance that prevents it from flying does not alter its design''); *United States* v. *Davis,* 668 F.3d 576, 577 (8th Cir. 2012) (holding that a pistol with no trigger was a ''firearm'' within the meaning of section 2K2.1(a)(3)(A)(i) of the Sentencing Guidelines and applying ''the same reasoning [that courts have applied in section 921(a)(3) cases] to Guidelines provisions that incorporate the § 921(a)(3) definition''); *United States* v. *Counce,* 445 F.3d 1016, 1018 (8th Cir. 2006) (handgun with missing safety); *United States* v. *Rivera,* 415 F.3d 284, 285–87 (2d Cir. 2005) (pistol with a broken firing pin and flattened firing-pin channel); *United States* v. *Morales,* 280 F. Supp. 2d 262, 272–73 (S.D.N.Y. 2003) (partially disassembled Tec-9 pistol was designed to expel a projectile); *United States* v. *Adams,* 137 F.3d 1298, 1300 & n.2 (11th Cir. 1998) (potentially inoperable shotgun); *United States.* v. *Brown,* 117 F.3d 353 (7th Cir. 1997) (holding that a gun with no firing pin was a ''firearm'' within the meaning of section 2B3.1(b)(2)(C) of the Sentencing Guidelines, and discussing analogous cases interpreting section 921(a)(3)(A)); *United States* v. *Reed,* 114 F.3d 1053 (10th Cir. 1997) (shotgun with broken breech bolt); *United States* v. *Hunter,* 101 F.3d 82 (9th Cir. 1996) (holding that the sentence enhancement for use of a semiautomatic weapon in section 924(c) applied to a pistol with broken firing pin); *United States* v. *Yannott,* 42 F.3d 999, 1005–07 (6th Cir. 1994) (shotgun with broken firing pin); *United States* v. *Ruiz,* 986 F.2d 905, 910 (5th Cir. 1993) (revolver with hammer filed down); *United States* v. *York,* 830 F.2d 885, 891 (8th Cir. 1987) (revolver with no firing pin and cylinder did not line up with barrel); *United States* v. *Thomas,* No. 17–194 (RDM), 2019 WL 4095569, at *4 (D.D.C. Aug. 29, 2019) (in ruling that a revolver missing its hammer, hammer screw, trigger, cylinder stop, hand, ejector rod housing, base pin, screw, nut, spring, loading gate detent and spring and miscellaneous screws was a ''firearm,'' the court said: ''[t]he Titanic was, after all, 'designed' to be unsinkable''). *But see Dotson,* 712 F.3d at 371 (a Beretta pistol redesigned to be a cigarette lighter); *Rivera,* 415 F.3d at 286–87 (''[A] gun with a barrel filled with lead, maybe for use as a theatrical prop, might perhaps no longer be deemed 'designed to' or 'readily be converted' to fire a bullet.''); *United States* v. *Wada,* 323 F. Supp. 2d 1079 (D. Or. 2004) (firearms redesigned as ornaments that ''would take a great deal of time, expertise, equipment, and materials to attempt to reactivate'' were no longer designed to expel a projectile by the action of an explosive, and could not readily be converted to do so).

[43] *See, e.g., United States* v. *Mullins,* 446 F.3d 750, 756 (8th Cir. 2006) (starter gun that can be modified in less than one hour by a person without any specialized knowledge to fire may be considered ''readily convertible'' under the GCA); *United States* v. *16,179 Molso Italian .22 Caliber Winlee Derringer Convertible Starter Guns,* 443 F.2d 463 (2d Cir. 1971) (starter guns converted in no more than 12 minutes to fire live ammunition were readily convertible under the GCA); *United States* v. *Morales,* 280 F. Supp. 2d 262, 272–73 (S.D.N.Y. 2003) (partially disassembled Tec-9 pistol that could be assembled within a short period of time could readily be converted to expel a projectile). *Cf. United States* v. *Dodson,* 519 F. App'x 344, 352–53 (6th Cir. 2013) (gun that was restored with 90 minutes of work, using widely available parts and equipment and common welding techniques, fit comfortably within the readily restorable standard of 26 U.S.C. 5845(b)); *United States* v. *TRW Rifle 7.62×51mm Caliber, One Model 14 Serial 593006,*

Continued

action of an explosive. Weapon parts kits, or aggregations of weapon parts, some of which contain all of the components necessary to complete a functional weapon within a short period of time, have been increasingly sold to individuals either directly from manufacturers of the kits or retailers, without background checks or recordkeeping. 86 FR at 27726. Some of these firearm kits include jigs, templates, and tools that allow the purchaser to complete the weapon fairly or reasonably efficiently, quickly, and easily to a functional state. Such weapon parts kits or aggregations of weapon parts that are *designed to* or *may readily be converted to* expel a projectile by the action of an explosive are also ''firearms'' under 18 U.S.C. 921(a)(3)(A).[44] This proposed addition makes explicit that manufacturers and sellers of such kits or aggregations of weapon parts are subject to the same regulatory requirements applicable to the manufacture or sale of fully completed and assembled firearms. *See* 86 FR at 27726.

B. Definition of ''Frame or Receiver''

The Department proposed to revise the definition of ''frame or receiver'' with a multi-part definition. First proposed was a general definition of ''frame or receiver'' with nonexclusive examples that illustrated the definition. This was followed by four proposed supplements, described below, that further explained the meaning of the term ''frame or receiver'' for certain firearm designs and configurations. Although the proposed definition was intended to more broadly define the term ''frame or receiver'' than the current definition, it was not intended to alter any prior determinations by ATF regarding which specific part of a given weapon it considered the frame or receiver. The NPRM also proposed to codify in the regulations the factors ATF considers when classifying the frame or receiver of a firearm.

1. General Definition of ''Frame or Receiver''

As a threshold matter, the NPRM proposed that the new definition, with a partial exception for an internal frame or chassis, make clear that each frame or receiver be visible to the exterior when the complete weapon is assembled so that licensees and law enforcement can quickly and easily identify the markings. Next, the NPRM proposed defining the term ''frame or receiver'' more broadly as a part that provides housing or a structure designed to hold or integrate any fire control component, which would have included, at a minimum, any housing or holding structure for a hammer, bolt, bolt carrier, breechblock, cylinder, trigger mechanism, firing pin, striker, or slide rails. However, the proposed definition would not have been limited to those particular fire control components[45] and was proposed to be general enough to encompass changes in technology and parts terminology. For further clarity, four nonexclusive examples with illustrations of common single-framed firearms were provided. *See* 86 FR at 27727, 27742. Finally, the proposed definition stated that persons who may acquire or possess a part now defined as a frame or receiver that is identified with a serial number must presume, absent an official determination by ATF or other reliable evidence to the contrary, that the part is a firearm frame or receiver without further guidance.

2. Definition of ''Firearm Muffler or Silencer Frame or Receiver''

The first proposed supplement to define the term ''frame or receiver'' as it applies to a ''firearm muffler or silencer frame or receiver'' and to add a new term ''complete muffler or silencer device'' is further discussed in Section III.D of this preamble. The NPRM proposed that in the case of a firearm muffler or firearm silencer, the frame or receiver is a part of the firearm that is visible from the exterior of a completed device and provides a housing or a structure designed to hold or integrate one or more essential internal components of the device.

As described in Section II.C of this preamble, the GCA's marking requirement and the GCA/NFA's definition of firearm ''muffler or silencer'' (sometimes referred to as a ''sound suppressor'') and its marking requirements have caused confusion and concern among many silencer manufacturers over the years. The NPRM explained that some silencer parts defined as ''silencers,'' such as baffles, are difficult for manufacturers to mark and listed examples of the ATF forms that manufacturers would have difficulty filing and processing in a timely manner. 86 FR at 27728. The Department also explained that it makes little sense to mark all silencer parts for tracing purposes when the outer tube or housing of the complete device is marked and registered. *Id.* at 27727–28.

For these reasons, the new definitions were proposed to clarify for manufacturers and makers of complete muffler or silencer devices that they need only mark the one part of the device defined as the frame or receiver under the proposed rule. However, individual muffler or silencer parts were proposed to be marked if they are disposed of separately from a complete

447 F.3d 686, 692 (9th Cir. 2006) (a two-hour restoration process using ordinary tools, including a stick weld, is within the ordinary meaning of ''readily restored''); *United States* v. *One TRW, Model M14, 7.62 Caliber Rifle,* 441 F.3d 416, 422–24 (6th Cir. 2006) (''[T]he Defendant weapon here had all of the necessary parts for restoration and would take no more than six hours to restore.''); *United States* v. *Woods,* 560 F.2d 660, 664 (5th Cir. 1977) (holding that a weapon was a shotgun within the meaning of 26 U.S.C. 5845(d) and stating ''[t]he fact that the weapon was in two pieces when found is immaterial considering that only a minimum of effort was required to make it operable.''); *United States* v. *Smith,* 477 F.2d 399, 400–01 (8th Cir. 1973) (machinegun that would take around an eight-hour working day in a properly equipped machine shop was readily restored to shoot); *United States* v. *Catanzaro,* 368 F. Supp. 450, 453 (D. Conn. 1973) (a sawed-off shotgun was ''readily restorable to fire'' where it could be reassembled in one hour and the necessary missing parts could be obtained at a Smith & Wesson plant). *But see United States* v. *Seven Miscellaneous Firearms,* 503 F. Supp. 565, 574–75 (D.D.C. 1980) (weapons could not be ''readily restored to fire'' when restoration required master gunsmith in a gun shop and $65,000 worth of equipment and tools).

[44] *See, e.g., United States* v. *Wick,* 697 F. App'x 507, 508 (9th Cir. 2017) (complete UZI parts kits ''could 'readily be converted to expel a projectile by the action of an explosive,' meeting the statute's definition of firearm under § 921(a)(3)(A)'' because the ''kits contained all of the necessary components to assemble a fully functioning firearm with relative ease''); *United States* v. *Stewart,* 451 F.3d 1071, 1072–73, 1073 n.2 (9th Cir. 2006) (upholding district court's finding that .50 caliber rifle kits with incomplete receivers were ''firearms'' under section 921(a)(3)(A) because they could easily be converted to expel a projectile); *United States* v. *Theodoropoulos,* 866 F.2d 587, 595 n.3 (3d Cir. 1989), *overruled in part on other grounds by United States* v. *Price,* 76 F.3d 526, 528 (3d Cir. 1996) (disassembled machine pistol that that could easily be made operable was a firearm under section 921(a)(3)(A)); *United States* v. *Morales,* 280 F. Supp. 2d 262, 272–73 (S.D.N.Y. 2003) (partially disassembled Tec-9 pistol that could be assembled within short period of time could readily be converted to expel a projectile was a firearm under section 921(a)(3)(A)); *United States* v. *Randolph,* No. 02 CR. 850–01 (RWS), 2003 WL 1461610, at *2 (S.D.N.Y. Mar. 20, 2003) (gun consisting of ''disassembled parts with no ammunition, no magazine, and a broken firing pin, making it incapable of being fired without replacement or repair'' was a ''firearm'' under section 921(a)(3)(A) because it could be readily converted to expel a projectile and included the frame or receiver of such a weapon); *cf. United States* v. *Annis,* 446 F.3d 852, 857 (8th Cir. 2006) (partially disassembled rifle that could easily be made operational was a firearm under sentencing guidelines); *United States* v. *Ryles,* 988 F.2d 13, 16 (5th Cir. 1993) (same with disassembled shotgun that could have been readily converted to an operable firearm); *Enamorado* v. *United States,* No. C16–3029–MWB, 2017 WL 2588428, at *6 (N.D. Iowa June 14, 2017) (same with disassembled .45 caliber handgun that could easily be reassembled).

[45] The prefatory paragraph to the definitional sections in the GCA and NFA regulations explain that ''[t]he terms 'includes' and 'including' do not exclude other things not enumerated which are in the same general class or are otherwise within the scope thereof.'' 27 CFR 478.11, 479.11.

device unless transferred by manufacturers qualified under the NFA to other qualified licensees for the manufacture or repair of complete devices.[46]

3. Definition of ''Split or Modular Frame or Receiver''

The second proposed supplement to the general definition sought to capture the majority of firearms that now use a split design as discussed above. It sought to clarify that even though a firearm, including a silencer, may have more than one part that falls within the definition of ''frame or receiver,'' ATF may classify a specific part or parts to be the ''frame or receiver'' of a particular weapon. It then set forth the various factors ATF would consider in making this determination with no single factor controlling. *See* 86 FR at 27728–29, 27743. It also proposed the clarification that ''[f]rames or receivers of different weapons that are combined to create a similar weapon each retain their respective classifications as frames or receivers provided they retain their original design and configuration.'' *Id.* at 27734.

To ensure that the proposed definition of ''split or modular frame or receiver'' did not affect existing ATF classifications that specified a single component as the frame or receiver, the definition included a nonexclusive list of common weapons with a split or modular frame or receiver configuration for which ATF previously determined a specific part to be the frame or receiver. *See id.* at 27729, 27743–46. The NPRM explained that a manufacturer or importer of one of these firearm designs, as they would exist as of the final rule's date of publication, could refer to this list to know which part is the frame or receiver, thereby allowing the manufacturer or importer to mark a single part without seeking a determination from ATF. However, if there was to be a present or future split or modular design for a firearm that was not comparable to an existing classification, then the proposed definition of ''frame or receiver'' would advise, absent a variance or classification from ATF, that more than one part is the frame or receiver subject to marking and other requirements.

4. Definition of ''Partially Complete, Disassembled, or Inoperable Frame or Receiver''

The third supplement proposed to define ''frame or receiver'' as including frames or receivers that are partially complete, disassembled, or inoperable, or a frame or receiver that has reached a stage in manufacture where it may readily be completed, assembled, converted, or restored to a functional state. The NPRM stated that, to determine this status, ''the Director may consider any available instructions, guides, templates, jigs, equipment, tools, or marketing materials.'' 86 FR at 27729, 27746. ''Partially complete,'' for purposes of this definition, was proposed to mean a forging, casting, printing, extrusion, machined body, or similar article at a stage in manufacture where it is clearly identifiable as an unfinished component part of a weapon.

The NPRM explained that this supplemental definition aimed to address *when* an object becomes a frame or receiver such that it is a regulated article. The NPRM stated that partially complete or unassembled frames or receivers, commonly called ''80% receivers,''[47] are often sold in kits where the frame or receiver can readily be completed or assembled to a functional state. *See id.* at 27729 n.54. The Department stated that the supplemental definition is necessary for clarity because companies are not running background checks or maintaining transaction records when they manufacture and sell these kits. Accordingly, prohibited persons have easily obtained them[48] and, when recovered, they are nearly impossible to trace. The proposed definition also sought to make clear that unformed blocks of metal, and other similar articles only in a primordial state[49] would not—without more processing—be considered a ''partially complete'' frame or receiver that is captured under the definition of ''frame or receiver.''

5. Definition of ''Destroyed Frame or Receiver''

The fourth supplement proposed to exclude from the definition of ''frame or receiver'' any frame or receiver that has been destroyed. This proposed definition described a destroyed frame or receiver as one permanently altered not to provide housing or a structure that may hold or integrate any fire control or essential internal component, and that may not readily be assembled, completed, converted, or restored to a functional state. The proposed definition set forth nonexclusive acceptable methods of destruction, which had been provided by ATF in its past guidance.[50]

C. Definition of ''Readily''

The Department proposed to add the term ''readily'' to 27 CFR 478.11 and 479.11 and define it as ''a process that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speedy, or easy process.'' 86 FR at 27730, 27747, 27751. It further listed factors relevant in applying this proposed definition, such as time, ease, expertise, equipment, availability, expense, scope, and feasibility, with brief examples describing these factors. *Id.* The proposed definitions and factors are based on case law interpreting ''may readily be converted to expel a projectile'' in 18 U.S.C. 921(a)(3)(A) and ''can be readily restored to shoot'' in 26 U.S.C. 5845(b)–(d). *See id.* at 27730 & n.58. The NPRM explained that defining the term ''readily'' was necessary to determine when a weapon, including a weapon parts kit, a partially complete or damaged frame or receiver, or an aggregation of weapon parts becomes a ''firearm'' regulated under the GCA and NFA.

[46] This rule is consistent with ATF enforcement policy. *See* footnote 58, *infra.*

[47] The term ''80% receiver'' is a term used by some industry members, the public, and the media to describe a frame or receiver that has not yet reached a stage of manufacture to be classified as a ''frame or receiver'' under Federal law. However, that term is neither found in Federal law nor accepted by ATF.

[48] *See* 86 FR at 27729 n.55; *see also* Gene Johnson, *Felon on supervision accused of having 'ghost gun' arsenal,* Associated Press (Feb. 28, 2020), *available at https://apnews.com/article/cc61d48e83a2c8113cdb1e1ed6fe6006* (last visited Mar. 23, 2022); Sarah Cassi, *Lehigh Valley felon was using 3D printer to make 'ghost guns' at home, Pa. attorney general says,LehighValleyLive.com* (June 29, 2021), *available at https://www.lehighvalleylive.com/northampton-county/2021/06/lehigh-valley-felon-was-using-3d-printer-to-make-ghost-guns-at-home-pa-attorney-general-says.html* (last visited Mar. 23, 2022); *Deputy recovers 'ghost gun' from convicted felon during traffic stop,* Fontana Herald News (Aug. 10, 2021), *available at https://www.fontanaheraldnews.com/news/inland_empire_news/deputy-recovers-ghost-gun-from-convicted-felon-during-traffic-stop/article_3cfe0fd0-f4a3-11eb-bd31-03979dc83307.html* (last visited Mar. 23, 2022); *Parolee Arrested With AR–15 Ghost Gun, Fake Law Enforcement Badge,* NBC Palm Springs (Aug. 13, 2021), *available at https://nbcpalmsprings.com/2021/08/13/parolee-arrested-with-ar-15-ghost-gun-fake-law-enforcement-badge* (last visited Mar. 23, 2022); *Georgetown Arrest of a Felon Leads to Recovery of Ghost Gun,* Seattle Police Department (Nov. 8, 2021), *available at https://spdblotter.seattle.gov/2021/11/08/georgetown-arrest-of-a-felon-leads-to-recovery-of-ghost-gun* (last visited Mar. 23, 2022).

[49] As used in this rule, the term ''primordial'' refers to an item, such as an unmachined block of metal, liquid polymer, or other raw material that is in its original natural form or at an early stage of development without substantial processing. *See* Primordial, Oxford English Dictionary, *available at https://www.oed.com/view/Entry/151373?redirectedFrom=primordial#eid* (last visited Mar. 23, 2022) (''that [which] constitutes the origin or starting point from which something else is derived or developed'').

[50] *See* 86 FR at 27729, 27746.

D. Definitions of ''Complete Weapon'' and ''Complete Muffler or Silencer Device''

The Department proposed to add the terms ''complete weapon'' and ''complete muffler or silencer device'' to 27 CFR 478.11 and 479.11. The proposed definition of a ''complete weapon'' was a firearm, whether or not assembled or operable, containing all component parts necessary to function as designed but not a firearm muffler or silencer device. 86 FR at 27730. The proposed definition of a ''complete muffler or silencer device'' was a firearm muffler or firearm silencer, whether or not assembled or operable, containing all of the component parts necessary to function as designed. *Id.* These terms were proposed to explain when a frame or receiver of a firearm, including a firearm muffler or silencer, as the case may be, must be marked for identification.

E. Definition of ''Privately Made Firearm''

The NPRM proposed adding the term ''privately made firearm'' to 27 CFR 478.11 and to define it as a firearm, including a frame or receiver, assembled by a person other than a licensed manufacturer, and not containing a serial number or other identifying marking placed by a licensed manufacturer at the time the firearm was produced. *See* 86 FR at 27730. The term would not include a firearm identified and registered in the NFRTR pursuant to 26 U.S.C., chapter 53, or any firearm made before October 22, 1968 (unless remanufactured after that date).[51]

F. Definition of ''Importer's or Manufacturer's Serial Number''

The Department proposed to add the term ''importer's or manufacturer's serial number'' in 27 CFR 478.11 and to define it as the identification number, licensee name, licensee city or State, or license number placed by a licensee on a firearm frame or receiver or on a PMF. The NPRM explained that a serial number incorporating the abbreviated FFL number (also known in industry as the ''RDS key'') placed by a licensee on a PMF under the proposed rule met the definition of the ''importer's or manufacturer's serial number.'' The Department also explained that the proposed definition would help ensure that the serial numbers and other markings necessary to ensure tracing are considered the ''importer's or manufacturer's serial number'' protected by 18 U.S.C. 922(k) and numerous State laws, which prohibit possession of firearms with serial numbers that have been removed, obliterated, or altered. *See* 86 FR at 27730 n.62.

G. Definition of ''Gunsmith'' [52]

The Department proposed to amend the definition of ''engaged in the business'' as it applies to a ''gunsmith'' in 27 CFR 478.11 to clarify that businesses may be licensed as dealer-gunsmiths rather than as manufacturers if they routinely repair or customize existing firearms, make or fit special barrels, stocks, or trigger mechanisms, or mark firearms as a service performed on firearms not for sale or distribution by a licensee.[53] The proposed amendment was also for the purpose of providing greater access to professional marking services so that persons who engage in the business of identifying firearms for nonlicensees may become licensed as dealer-gunsmiths solely to provide professional PMF marking services.

H. Marking Requirements for Firearms

1. Information Required to be Marked on the ''Frame or Receiver''

To properly implement the new definitions, the Department proposed to amend 27 CFR 478.92(a) and 479.102 to explain how and when markings must be applied on each part defined as a frame or receiver, particularly since there could have been more than one part of a complete weapon, or complete muffler or silencer device, which is the frame or receiver (*i.e.,* when ATF has not identified specific part(s) as the frame or receiver). Under the NPRM, each frame or receiver of a new firearm design or configuration manufactured or imported after the publication of the final rule was proposed to be marked with a serial number, and *either*: (a) The manufacturer's or importer's name (or recognized abbreviation), and city and State (or recognized abbreviation) where the manufacturer or importer maintains their place of business, or in the case of a maker of an NFA firearm, where the firearm was made; or (b) the manufacturer's or importer's name (or recognized abbreviation), and the serial number beginning with the licensee's abbreviated FFL number as a prefix, which is the first three and last five digits, followed by a hyphen, and then followed by a number (which may incorporate letters and a hyphen) as a suffix, *e.g.,* ''12345678-[number].'' The serial number (with or without the FFL prefix) identified on each part of a weapon defined as a frame or receiver was proposed to be the same number, but could not duplicate any serial number(s) placed by the licensee on any other firearm.

The NPRM proposed that licensed manufacturers and importers could continue to identify the additional information on firearms (other than PMFs) of the same design and configuration as they existed before the effective date of the final rule under the prior content rules, and any rules necessary to ensure such identification would have remained effective for that purpose. This proposed provision was intended to make the transition easier and reduce production costs incurred by licensees.

Except for silencer parts transferred by manufacturers to other qualified manufacturers and dealers for completion or repair of devices, no change was proposed to the existing requirement that each part defined as a machinegun or silencer that is disposed of separately and not part of a complete weapon or device be marked with all required information, because individual machinegun conversion and silencer parts are ''firearms'' under the NFA that must be registered in the NFRTR. 26 U.S.C. 5841(a)(1), 5845(a), (b). However, for frames and receivers, and individual machinegun conversion or silencer parts defined as ''firearms'' that are disposed of separately, the proposed rule allowed the model designation and caliber or gauge to be omitted if it is unknown at the time the part is identified. *See* 86 FR at 27731.

2. Size and Depth of Markings

The Department did not propose changes to the existing requirements for size and depth of markings in 27 CFR

[51] The Federal Firearms Act of 1938 (repealed), the predecessor to the GCA, made it unlawful for a person to receive in interstate or foreign commerce a firearm that had the manufacturer's serial number removed, obliterated, or altered. 15 U.S.C. 902(i) (1940). Regulations promulgated to implement this law required each firearm manufactured after July 1, 1958, to be identified with the name of the manufacturer or importer, a serial number, caliber, and model. However, there was an exception from the serial number and model requirements for any shotgun or .22 caliber rifle unless that firearm was also subject to the NFA. 26 CFR 177.50 (1959) (rescinded).

[52] The term ''gunsmith'' is not used in the GCA; however, the Firearm Owners' Protection Act, Public Law 99–308 (1986), amended the GCA to define ''engaged in the business'' as applied to dealers to clarify when gunsmiths must have a license. *See* 18 U.S.C. 921(a)(11)(B), (a)(21)(D); 132 Cong. Rec. 9603–04 (1986) (statement of Sen. McClure).

[53] This rule would supersede ATF Ruling 2010–10, which allows gunsmiths under specified conditions to engage in certain manufacturing activities for licensed manufacturers. This change was proposed to eliminate a significant source of confusion among regulated industry members and the public as to who needs a license to manufacture firearms. *See Broughman* v. *Carver,* 624 F.3d 670 (4th Cir. 2010) (distinguishing dealer-gunsmiths from manufacturers).

478.92(a)(1) and 479.102(a), but for sake of clarity, proposed to consolidate them into a standalone paragraph.

3. Period of Time To Identify Firearms

The Department proposed to identify the point at which manufacturers would be required to place markings on firearms. The NPRM proposed that complete weapons or complete muffler or silencer devices, as defined in the rule, would be allowed to be marked up to seven days from completion of the active manufacturing process for the weapon or device, or prior to disposition, whichever is sooner. Except for silencer parts produced by qualified manufacturers for transfer to other licensees to complete or repair silencer devices, parts defined as a frame or receiver, machinegun, or firearm muffler or firearm silencer that are not component parts of a complete weapon or device when disposed of would be allowed to be marked up to seven days following the date of completion of the active manufacturing process for the part, or prior to disposition, whichever is sooner. Adding this proposed language would codify ATF Ruling 2012–1, which explained that, whether the end product is to become a complete weapon or device, or a frame or receiver to be disposed of separately, it is reasonable for a licensed manufacturer to have seven days following the date of completion of the entire manufacturing process in which to mark a firearm manufactured and record its identifying information in the manufacturer's permanent records.

4. Marking of ''Privately Made Firearms''

The Department proposed to amend 27 CFR 478.92 to require FFLs to mark, or supervise the marking of, the same serial number on each part of the weapon defined as frame or receiver (as defined in the rule) of a PMF that the licensee acquired, but not duplicate any serial number(s) placed on any other firearm. The marking would begin with the FFL's abbreviated license number (first three and last five digits) as a prefix, followed by a hyphen, and then followed by a number as a suffix (*e.g.,* ''12345678-[number]''). Unless previously identified by another licensee, PMFs acquired by licensees on or after the effective date of the rule were proposed to be marked in this manner within seven days of receipt or other acquisition (including from a personal collection), or before the date of disposition (including to a personal collection), whichever is sooner.[54] For PMFs acquired by licensees before the effective date of the rule, the proposed rule would require licensees to mark or cause them to be marked by another licensee either within 60 days from the effective date of a final rule, or before the date of final disposition (including to a personal collection), whichever is sooner.[55]

Consistent with the language and purpose of the GCA, the NPRM explained that this proposed provision was necessary to allow ATF to trace all firearms acquired and disposed of by licensees, prevent illicit firearms trafficking, and provide procedures for FFLs and the public to follow with respect to PMF transactions with the licensed community. The proposed rule further noted that this provision was crucial in light of advances in technology that allow unlicensed, including prohibited, persons easily and repeatedly to produce firearms at home from parts ordered online, or by using 3D printers or personally owned or leased equipment. Such privately made firearms have made and will continue to make their way to the primary market in firearms through the licensed community.[56]

At the same time, nothing in the proposed rule restricted persons who are not otherwise prohibited from possessing firearms from making their own firearms without markings solely for personal use, nor did the proposed rule require individuals to mark PMFs when they occasionally acquire them for a personal collection, or sell or transfer them from a personal collection to unlicensed in-State residents in accordance with Federal, State, and local law. Further, the NPRM would not require FFLs to accept any PMFs, or to mark PMFs themselves, or to provide services to place identification marks on PMFs. Licensees would be able to arrange for individuals who wish to transfer PMFs to licensees to have them marked by another licensee before accepting them, provided they are properly marked in accordance with the proposed rule.

5. Meaning of Marking Terms

An additional amendment to 27 CFR 478.92 and 478.102 was proposed to clarify the meaning of the terms ''legible'' and ''legibly'' to ensure that ''the identification markings use exclusively Roman letters (*e.g.,* A, a, B, b, C, c) and Arabic numerals (*e.g.,* 1, 2, 3), or solely Arabic numerals, and may include a hyphen,'' and that the terms ''conspicuous'' and ''conspicuously'' are understood to mean that the identification markings are capable of being easily seen and unobstructed by other markings when the firearm is assembled. 86 FR at 27733. These would clarify the meaning of those terms as explained in ATF Ruling 2002–6 (''legible''), and ATF's final rule at 66 FR 40599 (Aug. 3, 2001) (referencing U.S. Customs Service regulations on the definition of ''conspicuous'').

6. Alternate Means or Period of Identification

The proposed rule would not alter the Director's existing ability to authorize other means of identification, or a ''marking variance,'' for any part defined as a firearm (including a machinegun or a silencer), or the process for such a variance.

7. Destructive Device Period of Identification

The proposed rule specified a seven-day grace period in which to mark all completed firearms, including destructive devices (similar to other firearms), and would have allowed ATF to grant a variance from this period. There were no proposed changes to the marking requirements for destructive devices.

8. Adoption of Identifying Markings

The Department proposed allowing licensed manufacturers and importers to adopt an existing serial number, caliber/gauge, model, or other markings already identified on a firearm, provided that they legibly and conspicuously place, or cause to be placed, on each part (or part(s)) defined as a frame or receiver, either the FFL's name (or recognized abbreviation), and city and State (or recognized abbreviation) where they maintain their place of business; or their name (or recognized abbreviation) and their abbreviated FFL number, as described in Section III.H.1 of this preamble, followed by the existing serial number (including any other abbreviated FFL prefix) as a suffix, *e.g.,* ''12345678-[serial number],'' to ensure the traceability of the firearm. This language was proposed to supersede ATF Ruling 2013–3 as it applied to licensed manufacturers and importers.

[54] Under this rule, licensed collectors would only need to mark PMFs they receive that are defined as ''curios or relics.'' *See* 27 CFR 478.11 (definitions of ''firearm'' and ''curios or relics'').

[55] Handguns that are 3D-printed are also subject to the registration and taxation requirements of the NFA if they have a smooth bore and are capable of being concealed on the person, thereby falling within the definition of ''any other weapon'' under the NFA. *See* 26 U.S.C. 5845(e).

[56] Under Federal law, for example, certain firearm transactions must be conducted through FFLs. *See* 18 U.S.C. 922(a)(5) (prohibiting any person other than a licensee, subject to certain limited exceptions, from selling or delivering a firearm to an unlicensed out-of-state resident).

The proposal was aimed at avoiding multiple markings on firearms that could be confusing to law enforcement and alleviate concerns of some manufacturers and importers regarding serial number duplication when firearms are remanufactured or imported.

9. Firearm Muffler or Silencer Parts Transferred Between Qualified Licensees

Licensed and qualified firearm muffler or silencer manufacturers routinely transfer small internal muffler or silencer components to each other to produce complete devices. Licensees qualified under the NFA routinely do the same when repairing existing devices. Because of the difficulties and expense of marking and registering small individual components used to commercially manufacture a complete muffler or silencer device with little public safety benefit, the NPRM proposed to allow qualified manufacturers to transfer parts defined as a firearm muffler or silencer to other qualified manufacturers without immediately identifying or registering them. Once the new device was completed with the part, the manufacturer would be required to identify and register the device in the manner and within the period specified in the proposed rule for a complete device. Likewise, the NPRM proposed to allow qualified manufacturers to transfer muffler or silencer replacement parts to qualified manufacturers and dealers to repair existing devices already identified and registered in the NFRTR. Further, the rule proposed to amend the definition of ''transfer'' to clarify that temporary conveyance of a lawfully possessed NFA firearm, including a silencer, to a qualified manufacturer or dealer for the sole purpose of repair, identification, evaluation, research, testing, or calibration, and return to the same lawful possessor is not a ''transfer'' requiring additional identification or registration in the NFRTR.[57] The proposed changes were intended to reduce the practical and administrative problems of marking and registering silencer parts by the regulated industry, and to avoid a potential resource burden on ATF to process numerous tax-exempt registration applications with little public safety benefit.[58]

10. Voluntary Classification of Firearms and Armor Piercing Ammunition

As described in the NPRM, for many years, ATF has acted on voluntary requests from persons, particularly manufacturers who are developing new products, by issuing determinations or ''classifications'' on whether an item is a ''firearm'' or ''armor piercing ammunition'' as defined in the GCA or NFA. The Department proposed to clarify the existing process by which persons may voluntarily submit such requests to ATF. The NPRM proposed that requests be submitted in writing, or on an ATF form, executed under the penalties of perjury with a complete and accurate description of the item, the name and address of the manufacturer or importer thereof, and a sample of such item for examination along with any instructions, guides, templates, jigs, equipment, tools, or marketing materials that are made available to the purchaser or recipient of the item. Upon completion of the examination, ATF would return the sample to the person who made the request unless a determination was made that return of the sample would be, or place the person, in violation of law. The NPRM also proposed to codify ATF's policy of not evaluating a firearm accessory or attachment ''unless it is installed on the firearm(s) in the configuration for which it is designed and intended to be used,'' and further explained that the Director's determination would not be applicable to or authoritative with respect to any other sample, design, model, or configuration. 86 FR at 27734.

I. Recordkeeping

1. Acquisition and Disposition Records

The Department proposed minor amendments to 27 CFR 478.122, 478.123, 478.125, and 478.125a, pertaining to the acquisition and disposition records maintained by importers, manufacturers, and dealers. Due to the possibility that a firearm may have more than one frame or receiver as defined in the proposed rule, and the changes to marking regulations, the rule proposed to make certain words plural, (*e.g.,* manufacturer(s), importer(s), and serial number(s)) in the recordkeeping regulations for the formatting of FFL records, as applicable. These proposed changes were considered necessary to ensure that FFLs record more than one manufacturer, importer, or serial number, if applicable, when acquiring or disposing of firearms with multiple components marked as the frame or receiver, or firearms that have been remanufactured or reimported by another licensee. This is consistent with prior ATF guidance to the firearms industry.[59]

The rule also proposed to amend 27 CFR 478.122 and 478.123 to require licensed importers and manufacturers to consolidate their records of importation, manufacture, or other acquisition, and their sale or other disposition in a format containing the applicable columns specified in a table under the regulation. These changes were proposed to supersede ATF Rulings 2011–1 and 2016–3.

The NPRM proposed to make minor clarifying changes to the format of the column titles required on the A&D Record in § 478.125(e). The proposed change was to make clear that both the name and license number (not the address) of a licensee from whom firearms are received and to whom they are disposed are recorded properly in the A&D Record.

The rule also proposed minor changes to § 478.125(f) to make clear that in the event the licensee records a duplicate entry with the same firearm and acquisition information, whether to close out an old record book or for any other reason, the licensee must record a reference to the date and location of the subsequent entry (*e.g.,* date of new entry, book name/number, page number, and line number) to document the disposition. The NPRM explained the proposed change is needed to ensure that acquisition records are closed out when firearms are no longer in inventory[60] and would resolve problems that ATF has encountered during the inspection process and FFLs

[57] The definition of ''transfer'' in the NFA only includes ''selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of'' a firearm. 26 U.S.C. 5845(j); *see also United States* v. *Smith,* 642 F.2d 1179, 1182 (9th Cir. 1981) (''We cannot agree that Congress intended to impose a transfer tax and require registration whenever mere physical possession of a firearm is surrendered for a brief period.'').

[58] These changes are consistent with ATF enforcement policy. *See NFA Handbook,* ATF E-Publication 5320.8, sec. 7.4.6, p.46, sec. 9.5.1, p. 60 (revised April 2009). With regard to silencer repairs, in order to avoid any appearance that an unlawful ''transfer'' has taken place, ATF recommends that an Application for Tax Exempt Transfer and Registration of Firearm, ATF Form 5, be submitted for approval prior to conveying the firearm for repair or identifying the firearm. The conveyance may also be accomplished by submission of a letter from the registrant to the qualified FFL advising the FFL that the registrant is shipping or delivering the firearm for repair/identification and describing the repair or identification. Return of the registered silencer to the registrant may likewise be accomplished by submission of an ATF Form 5 or by a letter from the FFL to the registrant that accompanies the silencer.

[59] *See* FFL Newsletter, May 2012, at 5 (''If a firearm is marked with two manufacturer's names, or multiple manufacturer and importer names, FFLs should record each manufacturers' and importers' [sic] name in the A&D record.'').

[60] This is consistent with prior ATF guidance to the firearms industry. *See* FFL Newsletter, Sept. 2011, at 5.

have encountered when responding to trace requests.

2. Firearms Transaction Records

Some technical amendments were proposed at 27 CFR 478.124 pertaining to information recorded on the Form 4473. Like changes to the recordkeeping regulations, the rule proposed to make certain words plural on the Form 4473 to ensure that FFLs would record more than one manufacturer, importer, and serial number, if applicable. The NPRM also proposed to remove from paragraph (f) a phrase that indicates than an FFL must fill out the firearm description information only after filling out the information about the transferee. The proposed deletion would clarify ATF Procedure 2020–1, which sets forth an alternative method of complying with section 478.124(f) for non-over-the-counter firearm transactions, and reflect the current process for completing the Form 4473.

3. Recordkeeping for ''Privately Made Firearms''

The Department proposed changes to the regulations regarding recordkeeping by licensees to account for any voluntary receipts or other acquisitions (including from a personal collection) of PMFs, and corresponding dispositions (including to a personal collection). If a PMF were received or otherwise acquired by a licensee or disposed of, or imported, the proposed rule required the abbreviation ''PMF'' to be recorded as the manufacturer in the appropriate column, as well as the PMF serial number beginning with the abbreviated FFL number in the serial number column. The rule proposed requiring licensees to first record the PMF as an acquisition in the licensee's A&D records upon receipt from the private owner (whether or not the licensee kept the PMF overnight). Once marked, the licensee would update the acquisition entry with the identifying information and record its return as a disposition to the private owner.

4. NFA Forms Update

The Department proposed minor technical amendments to 27 CFR 479.62, 479.84, 479.88, 479.90, and 479.141, pertaining to the Application to Make, NFA Form 1 (''Form 1''), the Application to Transfer, NFA Form 4 (''Form 4''), Tax Exempt Transfers—SOTs, NFA Form 3 (''Form 3''), Tax Exempt Transfers—Governmental Entities, NFA Form 5 (''Form 5''), and the Stolen or Lost Firearms Report, Form 3310.11 (''Form 3310.11''), respectively. The technical amendments were proposed to make certain words on the forms plural (*i.e.,* manufacturer(s), importer(s), serial number(s)).

5. Importation Forms Update

The Department proposed minor technical amendments to 27 CFR 447.42, 447.45, 478.112, 478.113, 478.114, and 479.112, pertaining to the importation of firearms. Like the other recordkeeping changes, these technical amendments were proposed to ensure that more than one name, manufacturer, country, importer, or serial number, if applicable, would be recorded when completing importation forms.

J. Record Retention

Given advancements in electronic scanning and storage technology, ATF's acceptance of electronic recordkeeping, the reduced costs of storing firearm transaction records, the increased durability and longevity of firearms, and the public safety benefits of ensuring that records of active licensees are available for tracing purposes, the Department proposed to amend 27 CFR 478.129 to require FFLs to retain all records until business or licensed activity is discontinued, either on paper or in an electronic format approved by the Director,[61] at the business or collection premises readily accessible for inspection. Also, a proposed amendment to 27 CFR 478.50(a) would allow all FFLs, including manufacturers and importers, to store paper records and forms older than 20 years at a separate warehouse, which would be considered part of the business premises for this purpose and subject to inspection. These amendments would reverse a 1985 rulemaking allowing non-manufacturer/importer FFLs to destroy their records after 20 years.[62]

IV. Analysis of Comments and Department Responses for the Proposed Rule

In response to the NPRM, ATF received 290,031 comments. Submissions came from individuals, including foreign nationals, lawyers, government officials, and various interest groups. Of the comments reviewed, there were nearly 114,400 comments that expressed support for the proposed rule. Of these, over 68,000 were submitted by individuals as form letters, *i.e.,* identical text that is often supplied by organizations or found online and recommended to be submitted to the agency as a comment. There were nearly 170,550 comments opposed to the rule, of which over 88,000 comments were submitted as form letters. For over 1,500 comments, the commenters' positions could not be determined. The commenters' grounds for support and opposition, along with specific concerns and suggestions, are discussed below.

A. Issues Raised in Support of the Rule

Thousands of commenters broadly expressed support for the NPRM. Over 3,000 comments simply expressed support, stating ''stop ghost guns,'' but numerous other comments focused on the need to regulate ''ghost guns'' and were supportive of the proposed change to treat items like weapon parts kits the same as other firearms because the commenters believed such treatment is necessary for public safety. These commenters pointed to the rise and proliferation of ''do-it-yourself'' (''DIY'') firearms used in crimes and argued that it is easy for extremists, violent criminals, and traffickers, among others, to skirt the law and obtain untraceable guns without undergoing a background check. They stated that the rule was necessary to combat the emerging threat that ''ghost guns'' pose to public safety.

As discussed below, numerous other commenters ranging from lawmakers to prosecutors to religious, medical, and social policy-oriented organizations all raised various points as to why they were supportive of the Department's proposed amendments to ATF regulations. Some commenters in support of the rule also provided suggestions on where they believed the regulatory text could be enhanced or further clarified.

1. Changes are Consistent With Law

Comments Received

Commenters in support remarked that the proposed definitions are justified given the ease with which prohibited persons can intentionally circumvent Federal regulations to acquire unfinished frames or receivers that can be easily converted to functional firearms without a background check. Commenters agreed that ATF's proposed definitions are consistent with Congress's intent to regulate the core component of the firearm and that the plain meaning of ''firearm'' in the GCA includes any kits or nearly complete frames or receivers that can be readily converted into a firearm. One commenter noted the case *United States* v. *Drasen,* 845 F.2d 731, 736–37 (7th Cir. 1988), where the Seventh Circuit rejected the argument that a collection

[61] ATF previously approved electronic storage of certain records under the conditions set forth in ATF Rulings 2016–1 (Requirements to Keep Firearms Records Electronically) and 2016–2 (Electronic ATF Form 4473).

[62] *See* Retention of Firearms Transaction Records, 50 FR 26702 (June 28, 1985).

of rifle parts cannot be a ''weapon.'' Other commenters agreed that ATF's proposed rule would be a functional definition that preserves existing designs while defining the frame or receiver to include those with split or multi-piece frame or receiver configurations, and allows for flexibility over time to account for new technologies. They stated that this flexible approach, including manufacturers' ability to submit a firearm to ATF and receive a classification on which component constitutes the receiver, would preserve the existing designations that ATF has made and minimize the burden on the gun industry.

Similarly, others agreed that the definition and factors set forth for the term ''readily'' are consistent with case law interpreting the term, and that the proposed definition and such case law provides manufacturers with fair warning on how the factors will be considered. Further, some commenters indicated that the proposed ''readily'' test is consistent with ATF's past approach to reviewing unfinished receivers. Some commenters, such as the Brady Group, the District Attorney and County Counsel for the County of Santa Clara, and the Attorney General for the State of California stated that for a few decades, ATF had issued classification letters taking the position that some unfinished receivers, which are identical to the so-called ''80% receivers'' on the market today, were ''firearms'' under the GCA. They stated that, in that time period, ATF's analysis was based on an approach that examined how quickly and easily an unfinished receiver or frame could be turned into a fully functional firearm—that is, whether it could ''readily be converted'' to function as the firearm it was specifically designed to be. The same commenters then asserted that, from around 2006 to the present, ATF changed its analysis and began to look at which machining operations still needed to be performed to determine whether a partially completed receiver or frame is a ''firearm'' under the GCA. Commenters believed that ATF's change in interpretation led to an increase in the number of PMFs that have proliferated and that are being recovered in crime scenes.

Department Response

The Department acknowledges the commenters' support for the proposed rule. The definitions in the proposed rule are consistent with the plain meaning of the term ''firearm'' in the GCA as it includes frames or receivers of weapons that are designed to or may readily be converted to fire, not merely of weapons that are in a functional state that will expel a projectile. The Department agrees with commenters that any new definitions must be general enough to account for changes in technology and terminology while preserving ATF's past classifications to minimize the impact on the firearms industry. The Department further agrees that the proposed definition of the term ''readily'' is consistent with case law that provides manufacturers with fair warning on how the factors in that definition are evaluated.

The Department also agrees that ATF took the position in past classification letters that some unfinished receivers were firearms because of the ease with which they can be made functional. However, ATF disagrees with commenters who stated that ATF changed its position from 2006 to the present concerning partially complete frames or receivers when it determined that specific machining operations had to be performed with respect to certain partially complete frames or receivers. Rather than a new or different test, how quickly and easily an item could be made functional is largely determined by which machining operations still needed to be performed. ATF has maintained and continues to maintain that a partially complete frame or receiver alone is not a frame or receiver if it still requires performance of certain machining operations (*e.g.,* milling out the fire control cavity of an AR–15 billet or blank, or indexing for that operation) because it may not readily be completed to house or hold the applicable fire control components. When a frame or receiver billet or blank is indexed or ''dimpled,'' it indicates the location for drilling or milling the holes or cavities necessary to install the fire control components necessary to initiate, complete, or continue the firing cycle.

However, this rule recognizes that the aggregation of a template or jig with a partially complete frame or receiver can serve the same purpose as indexing, making an item that is clearly identifiable as a partially complete frame or receiver into a functional one efficiently, quickly, and easily (*i.e.,* ''readily''). Prior to this rule, ATF did not examine templates, jigs, or other items and materials in determining whether partially complete frames or receivers were ''firearms'' under the GCA. For this reason, ATF issued some classifications concluding that certain partially complete frames or receivers were not ''frames or receivers'' as defined in this rule. Thus, any classification requests for partially complete, disassembled, or nonfunctional items or parts kits that were previously submitted to ATF, particularly those submitted without their associated templates, jigs, molds, instructions, equipment, or marketing materials as required by this rule, must be re-evaluated consistent with this rule to determine whether they would now be classified as ''firearms,'' ''frames,'' or ''receivers.''

2. Enhances Public Safety

Comments Received

Commenters supporting the proposed rule argued that the proposed rule is needed to make communities safer because under-regulation has made the rise of so-called ghost guns the fastest-growing public safety threat in the country. Some commenters emphasized that women who are victims of domestic abuse are severely affected by the rapid proliferation of unserialized firearms that can be easily acquired without a background check by convicted domestic violence offenders or those subject to a domestic violence restraining order. Healthcare and physicians' organizations, which have called gun violence a public health epidemic, urged issuance of the proposed rule as a necessary step to reduce or prevent firearm-related injuries and death.

Various commenters, including Members of Congress, State lawmakers, and State and local prosecutors noted the uptick in the involvement of ''ghost guns'' in crimes and provided numbers demonstrating the rise of unserialized firearms recovered or used in crimes in their jurisdictions. For example, a comment from several State Attorneys General asserted that the Philadelphia Police Department recovered 287 unserialized guns in the first half of 2021, whereas in 2019, the Philadelphia police recovered just 95 unserialized guns, and that unserialized guns represented 2.23 percent of all guns recovered after gun crimes. Similarly, a comment from the Gun Violence Task Force of the New York County Lawyers Association asserted that in 2020, law enforcement in New York recovered 220 ''ghost guns'' compared to 72 in 2019, and 38 in 2018. They stated that this represented a 479 percent increase over a three-year period. One group asserted that law enforcement officers across the country are increasingly identifying trafficking rings that mass produce and sell untraceable firearms. These commenters stated that it is important to take proactive steps now, given that technology continues to rapidly evolve and makes it likely that these weapons will become easier and cheaper to

manufacture privately, especially for criminals intending to skirt the law.

Department Response

The Department acknowledges that the rule will enhance public safety by helping to ensure that more firearms may be traced by law enforcement to solve crime and arrest the perpetrators. As discussed in Section II.B of this preamble, ATF has also seen an exponential increase in the number of suspected PMFs recovered and reported for tracing. At the same time, by requiring sellers to have licenses and conduct background checks when firearm parts kits are manufactured and sold, the rule will help prevent potentially dangerous persons from acquiring those kits and easily making functional weapons.

3. Prevents Companies From Exploiting Loopholes

Comments Received

Many commenters in support of the proposed rule argued that it was necessary to regulate so-called ghost guns because they believe that the primary reason people acquire them is for illicit purposes and that companies are exploiting existing loopholes in Federal regulations. Other commenters indicated that companies making and advertising DIY kits intentionally target prohibited purchasers or other dangerous parties by emphasizing the untraceable nature of their products. These companies, the commenters pointed out, frequently use the absence of a serial number and the ability to purchase the gun without a background check as selling points. Accordingly, these commenters argued it is evident that PMFs are not being used purely by hobbyists but are instead being made and sold for use on the street by violent criminals and gun traffickers precisely because their acquisition falls outside the scope of existing Federal regulations.

Some commenters made reference to ATF's Ruling 2015–1 that addressed inquiries from the public asking whether FFLs, or unlicensed machine shops, may engage in the business of completing, or assisting in the completion of, the manufacture of ''firearm frames or receivers'' (specifically from castings or blanks) for unlicensed individuals without becoming licensed as a manufacturer. These commenters asserted that the ''ghost gun industry'' ensures that its handgun frames and semiautomatic receivers do not meet ATF's 2015 interpretation of ''frame or receiver'' simply by not drilling into the frame or receiver, shipping the mostly finished item to the purchaser, and providing detailed instructions on how to complete the firearm privately, often within minutes. This allows the industry to sell thousands of weapons with no serial numbers or background checks. One commenter emphasized the proposed multi-factor analysis for ''readily'' provides ATF with the necessary flexibility to adapt to innovations in firearms technology and likely prevents these parts kits manufacturers from developing products aimed at complying with a narrow construction of ATF regulations while skirting the spirit and intent of the GCA.

Department Response

The Department acknowledges the commenters' support for the proposed rule. This rule interprets the plain language of the GCA to update its regulations and clarify when a license is required, which part of a firearm must be marked, and what records must be maintained by licensees. The rule clarifies that the regulatory definitions of ''firearm'' and ''frame or receiver'' include weapon and frame or receiver kits with partially complete frames or receivers, which are therefore subject to regulatory controls under the GCA or NFA. Sellers of such parts kits are required to be licensed, and the frames or receivers of those firearms must be marked with a serial number and other identifying information. ATF anticipates that, as technology develops, this rule will help to ensure that persons who commercially produce partially complete frames or receivers that can efficiently, quickly, and easily be completed are licensed and conduct background checks when sold to unlicensed individuals. This will help prevent prohibited persons from acquiring such frames and receivers.

4. Regulates ''Privately Made Firearms'' Like Other Firearms

Comments Received

Numerous commenters stated that PMFs should be regulated the same as any other firearm to ensure that manufacturers of weapon parts kits are licensed, adhere to recordkeeping requirements, and perform background checks on the purchasers of their products. Many commenters, including lawmakers from States such as Maryland, Massachusetts, and New York, stated that although some States that have enacted, or are working to pass, legislation regulating the possession or making of unserialized firearms, these laws cannot work in a vacuum and that there are limits to what any one State can do. Less restrictive gun laws in neighboring States, they argued, undermine States with tighter restrictions. Unserialized firearms and unfinished frames and receivers will continue to flow into their communities. Federal regulation, they argued, is therefore needed to close the loophole; otherwise, law enforcement and State efforts to prevent gun violence and enforce their own laws will be severely undermined. For example, the County of Santa Clara District Attorney wrote that the lack of adequate serialization and recordkeeping of PMFs has made it difficult for law enforcement to apprehend individuals involved in ongoing criminal activity or firearms traffickers who supply criminals with weapons. Similarly, another prosecutors' organization stated that prosecutors rely on gun markings to generate leads and identify patterns, and the lack of serial numbers on PMFs undermines prosecutors' ability to effectively investigate and prosecute gun crime.

Lastly, some commenters stated that ATF should reject the inaccurate claims that the NPRM would make criminals out of law-abiding gun owners, stating that the rule would not reach or restrict private individuals legally allowed to possess a firearm who previously purchased nearly complete frames or receivers or ghost gun kits. These individuals, they argued, will be no more exposed to criminal liability than they are currently. They concluded that the NPRM will cut off the supply of ghost guns to traffickers and prohibited persons at its source and not burden law-abiding, good faith actors.

Department Response

The Department acknowledges commenters' support for the proposed rule, and notes that one of the primary purposes of the GCA is to assist State and local jurisdictions to control the traffic of firearms within their own borders through the exercise of their police power.[63] Under the rule as proposed and finalized, when licensees receive privately made or DIY firearms in the course of their licensed business or activity, they will need to mark or cause those firearms to be marked. This allows PMFs to be traceable by State and local law enforcement whenever they, like commercially produced firearms, are introduced into the regulated marketplace. At the same time, neither the GCA nor the proposed or final rule prohibits unlicensed

[63] *See* Public Law 90–351, sec. 901(a)(1), 82 Stat. 225.

individuals from marking (non-NFA) firearms they make for their personal use, or when they occasionally acquire them for a personal collection, or sell or transfer them from a personal collection to unlicensed in-State residents consistent with Federal, State, and local law. There are also no recordkeeping requirements imposed by the GCA or the proposed or final rule upon unlicensed persons who make their own firearms, but only upon licensees who choose to take PMFs into inventory. In sum, this rule does not impose any new requirements on law-abiding gun owners.

5. Suggested Changes to the Text

Some commenters in support of the rule offered several suggestions on the text of the final rule while others asked that ATF take certain information into consideration. Notably, the combined comment submitted by 22 State Attorneys General in support of the proposed definitions offered seven suggestions for the final rule. The commenters' suggestions are addressed in the following paragraphs.

a. Definition of ''Firearm'' and Weapon Parts Kits

Comments Received

Some commenters urged ATF to clarify the relationship between a weapon parts kit and a partially complete frame or receiver. Although the proposed rule includes a ''weapon parts kit'' within the definition of ''firearm'' and separately defines a ''partially complete, disassembled, or inoperable frame or receiver,'' the commenters stated that a partially complete frame is often sold as part of a weapon parts kit. Therefore, the commenters suggested that ATF clarify whether a parts kit must include a partially complete frame or receiver in order to satisfy the definition of ''firearm.''

Other commenters asked ATF to consider how to effectively regulate the domestic distribution of Computer Aided Manufacturing (''CAM'') and Computer Aided Design (''CAD'') files and other software and technology used to produce firearms. They explained that these types of files are just like weapon parts kits and can be used to ''readily'' assemble a working firearm. The commenters stated that the Department of Commerce currently regulates only the international distribution and export of CAM or CAD files for the production of firearms where such files are ''ready for insertion into a computer numerically controlled machine tool, additive manufacturing equipment, or any other equipment that makes use of'' the files ''to produce the firearm frame or receiver or complete firearm.'' 15 CFR 734.7(c). They suggested that there are opportunities for ATF to work alone or with other Departments, such as Commerce, to address the lack of regulation of the domestic distribution of CAM and CAD files and other software and technology used to produce firearms.

Department Response

The Department agrees with commenters that the NPRM supplement entitled ''Partially Complete, Disassembled, or Inoperable Frame or Receiver'' should make clear that it includes a ''frame or receiver parts kit'' with a partially complete, disassembled, or nonfunctional (replacing ''inoperable'' in the final rule to describe the item more accurately) [64] frame or receiver. The final rule incorporates that addition. However, a weapon parts kit need not have a partially complete frame or receiver, as defined in this rule, to satisfy the definition of ''firearm'' under section 921(a)(3)(A).[65] For example, a weapon parts kit that contains pieces of a multi-piece frame or receiver, as defined in this rule, may still meet the definition of ''firearm'' under section 921(a)(3)(A) if the kit ''is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive.''

Regarding computer files, this rule as proposed and finalized does not regulate the domestic distribution of CAM or CAD computer files. This rule implements the GCA, which does not regulate the information used to manufacture firearms. However, it would violate federal law to aid and abet (18 U.S.C. 2) or conspire (18 U.S.C. 371) with others to manufacture firearms without a license (18 U.S.C. 922(a)(1)), which could include someone providing specially designed computer instructions for machines, such as Computer Numeric Control (CNC) machines or 3D printers, knowing that the purchaser is engaged in the business of producing firearms for sale or distribution without a license.

b. General Definition of ''Frame or Receiver''

Comments Received

Some commenters in support of the proposed rule were concerned with the language ''when the complete weapon is assembled'' in the general definition of ''frame or receiver,'' which was proposed to be defined, in part, as a ''part of a firearm that, *when the complete weapon is assembled,* is visible from the exterior and provides housing or a structure designed to hold one or more fire control components'' (emphasis added). The commenters stated that the italicized language makes the definition susceptible to being read to say that the part of a weapon that is the ''frame or receiver'' only becomes so when the complete weapon is assembled. To avoid that possible misreading, the commenters suggested the sentence should indicate it is a part of a complete weapon that is visible from the exterior when the complete weapon is assembled and provides housing designed to hold or integrate one or more fire control components.

Additionally, commenters also suggested the proposed definition of ''frame or receiver,'' which refers to ''[a] part of a firearm,'' be changed to ''[a] part of a complete weapon,'' given that under both the GCA and regulatory definition, a ''firearm'' could mean just the ''frame or receiver'' of a weapon. Similarly, commenters suggested that ''complete weapon'' also be used instead of ''firearm'' where ATF proposes to define ''fire control component'' as ''a component necessary for the firearm to initiate, complete, or continue the firing sequence.'' They suggested using ''complete weapon'' in other instances where the supplemental definition, like split or modular frame or receiver, uses the term ''firearm'' in the definition.

Department Response

The Department agrees that the phrase ''when the complete weapon is assembled, is visible'' in the proposed definition of ''frame or receiver'' could be misinterpreted to mean that the weapon or device must be assembled for a part to be defined as a frame or receiver. For this reason, and because

[64] *See* footnote 122, *infra.*

[65] The existence of a frame or receiver is *not* a precondition to classifying a weapon as a firearm under section 921(a)(3)(A), as section 921(a)(3) defines a ''firearm'' in the disjunctive with each subpart separated by the disjunctive participle ''or.'' *See* Black's Law Dictionary 1095 (6th ed.1990) (defining the term ''or'' to mean ''[a] disjunctive participle used to express an alternative or to give a choice of one among two or more things''); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* sec. 12, at 116 (2012) (''Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives . . . . With a conjunctive list, all . . . things are required—while with the disjunctive list, at least one of the [things] is required, but any one . . . satisfies the requirement.''). Thus, while the term ''firearm'' in section 921(a)(3)(B) includes the frame or receiver of a weapon described in section 921(a)(3)(A), section 921(a)(3)(A) *does not require* a weapon to have a ''frame or receiver,'' as each subpart qualifies, on its own, as a ''firearm'' for purposes of the GCA. Otherwise, section 921(a)(3)(A) would be superfluous.

the definition of ''conspicuous'' in the marking requirements makes clear that markings must be capable of being easily seen with the naked eye during normal handling of the firearm and unobstructed by other markings when the complete weapon or complete muffler or silencer device is assembled (*i.e.,* visible),[66] the phrase ''when the complete weapon is assembled, is visible'' has been removed from the definition of ''frame or receiver'' in the final rule because it is unnecessary. Regarding the suggestion to substitute ''complete weapon'' for ''firearm,'' the Department does not believe that change is necessary because the final rule now makes clear the terms under ''frame or receiver'' will be defined in relation to the type of weapon, not to ''firearms'' generally.

c. Supplement ''Split or Modular Frame or Receiver''

Comments Received

Some commenters indicated that it appears an item may qualify under the supplement entitled ''split or modular frame or receiver'' only if the Director makes that determination based on certain factors. The commenters suggested that the definition would be enhanced if it also provided a standard that may be generally used to determine whether something is a ''split or modular frame or receiver,'' as well as additional factors that may inform how that standard is applied. In this way, the regulations would define ''a split or modular frame or receiver'' much as the proposed rule suggests defining ''readily.'' The commenters recommended inserting ''each of those parts shall be a frame or receiver unless'' before ''the Director may determine'' and then changing ''may determine'' to ''determines.'' Commenters also suggested making clear that the courts and the public, in addition to the Director, may rely on the identified factors to determine whether something is a ''partially complete, disassembled, or inoperable frame or receiver'' for that definition.

Department Response

With respect to the definitional supplement ''split or modular frame or receiver,'' the Department disagrees that this provision as proposed was meant to be read as providing that a part may only qualify as a ''split or modular frame or receiver'' if the Director makes that determination based on the enumerated factors. This supplement was intended to inform the licensed industry and the public that if there is more than one part of a firearm falling within the proposed definition of ''frame or receiver'' (*i.e.,* more than one housing or structure for a fire control component), then ATF would use those factors when determining which specific part(s) of a split or modular weapon or device was the frame or receiver of that weapon or device. As with past ATF classifications, there would likely be only one such component specified in future designs.

In light of these and numerous other comments seeking more clarity as to how the definition of ''frame or receiver'' applies with respect to split and modular firearms, the Department is adopting three subsets of the proposed definition of ''frame or receiver''—one that applies to handguns; one for rifles, shotguns, and projectile weapons other than handguns; and one for firearm mufflers and silencers. The Department agrees with numerous commenters that the proposed supplement to the definition entitled ''split or modular frame or receiver'' is difficult for persons to apply when the term ''frame or receiver'' was defined to include more than any housing for any fire control component. Because the final rule focuses on only a single component of a firearm based on the recommendations of commenters, there is no longer a need for a separate supplement entitled ''split or modular frame or receiver'' and it has not been adopted in the final rule.

However, while defining the term ''frame or receiver'' to focus on a single component and removing the supplement entitled ''split or modular frame or receiver'' provides clarity as to which part of a ''split'' frame or receiver (*i.e.,* with upper and lower housings for the bolt, breechblock, and trigger mechanism) is regulated, it does not provide clarity with respect to multi-piece frames or receivers that are designed to be disassembled into multiple modular subparts, more than one of which may house or provide a structure for the applicable fire control component specified in this rule (*e.g.,* left and right halves of a frame or receiver). While these types of frames or receivers are relatively uncommon, ATF has seen an increase in multi-piece designs of frames or receivers. To address these new designs, the term ''multi-piece frame or receiver'' has been added to the final rule to mean a frame or receiver that may be disassembled into multiple modular subparts. To avoid confusion between multi-piece receivers that may be disassembled into modular subparts, and modular handguns with an internal removable chassis like the Sig P250/320 and Beretta APX Striker,[67] the definition expressly excludes the internal frame of a pistol that is a complete removable chassis that provides housing for the energized component, unless the chassis itself may be disassembled.

This rule clarifies for licensees which portion of a modular multi-piece frame or receiver they will need to identify with a serial number and additional identifying information. Pursuant to its authority under 18 U.S.C. 923(i) and 26 U.S.C. 5842(a), ATF is prescribing in this rule the manner in which licensed manufacturers and importers (and makers of NFA firearms) must identify multi-piece frames or receivers, as follows: (1) The outermost housing or structure designed to house, hold, or contain either the primary energized component of a handgun, the breech blocking or sealing component of a projectile weapon other than a handgun, or the internal sound reduction component of a firearm muffler or firearm silencer, as the case may be, is the subpart of a multi-piece frame or receiver that must be marked with the identifying information; (2) if more than one modular subpart is similarly designed to house, hold, or contain such a primary component (*e.g.,* left and right halves), each of those subparts must be identified with the same serial number and associated licensee information not duplicated on any other frame or receiver; and (3) the marked subpart(s) of a multi-piece frame or receiver must be presumed, absent an official determination by the Director or other reliable evidence to the contrary, to be part of the frame or receiver of a weapon.

The final rule provides that, once a modular subpart of a multi-piece frame

[66] Markings must also be clearly visible from the exterior because they may be needed to prove that a criminal defendant had knowledge that the serial number was obliterated or altered. *See, e.g., Lewis* v. *United States,* No. 3:12–0522, 2012 WL 5198090, at *4 (M.D. Tenn. Oct. 19, 2012) (serial number obliterated on the ''visible exterior'' of a revolver); *State* v. *Shirley,* No. 107449, 2019 WL 2156402, at *2 (Ct. App. Ohio May 16, 2019) (same); *cf. United States* v. *Sands,* 948 F.3d 709, 719 (6th Cir. 2020) (serial number is not altered or obliterated so long as it is ''visible to the naked eye''); *United States* v. *St. Hilaire,* 960 F.3d 61, 66 (2d Cir. 2020) (''This 'naked eye test' best comports with the ordinary meaning of 'altered'; it is readily applied in the field and in the courtroom; it facilitates identification of a particular weapon; it makes more efficient the larger project of removing stolen guns from circulation; it operates against mutilation that impedes identification as well as mutilation that frustrates it; and it discourages the use of untraceable weapons without penalizing accidental damage or half-hearted efforts.'').

[67] An internal removable chassis system (as found in the Sig P250/320 and Beretta APX Striker) that houses all components of a traditional pistol frame, to include incorporating the slide rails and housing for both the trigger and sear/hammer, is a complete pistol frame without the polymer grip.

or receiver has been marked and then aggregated (assembled or unassembled) with the other frame or receiver subparts, the marked part cannot be removed and replaced unless: (1) The subpart replacement is not a firearm under 26 U.S.C. 5845; (2) the subpart replacement is identified by the licensed manufacturer of the original subpart with the same serial number and associated licensee information in the manner prescribed by the rule; and (3) the original subpart is destroyed under the firearm licensee's control or direct supervision prior to such placement. These conditions are necessary because removing and replacing the identified component of a multi-piece frame or receiver would place the possessor in violation of 18 U.S.C. 922(k) (and, if an NFA firearm, 26 U.S.C. 5861(g) and (h)), which prohibits the possession of any firearm with the manufacturer's or importer's serial number removed. If a modular subpart of a multi-piece frame or receiver is sold separately, the rule requires that it be identified with an individual serial number. This is to ensure that the frame or receiver of the resulting weapon has traceable marks of identification. These clarifications with respect to the markings of a multi-piece frame or receiver are necessary for the final rule; otherwise, multi-piece frames or receivers could be sold or distributed piecemeal in individual subparts and replaced by the end user without any traceable marks of identification.

Finally, to ensure that industry members and others can rely on ATF's prior classifications, most prior ATF classifications and variants thereof, including those for externally powered weapons, have been grandfathered into the definition of ''frame or receiver'' along with examples and diagrams of those weapons, such as AR–15/M–16 variant firearms. The only exception is for classifications that a partially complete, disassembled, or nonfunctional frame or receiver, including a parts kit, was not, or did not include, a firearm ''frame or receiver'' as defined prior to this rule. Any such classifications, to include weapon or frame or receiver parts kits, would need to be resubmitted for evaluation. Further, if persons remain unclear as to which specific portion of a weapon or device falls within the definition of ''frame or receiver,'' then they may still voluntarily submit a request to ATF as otherwise provided in this rule.

d. Definition of ''Privately Made Firearm''

Comments Received

Some commenters suggested that ATF should explain that ''made,'' as used in the definition of ''privately made firearm,'' does not imply that firearms cannot be ''manufactured'' by private parties for purposes of other firearms laws. They stated that the proposed rule opted for ''privately made firearm'' instead of ''privately manufactured firearms'' to distinguish between what an FFL does (manufacture) and what a nonlicensee does (make). These commenters asserted that the NFA's definition of ''make'' demonstrates that the distinction between ''make'' and ''manufacture'' is not consistent throughout Federal law. Therefore, the commenters requested that ATF should clarify that its use of ''made'' in this regulation does not limit the meaning of either ''made'' or ''manufacture'' as used in this and other Federal laws and regulations.

Department Response

The Department agrees that the term ''made'' in the definition of ''privately made firearm'' was not meant to restrict the use of the terms ''made'' or ''manufacture'' with respect to the GCA or other firearms laws. As the preamble in the NPRM explained, the term ''made'' was incorporated into that definition merely to distinguish those firearms that were manufactured by licensees from those manufactured by unlicensed persons. *See* 26 U.S.C. 5845(i) (''The term 'make', and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm.''). This rule is not intended to limit the meaning of ''made'' or ''manufacture'' in the GCA or any other Federal law, or with respect to State or local firearms laws.[68]

e. Marking of ''Privately Made Firearms''

Comments Received

Some supportive commenters suggested that the final rule should clarify that any identifying marks must be placed on the metal insert of an otherwise undetectable PMF, not on any polymer or other nonmetal part or component, to ensure the marks are not worn away during normal use. The commenters believed this is what the preamble suggested, although the text of the proposed regulations did not do so explicitly.

The California Department of Justice stated that ATF should consider extending the PMF serialization requirement to owners as well as firearms licensees so as to foreclose the possibility that any PMFs will remain untraceable. This commenter stated that ATF could require owners of PMFs to register those weapons after a reasonable time frame, such as 60 days after the effective date of the regulation, which would ensure all PMFs are safely tracked by law enforcement.

Department Response

The Department agrees that the final rule should make clear that one of the acceptable methods of marking a PMF, or a commercially produced firearm, is to permanently embed a serialized metal plate into polymer or other nonmetal material. The final rule adds this as an acceptable example in addition to recognizing any other method approved by the Director. This can be accomplished by casting, molding, or another manufacturing method, such as 3D overprinting.[69]

The Department, however, disagrees that serialization should be limited to a particular method. The current regulations and this rule already require that identification marks be placed in a manner not susceptible of being readily obliterated, altered, or removed. While the commenters raised the point that the serial number with the Federal firearms licensee's abbreviated license number prefix would normally be placed on a metal insert to meet this requirement, the Department believes that other permanent methods and hardened materials for marking may be developed in the future as technology progresses.

[68] *See* 18 U.S.C. 927 (GCA does not preempt State or local law unless there is a direct and positive conflict with Federal law such that they cannot be reconciled or consistently stand together).

[69] *See generally* Hayley Everett, *Lehvoss Group Leads Innovate UK Project for Overprinting High-Performance Polymers,3DPrintingIndustry.com* (Aug. 25, 2021), *available at https://3dprintingindustry.com/news/lehvoss-group-leads-innovate-uk-project-for-overprinting-high-performance-polymers-195071/* (last visited Mar. 23, 2022) (''Overprinting is a technique for designing multi-material parts when different materials are needed in various components of a part. Typically, a print is started and then paused midway whereby components can be embedded into the 3D print job. Then, the print process is resumed and allowed to 3D print over the components that have been embedded.''); *MMF #5: A Guide to Embedding Components in 3D Printed Parts,* Markforged.com, *available at https://markforged.com/resources/blog/embedding-components-in-3d-printed-parts* (last visited Mar. 23, 2022); *How to Insert Internal Components with Markforged Composite 3D Printing,* Hawkridgesys.com (June 9, 2020), *available at https://hawkridgesys.com/blog/how-to-insert-internal-components-with-markforged-composite-3d-printing* (last visited Mar. 23, 2022).

Additionally, the GCA, 18 U.S.C. 922(p), only requires that firearms be *as detectable as* the ''Security Exemplar'' that contains 3.7 ounces of material type 17–4 PH stainless steel. This detectable material is likely to be metal, but it could be another substance. So long as the identification marks cannot readily be removed, obliterated, or altered, no additional marking requirement is necessary.[70] However, if the serial number or other markings may readily be removed, obliterated, or altered when placed using a particular method or material, then the licensee cannot adopt that serialization process to meet the identification requirements.

In response to the comment that the rule should extend the serialization requirement for PMFs to individual owners, unlike the NFA, the GCA does not impose a marking or recordkeeping requirement on unlicensed persons who are not engaged in a business or activity requiring a license. Nonetheless, under the GCA, 18 U.S.C. 927, State and local jurisdictions are free to enact their own requirements and restrictions on PMFs provided they do not directly and positively conflict with Federal law.

f. Marking of a ''Firearm Muffler or Silencer''

Comments Received

At least one commenter welcomed the change under which silencers would only need to be marked on the designated frame or receiver of a silencer, and that minor components of silencers would not need to be engraved or registered when transferred between Special Occupation Taxpayers (''SOTs'') for repair. This provision, the commenter stated approvingly, conforms policy to longstanding practice.

Department Response

The Department acknowledges commenters' support for the proposal not to require firearm mufflers or silencer parts other than the frame or receiver of a silencer to be marked or registered when transferred between qualified SOTs for repair. This rule finalizes that proposal with minor clarifying changes. The Department notes that this change would not adversely impact public safety because the frame or receiver of the complete firearm muffler or silencer devices being repaired are registered in the NFRTR and recorded as a disposition whenever an actual device is transferred.

[70] *See* 26 U.S.C. 5842(a) (serial number ''may not be readily removed, obliterated, or altered'').

g. Firearms Designed and Configured Before Effective Date of Rule

Comments Received

The group Everytown for Gun Safety Support Fund stated that ATF needs to make clear that its prior classifications of ''nearly-complete'' frames and receivers are no longer valid, as some sellers of these items display these classification letters on their websites to promote their products. The commenter said that this clarification was necessary to ensure these sellers do not continue to exploit outdated letters as legal cover for selling firearms illegally.

Department Response

The Department agrees with this comment. Certain prior ATF classifications of a ''partially complete, disassembled, or nonfunctional frame or receiver'' will not be grandfathered upon issuance of this final rule. In the past, ATF encountered situations in which incomplete frames or receivers were sent to ATF for classification without any of the other parts, jigs, templates, or materials that are sold or distributed with the item or kit. ATF then issued a classification that an unfinished item or kit was not a ''frame or receiver'' without the benefit of, or considering, such parts, jigs, templates, or information. In addition to not grandfathering these particular classifications, this rule finalizes the proposed process that any person seeking a voluntary classification must submit any associated templates, jigs, molds, equipment, or tools that are made available by the seller or distributor of the item or kit, to the purchaser or recipient of the item or kit, and any instructions, guides, or marketing materials if they will be made available by the seller or distributor with the item or kit. This is to ensure that a proper classification can be made under the new definitions. ATF will reconsider those firearm classifications, and any prior classifications of such items or parts kits would need to be resubmitted if a requester wants a voluntary determination.

h. Recordkeeping Requirements

Comments Received

The City of Oakland, California, which expressed support for the proposed rule, stated that their support is based on the NPRM taking into account the racially inequitable impacts of gun violence and over-policing. The City had several suggestions for the final rule to better account for the potential racial collateral consequences of the proposed rule and help Black and Brown communities disproportionately harmed by gun violence to respond to PMFs already in their community. These suggestions included the following: (1) ATF should collect, retain, and study the information collected through the ATF Form 4473, which they stated should include demographic information; (2) ATF should provide clear guidance for local law enforcement on how to collect data on ''ghost guns,'' including data that can be disaggregated by race, and ensure that implementing the rule does not lead to over-policing of Black and Brown communities; (3) ATF should work with the Executive Office for U.S. Attorneys and other Department partners on how to ensure that Black and Brown persons are not disproportionately charged with firearms-related offenses in Federal prosecutions; (4) ATF should include an explicit non-discrimination clause with respect to enforcement of the rule; (5) ATF should include model programs and best practices for how communities can respond to and mitigate the harm posed by ghost guns and gun violence, like Oakland Ceasefire; and (6) ATF should develop guidance for manufacturers and sellers to inform them of ATF's enforcement priorities.

Department Response

The Department acknowledges the commenter's support for the proposed rule; however, ATF cannot ''collect, retain, and study'' information on the ATF Forms 4473 for the purpose of evaluating potential racial collateral consequences of this rule. First, ATF does not retain the ATF Forms 4473, as they are owned and maintained by FFLs while they are in business. Therefore, the demographic and other information included on those forms is located throughout the country in the individual business records of FFLs. Second, the demographic information on that form (race and ethnicity) may only be used for limited purposes—collecting information required for the FFL to run a National Instant Criminal Background Check System (''NICS'') background check,[71] and for certain law enforcement purposes, such as correctly

[71] After passage of the Brady Handgun Violence Prevention Act in 1993 (*see* 18 U.S.C. 922(t)), the FBI promulgated regulations to implement the NICS. These regulations, *see* 28 CFR 25.7, prescribe the search criteria used by NICS and state: ''[T]he following search descriptors will be required in all queries of the system for purposes of a background check: (1) Name; (2) Sex; (3) *Race;* (4) Complete date of birth; and (5) State of residence'' (emphasis added). This information is needed to facilitate proper identification by providing additional information that helps match—or rule out a match—between an individual and a potentially prohibiting record.

identifying the original purchaser of a firearm later used in a violent crime.[72] Although this demographic information is used for background check purposes, it is not maintained by the NICS. The NICS, which is administered by the FBI, is required by law to destroy all identifying information on prospective purchasers within 24 hours of providing a response that the transfer may proceed.[73] ATF may also inspect individual ATF Forms 4473 containing personally identifiable information held by FFLs, but only for limited regulatory or law enforcement functions—specifically, during inspections, and in the course of investigations, such as when tracing firearms linked to individual criminal investigations. Finally, statutory and appropriations restrictions prohibit ATF from promulgating any rule requiring the maintenance of a database or other information repository of the race or ethnicity of firearm purchasers or licensees.[74] For these reasons, the Department cannot require the systematic collection of such demographic information for statistical, programmatic, or other purposes as part of this rule.

Commenter's remaining suggestions regarding racial equality are beyond the scope of this rule.[75] This rule implements the GCA, which was passed, in part, to help Federal, State, and local law enforcement prevent illicit firearms trafficking within their respective jurisdictions.[76] Specifically, this rule is intended, in part, to address the proliferation of unserialized ''ghost guns,'' which are increasingly being recovered at crime scenes, and law enforcement's difficulty in tracing them when recovered. The rule accomplishes this objective by clarifying the serialization and recordkeeping requirements that preserve ATF's ability to trace firearms for Federal, State, local, and international law enforcement wherever firearm violence may occur.

B. Issues Raised in Opposition to the Rule

Thousands of commenters broadly expressed opposition to the NPRM with numerous form letters submitted. Over 7,000 commenters simply opposed without providing concrete reasons while the majority raised specified concerns about the proposed rule. ATF received comments from a variety of interested parties, including from FFL retailers and manufacturers, organizations, various lawmakers, knowledgeable gun enthusiasts, and persons with law enforcement backgrounds. As discussed below, numerous other commenters raised various concerns about the Department's proposed amendments to ATF regulations. These reasons included constitutional and statutory authority concerns, issues with the clarity and effect of the proposed definitions and changes to recordkeeping and marking requirements, and concerns about the public safety goals of the Department in promulgating this rule.

1. Constitutional Concerns

a. Violates the Ex Post Facto Clause

Comments Received

Several hundred commenters opposed to the rule stated that it directly violates Clause 3 of Article I, Section 9, of the United States Constitution, which prohibits ''ex post facto Law[s].'' These commenters' opposition comes from their belief that, once the proposed rule goes into effect, possession of items that are currently lawful would be no longer legal, and that the new prohibition would constitute an ex post facto law.

Department Response

The Department disagrees that the proposed rule violates the Ex Post Facto Clause. In *Calder* v. *Bull,* 3 U.S. (3 Dall.) 386 (1798), the Supreme Court set out four types of laws that violate the Ex Post Facto Clause:

> 1st. Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2nd. Every law that aggravates a crime, or makes it greater than it was, when committed. 3rd. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender.

Id. at 390. Citing *Calder,* the Supreme Court has explained that a ''law must be retrospective—that is, it must apply to events occurring before its enactment—and it must disadvantage the offender affected by it by altering the definition of criminal conduct or increasing the punishment for the crime'' to be considered as falling within the ex post facto prohibition. *Lynce* v. *Mathis,* 519 U.S. 433, 441 (1997) (citation and internal quotation marks omitted). Courts have consistently recognized that regulating the continued or future possession of a firearm that is already possessed does not implicate the Ex Post Facto Clause because such a regulation does not criminalize past conduct. *See, e.g., United States* v. *Pfeifer,* 371 F.3d 430, 436–37 (8th Cir. 2004); *United States* v. *Mitchell,* 209 F.3d 319, 322 (4th Cir. 2000); *United States* v. *Brady,* 26 F.3d 282, 290–91 (2d Cir. 1994); *United States* v. *Gillies,* 851 F.2d 492, 495–96 (1st Cir. 1988) (Breyer, J.); *United States* v. *D'Angelo,* 819 F.2d 1062, 1065–66 (11th Cir. 1987); *see also Samuels* v. *McCurdy,* 267 U.S. 188, 193 (1925) (rejecting Ex Post Facto Clause challenge to statute that prohibited the post-enactment possession of intoxicating liquor, even when the liquor was lawfully acquired before the statute's enactment).

Here, penalties would result only from the future failure to mark firearms. For FFLs that already have unmarked firearms kits, frames, or receivers, they have 60 days from the effective date of the rule to appropriately mark these firearms. *See* 27 CFR 478.92(a)(4)(vi). Moreover, as this rule in other respects simply describes the proper application

[72] There are some limited circumstances under which the ATF Forms 4473 or information contained thereon is reported to ATF, for example, as part of the statutorily authorized demand letter program, pursuant to 18 U.S.C. 923(g)(5). Those circumstances are exceptions to the general rule, and even under those circumstances, ATF does not aggregate or centralize the demographic information contained on those forms.

[73] Public Law 112–55, sec. 511, 125 Stat. 632 (2011); 28 CFR 25.9.

[74] *See* 18 U.S.C. 926 (''No rule or regulation . . . may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.''); Public Law 103–159, sec. 103(i), 107 Stat. 1536 (1993) (''No department, agency, officer, or employee of the United States may—(1) require that any record or portion thereof generated by the [NICS] system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof . . . .''). Additionally, since 1979, congressional appropriations have prohibited ATF from using any funds or salaries in connection with the consolidation or centralization of records of acquisition and disposition of firearms maintained by FFLs. *See* Treasury, Postal Service, and General Government Appropriations Act, 1980, Public Law 96–74, 93 Stat. 560 (1979). This annual restriction became permanent in 2011. *See* Public Law 112–55, 125 Stat. 632 (2011).

[75] As a general matter, the Department's prosecutorial practices and priorities are set forth in the ''Principles of Federal Prosecution'' in the DOJ Justice Manual §§ 9–27.000, *et seq.* Section 9–27.260 (''Initiating and Declining Charges—Impermissible Considerations'') reads, in pertinent part, ''In determining whether to commence or recommend prosecution or take other action against a person, the attorney for the government should not be influenced by . . . [t]he person's race, religion, gender, ethnicity, national origin, sexual orientation, or political association, activities, or beliefs.''

[76] *See* Public Law 90–351, sec. 901(a), 82 Stat. 225–26.

of the terms Congress used in various provisions of the GCA, it does not impose liability independent of the preexisting requirements of those statutes. For these reasons, the Department disagrees with commenters' assertions that the rule violates the Ex Post Facto Clause.

b. Violates the First Amendment

Comments Received

A few commenters raised concerns that the proposed definitions violate the First Amendment. One commenter, an organization of artisans who create artistic arrangements that use ''arbitrary components, some of which are semi-processed firearm components such as barrels [and] pistol slides,'' is concerned that if artisans are required to check with ATF on its opinion when using novel or arbitrary components in their artwork, this requirement would be a prior restraint on protected expression. The commenting organization stated that ATF's definitions are so vague that it does not know what ATF would consider novel ''modular'' designs that might be considered a frame or receiver. Further, the organization claimed that under the nonexclusive lists in the proposed definition just about any major gun part could check more than one box on ATF's ''unlimited features'' and be considered a frame or receiver. As such, the organization argued that the vague, open-ended definitions in the NPRM ''would chill an artisan—one with a specific desire *not* to use any gun part which could be considered a 'firearm' and thus require the employ of an FFL—from engaging in First Amendment protected expression.'' Other commenters stated that the NPRM also raises First Amendment concerns because the Director would be able to determine when a component has become a firearm based on a company's instructions and how a company markets the product.

Department Response

The Department agrees with the commenters who asserted that the proposed definition was potentially confusing, but disagrees with the commenters' First Amendment objections. First, the Department recognizes that the definition as proposed would have made it more difficult for artisans and others to determine whether they would be acquiring a ''frame or receiver'' subject to regulation. For this reason, and because the Department agrees with commenters that the definition of ''firearm'' in 18 U.S.C. 921(a)(3)(B) is best read to mean that a single part of a weapon or device is the frame or receiver, this rule adopts subsets of the proposed definition of ''frame or receiver'' to define ''frame'' and ''receiver'' so that licensees and the public can make this determination without an ATF classification. The Department has accordingly established new distinct definitions for frames with respect to handguns; receivers with respect to rifles, shotguns, and projectile weapons other than handguns; and frames or receivers for firearm mufflers or silencers.

The Department, however, does not agree with commenters that the rule would violate the First Amendment rights of artisans. The Supreme Court has held the First Amendment is not implicated by the enforcement of a regulation of general application not targeted at expressive activity. *See Arcara* v. *Cloud Books, Inc.,* 478 U.S. 697, 707 (1986) (upholding closure sanction of ''an establishment used for prostitution'' where respondents also ''happen to sell books''). First Amendment scrutiny ''has no relevance to a statute directed at . . . non-expressive activity,'' and applies ''only where it was conduct with a significant expressive element that drew the legal remedy in the first place.'' *Id.* at 706–707; *see also Wright* v. *City of St. Petersburg, Florida,* 833 F.3d 1291, 1298 (11th Cir. 2016) (''First Amendment scrutiny ha[d] no relevance to [a trespass ordinance] directed at imposing sanctions on nonexpressive activity.'' (internal quotation marks omitted)); *Talk of the Town* v. *Department of Finance & Business Servs ex rel. Las Vegas,* 343 F.3d 1063, 1069 (9th Cir. 2003) (section of Las Vegas Code barring consumption of alcohol in places that lack valid liquor license—including exotic dancing establishments—''in no way can be said to regulate conduct containing an element of protected expression''). The definitions at issue are not targeting expressive conduct of any kind but are part of a ''regulation of general application'' clarifying the definition of frame and receiver and the marking requirements thereof. As such, the Department's position is that the First Amendment is not implicated by this rule.

However, in an abundance of caution and because artwork in general is expressive conduct entitled to First Amendment protection, *see Texas* v. *Johnson,* 491 U.S. 397, 404 (1989), and assuming this regulation somehow affects that conduct, the definitions still do not target expressive conduct and strict scrutiny review is not appropriate under the First Amendment analysis set out in *United States* v. *O'Brien,* 391 U.S. 367 (1968). ''[W]hen 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.'' *Id.* at 376. Under an *O'Brien* analysis—

> a government regulation is sufficiently justified [1] if it is within the constitutional power of the Government; [2] if it furthers an important or substantial governmental interest; [3] if the governmental interest is unrelated to the suppression of free expression; and [4] if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Id. at 377.

First, ''the Government may constitutionally regulate the sale and possession of firearms.'' *Wilson* v. *Lynch,* 835 F.3d 1083, 1096 (9th Cir. 2016). Second, courts have repeatedly held that public safety and the prevention of crime are not only substantial, but *compelling* governmental interests. *See United States* v. *Salerno,* 481 U.S. 739, 750 (1987); *Mai* v. *United States,* 952 F.3d 1106, 1116 (9th Cir. 2020); *Worman* v. *Healey,* 922 F.3d 26, 39 (1st Cir. 2019); *New York State Rifle & Pistol Ass'n* v. *Cuomo,* 804 F.3d 242, 261 (2d Cir. 2015); *Kolbe* v. *Hogan,* 849 F.3d 114, 139 (4th Cir. 2017); *Horsley* v. *Trame,* 808 F.3d 1126, 1132 (7th Cir. 2015). Third, ''the Government's efforts to reduce gun violence'' are not directed at any expressive conduct and cannot be construed to be related to the suppression of free expression in any way. *Wilson,* 835 F.3d at 1096–97. Fourth, the definitions do not ban the private making of a firearm nor the unregulated possession of non-frame or non-receiver firearms parts. Nor do the definitions ban the possession of a frame or receiver, but only require that a frame or receiver be marked; therefore, any burden is ''incidental'' and ''minimal.'' *Id.* Because the regulation ''satisfies each of the *O'Brien* conditions, it survives intermediate scrutiny.'' *Id.* at 1097 (finding ATF's Open Letter to Federal Firearms Licensees informing them that the presentment of a purported purchaser's medical marijuana registry card would give them cause to deny the sale as violating 18 U.S.C. 922(d)(3) did not violate the First Amendment even if having the card was considered expression). Therefore, even if the *O'Brien* standard applies, the definitions do not violate the First Amendment. *See Arcara,* 478 U.S. at 707 (''*O'Brien* . . .

has no relevance [to a rule regulating] nonexpressive activity'').

c. Violates the Second Amendment

Comments Received

A majority of commenters opposed to the NPRM objected to it on grounds that any changes to the definitions or the creation of new requirements that undermine the Second Amendment are unconstitutional, stating that the right to build firearms dates back to the founding of the Republic and that requiring markings on PMFs is an unconstitutional infringement of their Second Amendment rights. Commenters stated that ATF has encouraged hobbyists to fabricate firearms for their personal use and that the new requirements will restrain them from exercising their constitutional rights. Others objected saying that the NPRM failed to include relevant Second Amendment analysis. One commenter provided its own analysis, claiming that since *District of Columbia* v. *Heller,* 554 U.S. 570 (2008), a majority of gun control laws are examined under a reasonableness standard, which requires the regulation be a reasonable method for achieving the objectives of the regulation. Commenters claimed that ATF's proposed regulations would fail to meet the reasonableness standard because the evidence the agency cites actually proves that unfinished lower receivers are not even a marginal contributor to America's gun violence problem. Under their calculations, the commenters estimate that PMFs have been used only .837 percent of the time in deaths resulting from gun violence. Commenters concluded the proposed regulations are not a reasonable method to achieve the goal of reducing gun violence and therefore do not pass constitutional muster since the data does not demonstrate that regulating unfinished lower receivers will result in a statistically significant reduction of deaths from firearms.

Department Response

The Department disagrees with commenters that the new requirements are unconstitutional under the Second Amendment. First, the GCA and this rule do not prohibit individuals from assembling or otherwise making their own firearms from parts for personal use, such as self-defense or other lawful purposes. Neither the GCA nor this rule prohibits law-abiding citizens from completing, assembling, or transferring firearms without a license as long as those persons are not engaged in the business of manufacturing or importing firearms for sale or distribution, or dealing in firearms, or transacting curio or relic firearms in a manner requiring a license. *See* 18 U.S.C. 922(a)(1), 923(a)–(b).

Second, this final rule is consistent with the Supreme Court's decision in *District of Columbia* v. *Heller,* 554 U.S. 570 (2008). There are compelling governmental interests in requiring privately made firearms to be marked and recorded whenever they are accepted into the business or collection inventories of licensees. The Supreme Court recognized in *Heller,* 554 U.S. at 626–27 & n.26, that ''presumptively lawful regulatory measures'' include those ''imposing conditions and qualifications on the commercial sale of arms.'' PMFs, like commercially produced firearms, must be able to be traced through the records of licensees when the PMFs are involved in crimes. PMFs cannot be traced through a licensee's records without the manufacturers' serial numbers placed on PMFs by licensees, as required by this rule. *Cf. United States* v. *Marzzarella,* 614 F.3d 85, 99 (3d Cir. 2010) (concluding that even if strict scrutiny were to apply, 18 U.S.C. 922(k) (prohibiting possession of firearms with obliterated serial numbers) would be upheld under the Second Amendment because ''serial number tracing serves a governmental interest in enabling law enforcement to gather vital information from recovered firearms,'' and ''[b]ecause it assists law enforcement in this manner, we find its preservation is not only a substantial but a compelling interest'').

Commenters also suggested that a licensing requirement for the manufacture of firearms violates the Second Amendment. Preexisting law requires those engaged in the business of manufacturing, importing, or dealing firearms to be licensed. That requirement does not burden the ability of non-prohibited people to buy, sell, or possess firearms, and no court has opined that the Second Amendment protects the right to engage in the business of unlicensed manufacturing. *Heller* ''did not touch in any way on an individual's right to manufacture or create those arms.'' *Defense Distributed* v. *United States Dep't of State,* 121 F. Supp. 3d 680, 699 (W.D. Tex. 2015) (finding prepublication approval for software data files, project files, coding, and model for producing 3D printed firearms was a burden that fell ''well short of that generally at issue in Second Amendment cases''). As stated above, the regulation does not ban the private making of a firearm.[77] *See id.* (plaintiffs ''are not prohibited from manufacturing their own firearms, nor are they prohibited from keeping and bearing other firearms'').

In rejecting a Second Amendment challenge to the analogous requirement to be licensed as a dealer in firearms, the Fourth Circuit found the licensing requirement ''covers only the commercial sale of firearms. It affects only those who regularly sell firearms . . . . It explicitly excludes the vast majority of noncommercial sales.'' *United States* v. *Hosford,* 843 F.3d 161, 166 (4th Cir. 2016). The same findings apply to persons ''regularly'' manufacturing firearms. Like section 922(a) of the GCA, the regulation ''imposes a mere condition or qualification. Though framed as a prohibition against unlicensed firearm [commerce], the law is in fact a requirement that those who engage in the [business] of firearms obtain a license.'' *Id.* And this licensing requirement ''is a crucial part of the federal regulatory scheme.'' *Id.* at 168; *see also United States* v. *Focia,* 869 F.3d 1269, 1286 (11th Cir. 2017) (prohibiting transfers between unlicensed individuals in different states ''does not operate to completely prohibit [the defendant] or anyone else, for that matter, from selling or buying firearms;'' instead, it ''merely'' imposes ''conditions and qualifications on the commercial sale of arms'' (internal quotation marks omitted)); *United States* v. *Nowka,* 2012 WL 2862061, at *6 (N.D. Ala. May 10, 2012) (''[Plaintiff's] right to buy or sell a firearm is not abridged. It is regulated.'').

In some ways similar to the regulation, but in other ways more far-reaching, a San Diego City ordinance prohibits the possession, purchase, sale, receipt, and transportation of non-serialized firearms and unfinished frames and receivers. A lawsuit was brought challenging the ordinance as imposing ''a blanket prohibition'' upon a Second Amendment right to ''self-manufacture all firearms in common use for self-defense and other lawful purposes.'' *Fahr* v. *City of San Diego,* 2021 WL 4895974, at *5 (S.D. Cal. Oct. 20, 2021). The district court disagreed, finding the ordinance ''neither strips

[77] There is no historical support for the idea that private individuals *regularly* and easily manufactured firearms at home at the time of the Founding. ''[F]irearms were not like apple pies, which a typical family could make at home . . . . [T]hey were items of commerce that were nearly impossible to produce without specialized equipment and skill.'' David B. Kopel, *Does the Second Amendment Protect Commerce*?, 127 Harv L. Rev. Forum 230, 237 (Apr. 11, 2014).

persons of access to any serialized, California-compliant firearm, including AR–15s, nor does it prevent persons from assembling any class of California-compliant firearm using pre-serialized frames or receivers.'' *Id.* at *6. The court further found that, assuming the ordinance regulates conduct protected by the Second Amendment, it ''does not severely burden Second Amendment-protected conduct, but merely regulates it.'' *Id.* at *9; *see also id.* at *10 (because the ordinance ''targets only non-serialized firearms and unfinished frames and unfinished receivers . . . that bypass background checks . . . and that are untraceable . . . this Court finds that the Ordinance is a reasonable fit for achieving the City's objectives of decreasing the threat that ghost guns pose to the City's stated substantial and important interests,'' *i.e.,* ''[p]ublic safety and crime prevention'').

Further, where commenters believed that the rule would require them to mark their PMFs, they argued that imposing such marking requirements is unconstitutional under the Second Amendment because the right to build firearms dates back to the founding of the Republic. Some commenters also believed that requiring markings of any kind on firearms is unconstitutional under the Second Amendment. As stated above, in *Marzzarella,* the Third Circuit rejected as ''unavailing'' the premise that ''unmarked firearms'' are ''a constitutionally recognized class of firearms.'' 614 F.3d at 93. The court found that requiring a visible serial number ''d[oes] not bar'' an individual ''from possessing any otherwise lawfully marked firearm,'' *id.* at 94, and thus the ''burden imposed by the law does not severely limit the possession of firearms,'' *id.* at 97. Moreover, this requirement ''serves a law enforcement interest in enabling the tracing of weapons via their serial numbers'' and in ''assist[ing] law enforcement by making it possible to use the serial number of a firearm recovered in a crime to trace and identify its owner and source.'' *Id.* at 98; *see also Fahr,* 2021 WL 4895974, at *10 (''It is a matter of common sense that tracing firearms enhances public safety and aids crime solving.'' (internal quotation marks omitted)); *id.* at *11 (''firearms tracing has become a critical tool for modern firearms investigations and prosecutions, which the prevalence of ghost guns threatens to upend'' (internal quotation marks omitted)).

Although commenters argued that *Heller* established a ''reasonableness'' standard under which the regulation fails because there is low usage of PMFs in crimes, this final rule provides revised information demonstrating that the number of suspected PMFs recovered at crime scenes has been increasing exponentially. As a matter of common sense, unserialized firearms are inherently attractive to criminals, and therefore pose a risk to public safety. And, as noted in Section II.B of this preamble, there has been a substantial increase in the number of PMFs recovered from crime scenes in recent years. The agency does not need to wait until a certain number of crimes are committed in order to address a growing problem. Moreover, this rule serves the compelling governmental interest of preventing unserialized firearms from proliferating throughout the country, as recognized in *Marzzarella* decision. Finally, this rule is not a prohibition, but only a regulation that imposes a minimal burden on the possession of firearms.

d. Violates the Fourth Amendment Right to Privacy

Comments Received

Several commenters claimed the proposed rule violates their right to privacy under the Fourth Amendment. These commenters believe that the proposed rule requires persons to disclose firearms they have privately made on Form 4473, or that there is de facto registration occurring in the requirement that FFLs mark the PMFs they acquire. Other commenters stated that enforcement of the proposed rule would lead to a violation of their constitutional right to privacy in regards to their property if the government knows how many weapons each individual owns.

Department Response

The commenters are not correct in their belief that the rule requires persons to disclose firearms they have made on Form 4473. Under the proposed and final rule, there are no recordkeeping or marking requirements for personal, non-NFA firearms that are privately made. As to the recordkeeping and marking requirements for the licensees engaged in the business of manufacturing or dealing in firearms, those records are not in the custody of the government, but are retained by the licensee until they discontinue business. *See* 18 U.S.C. 923(g)(4). Additionally, while the proposed rule in no way establishes a registry of firearms, it is worthwhile noting that even actual registration of NFA firearms has never been found to violate a Fourth Amendment right to privacy.

The Department also does not agree that the proposed rule violates a constitutional right to privacy in regard to commenters' property if the government knows how many weapons an individual possesses. ''The United States Constitution does not expressly guarantee a right to privacy, but the Supreme Court has held that a right to privacy does exist within the liberty component of the Fourteenth Amendment.'' *See Padgett* v. *Donald,* 401 F.3d 1273, 1280 (11th Cir. 2005). Courts have recognized a privacy interest in avoiding disclosure of certain personal matters. *See id.*

''[N]ot all disclosures of private information will trigger constitutional protection.'' *Doe No. 1* v. *Putnam County,* 344 F. Supp. 3d 518, 540 (S.D.N.Y. 2018) (finding courts have found a right to privacy in a ''limited set of factual circumstances'' involving one's personal financial or medical information, *i.e.,* information of a ''highly personal nature''). ''[T]he question is not whether individuals regard [particular] information about themselves as private, for they surely do, but whether the Constitution protects such information.'' *DM* v. *Louisa County Dep't of Human Services,* 194 F. Supp. 3d 504, 508–09 (W.D. Va. 2016) (finding no right to privacy of medical information) (internal quotation marks omitted). Information regarding firearms ownership or possession is of neither the medical nor financial variety, and no court has found this information to be constitutionally protected. *See Doe 1,* 344 F. Supp. 3d at 541 (''Disclosure of one's name, address, and status as a firearms license [holder] is not one of the 'very limited circumstances' in which a right to privacy exists.'').

e. Violates the Fifth Amendment—Unconstitutionally Vague

Comments Received

Numerous commenters objected to the new definitions on grounds that the definitions are so vague that they violate the Due Process Clause of the Fifth Amendment. Citing to *Christopher* v. *SmithKline Beecham Corp,* 567 U.S. 142, 155–56 (2012), commenters stated that ATF must ''provide regulated parties 'fair warning of the conduct [the regulation] prohibits or requires' ''; otherwise, such ambiguity undermines due process and deprives market participants of notice about the law. Here, the commenters stated the definitions of ''firearms,'' ''split or modular frame or receiver,'' and ''readily'' offer no clear guidance or clarity in determining the scope of the terms and therefore are impermissibly vague. Further, commenters stated that

because the only way the public can get clarity is through the non-binding and non-public classification letters process, due process concerns are further compounded as entities are denied an opportunity to know what the law is and how to conform their conduct accordingly.

Department Response

In light of the many cases rejecting such challenges, the Department does not believe the term ''readily'' is vague. Nonetheless, to avoid any doubt, the final rule provides additional clarity on the application of ''readily.'' The rule now expressly excludes from the definitions of ''frame or receiver,'' a ''forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon (*e.g.,* unformed block of metal, liquid polymer, or other raw material).'' Thus, the definition of ''readily'' is not applied to items in a primordial state that are not clearly identifiable as unfinished weapon (*i.e.,* pistol, revolver, rifle, or shotgun) frames or receivers. Moreover, the final rule explains that, when issuing a classification, the Director may consider any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are sold, distributed, or possessed with the item or kit, or otherwise made available by the seller or distributor of the item or kit, to the purchaser or recipient of the item or kit. The final rule further provides detailed examples of when an unfinished frame or receiver billet, blank, or parts kit may be considered a ''frame or receiver.'' For example, a partially complete billet or blank of a frame or receiver is a ''frame or receiver'' when it is sold, distributed, or possessed with a compatible jig or template, allowing a person using online instructions and common hand tools to complete the frame or receiver efficiently, quickly, and easily ''to function as a frame or receiver,'' a term which is also explained in the final rule. These revisions make it clear that manufacturers will be able to continue to obtain unfinished billets or blanks from their suppliers for further manufacture without requiring that the producer be licensed, mark such items, or maintain records of production and disposition. This is because their suppliers are not selling, distributing, or otherwise making available to their customers any jigs, templates, or other items that allow them to be readily converted to function as a frame or receiver.

The Department disagrees with commenters that the explanation in the proposed rule of how ATF would determine which portion of a ''firearm'' is a frame or receiver in a split or modular weapon, and what the term ''readily'' encompasses, is unconstitutionally vague. To begin, the rule explains ATF's understanding of the statutory terms at issue and describes how those terms apply to particular circumstances, thus providing greater clarity about the statutory terms involved. To the extent commenters are concerned that the statutory requirements are unclear, that is an objection about the statute, not the rule. In any event, however, the terms employed in the rule are not unconstitutionally vague. ''It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.'' *Grayned* v. *City of Rockford,* 408 U.S. 104, 108 (1972). A law is impermissibly vague if it ''fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages discriminatory enforcement.'' *FCC* v. *Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012) (internal quotation marks omitted). However, ''[c]ondemned to the use of words, we can never expect mathematical certainty from our language.'' *Grayned,* 408 U.S. at 110; *see also Ward* v. *Rock Against Racism,* 491 U.S. 781, 794 (1989) (''perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity'').

Commenters objected to the term ''readily'' as vague. The term ''readily'' is defined in the rule to explain when a partially complete, disassembled, or nonfunctional frame or receiver is considered a ''frame or receiver'' under 18 U.S.C. 921(a)(3)(B); when a weapon, including a weapon parts kit, is considered a ''firearm'' under 18 U.S.C. 921(a)(3)(A); and when such frames or receivers are considered ''destroyed.'' These terms are easily understood to mean that if there is a weapon parts kit that may readily be completed, assembled, restored, or otherwise ''converted'' to a functional state (*i.e.,* to expel a projectile), that parts kit is, itself, a ''firearm.'' Likewise, it is easy to understand that if there is a partially complete, disassembled, or nonfunctional frame or receiver that may readily be completed, assembled, restored, or otherwise converted to a functional state (*i.e.,* to house or provide a structure for the applicable fire control component), that housing or structure is, itself, a ''frame'' or ''receiver.'' No specialized knowledge is needed to understand how the term ''readily'' is to be applied. Persons who manufacture or possess weapon or frame or receiver parts kits, aggregations of parts, partially complete, or nonfunctional frames or receivers, are clearly on notice that what they are manufacturing, making, selling, distributing, receiving, or possessing are items subject to regulation if they only require minor additional work to be made functional. In sum, persons who make, transfer, receive, or possess partially complete firearm frames or receivers are on notice that those items are regulated if they may readily be converted.[78] On the other end of the spectrum, it is easy for persons to comprehend that if what was a ''frame or receiver'' of a weapon can no longer function as such, and cannot efficiently, quickly, or easily be converted back to a functional state, that item is no longer a ''frame or receiver,'' or ''firearm,'' because it has been destroyed.

Moreover, ''readily'' has been repeatedly—and consistently—defined by case law. In *New York State Rifle & Pistol Ass'n* v. *Cuomo,* 804 F.3d 242 (2d Cir. 2015), the plaintiffs challenged a State statute criminalizing the possession of magazines that ''can be readily restored or converted to accept'' more than ten rounds of ammunition as vague because ''whether a magazine 'can be readily restored or converted' depends upon the knowledge, skill, and tools available to the particular restorer.'' *Id.* at 266. The Second Circuit rejected that argument, finding that this ''statutory language dates at least to the 1994 federal assault weapons ban'' and ''there is no record evidence that it has given rise to confusion at any time in the past two decades.'' *Id.*

Indeed, ''readily'' dates back even further, appearing in the NFA's definition of ''machinegun,'' where it has repeatedly been upheld against vagueness challenges. *See United States* v. *Catanzaro,* 368 F. Supp. 450, 453–54 (D. Conn. 1973) (rejecting argument that

[78] Forgings, castings, extrusions, and machined bodies of firearms that are clearly identifiable as incomplete firearm frames or receivers have been regulated for purposes of importation and exportation as ''defense articles'' since at least 1939. *See* International Traffic in Arms, Ammunition, etc., 22 CFR 171.6, 1939 Supp. 1318; 32 CFR 1.6, 1939 Supp. 2326 (now 22 CFR 120.6 and 27 CFR 447.22). They are also considered ''imported parts'' for purposes of the prohibition against assembling nonsporting semiautomatic rifles or shotguns under 18 U.S.C. 922(r). *See* 27 CFR 478.39(c)(1). Under this rule, only forgings, castings, and machined bodies that are clearly identifiable as a component part of a weapon and that are designed to, or may readily be completed, assembled, restored, or otherwise converted to a functional state are regulated as ''frames'' or ''receivers.''

phrase ''which may be readily restored to fire'' in the NFA ''is not sufficiently definite to provide adequate warning as to the kinds of weapons included''); *United States* v. *M–K Specialties Model M–14 Machinegun,* 424 F. Supp. 2d 862, 872 (N.D. W. Va. 2006) (the parties agreed ''the ordinary meaning of the term 'readily restored' should be used when applying section 5845(b) [of the NFA] . . . the statute's terms should be easily understood by a person of ordinary intelligence'').[79] While Congress did not define ''readily,'' courts have turned to the ''common practice of consulting dictionary definitions to clarify their ordinary meaning.'' *United States* v. *TRW Rifle 7.62X51mm Caliber, One Model 14 Serial 593006,* 447 F.3d 686, 689 (9th Cir. 2006) (internal quotation marks omitted). The ''plain and unambiguous ordinary meaning of 'readily' may be defined by a temporal component . . . or a component related to a manner or methodology'' and ''must not be construed as an abstract phrase, but rather its contours should be determined in . . . context.'' *Id.* at 690 (internal quotation marks omitted).

The Department disagrees with commenters that the explanation in the proposed rule of how ATF would determine which portion of a ''firearm'' is the frame or receiver in a split or modular weapon was unconstitutionally vague. ATF has applied that criteria for many decades as to split or modular weapons. Nonetheless, because the Department agrees with commenters that the definition of ''firearm'' in 18 U.S.C. 921(a)(3)(B) is best read to mean a single part of a weapon or device as being ''the'' frame or receiver, the Department provides under the definition of ''frame or receiver'' new distinct sub-definitions for frames with respect to handguns; receivers with respect to rifles, shotguns, and projectile weapons other than handguns; and frames or receivers for firearm mufflers and silencers. The final rule does not adopt the proposed supplement entitled ''Split or Modular Frame or Receiver.'' The final rule also provides illustrative examples of ATF's prior classifications that are grandfathered, and examples of when a partially complete, disassembled, or nonfunctional frame or receiver is considered readily completed, assembled, restored, or otherwise converted to a functional state. *See Parker* v. *Levy,* 417 U.S. 733, 754 (1974) (examples provided ''considerable specificity'' of ''the conduct which they cover''). With these clarifications in the final rule, licensees, and the public, can make their own determinations to identify the frame or receiver of a weapon without an ATF classification.

These definitions use the terms with their ordinary meanings and in context, s*ee TRW Rifle,* 447 F.3d at 689, 690, and are sufficiently clear to ''give the person of ordinary intelligence a reasonable opportunity to know what is prohibited,'' *Village of Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 498 (1982) (citing *Grayned,* 408 U.S. at 108–09). Absolute certainty is not required. *See United States* v. *Hosford,* 843 F.3d 161, 171 (4th Cir. 2016) (laws ''necessarily have some ambiguity, as no standard can be distilled to a purely objective, completely predictable standard.''); *Draper* v. *Healey,* 827 F.3d 1, 4 (1st Cir. 2016) (''if due process demanded [a] how-to guide, swaths of the United States Code, to say nothing of state statute books, would be vulnerable''); *United States* v. *Lachman,* 387 F.3d 42, 56 (1st Cir. 2004) (''The mere fact that a statute or regulation requires interpretation does not render it unconstitutionally vague.''); *Kolbe* v. *O'Malley,* 42 F. Supp. 3d 768, 800 (D. Md. 2014) (A ''statute is not impermissibly vague simply because it does not spell out every possible factual scenario with celestial precision.'' (internal quotation marks omitted)).[80]

Commenters cite to *Christopher* v. *SmithKline Beecham Corp.,* 567 U.S. 142, 155–56 (2012), but that case did not involve constitutional vagueness claims at all. It instead addressed when *Auer* deference is due to an agency's interpretation of its own ambiguous regulations. *Id.* Here, by contrast, ATF is promulgating new regulations implementing the NFA and GCA through a formal rulemaking procedure. And as explained above, the terms employed in this rule comport with ordinary usage and the case law interpreting those terms.

f. Violates the Fifth Amendment—Unconstitutional Taking

Comments Received

Commenters opposed to the NRPM asserted that the regulations would result in an unconstitutional taking under the Fifth Amendment. Commenters claimed that the government is obligated to compensate people who lost money based on the agency's misrepresentations. One commenter argued that an unconstitutional taking would occur if FFLs are forced to either mark PMFs currently in their possession in accordance with the proposed rule, destroy the PMFs, or ''voluntarily'' turn the PMFs over to law enforcement officials within 60 days of the effective date of the final rule. The commenter claimed that the ''voluntary'' surrender to law enforcement officials is a government taking of personal property. The commenter relied on *Loretto* v. *Teleprompter Manhattan CATV Corp.,* 458 U.S. 419 (1982), where the Supreme Court explained that, with regard to the factual inquiry involved in a takings claim under *Penn Central Transportation Co.* v. *New York City,* 438 U.S. 104 (1978), a ''governmental action'' that results in ''a permanent physical occupation of property'' represents ''a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner.'' 458 U.S. at 434–

[79] *See also U.S.* v. *Wojcikiewicz,* 403 F. App'x 483, 486 (11th Cir. 2010) (same with disassembled rifles); *United States* v. *Kelly,* No. 05–4775, 2007 WL 2309761, at *5 (4th Cir. Aug. 14, 2007) (the argument that 26 U.S.C. 5845(b) is unconstitutionally vague is meritless); *United States* v. *Kent,* 175 F.3d 870, 878 (11th Cir. 1999) (rejecting vagueness challenge where disassembled short-barreled Colt AR–15 could be readily restored to operate as a short-barreled rifle); *United States* v. *Drasen,* 845 F.2d 731, 737–38 (7th Cir. 1988) (rejecting vagueness challenge to the phrase ''readily restored'' in 26 U.S.C. 5845(c) defining ''rifle''); *U.S.* v. *M–K Specialties Model M–14 Machinegun,* 424 F. Supp. 2d 862, 872 (N.D. W. Va. 2006) (rejecting vagueness challenge to the phrase ''readily restored'' in 26 U.S.C. 5845(b); *cf. Phelps* v. *Budge,* 188 F. App'x 616, 618 (9th Cir. 2006) (Nevada statute defining deadly weapon as, among other things, any weapon or device which was ''readily capable of causing substantial bodily harm or death'' was not unconstitutionally vague); *Coalition of New Jersey Sportsmen* v. *Whitman,* 44 F. Supp. 2d 666, 681 (D.N.J. 1999), *aff'd,* 263 F.3d 157 (3d Cir. 2001) (New Jersey statute criminalizing ''any combination of parts from which an assault firearm may be readily assembled'' was not unconstitutionally vague); *Botosan* v. *Paul McNally Realty,* 216 F.3d 827, 836–37 (9th Cir. 2000) (term ''readily achievable'' and factors set forth in the Americans with Disabilities Act ''can hardly be considered vague''); *United States* v. *Quiroz,* 449 F.2d 583, 585 (9th Cir. 1971) (the definition of ''firearm'' in section 921(a)(3) was not unconstitutionally vague with respect to a ''readily convertible'' starter gun); *United States* v. *16,179 Molso Italian .22 Caliber Winlee Derringer Convertible Starter Guns,* 443 F.2d 463, 464–65 (2d Cir. 1971) (same).

[80] Moreover, to the extent there is uncertainty about a particular item, upon submission, ATF will render a classification, a service ATF has long provided. *See Sig Sauer, Inc.* v. *Brandon,* 826 F.3d 598, 599–600 (1st Cir. 2016); *see also United States* v. *Zhen Zhou Wu,* 711 F.3d 1, 15 (1st Cir. 2013) (rejecting a vagueness challenge to the regulatory framework of the Arms Export Control Act and noting there is a ''determination process'' to ''allow private parties to obtain an official government answer on whether an item is covered . . . before they engage in potentially unlawful conduct, a feature that further mitigates any concern about the law trapping [the] unwary'' (citation omitted)).

35. The commenter claimed that absent specific asset forfeiture instructions directing Federal law enforcement agencies to destroy any PMFs ''voluntarily'' turned in by FFLs, the proposed rule fails to set forth any safeguards that prevent Federal law enforcement agencies from repurposing the PMFs for their own use and therefore effectuates a regulatory taking of private property without just compensation.

Department Response

The Department disagrees that the regulation constitutes a taking, and further disagrees that it results in a compensable taking. In order to remain in compliance, FFLs are not required to destroy unmarked PMFs or surrender them to ATF. They can mark them, or have them marked, as required by regulation, which does not require any transfer or loss of property. However, if an FFL chooses to destroy a PMF, that is not compensable. Moreover, the Federal Circuit has recognized that, under Supreme Court precedent, there are certain exercises ''of the police power that ha[ve] repeatedly been treated as legitimate even in the absence of compensation to the owners of the . . . property.'' *Acadia Tech., Inc.* v. *United States,* 458 F.3d 1327, 1332–33 (Fed. Cir. 2006). As the Supreme Court articulated the doctrine, ''[a] prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit.'' *Mugler* v. *Kansas,* 123 U.S. 623, 668–69 (1887); *see Acadia Tech.,* 458 F.3d at 1333.

The Federal Circuit has applied this precedent in situations where Federal law enforcement has acted pursuant to seizure statutes, and criminal laws, to find that no compensable taking exists. *AmeriSource Corp.* v. *United States,* 525 F.3d 1149, 1154 (Fed. Cir. 2008); *Acadia Tech.,* 458 F.3d at 1333. In doing so, the court emphasized that ''[p]roperty seized and retained pursuant to the police power is not taken for a 'public use' in the context of the Takings Clause.'' *AmeriSource,* 525 F.3d at 1153. In these decisions, the Federal Circuit found no taking occurs irrespective of whether the government had physically seized the property or rendered it worthless. *Id.* at 1153–54; *Acadia,* 458 F.3d at 1333.

The Federal Circuit and the Court of Federal Claims have also made clear that these principles apply with full force in analyzing the impact of firearms regulations promulgated pursuant to the Federal power to regulate commerce. In *Mitchell Arms, Inc.* v. *United States,* 7 F.3d 212 (Fed. Cir. 1993), the Federal Circuit rejected a takings claim brought by a firearms business whose permits to import semiautomatic rifles were revoked. Similarly, in *Akins* v. *United States,* 82 Fed. Cl. 619 (2008), the Court of Federal Claims rejected takings claims, including a *per se* takings claim, after ATF reconsidered its prior classification decisions regarding the Akins Accelerator. The Court explained that ''[p]roperty seized and retained pursuant to the police power is not taken for a 'public use' in the context of the Takings Clause.'' *Id.* at 622 (quoting *AmeriSource,* 525 F.3d at 1153). And, citing *Mitchell Arms,* the *Akins* Court also found that the plaintiff was fully aware of the ''potential for federal regulation of his invention'' and his ''expectation interest'' was ''not a property interest protected by the Fifth Amendment.'' *Id.* at 624; *see also Maryland Shall Issue* v. *Hogan,* 353 F. Supp. 3d 400, 408–17 (D. Md. 2018) (rejecting takings claim arising from State ban on bump stocks), *aff'd,* 963 F.3d 356 (4th Cir. 2020); *cf. McCutchen* v. *United States,* 14 F.4th 1355, 1364–65 (Fed. Cir. 2021) (rejecting takings claim on the ''related'' ground that no taking occurs where the government ''asserts a pre-existing limitation upon the [property] owner's title'' to require destruction of a banned weapon (internal quotation marks omitted)). Even under a takings analysis, the regulation would be analyzed under *Penn Central,* and the regulation would be upheld. Under *Penn Central,* a court considers: (1) The economic impact of the regulation on the claimant, (2) its interference with investment-based expectations, and (3) the character of the governmental action. 438 U.S. at 124.

No taking exists under *Penn Central.* A restriction ''directed at the protection of public health and safety . . . is the type of regulation in which the private interest has traditionally been most confined and governments are given the greatest leeway to act without the need to compensate those affected by their actions.'' *Rose Acre Farms, Inc.* v. *United States,* 559 F.3d 1260, 1281 (Fed. Cir. 2009). A plaintiff's ''reasonable investment-backed expectations are greatly reduced in a highly regulated field,'' *Branch* v. *United States,* 69 F.3d 1571, 1581 (Fed. Cir. 1995), such as the firearms industry. And as the Supreme Court has made clear, ''an owner of personal property 'ought to be aware of the possibility that new regulation might even render his property economically worthless.' '' *See Lucas* v. *S.C. Costal Council,* 505 U.S. 1003, 1027–28 (1992). As for the economic impact, licensees do not have to abandon or destroy anything; they need only mark PMFs with serial numbers as required by the GCA if they choose to take those items into inventory.

Commenters' citation to *Loretto* is inapplicable. The *Loretto* decision states nothing about regulating the possession of inherently dangerous personal property. Instead, *Loretto* involved a challenge to a state law requiring a landlord to install cable television facilities on the landlord's building. 458 U.S. at 421. The Court found a *per se* physical taking based upon the physical invasion of the landlord's real property. *Id.* at 426. Here, in contrast, the government has not required anyone to transfer title of anything to the government and has not physically invaded anyone's property. Moreover, even the physical seizure of highly regulated goods pursuant to the government's police power has never been thought to constitute a *per se* taking. *See Kam-Almaz* v. *United States,* 682 F.3d 1364, 1372 (Fed. Cir. 2012); *AmeriSource,* 525 F.3d at 1153; *Acadia Tech.,* 458 F.3d at 1332–33.

To the extent commenters are arguing that a categorical regulatory taking under *Lucas* has occurred, they are incorrect. First, the *Lucas* test does not apply to valid exercises of the government's police power in enforcing the criminal laws. That is the case even where personal property may become worthless as a result of the government's action, which is not the case here. *See AmeriSource,* 525 F.3d at 1154; *Akins,* 82 Fed. Cl. at 621–23. *Lucas* also does not apply to the regulation of personal property of the type involved here. The Supreme Court has never held that even a complete ban on possessing dangerous personal property constitutes a *per se* taking under *Lucas* (or any *per se* test). The Supreme Court has explained that the categorical takings analysis applies only in the ''relatively rare'' and ''extraordinary circumstance when *no* productive or economically beneficial use of land is permitted.'' *Lucas,* 505 U.S. at 1017–18. Although the Court has had reason to consider *Lucas* on multiple occasions, it has never applied the rule to any type of property rights other than real property. *See McCutchen,* 14 F.4th at 1371–72 (''The cases in which the Supreme Court has applied *Lucas's* total takings rule have involved real property, and Circuit Courts have not reached a clear consensus on how broadly to apply *Lucas's* per se rule.'') (Wallach, J., concurring in result).

g. Violates the Fifth Amendment—Equal Protection Clause

Comments Received

Several commenters claimed that the proposed rule violates the Equal Protection Clause by targeting the products of certain law-abiding businesses, including by naming particular companies.[81]

Department Response

The Department disagrees that the proposed rule violates the Equal Protection Clause. If a ''classification 'impermissibly interferes with the exercise of a fundamental right or operates to the peculiar advantage of a suspect class,' [a court will] subject the classification to strict scrutiny. Otherwise, [courts] will uphold the classification if it is 'rationally related to a legitimate state interest.' '' *Mance* v. *Sessions,* 896 F.3d 699, 711 (5th Cir. 2018) (citing *NRA* v. *ATF,* 700 F.3d 185, 211–12 (5th Cir. 2012)). There is no fundamental right to be engaged in the business of manufacturing firearms or to possess unserialized firearms. *See Defense Distributed,* 121 F. Supp. 3d at 699; *Marzzarella,* 614 F.3d at 93. Nor are firearms manufacturers a suspect class. Rational basis review therefore applies.

Under rational basis review, a classification ''is accorded a strong presumption of validity.'' *Heller* v. *Doe by Doe,* 509 U.S. 312, 319 (1993). ''The firearm regulatory scheme . . . is consonant with the concept of equal protection embodied in the Due Process Clause of the Fifth Amendment if there is some rational basis for the statutory distinctions made . . . or they have some relevance to the purpose for which the classification is made.'' *Lewis* v. *United States,* 445 U.S. 55, 65 (1980) (internal quotation marks omitted).

There is clearly a rational basis for requiring those engaged in the business of manufacturing firearms to be licensed and serialize their firearms. The ''principal purpose'' of the GCA is to curb crime by keeping ''firearms out of the hands of those not legally entitled to possess them.'' *Huddleston* v. *United States,* 415 U.S. 814, 824 (1974) (internal quotation marks omitted). As a result, ''[c]ommerce in firearms is channeled through federally licensed importers, manufacturers, and dealers in an attempt to halt mail-order and interstate consumer traffic in these weapons.'' *Id.; see also United States* v. *Biswell,* 406 U.S. 311, 315 (1972) (''[C]lose scrutiny'' of ''interstate traffic in firearms'' is ''undeniably of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders.''); *id.* at 315–16 (''Federal regulation'' of the traffic in firearms ''assures that weapons are distributed through regular channels and in a traceable manner.''); *United States* v. *Hosford,* 82 F. Supp. 3d 660, 667 (D. Md. 2015) (prohibiting engaging in the business of firearms without a license ''ensures that significant commercial traffic in firearms will be conducted only by parties licensed by the federal government''); *id.* (''Nor is the licensing requirement onerous.''); *Marzzarella,* 614 F.3d at 100 (requiring serial numbers not only allows for the ''tracing of the chain of custody of firearms involved in crimes,'' but also ''provides agencies with vital criminology statistics,'' ''as well as allowing for the identification of individual dealers involved in the trafficking of firearms and the matching of ballistics date with recovered firearms''); *United States* v. *Adams,* 305 F.3d 30, 34 (1st Cir. 2002) (''[A]nyone can see what Congress was getting at[;]'' the serial number is the ''principal means of tracing origin and transfers in ownership.'') And, as stated above, public safety and crime prevention are compelling governmental interests.

2. Statutory Authority Concerns

a. Lack of Delegated Authority To Promulgate the Rule

Comments Received

A majority of commenters opposed to the NPRM argued that ATF is exceeding its authority by promulgating the rule and that it is the job of Congress to change the laws and the job of Federal agencies to enforce them. Because the NPRM explained that the agency is changing its regulations in response to the manner in which courts have ruled on the AR–15-type firearm receiver, commenters stated that it is Congress's role to amend the law if the law has become out of date and that this power cannot be usurped by a non-legislative governmental entity.

Other commenters argued that ATF's authority to enact regulations is constrained under 18 U.S.C. 926. They pointed to the Firearms Owners' Protection Act of 1986 (''FOPA'') and its accompanying legislative history, when Congress amended section 926 by deleting the discretionary language that allowed the Secretary to ''prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.'' Commenters stated the prior language was a broader standard and it was amended to the current language, which only allows the Attorney General to ''prescribe only such rules and regulations as necessary to carry out the provisions of this chapter.'' Further, the commenters stated that none of the examples provided in section 926(a) ''indicate[s] any intention of Congress to delegate to the ATF the power to define the items regulated under the GCA . . . in a manner that expands or contracts the scope of the GCA. Rather, [the] examples reinforce Congressional [sic] to severely limit ATF's authority to those required to carry out the administration of the provisions contained within the GCA.''

Other commenters argued that ATF lacks the authority to act because it is in violation of the non-delegation doctrine, which asks ''whether Congress has supplied an intelligible principle to guide the delegee's use of discretion.'' *Gundy* v. *United States,* 139 S. Ct. 2116, 2123 (2019). Specifically, they argued that the GCA contains no intelligible principle to guide ATF's rulemaking authority nor provides any standards for the Department or ATF to redefine statutory definitions. Instead, the commenters asserted, the Attorney General's rulemaking authority is limited to 18 U.S.C. 926(a). Another commenter wrote that ''nothing grants ATF or any other agency the discretion to modify this command'' in the GCA that all firearms must bear a serial number although ATF has the ability to provide the practical details of how the marking is to be done. However, the commenter argued the proposed rule grants ATF far too much discretion in deciding which firearms it will regulate and would open ''a floodgate of policymaking discretion that the GCA does not and cannot grant to it.'' Many other commenters raised specific arguments that ATF's newly proposed and revised definitions, as well as other proposed marking and recordkeeping requirements on FFLs, are contrary to the GCA. Those separate specific arguments are explained in further detail below. *See* Sections IV.B.2.b–f of this preamble.

Department Response

The Department disagrees that ATF lacks the delegated legal authority to promulgate rules that are necessary to implement the GCA and the NFA, including the definitions of ''frame or receiver'' promulgated by the predecessor agency to ATF. The

[81] For example, Blackhawk Manufacturing Group objected to the inclusion of its website address, and claimed it was being targeted because ''ATF seeks to put [it] out of business.'' This is inaccurate. If Blackhawk Manufacturing Group is interested in engaging in the business of manufacturing firearms, it need only apply for a license like other commercial firearms manufacturers.

Department's and ATF's legal authority includes the authority to promulgate regulations and rules implementing and interpreting the GCA and NFA, to specify the information and period by which firearms are required to be marked pursuant to the GCA and NFA, and to specify the precise period and form in which Federal firearm licensee records required by the GCA and NFA are maintained.[82] Congress and the Attorney General have delegated the responsibility for administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(b)(1), (c)(1); 28 CFR 0.130(a)(1)–(2); T.D. Order No. 221(2)(a), (d), 37 FR 11696–97 (June 10, 1972). ''Because § 926 authorizes the [Attorney General] to promulgate those regulations which are 'necessary,' it almost inevitably confers some measure of discretion to determine what regulations are in fact 'necessary.' '' *Nat'l Rifle Ass'n* v. *Brady,* 914 F.2d 475, 479 (4th Cir. 1990). And courts have long recognized that regulatory agencies do not establish rules to last forever. ''They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.'' *Am. Trucking Ass'n* v. *Atchison, Topeka, and Santa Fe Ry. Co,* 387 U.S. 397, 416 (1967).

As to comments asserting that the GCA's various delegations of rulemaking authority to the Attorney General and ATF violate the non-delegation doctrine, the Supreme Court has consistently rejected similar arguments with respect to public safety statutes. *See Whitman* v. *American Trucking Ass'ns,* 531 U.S. 457, 474 (2001) (''[W]e have found an ''intelligible principle'' in various statutes authorizing regulation in the 'public interest.' '' (collecting cases)). The definitions and requirements established by this rule are all guided by the intelligible principles set forth in the GCA governing the manufacture, importation, dealing, and collecting of firearms, including licensing, marking, recordkeeping, background checks, and crime gun tracing.[83]

b. Lack of Authority To Regulate Multiple Parts as ''Frames or Receivers''

Comments Received

A large number of commenters objected to the proposed definition of ''firearm frame or receiver'' and, in particular, the supplemental definition of ''split or modular frame or receiver.'' Commenters stated that the statute is clear that a firearm has only one, singular frame or receiver and that Congress (as ATF pointed out in its NPRM) elected not to regulate all firearms parts when it repealed the FFA and revised the definition of ''firearm'' in 1968 when passing the GCA. According to these commenters, contrary to the intent of Congress, the NPRM's definition of frame or receiver would return to regulating individual firearm parts by allowing several parts to be considered the frame or receiver. Several commenters stated that Congress knew how to distinguish between a whole and parts of a whole. For example, Congress included both the whole and any one of the individual constituent parts in the definition of a silencer or a muffler, which is defined in 18 U.S.C. 921(a)(24) as ''any combination or parts . . . and any part intended for use in such assembly or fabrication,'' and a ''handgun'' is defined in 18 U.S.C. 921(a)(29) as ''any combination of parts . . . .'' If Congress had intended multiple parts of other firearms to be ''firearms,'' it could have used similar language. Moreover, Congress has amended the GCA several times without redefining the terms at issue.

At least one commenter rejected ATF's reliance on the series of tax cases listed in the NPRM as authority for interpreting statutory definitions to avoid clear error in applying the law. The commenter stated that the Department is not interpreting clear error, but instead is rewriting the law. Some commenters also highlighted *Niz-Chavez* v. *Garland,* 141 S. Ct. 1474 (2021), a recent Supreme Court case that examined another Federal statute with a singular article before a defined term. In *Niz-Chavez,* the Court evaluated whether an immigration statute's requirement to send ''a notice'' with certain information was met when the government sent multiple notices, each of which did not contain all of the information required by the statute. The Court applied a plain reading of the text and said the government must send a single notice. *Id.* at 1486. In holding that a singular usage controlled, the Court in *Niz-Chavez* rejected the government's attempt to use the Dictionary Act as a way to pluralize the otherwise singular text of the term, stating ''[t]he Dictionary Act does not transform every use of the singular 'a' into the plural 'several.' '' *Id.* at 1482.

Many other commenters disagreed with ATF's claim that single frames or receivers were more prevalent for civilian use over split or multi-piece receivers at the time of the GCA's enactment and issuance of the original implementing regulations. One commenter provided copies of historical materials on firearms, including from the Department of Defense, to support his assertion that Members of Congress in 1967, many of whom had served in World War II, would have been personally familiar with ''new-fangled'' rifles that had an upper and a lower receiver. For this reason, the commenter asserted that it is, therefore, not possible for ATF to argue that Congress did not know there were rifles with upper and

[82] In this regard, the GCA and NFA include both general and specific delegations of rulemaking authority. *Compare* 18 U.S.C. 926(a) (''The Attorney General may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter . . . .''); H.R. Rep. No. 90–1577, at 18 (June 21, 1968) (''Section 926. Rules and regulations. This section grants rulemaking authority to the Secretary . . . .''); S. Rep. No. 90–1501, at 39 (Sept. 6, 1968) (same), and 26 U.S.C. 7805(a) (''the [Attorney General] shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.''), *with* 18 U.S.C. 921(a)(13) (''The term 'collector' means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define . . . .''); *id.* sec. 923(g)(1)(A) (''Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe.''); *id.* sec. 923(g)(2) (''Each licensed collector shall maintain in a bound volume the nature of which the Attorney General may by regulations prescribe, records of the receipt, sale, or other disposition of firearms.''); *id.* sec. 923(i) (''Licensed importers and licensed manufacturers shall identify by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer.''); 26 U.S.C. 5841(c) (''Each manufacturer shall notify the Secretary of the manufacture of a firearm in such manner as may by regulations be prescribed . . . .''); *id.* sec. 5842(a) (''Each manufacturer and importer and anyone making a firearm shall identify each firearm, other than a destructive device, manufactured, imported, or made by a serial number which may not be readily removed, obliterated, or altered, the name of the manufacturer, importer, or maker, and such other identification as the [Attorney General] may by regulations prescribe.''); and *id.* sec. 5843 (''Importers, manufacturers, and dealers shall keep such records of, and render such returns in relation to, the importation, manufacture, making, receipt, and sale, or other disposition, of firearms as the [Attorney General] may by regulations prescribe.'').

[83] *Cf. Cargill* v. *Barr,* 502 F. Supp. 3d 1163, 1188 (W.D. Tex. 2020), *aff'd on other grounds,* 20 F.4th 1004, 1014 (5th Cir. 2021) (''The delegations of authority supporting the Final Rule [defining ''machinegun''] also do not violate non-delegation principles because 18 U.S.C. 926(a) only permits the Attorney General to 'prescribe such rules and regulations as are necessary to carry out the provisions of [the GCA]' and 26 U.S.C. 7805 provides similar authority for 'all needful rules and regulations for the enforcement of [the NFA].' 18 U.S.C. 926(a); 26 U.S.C. 7805(a). Given that the Supreme Court has 'over and over upheld even very broad delegations,' like ones requiring an agency merely 'to regulate in the ''public interest,' '' the delegations underlying the Final Rule pass the 'intelligible principle' test.'').

lower receivers when re-defining ''firearm'' to include ''the frame or receiver'' instead of ''any part or parts of such weapon.'' Other commenters also pointed to specific models designed for the military that found their way into common use after World War I, including the 1911 pistol and the Thompson gun.

One commenter, who is a manufacturer, also cited a 1971 Treasury Memorandum on the M16 receiver to show that when ATF was part of the Department of the Treasury, the agency had considered split or multi-piece receiver firearms during the initial rulemaking process but felt it impracticable to do so. The author of the 1971 memorandum stated the ''M–16 receiver is fabricated in two parts . . . . Both parts were necessary to function as a 'frame or receiver . . . .' I can see some difficulty in trying to make cases against persons possessing only the lower part of the receiver, but insofar as licensing, serial numbering, and special occupational tax requirements are concerned, I feel that [serializing the lower] is the only practical solution.'' *See* CC: ATF–12,736, Subject: M16 Receivers, Internal Revenue Service, Department of the Treasury (March 1, 1971).

Department Response

Although the Department disagrees with numerous commenters who claim that the term ''frame or receiver'' in 18 U.S.C. 921(a)(3)(B) must be read to mean that a firearm may not have more than one frame or receiver, the Department has decided to alter the proposed definition in this final rule in response to comments.[84] The Department agrees with commenters that section 921(a)(3)(B) must be read in context, and recognizes that the Supreme Court in *Niz-Chavez* instructs courts to exhaust all textual and structural clues bearing on the meaning of a statutory term. 141 S. Ct. at 1480. The statutory term in question is ''*the* frame or receiver of any such weapon'' (emphasis added). Unfortunately, here, there are contextual and structural clues that point in different directions. On one hand, ''the frame or receiver of any such weapon'' refers to a weapon in section 921(a)(3)(A), and that definition uses a singular article when referring to more than one firearm design. For example, section 921(a)(3)(A) states that a ''firearm'' includes ''any weapon . . . which will or is designed to . . . expel *a* projectile by the action of an explosive'' (emphasis added). By using the singular term ''a,'' Congress clearly did not mean to regulate only those weapons that will or are designed to expel only a single projectile. Almost all firearms are designed to expel more than one projectile after the first, and numerous firearm designs, such as shotguns and machineguns, will expel multiple projectiles at the same time. Moreover, as one commenter pointed out, one major design of a ''firearm'' under 18 U.S.C. 921(a)(3)(A) is a handgun, and the definition of ''handgun'' in 18 U.S.C. 921(a)(29)(B) includes ''any combination of parts from which a [handgun] can be assembled.''[85] Thus, it is possible that the term ''frame,'' for example, could be referring to multiple frames within a handgun, or both a frame and a receiver in a split handgun design.[86]

On the other hand, the marking requirement for manufacturers and importers, 18 U.S.C. 923(i), refers to identifying ''a'' serial number on ''the'' receiver or frame of the weapon. And the GCA similarly amended the definition of ''machinegun'' in the NFA at 26 U.S.C. 5845(b) to refer to a singular component when including ''the'' frame or receiver of any such weapon. The Department agrees with numerous commenters that the context of the singular terms ''frame'' and ''receiver'' in these provisions suggests that a firearm only has one frame or receiver. This reading is more consistent with the GCA's legislative history explaining that Congress found it impractical to treat each small part of a firearm as if it were a weapon capable of firing.[87]

After carefully considering the numerous comments submitted on this issue, the Department agrees that reading the GCA to encompass only one single part of a given weapon would greatly reduce the possibility that a modified weapon might have more than one serial number. Having more than one serial number per firearm would make it more difficult and costly for licensees to mark firearms and maintain associated records, and for law enforcement to trace firearms used in crime. Because the NPRM contemplated the possibility that a given firearm under the proposed rule would have more than one frame or receiver with different serial numbers, the Department is responding to the concerns of those comments by focusing on three subsets of the proposed definition of ''frame or receiver.'' Specifically, the final rule defines that term to mean a housing or structure for a single fire control component—''frame'' for handguns and variants thereof; ''receiver'' for rifles, shotguns, and projectile weapons other than handguns and variants thereof; and ''frame'' or ''receiver'' for firearm muffler or silencer devices.

Finally, to ease the transition to the new definitions and marking requirements, the Department will grandfather existing split frame or receiver designs previously classified by ATF as the firearm ''frame or receiver'' prior to the issuance of this rule (except for certain partially complete, disassembled, or nonfunctional frames or receivers, to include weapon or frame or receiver parts kits). For example, the lower receiver of the AR–15-type rifle and variants thereof are expressly included within the new definition of ''receiver'' and may be marked according to the rules that existed before this rule.[88]

[84] The Dictionary Act recognizes that ''[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise, words importing the singular include and apply to several persons, parties, and things.'' 1 U.S.C. 1; *see also Niz-Chavez,* 141 S. Ct. at 1482 (the Dictionary Act tells us that a statute using the singular can apply to multiple persons, parties, or things); *Barr* v. *United States,* 324 U.S. 83, 91 (1945) (citing 1 U.S.C. 1 as authority for construing the statutory term ''buying rate'' to include more than one buying rate); *Day* v. *Sec. of Health & Human Services,* 129 Fed. Cl. 450, 452 (2016) (''The mere use of terms in the singular, of course, hardly provides the context for escaping the ambit of the Dictionary Act rule regarding the use of the singular.''); *Georgetown Univ. Hospital* v. *Sullivan,* 934 F.2d 1280, 1283–84 (D.D.C. 1991) (use of definite article ''the'' with the singular word ''amount'' did not preclude the possibility there may be more than one ''amount'').

[85] The Department recognizes that ''combinations of parts'' was added to the definition of ''handgun'' in the GCA by section 102 of the Brady Handgun Violence Protection Act, Public Law 103–159 (1993).

[86] *Cf. United States* v. *Morales,* 280 F. Supp. 2d 262, 273 (S.D.N.Y. 2003) (''[T]he different parts represented in Exhibit J to the Becker Affirmation include both the ''frame'' and the ''receiver'' of a Tec–9 pistol, and are therefore explicitly covered under the language of 18 U.S.C. 921(a)(3)(B).'').

[87] *See Juvenile Delinquency: Investigation of Juvenile Delinquency in the United States: Hearing before the S. Comm. on the Judiciary,* 88th Cong. (1963) (technical memorandum of Internal Revenue Service) (''The present definition [of ''firearm''] includes any 'part' of a weapon within the term. It has been found that it is impracticable, if not impossible, to treat all parts of a firearm as if they were a weapon capable of firing. This is particularly true with respect to recordkeeping provisions since small parts are not easily identified by a serial number. Accordingly, there are no objections to modifying the definition so that all parts, other than frames or receivers, are eliminated. It should be noted that this amendment to the definition of 'firearm' eliminates all parts of a weapon, other than receivers and frames, from the provisions of the act.'').

[88] However, the Department disagrees with commenters who suggested that the AR–15 rifle was in common civilian (*i.e.,* non-military or law enforcement) use in the United States when ATF's predecessor agency originally promulgated its regulatory definitions of ''frame or receiver'' in 1968 (Part 478) and 1971 (Part 479). While millions of AR–15s/M–16s existed at the time ATF promulgated the definitions, the vast majority were

Continued

c. Lack of Authority To Regulate Weapon Parts Kits

Comments Received

Commenters opposed to the NPRM specifically argued that ATF did not have the authority to amend the regulatory definition of ''firearm'' to include weapon parts kits because it runs contrary to the GCA's definition of firearm. Commenters stated that the definition of ''firearm'' cannot be read, and has not been read in the cases cited by ATF, to include a kit containing parts that could be used to make a weapon because a kit is not itself a weapon. They stated that section 921(a)(3)(A) is clear that a firearm is a ''weapon that can be readily converted to expel . . . , not the parts that can readily be converted to expel a projectile.'' Further, commenters argued that including weapon parts kits would impermissibly expand and alter the statutory meaning of both ''converted'' and ''readily.'' They stated that ATF cannot equate ''converted'' with the proposed added words ''assembled,'' ''completed,'' or ''restored,'' and that, under a plain English reading, one would not ''convert'' these parts into a weapon. The GCA uses a starter gun as an example of an existing item that can be converted. Even assuming the definition includes ''assembled,'' the commenter stated that ''[a] weapon parts kit that does not contain most of the necessary components, or that needs machining, cannot be assembled (or converted) 'readily' *i.e.,* 'without much difficulty' or 'with fairly quick efficiency.' ''

Department Response

The Department disagrees with commenters and believes the language of section 921(a)(3)(A) should be read to include weapon parts kits and aggregations of weapon parts that: (1) Are actually designed to expel a projectile by the action of an explosive in their present form or configuration, but cannot expel a projectile due to damage, poor workmanship, or design flaw or feature regardless of whether they may readily be made to function; or (2) may or may not be designed to expel a projectile by the action of an explosive in their present form or configuration, but may readily be converted to do so. The Federal courts that have addressed this issue have uniformly held that disassembled aggregations of weapon parts [89] and weapon parts kits [90] that may readily be converted to expel a projectile are ''firearms'' under 18 U.S.C. 921(a)(3)(A).

A ''weapon'' is defined by common dictionaries as ''[a]n instrument of offensive or defensive combat,'' *see* Webster's Third New International Dictionary 2589 (2002), but there is no requirement in either the dictionary definition or section 921(a)(3)(A) that the instrument have a minimum level of utility or lethality to be considered a ''weapon.'' [91] While the aggregation of parts in a kit may not yet function as a weapon, these parts, simply in broken down form, can only be completed and assembled as instruments that expel live ammunition. Weapons completed from the parts in these kits typically incorporate or accept magazines that hold multiple rounds of lethal ammunition. They are not ornaments,[92] toys,[93] or industrial tools.[94] Requiring some minimum level of utility, lethality, or actual functionality for aggregations of parts that are clearly identifiable as unassembled, unfinished, or incomplete pistols, revolvers, rifles, or shotguns, would be reading a requirement into the statutory definition of ''firearm'' that is not present. So long as the aggregation of parts is clearly identifiable as an instrument to expel live ammunition (including a starter gun), that is sufficient under section 921(a)(3)(A) to constitute a ''weapon.'' [95] Indeed, numerous courts have recognized that an item was a rifle, shotgun, pistol, or revolver—a weapon—even though it was unassembled or nonfunctional due to missing or broken components.[96]

The Department agrees with commenters that the term ''weapon which . . . may readily be converted to'' was inserted into the definition of ''firearm'' in the GCA to include, as an example, starter guns designed for use with blank ammunition.[97] However, the legislative history indicates that Congress included these guns because the convertibility of these starter pistols was found to be a matter of serious concern to law enforcement. One example of these conversions cited in the legislative history of the GCA was a ''do-it-yourself gunsmith'' who made out-of-State bulk purchases of starter pistols. ''[H]e would then, at his residence, disassemble them, and using an electric hand drill mounted in a drill press stand, bore out the plugged barrel and enlarge the cylinder chambers to accommodate .22-caliber cartridges.'' [98]

manufactured for military use. *See* Internal Colt Memorandum from B. Northrop, Feb. 2, 1973, p. 2 (noting that there were 2,752,812 military versus 25,774 civilian (''Sporters'') serialization of AR–15/M–16 rifles then manufactured).

[89] *See, e.g., United States* v. *Annis,* 446 F.3d 852, 857 (8th Cir. 2006) (partially disassembled rifle that could easily be made operational was a firearm under section 921(a)(3)(A)); *United States* v. *Ryles,* 988 F.2d 13, 16 (5th Cir. 1993) (disassembled shotgun was a firearm because it could have been readily converted to an operable firearm); *United States* v. *Theodoropoulos,* 866 F.2d 587, 595 n.3 (3d Cir. 1989) (machine pistol that was disassembled that could easily be made operable); *Enamorado* v. *United States,* No. C16–30290–MWB, 2017 WL 2588428, at *6 (N.D. Iowa June 14, 2017) (disassembled .45 caliber handgun that could easily be reassembled); *United States* v. *Morales,* 280 F. Supp. 2d 262, 272–73 (S.D.N.Y. 2003) (partially disassembled Tec-9 pistol that could be assembled within short period of time could readily be converted to expel a projectile); *United States* v. *Randolph,* No. 02 CR. 850–01 (RWS), 2003 WL 1461610, at *2 (S.D.N.Y. Mar. 20, 2003) (gun consisting of ''disassembled parts with no ammunition, no magazine, and a broken firing pin, making it incapable of being fired without replacement or repair'' was a ''firearm'' because it could be readily converted to expel a projectile and included the frame or receiver of any such weapon).

[90] *See, e.g., United States* v. *Wick,* 697 F. App'x 507, 508 (9th Cir. 2017) (complete Uzi parts kits ''could 'readily be converted to expel a projectile by the action of an explosive,' thus meeting the statute's definition of firearm'' because the ''kits contained all of the necessary components to assemble a fully functioning firearm with relative ease''); *United States* v. *Stewart,* 451 F.3d 1071, 1073 n.2 (9th Cir. 2006) (upholding district court's finding that .50 caliber rifle kits with incomplete receivers were ''firearms'' under section 921(a)(3)(A) because they could easily be converted to expel a projectile).

[91] *See Bond* v. *U.S.,* 572 U.S. 844, 861 (2014) (citing dictionary definitions, and concluding that non-lethal irritant chemical was not a weapon).

[92] *See, e.g., United States* v. *Wada,* 323 F. Supp. 2d 1079, 1081 (D. Or. 2004) (ornaments that ''would take a great deal of time, expertise, equipment, and materials to attempt to reactivate'' were no longer firearms).

[93] *See, e.g., Lunde Arms Corp.* v. *Stanford,* 107 F. Supp. 450, 452 (S.D. Cal. 1952), *aff'd,* 211 F.2d 464 (9th Cir. 1954) (small muzzle loading toy cap gun that expelled non-lethal bird shot was not a ''weapon''); Rev. Rul. 54–519, 1954–2 C.B. 438 (inexpensive plastic toy gun was not a ''weapon'').

[94] *See* H.R. Rep. No. 90–1577, at 10 (June 21, 1968) (''[P]owder actuated industrial tools used for their intended purpose are not considered weapons and, therefore, are not included in this definition.''); S. Rep. No. 90–1097, at 111 (April 29, 1968) (same).

[95] *Cf. United States* v. *Thompson/Center Arms,* 504 U.S. 505, 513, n.6 (1992) (finding that a rifle—a type of weapon—was ''made'' under the NFA when a pistol was packaged together with a disassembled rifle parts kit even in the absence of ''combination of parts'' language); *United States* v. *Hunter,* 843 F. Supp. 235, 256 (E.D. Mich. 1994) (''If Defendants believe that conversion kits are not in and of themselves 'weapons' under § 921(a)(3), they forget that that section clearly envisions machineguns as weapons.''); *United States* v. *Drasen,* 845 F.2d 731, 736–37 (7th Cir. 1988) (rejecting argument that a collection of rifle parts cannot be a ''weapon'' even in the absence of combination of parts language); *United States* v. *Grimm,* 51 M.J. 254, 254 (C.A.A.F. 1999) (disassembled pistol with various components carried in different pants pockets was a ''weapon'').

[96] *See* footnotes 42 and 43, *supra.*

[97] *See* S. Rep. No. 89–1866, at 14, 73 (Oct. 19, 1966) (''Added to the term 'firearm' are weapons which 'may be readily converted to' a firearm. The purpose of this addition is to include specifically any starter gun designed for use with blank ammunition which will or which may be readily converted to expel a projectile or projectiles by the action of an explosive.'').

[98] *See* S. Rep. No. 88–1340, at 14 (Aug. 7, 1967). The completed weapons were reassembled, packaged as a kit with a holster and a box of fifty

The focus on starter pistols is not on starter pistols themselves as a weapon, but on their ability to be converted to a functional state. As such, the Department sees no legal distinction under the GCA between starter guns that may readily be converted to fire, and pistols, revolvers, rifles, or shotguns parts kits that may readily be converted to fire. All are incomplete ''weapons'' that may readily be converted to fire under the GCA.

Determining *when* a weapon configured as a parts kit meets the statutory definition of ''firearm'' requires a case-by-case evaluation of each kit. Some weapon parts kits are ''firearms'' because they are *designed to* expel a bullet, even if they cannot presently fire or readily be made to function because of damage, poor workmanship, or design flaw or feature.[99] Such weapon parts kits are akin to ''unserviceable firearms,'' defined by the GCA as ''a *firearm* which is incapable of discharging a shot by means of an explosive and incapable of being *readily restored* to a firing condition'' (emphases added).[100] Some weapon parts kits are ''firearms'' because they *may readily be converted to* expel a bullet, even if they cannot yet expel one or function without additional work.

The Department disagrees with the comment that weapon parts kits must contain all component parts of the weapon to be ''readily'' converted to expel a projectile. But the Department agrees that the completeness of the kit is an important factor in determining whether a weapon parts kit may readily be converted to expel a projectile. This is why one of the factors in the definition of ''readily'' that courts have relied upon in determining whether a weapon may ''readily be restored'' to fire is whether additional parts are required, and how easily they may be obtained. An essential part missing from the kit that cannot efficiently, quickly, and easily be obtained would mean that the weapon cannot readily be completed, assembled, restored, or otherwise ''converted'' to a functional state.[101]

d. Lack of Authority To Regulate ''Partially Complete'' Frames or Receivers

Comments Received

Commenters argued that ATF does not have authority to regulate ''partially complete frames or receivers'' because section 921(a)(3)(B) is clear that a completed frame or receiver is not a weapon, but only a part of such a weapon. Their theory is that if a frame or receiver were equivalent to a weapon, then section 921(a)(3)(B) would be read as ''the weapon of any such weapon'' rather than ''the frame or receiver of any such weapon.'' Further, commenters stated that ATF does not have authority to apply the phrase ''may readily be converted'' to define ''partially complete . . . frame or receiver'' since the ''may readily be converted'' language was included in prong (A) of section 921(a)(3) (applying to weapons) but not prong (B), meaning that ''readily'' cannot be applied to ''frame or receiver'' to allow for the inclusion of partially complete frames or receivers in the regulatory scheme.

Department Response

The Department agrees with commenters who stated that frames or receivers are not ''weapons.'' They are the frames or receivers ''*of*'' the weapons described in 18 U.S.C. 921(a)(3)(A), and they are regulated as ''firearms'' with or without the component parts necessary to produce complete weapons. 18 U.S.C. 921(a)(3)(B). But Congress did not define the term ''frame or receiver'' in 18 U.S.C. 921(a)(3)(B), and the crucial inquiry is at what point an unregulated piece of metal, plastic, or other material becomes a ''frame or receiver'' that is a regulated item under Federal law. ATF has long held that a piece of metal, plastic, or other material becomes a frame or receiver when it has reached a ''critical stage of manufacture.'' To make this determination, ATF's position has been that the item has reached a ''critical stage of manufacture'' when it is ''brought to a stage of completeness that will allow it to accept the firearm components to which it is designed for [sic], using basic tools in a reasonable amount of time.'' [102] Accordingly, this rule explains that the terms ''frame'' and ''receiver'' include a partially complete frame or receiver ''that is designed to, or may readily be completed, assembled, restored, or otherwise converted'' to accept the parts it is intended to house or hold.

The Department disagrees with commenters' suggestion that the Department cannot use the concepts of ''readily'' and ''converted'' in describing partially complete frames and receivers simply because those terms appear in section 921(a)(3)(A). In crafting the language of the regulation, ATF has properly considered concepts concerning when other firearms reach the point at which they are regulated under Federal law.[103] This analysis is also appropriate because the very definition of ''manufacturing'' is the process of ''converting'' raw materials into finished goods suitable for use.[104]

.22-caliber cartridges, and sold to youth gang members.

[99] The common meaning of the term ''design'' is ''to conceive and plan out in the mind'' or ''to plan or have in mind as a purpose.'' *See United States* v. *Gravel,* 645 F.3d 549, 551 (2d Cir. 2011) (quoting Webster's Third Int'l Dictionary (1993)).

[100] Section 201 of Public Law 90–618 (Title II); 26 U.S.C 5845(h); 27 CFR 478.11, 479.11 (definition of ''unserviceable firearm''); H.R. Rep. No. 90–1577, at 10 (June 21, 1968) (''This provision makes it clear that so-called unserviceable firearms come within the definition.''); S. Rep. No. 90–1097, at 111 (April 29, 1968) (same). The GCA allows an unserviceable curio or relic firearm other than a machinegun to be imported. 18 U.S.C. 925(d)(2). Unserviceable NFA firearms may also be transferred as a curio or ornament without payment of the transfer tax. 26 U.S.C. 5852(e).

[101] As explained in the next section, the Department also disagrees that the terms ''assembled'' and ''completed'' cannot be equated with ''conversion'' because that latter term means, in the context of manufacturing, altering raw materials to make them suitable for use. *See* footnote 104, *infra.*

[102] *See* ATF Letter to Private Counsel #303304, at 3–4 (Mar. 20, 2015) (internal quotation marks omitted); ATF Rul. 2015–1 (an AR-type lower receiver that has been indexed may be classified as a receiver even though additional machining or other manufacturing process takes place to remove material from the cavity that allows the fire control components to be installed).

[103] *See* footnotes 43 and 44, *supra; see also* 18 U.S.C. 921(a)(3)(A); 26 U.S.C. 5845(b).

[104] *See Merriam-Webster.com,* available at *https://www.merriam-webster.com/dictionary/convert* (last visited Mar. 24, 2022) (The term ''convert'' means ''to alter the physical or chemical nature or properties of especially in manufacturing.''); *Samsung Electronics Co., Ltd.* v. *Apple Inc.,* 137 S. Ct. 429, 435 (2016) (''manufacture' means 'the conversion of raw materials by the hand, or by machinery, into articles suitable for the use of man' and 'the articles so made.' '' (citing J. Stormonth, A Dictionary of the English Language at 589 (1885))); *FastShip, LLC* v. *United States,* 892 F.3d 1298, 1303 n.7 (Fed. Cir. 2018) (same); *Cyrix Corp.* v. *Intel Corp.,* 803 F. Supp. 1200, 1206 (E.D. Tex. 1992) (referring to the manufacturing process of converting raw materials into computer coprocessors); *Swiss Manufacturers Ass'n, Inc.* v. *United States,* 39 Cust. Ct. 227, 233 (1957) (''What must be kept in mind is the distinction between manufacturing operations which advance the materials as materials and manufacturing operations which convert the materials into the complete articles.''); *Dean & Sherk Co., Inc.* v. *United States,* 28 Cust. Ct. 186, 189 (1952) (''It may require more than one manufacturing process to convert a textile material into a new textile material having a new name, character, or use.''); *United States* v. *J.A. Schneider & Co.,* 21 C.C.P.A. 352, 357 (Cust. & Pat. App. 1934) (referring to the process of taking finished products of certain processes of manufacture as ''material for subsequent manufacturing processes necessary to convert them into parts for furniture''); *Bedford Mills* v. *United States,* 75 Ct. Cl. 412, 423 (1932) (referring to a ''manufacturer'' as ''one who converts raw materials into a finished product''); *Stoneco, Inc.* v. *Limbach,* 53 Ohio St. 3d 170, 173, 560 N.E. 2d 578, 580 (Ohio. 1990) (''manufacturing is the commercial use of engines, machinery, tools, and implements to convert material into a new form, quality, property, or combination and into a more valuable commodity for sale''); *State* v. *American Sugar Refining Co.,* 108 La. 603, 627, 32 So. 965, 974 (La.

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While this analysis is intended to capture when an item becomes a frame or receiver that is regulated irrespective of the type of technology used, unformed blocks of metal, liquid polymers, and other raw materials only in a primordial state would not be considered by this rule to be a frame or receiver. However, when a frame or receiver is broken, disassembled into pieces, or is a forging, casting, or additive printing for a frame or receiver (*i.e.,* a partially complete frame or receiver) that has reached a stage of manufacture where it can readily be completed, assembled, restored, or otherwise converted into a functional frame or receiver, that article is a ''frame or receiver'' under the GCA.[105]

In light of the widespread availability of unlicensed and unregulated partially complete or unassembled frames or receivers, which are often sold as part of easy-to-complete kits, it is necessary to deter prohibited persons from obtaining or producing firearms by clarifying that incomplete frames or receivers can be firearms within the meaning of the governing law.[106] Otherwise, persons could easily circumvent the requirements of the GCA and NFA, including licensing, marking, recordkeeping, and background checks (and, if a machinegun, NFA registration) simply by producing almost-complete frames or receivers, or by making a few minor alterations to existing frames or receivers that could quickly be altered to produce either a functional weapon, or a functional frame or receiver of any such weapon. To be sure, many prohibited persons have easily obtained them.[107] A contrary rule, under which prohibited persons can easily make or acquire virtually untraceable firearms directly from unlicensed parts manufacturers, would unreasonably thwart Congress's evident purpose in the GCA and the NFA.[108] These principles provide further reason not to read into the definition of ''frame or receiver'' terms like ''finished,'' ''operable,'' ''functional,'' or a minimum percentage of completeness (*e.g.,* ''80.1%'').

e. Lack of Authority To Regulate ''Privately Made Firearms''

Comments Received

Commenters also generally stated that Congress did not grant any statutory authority to ATF to regulate PMFs. They explained that the GCA's central premise has been based on Congress's authority to regulate interstate commerce and that Congress has gone to great lengths to clarify that only those involved in commercial manufacturing are subject to the GCA. A private party, making a firearm for their own use, has never been subject to regulation. The commenter cited section 101 of the GCA, which provides that ''it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with the respect to the acquisition, possession, or use of firearms,'' and that the ''title is not intended to discourage the private ownership or use of firearms by law-abiding citizens.'' Commenters argue that because these PMFs are made solely for personal use, they do not come under the legal purview of the NFA or GCA as they lack any substantial connection to interstate commerce and therefore ATF is without statutory authority to make any rule pertaining to PMFs.

Department Response

The Department agrees that firearms privately made by non-prohibited persons solely for personal use generally do not come under the purview of the GCA.[109] This rule does not restrict law-

1902) (''The process of manufacture converts the raw material . . . into the manufactured articles''); *see also* Prod. Liab.: Design and Mfg. Defects § 14:7 (2d ed.) (''The basic function of the manufacturing organization is to convert raw materials into finished products.''); *cf. Broughman* v. *Carver,* 624 F.3d 670, 675 (4th Cir. 2010) (to ''manufacture'' a firearm means ''to render the firearm 'suitable for use' '').

[105] *See* S. Rep. No. 90–1501, at 46 (Sept. 6, 1968) (''Of course, if the frame or receiver are themselves unserviceable as a frame or receiver then they would be treated as an unserviceable machinegun. Any machinegun frame or receiver which is readily restorable would be treated as serviceable.''); *United States* v. *Thomas,* No. 17–194 (RDM), 2019 WL 4095569, at *5 (D.D.C. Aug. 29, 2019) (In holding that a revolver missing its trigger, hammer, and cylinder pin was a ''frame or receiver'' under section 921(a)(3)(B), the Court stated that ''Thomas's theory also twists the statutory definition beyond comprehension: Under his theory, Congress included the 'frame or receiver' of a weapon—which is, by definition, inoperable—in the statutory definition, but did so only for those frames or receivers that are part of an operable weapon. The Court rejects this mind-bending reading of the statute.'').

[106] The Polymer 80 assembly, for example, may be completed in under thirty minutes. *See, e.g.,* Silverback Reviews, *POLYMER 80 Lower completion/Parts kit install,* YouTube (Aug. 19, 2019), *available at https://web.archive.org/web/20200331211935/https://www.youtube.com/watch?v=ThzFOIYZglg* (21-minute video of completion of a Polymer 80 lower parts kit with no slide) (last visited Apr. 1, 2022). Indeed, the internet is replete with ''numerous videos that provide explicit instructions on how to construct ghost guns.'' Letter for Susan Wojcicki, CEO, YouTube, from Senators Blumenthal, Menendez, Murphy, Booker, and Markey at 1 (Feb. 14, 2022), *available at https://www.blumenthal.senate.gov/imo/media/doc/0215.22youtubeghostguns.pdf* (last visited Apr. 1, 2022); Joshua Eaton, *Senators call on YouTube to crack down on 'ghost gun' videos, NBCNews.com* (Feb. 15, 2022), *available at https://www.nbcnews.com/news/us-news/senators-youtube-ghost-gun-videos-rcna16387* (last visited Apr. 1, 2022); Joshua Eaton, *YouTube banned 'ghost gun' videos. They're still up., NBCNews.com* (Dec. 9, 2021), *available at https://www.nbcnews.com/news/us-news/youtube-ghost-gun-videos-rcna7605* (last visited Apr. 1, 2022).

[107] *See* footnote 20, *supra; see also Convicted Felon Nabbed in Lakeside with Meth, Ghost Guns and Burglary Tools, timesofsandiego.com* (Jan. 29, 2022), *available at https://timesofsandiego.com/crime/2022/01/29/convicted-felon-nabbed-in-lakeside-with-meth-ghost-guns-and-burglary-tools/* (last visited Mar. 24, 2022); Kym Kemp, *Felon found with 'ghost gun' arrested, says HCSO, kymkemp.com* (Nov. 29, 2021), *available at https://kymkemp.com/2021/11/29/felon-found-with-ghost-gun-arrested-says-hcso/* (last visited Mar. 24, 2022); Det. Patrick Michaud, *Georgetown Arrest of a Felon Leads to Recovery of Ghost Gun, spdblotter.seattle.gov* (Nov. 8, 2021), *available at https://spdblotter.seattle.gov/2021/11/08/georgetown-arrest-of-a-felon-leads-to-recovery-of-ghost-gun/* (last visited Mar. 24, 2022); *Deputy recovers 'ghost gun' from convicted felon during traffic stop, fontanaheraldnews.com* (Aug. 10, 2021), *available at https://www.fontanaheraldnews.com/news/inland_empire_news/deputy-recovers-ghost-gun-from-convicted-felon-during-traffic-stop/article_3cfe0fd0-f4a3-11eb-bd31-03979dc83307.html* (last visited Mar. 24, 2022); *Lehigh Valley felon was using 3D printer to make 'ghost guns' at home, Pa. attorney general says, lehighvalleylive.com* (Jun. 29, 2021), *available at https://www.lehighvalleylive.com/northampton-county/2021/06/lehigh-valley-felon-was-using-3d-printer-to-make-ghost-guns-at-home-pa-attorney-general-says.html* (last visited Mar. 24, 2022); Press Release, Department of Justice, U.S. Attorney's Office, District of Conn., Bridgeport Felon Sentenced to More Than 5 Years in Federal Prison for Possessing Firearms (Jan. 7, 2021), *https://www.justice.gov/usao-ct/pr/bridgeport-felon-sentenced-more-5-years-federal-prison-possessing-firearms;* Christopher Gavin, *Winthrop man had homemade 'ghost' guns and 3,000 rounds of ammunition, prosecutors say, Boston.com* (Aug. 5, 2020), *available at https://www.boston.com/news/crime/2020/08/05/winthrop-man-had-homemade-ghost-guns-prosecutors-say* (last visited Mar. 24, 2022); *'Ghost Gun' used in shooting that killed two outside Snyder County restaurant, pennlive.com* (Jul. 14, 2020), *available at https://www.pennlive.com/crime/2020/07/ghost-gun-used-in-shooting-that-killed-two-outside-snyder-county-restaurant.html* (last visited Mar. 24, 2022); *The gunman in the Saugus High School shooting used a 'ghost gun,' sheriff says, CNN.com* (Nov. 21, 2019), *available at https://www.cnn.com/2019/11/21/us/saugus-shooting-ghost-gun/index.html* (last visited Mar. 24, 2022); *How the felon killed at Walmart got his handgun, DA says, LehighValleyLive.com* (March 9, 2018), *available at https://www.lehighvalleylive.com/news/2018/05/how_the_felon_killed_at_walmar.html* (last visited Mar. 24, 2022);*'Ghost guns': Loophole allows felons to legally buy gun parts online, KIRO7.com* (Feb. 22, 2018), *available at https://www.kiro7.com/news/local/ghost-guns-federal-loophole-allows-felons-to-legally-buy-gun-parts-online-build-assault-weapons/703695149/* (last visited Mar. 24, 2022).

[108] *See New York* v. *Burger,* 482 U.S. 691, 713 (1987) (''[T]he regulatory goals of the Gun Control Act . . . ensure[ ] that weapons [are] distributed through regular channels and in a traceable manner'' thus making ''possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms.' '' (quoting *United States* v. *Biswell,* 406 U.S. 311, 315–16 (1972))); *City of Chicago* v. *U.S. Dep't of Treasury, Bureau of Alcohol, Tobacco & Firearms,* 423 F.3d 777, 781 (7th Cir. 2005) (statutes should not be read in a way that ''would thwart Congress' intention'').

[109] However, the Undetectable Firearms Act of 1988, *see* 18 U.S.C. 922(p), which amended the GCA, prohibits the manufacture and possession of

abiding citizens' ability to make their own firearms from parts for self-defense or other lawful purposes. Under this rule, non-prohibited persons may continue to lawfully complete, assemble, and transfer unmarked firearms without a license as long as they are not engaged in the business of manufacturing, importing, dealing in, or transacting curio or relic firearms in a manner requiring a license. *See* 18 U.S.C. 922(a)(1), 923(a), (b). Neither the GCA nor this implementing rule requires unlicensed individuals to mark (non-NFA) firearms they make for their personal use, or to transfer them to an FFL for marking. Such individuals who wish to produce, acquire, or transfer PMFs should, however, determine whether there are any applicable restrictions under State or local law.[110]

The Department disagrees with comments stating that ATF does not have the authority to regulate PMFs when those firearms are received and transferred by FFLs like other firearms subject to regulation under the GCA. The GCA provides that all firearms received and transferred by FFLs must be traceable through licensee records maintained for the period and in such form as prescribed by regulations. 18 U.S.C. 923(g)(1)(A), (g)(2). There is no exception for PMFs.

f. Lack of Authority To Require FFLs To Mark Serial Numbers on ''Privately Made Firearms''

Comments Received

Several commenters stated that ATF lacks the statutory authority to require FFL dealers to engrave serial numbers on PMFs. Commenters argued that section 923(i) of the GCA only requires that ''licensed importers and licensed manufacturers'' mark firearms. They pointed out that while numerous provisions apply to importers, manufacturers, dealers, and collectors, not all do. For example, licensed collectors are not required to maintain records of importation as they are not listed in the statute. Accordingly, the commenters argued that Congress expressly imposed the duty to engrave serial numbers only on licensed importers and manufacturers but not on licensed dealers and that ATF is without any statutory basis to require any other FFLs, such as retailers, to mark firearms. Further, commenters argued that while the GCA requires a firearm have ''a serial number engraved or cast on the receiver or the frame of the weapon,'' this does not provide authority for ATF to require placement of multiple serial numbers or a single serial number on multiple parts.

Department Response

The Department disagrees that, under the GCA, licensees other than licensed manufacturers and importers cannot be required to mark firearms. The Attorney General and ATF have authority to promulgate regulations necessary to enforce the provisions of the GCA, and requiring licensees to mark PMFs is such a regulation. *See* 18 U.S.C. 926(a); H.R. Rep. No. 90–1577, at 18 (June 21, 1968); S. Rep. No. 90–1501, at 39 (Sept. 6, 1968). ''Because § 926 authorizes the [Attorney General] to promulgate those regulations which are 'necessary,' it almost inevitably confers some measure of discretion to determine what regulations are in fact 'necessary.' '' *Nat'l Rifle Ass'n* v. *Brady,* 914 F.2d 475, 479 (4th Cir. 1990). ''[T]he regulatory goals of the Gun Control Act . . . ensure[ ] that weapons [are] distributed through regular channels and in a traceable manner,'' thus making ''possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms.' '' *New York* v. *Burger,* 482 U.S. 691, 713 (1987) (quoting *United States* v. *Biswell,* 406 U.S. 311, 315–16 (1972)). ''Severely limiting the application of the GCA's 'manufacturing' provisions would be inconsistent with these goals and would serve to 'undermine the congressional policies' underlying the Act.'' *Broughman* v. *Carver,* 624 F.3d 670, 677 (4th Cir. 2010).

In enacting the GCA, which amended the NFA, Congress clearly understood that persons other than licensed manufacturers and importers may need to mark firearms they make or possess privately with a serial number and other identifying information. *See, e.g.,* 26 U.S.C. 5842(a)–(b) (requiring unlicensed makers and possessors to place serial numbers and other marks of identification on NFA firearms as may be prescribed by regulations).[111] The GCA requires licensees to record firearm information for purposes of tracing. Yet licensees have no serial number or other identifying information marked on the frame or receiver of a privately made (non-NFA) firearm that they can record in cases where a licensed manufacturer does not produce the firearm or an importer does not import the firearm, unless they are able to mark such firearms when received into inventory. Under 18 U.S.C. 923(i), licensed importers and manufacturers are required to mark firearms, but it does not prohibit others from also doing so. The GCA's silence on the specific manner in which licensees are to mark the firearms that they receive into inventory cannot be construed as a prohibition against any marking requirement through regulation.

This rule is necessary to ensure the continuing fulfillment of the congressional intent to mark and allow for tracing of all firearms. If licensees accept PMFs into their inventories with no identifying markings, then the required records they maintain would be rendered meaningless because there would be almost no information—only the ''type'' of firearm—recorded in the A&D records, ATF Forms 4473, Theft/Loss Reports, and Reports of Multiple Sales. The information in these records is essential to public safety in that they are used to trace firearms involved in a crime and to prevent straw purchasers from acquiring them. There would be little point inspecting the records of FFLs that do not contain serial numbers, which are critical to solving and preventing crime.

In this regard, 18 U.S.C. 923(g)(1)(A) and (g)(2) specifically authorize ATF to prescribe regulations with respect to the records regarding importation, production, shipment, receipt, sale, or other disposition of firearms. By regulation, a firearm's serial number and other identifying information are required to be entered on all Forms 4473, A&D records, and ATF Forms 6/6A import permit applications. *See* 27 CFR 478.112(b)(1)(iv)(G), 478.113(b)(1)(iv)(G), 478.114(a)(1)(v)(G), 478.122(a)–(b), 478.123(a)–(b), 478.124(c)(4), 478.125(e), 478.125a(a)(4). Licensees are also required to submit theft/loss reports and ATF Forms 3310.11 (pursuant to 18 U.S.C. 923(g)(6)), and multiple sales and demand letter transaction reports, ATF Forms 3310.4, 3310.12, and 5300.5 (pursuant to 18 U.S.C. 923(g)(3)(A) and (g)(5)(A)), all of which require reporting of the serial number and other identifying information. As explained in this rule, these records and reports are largely meaningless without a unique identifying number and associated licensee information. Therefore, in order for licensees to comply with recording and reporting this information as required, it is incumbent on them to serialize—or cause to be serialized—all firearms that are taken into their inventories.

any firearm that is not as detectable as the ''Security Exemplar'' that contains 3.7 ounces of material type 17–4 PH stainless steel.

[110] *See* footnote 24, *supra;* 18 U.S.C. 927.

[111] The Department also notes that 18 U.S.C. 922(k), which prohibits possession of a firearm with the ''importer's or manufacturer's serial number'' removed, obliterated, or altered, does not necessarily refer to the serial number placed by a *licensed* importer or a *licensed* manufacturer.

At the time the GCA was enacted, almost all firearms were commercially produced by manufacturers (either within or outside the U.S.) because the milling equipment, materials needed, and designs were far too expensive for individuals to make firearms practically or reliably on their own. But today, firearms may be made at home from commercially produced parts kits by purchasing individual parts or using personally owned or leased equipment, including 3D printers. Also, cheaper materials, such as polymer plastics, along with blueprints and instructions, are now readily available over the internet. When Congress enacted the GCA, it likely did not consider that unmarked PMFs would enter the business or collection inventories of licensees, at least not in any significant number. ''But whatever the reason, the scarcity of controls in the secondary market provides no reason to gut the robust measures Congress enacted at the point of sale.'' *Abramski* v. *United States,* 573 U.S. 169, 187 (2014).

Further, the rule necessarily allows licensed firearms dealers, including gunsmiths, to mark PMFs because licensed manufacturers and importers may refuse to provide these services as they are generally focused on their own production or importation of firearms. Without this change, the availability of professional marking by dealer-gunsmiths would be greatly limited and the efficacy of the rule would also be reduced if unlicensed individuals had fewer options to have their PMFs professionally marked. Moreover, allowing licensed firearms dealers, or licensed or unlicensed persons under the direct supervision of licensed firearms dealers, to properly mark firearms in a manner that ATF can trace directly to them reduces the tracing burden on manufacturers and importers, as well as law enforcement. It also provides dealers with the opportunity to earn additional income from repairing, customizing, or pawning firearms that are privately made—firearms that are highly likely to proliferate throughout the marketplace over time as firearms production technology develops. Licensed dealer-gunsmiths, in particular, are well-equipped to provide these services as they routinely engage in the business of engraving, painting, camouflaging, or otherwise customizing firearms for unlicensed individuals.[112]

Finally, the Department agrees with comments saying that the placement of multiple serial numbers on multiple frames or receivers of PMFs would be burdensome and costly for licensees, and would make it more difficult for law enforcement to trace firearms, including PMFs. For this reason, ATF is finalizing this rule to require placement of an individual serial number on a single frame or receiver of a given firearm. This does not mean, however, that it is impossible for a firearm to have more than one serial number marked on the frame or receiver. For example, a remanufacturer or importer who does not adopt an existing serial number as expressly allowed under this rule may re-mark the firearm with their own unique serial number. This has always been the case under current regulations. Additionally, multi-piece frames or receivers as defined in this rule may have the serial number marked on different sides of the same frame or receiver. The Department nonetheless believes these circumstances are rare.

g. Violates the Administrative Procedure Act

Comments Received

Numerous commenters objected to the NPRM on grounds that it is nothing more than a politically motivated rulemaking, demonstrated by ATF's use of a politicized nomenclature (*i.e.,* ''ghost guns'') and reports that rulemaking was directed by certain lobbying groups. They further argued that the entire rule is arbitrary and capricious under 5 U.S.C. 706(2)(A) of the Administrative Procedure Act (''APA'') because the agency relied on factors that Congress did not intend for it to consider. As an example, commenters stated that the definitions of ''partially complete'' and ''split or modular frame or receiver'' rely on balancing tests that have no weighted or comprehensible standard and can create unfair surprise.

Moreover, commenters argued the rule violates the APA because the proposed definitions are arbitrary and capricious and because they fail to account for the reliance interests of those affected by the action and fail to explain the agency's departure from prior policy. For example, commenters said that ATF's proposal to change serial marking requirements and the definition of ''gunsmith'' fails to provide any data or explanation as to how traces are failing under the current system due to existing marking requirements or why the definition for ''gunsmith'' is suddenly changing after many years.

Numerous commenters further argued that the rule, especially with respect to the proposed definition of ''frame or receiver'' to include partially completed frames or receivers, is arbitrary because the agency failed to address why it is deviating from its legal reasoning that it had made in recent past cases before Federal courts and on which the public relied. For example, commenters highlighted ATF's arguments presented in *City of Syracuse* v. *ATF,* 1:20–cv–06885, 2021 WL 23326 (S.D.N.Y. Jan. 2, 2021), and *California* v. *ATF,* 3:20–cv–06761 (N.D. Cal.). In ATF's Motion to Dismiss in *California,* the agency wrote: ''The longstanding position of ATF is that, where a block of metal (or other material) that may someday be manufactured into a receiver bears no markings that delineate where the fire-control cavity is to be formed and has not yet been even partially formed, that item is not yet a receiver and may not 'readily be converted to expel a projectile.' '' Fed. Defs.' Mot. Dismiss, at 2, ECF No. 29 (Nov. 30, 2020). One commenter pointed out that, in that same Motion to Dismiss, ATF stated that its refusal to classify unfinished lower receivers as firearms is based on concurring expertise from DOJ. *Id.* at 18–19 (citing Shawn J. Nelson, *Unfinished Lower Receivers,* 63 U.S. Attorney's Bulletin No. 6 at 44–49 (Nov. 2015)). Similarly, commenters stated that ATF was clear in *City of Syracuse* that ''an unmachined frame or receiver is not 'designed to' expel a projectile because its purpose is not to expel a projectile. Rather its purpose is to be incorporated into something else that is designed to expel a projectile.'' Mem. Supp. Fed. Defs.' Mot. Summ. J., at 21, ECF No. 98 (Jan. 29, 2021). Another commenter cited *Police Automatic Weapons Services, Inc.* v. *Benson,* 837 F. Supp. 1070 (D. Or. 1993), in which, before Congress ended the manufacture of machineguns for sale to ordinary persons, ATF had apparently refused to register incomplete machinegun

[112] *See* ATF Rul. 2009–1. While this ruling explains that gunsmiths who engage in the business of camouflaging or engraving firearms must be licensed as dealers, that ruling is superseded by this rule to the extent that those processes are performed on firearms ''for purposes of sale or distribution,'' requiring a license as a manufacturer. *See* 18 U.S.C. 921(a)(10), (a)(21)(A), 923(a). To address concerns and reduce the burden on licensed gunsmiths required to be re-licensed as manufacturers, this final rule expressly authorizes licensed manufacturers to adopt the existing markings on firearms unless they have been sold or distributed to a person other than a licensee. Additionally, the final rule clarifies that licensed manufacturers and importers, who are permitted to act as licensed dealers without obtaining a separate dealer's license, can conduct same-day adjustments or repairs on firearms without recording an acquisition provided the firearm is returned to the person from whom it was received. Further, this rule allows licensees who do not have engraving equipment to take a PMF to and directly supervise on-the-spot engraving of a serial number on the firearm by another licensee or even an unlicensed engraver so long as the dealer does not relinquish supervisory control over the firearm.

receivers because they were not complete enough to be considered a receiver. Similarly, one manufacturer stated that the rule's more expansive regulation governing frames or receivers would run counter to the legal reasoning ATF relied on in three prior classifications to the company dated February 2015, November 2015, and January 2017 regarding certain types of receiver blanks.

Department Response

The Department disagrees that this rulemaking violates the APA or is an arbitrary or capricious reaction to the proliferation of ''ghost guns.'' This rule cites ATF statistics and media reports demonstrating the steady increase in the number of PMFs recovered from crime scenes (including homicides) throughout the country, and the small number of crime gun traces to an individual purchaser that were successful in relation to numerous attempted traces of PMFs (generally by tracing a serial number engraved on a handgun slide, barrel, or other firearm part not currently defined as a frame or receiver, but recorded by licensees in the absence of other markings). The NPRM and this rule cite numerous criminal cases brought by the Department against unlicensed persons who were engaged in the business of manufacturing and selling PMFs without a license, and prohibited persons found in possession of such weapons. This rule cites reports and studies showing that the problem of untraceable firearms being acquired and used by violent criminals and terrorists is international in scope. This rule details how unmarked firearms undermine the GCA's comprehensive regulatory scheme that requires licensing, marking, recordkeeping, and background checks for all firearms acquired and transferred by or through firearms licensees. This rule further explains how allowing persons to be licensed as dealer-gunsmiths will make professional marking services more available to unlicensed individuals, and make it possible for other licensees to receive and transfer PMFs should they choose to accept them into inventory in the course of their licensed activities. The Department carefully considered all commenters' concerns in finalizing this rule in accordance with the APA.

The Department does not agree with commenters who said that the number of PMFs involved in crime should be compared with the number of all firearms involved in crime. At the outset, there is no threshold for establishing when law enforcement agencies may take steps to reduce violent crime. The subset of traces for PMFs is obviously fewer than those of commercially manufactured crime guns, which bear serial numbers and other identifying markings and make up a much greater volume of marked weapons in circulation, and firearms with serial numbers are much more likely to be traced successfully by law enforcement than PMFs without serial numbers. Regardless, with better and cheaper technologies, unmarked firearms are becoming more easily and repeatedly made by individuals using personally owned or leased equipment, including 3D printers. It is clear from this data that PMFs are increasingly being used in crime throughout the United States and internationally with no reason to believe the trend will not continue. Statistics concerning crime gun tracing of commercially manufactured firearms do not lessen the necessity of this rule to improve public safety in the context of unmarked PMFs.

The Department disagrees with commenters who said that ATF is changing its position that a solid block of metal (or other material) that may someday be manufactured into a receiver that bears no markings that delineate where the fire-control cavity is to be formed, and has not yet been even partially formed, is not a ''receiver.'' Machining, indexing, or lack thereof, to the fire-control cavity remain an important factor in the readily completed, assembled, restored or otherwise converted analysis. To buttress this point, the final rule expressly excludes from the definitions of ''frame'' and ''receiver,'' ''a forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon (*e.g.,* unformed block of metal, liquid polymer, or other raw material).'' In other words, an item in a primordial state, such as a solid block of metal, liquid polymer, raw material, or other item that is not clearly identifiable as a component part of a weapon, is not a ''frame'' or ''receiver'' under this rule. This rule as proposed and finalized clarifies the distinction between a primordial object and a partially complete frame or receiver billet or blank that may be considered a ''frame'' or ''receiver'' under certain circumstances.

However, prior to this rule, ATF did not examine templates, jigs, molds, instructions, equipment, or marketing materials in determining whether partially complete frames or receivers were ''firearms'' under the GCA. For this reason, ATF issued some classifications concluding that certain partially complete frames or receivers were not ''frames or receivers'' as now defined in this rule. This change to allow consideration of templates, jigs, instructions, *etc.* in classification determinations does not run afoul of the APA. *See F.C.C.* v. *Fox,* 556 U.S. 502, 517 (2009) (Federal Communications Commission did not act arbitrarily when it changed its policy regarding fleeting expletives). The Supreme Court ''fully recognize[s] that regulatory agencies do not establish rules of conduct to last forever and that an agency must be given ample latitude to adapt [its] rules and policies to the demands of changing circumstances.'' *Motor Vehicle Manufacturer's Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 41 (1983) (citation and internal quotation marks omitted). The aggregation of a template or jig with a partially complete frame or receiver, such as those included in firearm parts kits, can serve the same purpose as indexing, making an item that is clearly identifiable as a partially complete frame or receiver into a functional one efficiently, quickly, and easily (*i.e.,* ''readily''). Because indexing allows partially complete frames or receivers to be completed efficiently, quickly, and easily, such articles will now be considered frames or receivers under this rule. As stated in the NPRM and this final rule, changing circumstances—*i.e.,* more advanced and accessible technology, the subsequent proliferation of ''80% receivers,'' and the resulting threat to public safety from unserialized firearms—necessitate this change.

With regard to the comment on gunsmiths, the rule is necessary to explain who is required to be licensed as a gunsmith, as distinguished from a manufacturer. In addition to comments concerned with the application of the proposed definition, ATF has received numerous inquiries over the years asking whether persons are required to be licensed as dealer-gunsmiths (Type 01) or manufacturers (Type 07). *See, e.g.,* ATF Ruls. 2009–1, 2009–2, 2010–10, and 2015–1. The current definition of ''engaged in the business'' in 18 U.S.C. 921(a)(21)(D) and ''gunsmith'' in 27 CFR 478.11 describe a gunsmith as a ''person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit'' without explaining the range of commercial activities gunsmiths perform, or when those activities can be performed on firearms for sale or distribution without a manufacturer's license. This rule,

therefore, necessarily clarifies the meaning of that term.

h. Violates the Prohibitions Against Creation of a Gun Registry

Comments Received

Numerous commenters objected to the proposed serial marking requirements, claiming it is a ploy by the Government to subject law-abiding gun owners who enjoy and have the right to build their own firearms to a rigorous registration requirement. They claimed that the requirement that PMFs be serialized only leads to an illegal gun registry, which ATF is forbidden from creating under Federal law. Commenters similarly opined that the extended recordkeeping requirement is a clear sign that ATF intends to have a registry of all firearms owners going far beyond those who are legally required to register firearms under the NFA.

Department Response

The Department disagrees that this rule creates a registry of PMFs, for several reasons. First, neither the GCA nor this implementing rule requires unlicensed individuals to mark (non-NFA) firearms they make for their personal use, or when they occasionally acquire them for, or sell or transfer them from, a personal collection to unlicensed in-State residents consistent with Federal, State, and local law. There are also no recordkeeping requirements imposed by the GCA or this rule upon unlicensed persons who make their own firearms, but only upon licensees who choose to take PMFs into inventory. And, under this final rule, when FFLs do choose to accept PMFs into inventory, and no manufacturer name has been identified on a PMF (if privately made in the United States), the words ''privately made firearm'' (or the abbreviation ''PMF'') are required to be recorded as the name of the manufacturer, not the name of the actual private maker.

Second, records of production, acquisition, and disposition of all firearms are required by the GCA, 18 U.S.C. 923(g)(1)(A) and (g)(2), to be completed and maintained by FFLs at their licensed business premises for such period, and in such form, as the Attorney General may prescribe by regulations. In this rule, ATF is exercising that authority to change the manner and duration in which those records are maintained. At present, licensees are required to maintain their acquisition and disposition records for at least 20 years. This rule merely extends the 20-year retention period so that those records are not destroyed, and thus can be used for tracing purposes.

Although ATF has the authority to inspect an FFL's records under certain conditions, *see* 18 U.S.C. 923(g)(1)(B)–(C), the records belong to and are maintained by the FFLs, not the government. Only after an FFL discontinues business does the GCA, 18 U.S.C. 923(g)(4), require FFLs to provide their records to ATF so that tracing of crime guns can continue.[113] In fact, the provision cited by some commenters, 18 U.S.C. 926(a), expressly provides that ''[n]othing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation.'' Moreover, Federal law has long prohibited ATF from consolidating or centralizing licensee records. Since 1979, congressional appropriations have prohibited ATF from using any funds or salaries for the consolidation or centralization of records of acquisition and disposition of firearms maintained by FFLs. *See* Treasury, Postal Service, and General Government Appropriations Act, 1980, Public Law 96–74, 93 Stat. 559, 560 (1979). This annual restriction became permanent in 2011. *See* Public Law 112–55, 125 Stat. 632 (2011). Thus, ATF is already restricted by law from creating any such registry, and this rule does not create one.[114]

[113] The out-of-business firearms transaction records are indexed by abbreviated FFL number so that they may be accessed when needed to complete a firearm trace request involving a licensee that is no longer in business. Out-of-business firearms transaction records are not searchable by an individual's name or other personal identifiers. In 2006, ATF transitioned from using microfilm images of records to scanning records into a digital storage system with images that are not searchable through character recognition, consistent with ATF's design and use of its prior Microfilm Retrieval System. A 2016 GAO Audit (GAO–16–552) concluded that ATF's digital system complies with the restrictions prohibiting consolidation or centralization of FFL records. *See also Statutory Federal Gun Registry Prohibitions and ATF Record Retention Requirements,* Congressional Research Service (March 4, 2022), *https://crsreports.congress.gov/product/pdf/IF/IF12057* (last visited Apr. 3, 2022).

[114] *See* 124 Cong. Rec. 16637 (June 7, 1978) (statement of Rep. Drinan) (''The most frequent criticism of the March 21 regulations is their alleged establishment of a 'national gun registration' system. Is it possible to establish such a system under a set of regulations which prohibit the submission, collection, or maintenance on file of the identifies of owners and purchasers of firearms? Clearly, the answer is no. These regulations are not directed at gun purchasers; they are designed instead to aid law enforcement officers by requiring that firearms manufacturers and dealers keep track of firearms transactions. Put more simply, the regulations will trace guns, not gun owners. Individual purchasers of firearms will not have to register their weapons, and the Bureau will not establish a centralized registry of firearms owners.'').

i. Violates 18 U.S.C. 242 and 1918

Comments Received

Out of concern regarding their rights under the Second Amendment to the U.S. Constitution, several commenters claimed that by working on this rule, ATF officials are violating 18 U.S.C. 242, which makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. Commenters also claim that ATF officials and employees are likewise violating their oath of office to support and defend the U.S. Constitution (particularly the Second Amendment), which the commenters state is punishable under 18 U.S.C. 1918.

Department Response

The Department disagrees that any official involved in promulgating or implementing this rule violates 18 U.S.C. 242 or 1918, or any other Federal law. As stated previously, this rule does not impact the Second Amendment rights of law-abiding citizens to keep and bear firearms for lawful personal use. The regulations proposed and finalized herein do not raise Second Amendment concerns because they are ''presumptively lawful regulatory measures'' that ''impos[e] conditions and qualifications on the commercial sale of arms.'' *Heller,* 554 U.S. at 626–27 & n.26.

3. Concerns With Proposed Definitions

a. General Concerns With Proposed Definitions

Comments Received

Numerous commenters stated that no changes to the regulations are needed because the current definitions are adequate. They also believe that ATF's private letter rulings are adequate communications to provide information to the industry and firearms owners. Commenters opposed to the proposed definitions and new terms in the NPRM stated that the new definitions, which they assert are vague, use terms and phrases that are even more unclear. For instance, commenters argued that although ''partially complete receiver'' is defined, the definition has even more vague, problematic terms such as ''clearly identifiable,'' ''unfinished component part of a weapon,'' ''critical stage of manufacture,'' ''sufficiently complete to function,'' and ''primordial state.'' Similar to the due process and APA concerns discussed earlier, one major objection of commenters to the proposed definitions was that the definitions are too broad to be workable.

A majority of these comments focused on the supplemental definitions of ''split or modular frame or receiver'' and ''partially complete, disassembled, or inoperable frame or receiver.''

Several commenters stated that the very problem ATF is trying to solve is made worse by the proposed regulations, as no reasonable person would be able to determine which component or components of a given firearm constitute a frame or receiver. As summed up by some commenters: ''The proposed definition creates a reality where a reasonable person would be forced to assume that every component of the firearm which meets the proposed definition of firearm frame or receiver is such, *unless* they are aware of a determination to the contrary by ATF. Therefore, consumers must constantly be in doubt as to whether a firearm in their possession has been properly marked in accordance with the law, or if they are in possession of an illegal item.'' Moreover, as discussed in Section IV.B.13.b of this preamble, numerous commenters opined that the proposed definition of ''frame or receiver'' and its supplemental definitions, which would trigger new marking or recordkeeping requirements, would be cost prohibitive to the industry and to firearms owners.

Department Response

The Department disagrees with commenters who stated that the current definitions are adequate. The NPRM and this final rule explain in detail how the current definitions of ''firearm frame or receiver'' and ''frame or receiver'' in 27 CFR 478.11 and 479.11 do not adequately describe the major component of split or modular weapons or muffler or silencer devices required to be identified and recorded by licensees as a ''firearm.'' The current definition describes a housing for three fire control components: Hammer, bolt or breechblock, and firing mechanism. But the vast majority of firearms in common use today do not have a single housing for all of those components, and numerous firearms today are not hammer-fired. They often have split frame or receiver designs, and many are striker-fired. As stated previously, three courts have already applied ATF's definition of ''frame or receiver'' in a way that would leave most firearms currently in circulation in the United States without an identifiable frame or receiver. *See United States* v. *Rowold,* 429 F. Supp. 3d 469, 475–76 (N.D. Ohio 2019) (''The language of the regulatory definition in § 478.11 lends itself to only one interpretation: Namely, that under the GCA, the receiver of a firearm must be a single unit that holds three, not two components: (1) The hammer, (2) the bolt or breechblock, and (3) the firing mechanism.''); *United States* v. *Roh,* SACR 14–167–JVS, Minute Order p. 6 (C.D. Cal. July 27, 2020); *United States* v. *Jimenez,* 191 F. Supp. 3d 1038, 1041 (N.D. Cal. 2016).

The proposed new terms and definitions are also needed to explain when weapon parts kits, frame or receiver parts kits, and multi-piece frames or receivers are ''firearms'' and thus subject to regulation, and how licensees can accept unmarked PMFs into their inventories. The rule points out that silencer manufacturers are currently uncertain when and how each small silencer part must be marked given that each part is defined as a ''silencer'' under the law. Clarifying these issues in individual private letter rulings is not adequate to provide sufficient notice and guidance to the licensed community and public at large as to how firearms are defined and regulated. In addition, letter rulings are only applicable for the precise sample submitted to ATF, and those classifications may then be misapplied (as some have done) to other items that may appear similar, but have legally important differences. For these reasons, the Department has addressed these issues through this rulemaking to promulgate new definitions that apply to all existing firearm designs as well as to accommodate future changes in firearms technology and terminology.

Nonetheless, the Department agrees with commenters that the supplement to the proposed definition of ''frame or receiver'' entitled ''split or modular frame or receiver'' could have been costly to licensees to implement, and that the supplement ''partially complete, disassembled, or inoperable frame or receiver'' should be revised to provide more clarity on how it applies to the definition of ''frame or receiver.'' In response to comments, in the final rule the Department has removed the supplement entitled ''split or modular frame or receiver,'' made additions to explain how multi-piece frames or receivers must be identified, and made clarifying changes to the supplement entitled ''partially complete, disassembled, or inoperable frame or receiver.''

Finally, although the Department disagrees that certain terms in this rule were vague, additional clarity has been provided to explain the meaning of those terms. Examples of articles that are ''clearly identifiable as an unfinished component part of a weapon'' are unformed blocks of metal, liquid polymers, and other raw materials. The dictionary definition of the term ''primordial'' was adopted and explained in footnote 49 of this preamble. The term ''sufficiently complete to function as a frame or receiver'' is no longer used in the regulatory text. That term was replaced with ''to function as a frame or receiver,'' which is described as ''to house or provide a structure for the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or firearm silencer, as the case may be.''

b. Definition of ''Firearm'' and Weapon Parts Kits

Comments Received

In addition to stating that ATF does not have authority to include weapon parts kits in the definition of ''firearm,'' several commenters also stated the definition was flawed and would serve no purpose. For instance, commenters said it is futile to regulate a weapon parts kit because a kit could be sold without a firing pin and thus would not be in a state where it is readily completable, enabling kit manufacturers to circumvent the definition by selling the kit separately from a cheap and readily available pin. Other commenters stated that if ATF's definitions mean that a ''weapon parts kit'' containing all unregulated parts, including a so-called ''80% receiver,'' is a ''firearm,'' this would raise the question of whether a kit with a forging in a primordial state is still a firearm because the pieces taken together could expel a projectile by an action of an explosive even if it is not readily convertible for that purpose. They stated that under ATF's interpretation it appears to be irrelevant whether the part that could become the frame or receiver ''may readily be converted'' as long as it is ''designed to expel a projectile by action of an explosive.'' Separately, since the preamble described ''weapons parts kits'' as having ''most or all of the components,'' commenters questioned whether a kit that does not contain all of the necessary components to expel a projectile by the action of an explosive is still ''designed'' or ''readily convertible'' to do so. Commenters thus sought more clarity on what components must be present in a kit to constitute a firearm.

Department Response

The Department disagrees with commenters that including weapon parts kits in the definition of ''firearm''

serves no purpose. The GCA is clear that when a weapon will, is designed to, or may readily be converted to expel a projectile by the action of an explosive, the weapon is a ''firearm'' under 18 U.S.C. 921(a)(3)(A). As explained above and in the NPRM, relevant case law makes clear that weapon parts kits that are designed to or may readily be assembled, completed, converted, or restored to expel a projectile by the action of an explosive qualify as a ''firearm'' under 18 U.S.C. 921(a)(3)(A). *See* Section III.A, *supra;* 86 FR 27726 & nn.39–40. The rule thus amends the existing definition to explicitly note this application of the term ''firearm'' to include such weapon parts kits. The rule also relies on existing case law to provide a definition of the term ''readily'' and to detail the factors relevant to making that determination when classifying firearms. *See* Section III.C, *supra;* Section IV.B.3.j, *infra.* As earlier explained, in recent years, manufacturers and retailers have been selling to individuals weapon parts kits with incomplete frames or receivers, commonly called ''80% receivers,'' without conducting background checks or maintaining records. Some of these parts kits contain all of the necessary components (finished or unfinished), along with jigs, templates, or other tools that allow an individual to complete a functional weapon with minimal effort, expertise, or equipment within a short period of time.

The Department disagrees with commenters who said that regulating weapon parts kits that were missing certain parts, such as a firing pin, would be futile. A weapon missing a firing pin is still a ''firearm'' under section 921(a)(3)(A) because it is designed to expel a projectile.[115] The fact that the same exact pistol without a firing pin has been disassembled into a parts kit does not alter the weapon's design. Moreover, one of the considerations in determining whether a weapon, including a weapon parts kit, may ''readily'' be converted to expel a projectile is whether additional parts are required, and how efficiently, quickly, and easily they can be obtained and assembled.

The Department agrees that certain essential parts could be removed from the kit, potentially making it difficult to determine whether such a kit or aggregation of parts may readily be converted to fire. However, it would be impossible for the Department to set forth in the regulations a precise minimum percentage of completion, maximum time period, maximum level of expertise, or type or number of parts necessary to convert each and every make, model, and configuration of weapon parts kits now in existence, or that may be produced in the future. The Department believes that it is constitutionally, legally, and practically sufficient, and consistent with relevant case law, to explain in this rule that the conversion must be fairly or reasonably efficient, quick, and easy (though not necessarily the most efficient, speediest, or easiest process) after examining the enumerated factors. Additionally, if persons remain uncertain as to whether a particular weapon parts kit is a ''firearm,'' they may submit a voluntary request to ATF for a classification in accordance with this rule.

While these determinations must necessarily be made on a case-by-case basis, the Department believes that the term ''readily'' and the factors in this rule provide sufficient notice that certain weapon and frame or receiver parts kits are regulated under the GCA. It is not the purpose of the rule to provide guidance so that persons may structure transactions to avoid the requirements of the law. Persons who engage in the business of importing, manufacturing, or dealing in weapon and frame or receiver parts kits must be licensed, mark the frames or receivers within such kits with serial numbers and other marks of identification, conduct background checks, and maintain transaction records for them so that they can traced by law enforcement if involved in crime.

c. Definition of ''Frame or Receiver''

Comments Received

Despite the grandfather provision ATF provided in the NPRM for existing frames or receivers, commenters said there is still confusion because one cannot examine the definition of ''frame or receiver'' to determine with any certainty whether a specific part of a firearm that was previously classified as a single frame or receiver is redefined as a split or modular frame or receiver and whether the entire scope of the definition is dependent upon the Director. Other commenters asserted that the definition of ''frame or receiver'' is vague because ''almost any housing or structure that is at all visible from the exterior [is] susceptible to a classification as a frame or receiver'' or would make ''every single part of a firearm a 'fire control component' '' such that firearms like the AR–15 may now include as many as ten frames or receivers.

Another commenter stated that the open-ended nature of fire control components makes it difficult, if not impossible, to determine what constitutes the frame or receiver. The commenter explained that some magazine catches could be a frame or receiver because those components are visible from the exterior of a completed firearm and provide a structure to hold or integrate a component necessary for the firearm to initiate or continue the firing sequence (*e.g.,* a magazine for use in a semiautomatic pistol equipped with a magazine disconnect). The commenters stated that ATF's illustrations purport to indicate that only one part is the frame or receiver when in fact the depictions show firearms with more than one component that meet the definition using only the listed fire control components. For example, the commenters stated: ''The hinged revolver example indicates that the 'frame' is the rear half of the firearm, even though the front half of the firearm obviously provides a 'housing or structure' to 'hold or integrate' the cylinder when the firearm is assembled.'' Commenters also pointed out that ATF did not explain what it means by ''other reliable evidence'' where it stated that: ''Any such part identified with a serial number shall be presumed, absent an official determination by the Director or other reliable evidence to the contrary, to be a frame or receiver.'' Given that firearms classifications are not released to the public, the commenters questioned how anyone is to know whether a given firearm has or has not received an official determination.

Department Response

The Department believes that the grandfather provision in the proposed rule would have eliminated most of the concerns raised by commenters concerning the proposed definition of ''frame or receiver'' and agrees that it relied heavily on ATF classifications of specific components as a ''frame or receiver.'' Nonetheless, as stated previously, the Department agrees with commenters that the definition of ''firearm'' in 18 U.S.C. 921(a)(3)(B) is best read to mean a single part of a weapon or device as being ''the'' frame

[115] *See, e.g., United States* v. *Rivera,* 415 F.3d 284, 285–87 (2d Cir. 2005) (pistol with a broken firing pin and flattened firing-pin channel); *United States.* v. *Brown,* 117 F.3d 353, 356 (7th Cir. 1997) (gun with no firing pin); *United States* v. *Hunter,* 101 F.3d 82, 85 (9th Cir. 1996) (pistol with broken firing pin); *United States* v. *Yannott,* 42 F.3d 999, 1005 (6th Cir. 1994) (shotgun with broken firing pin); *United States* v. *York,* 830 F.2d 885, 891 (8th Cir. 1987) (revolver with no firing pin and cylinder did not line up with barrel); *United States* v. *Randolph,* No. 02 CR. 850–01 (RWS), 2003 WL 1461610, at *2 (S.D.N.Y. Mar. 20, 2003) (gun consisting of ''disassembled parts with no ammunition, no magazine, and a broken firing pin'').

or receiver. Accordingly, the final rule adopts certain subsets of the proposed definition firearm ''frame or receiver'' while providing new distinct definitions for ''frame'' and ''receiver.'' Whereas the proposed rule would have considered any housing or structure for any fire control component a frame or receiver, the final rule focuses these definitions by describing a specific housing or structure for one specific type of fire control component. This will help licensees and the public determine on their own which portion of a firearm is the ''frame or receiver'' without an ATF classification.

In the final rule, the Department has established new definitions for the term ''frame'' to apply to handguns; ''receiver'' to apply to rifles, shotguns, and projectile weapons other than handguns; and ''frame'' or ''receiver'' to apply to firearm mufflers and silencers. More specifically, with respect to handguns, the Department is adopting in this final rule a definition of ''frame'' that incorporates language similar to that proposed by commenter Sig Sauer, Inc., described below. The term ''frame'' will be defined as: ''the part of a handgun, or variants thereof, that provides housing or a structure for the primary energized component designed to hold back the hammer, striker, bolt, or similar component prior to initiation of the firing sequence (*i.e.,* sear or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.'' This definition is consistent with the common understanding of the term ''frame'' as the ''basic unit of a handgun'' that holds the ''operating parts'' of the weapon.[116] These operating parts necessarily include the sear or equivalent component that is energized prior to initiation of the firing sequence.

However, the Department does not adopt the same definition with respect to rifles, shotguns, and projectile weapons other than handguns which are commonly understood to incorporate a ''receiver.'' This term is generally understood to be the part ''in which the action of a firearm is fitted and to which the breech end of the barrel is attached.'' [117] Because the ''action'' of a firearm is commonly understood to mean ''the physical mechanism that manipulates cartridges and/or seals the breech,'' [118] the term ''receiver'' is defined in the final rule as: ''the part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (*i.e.,* bolt, breechblock, or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.''

For purposes of these definitions, the terms ''variant'' and ''variants thereof'' are defined as: ''a weapon utilizing a similar frame or receiver design irrespective of new or different model designations or configurations, characteristics, features, components, accessories, or attachments. For example, an AK-type firearm with a short stock and a pistol grip is a pistol variant of an AK-type rifle, an AR-type firearm with a short stock and a pistol grip is a pistol variant of an AR-type rifle, and a revolving cylinder shotgun is a shotgun variant of a revolver.'' The definition of frame or receiver with respect to a firearm muffler or silencer is described in Section IV.B.3.e of this preamble. The final rule does not adopt the proposed supplement entitled ''Split or Modular Frame or Receiver.''

Additionally, in response to comments, the Department has added a new ''grandfather'' supplement expressly defining the term ''frame or receiver'' to include prior ATF classifications of a specific component as the frame or receiver, and clarified how multi-piece frames or receivers with modular subparts are defined and must be marked. These amendments should greatly diminish commenters' concerns regarding any lack of specificity or confusion regarding the particular models listed in the proposed definitions. The final rule includes a wide variety of examples and pictures to illustrate the frame or receiver of popular models and variants thereof, as well as examples of particular models previously classified by ATF that are grandfathered, such as the lower receiver of AR–15 variant firearms which houses the trigger mechanism and hammer, rather than the breech blocking or sealing component (*i.e.,* the bolt).

d. Alternative Definitions of ''Frame or Receiver''

Comments Received

Commenters opposed to the proposed rule have either urged ATF to withdraw the rulemaking or come up with a more concise, less complex definition. While some commenters agreed that ATF's current definition of ''frame or receiver'' is outdated, ''antiquated,'' or ''confusing,'' several commenters from the industry said a new definition should be tailored to focus on new designs and should be done with meaningful input from stakeholders.

A few commenters stated that there were numerous other ways for ATF to amend its definition to adapt to technological advances while also being consistent with the wider public's longstanding interpretation of the term to mean a single component of a given firearm. Commenter Sig Sauer, Inc., for example, suggested the following possible alternative definitions: (1) ''Firearm frame or receiver'' means ''the component of the firearm which provides a housing for the component responsible for constraining the energized component of the firearm (*i.e.,* the sear or equivalent thereof)''; (2) ''Firearm frame or receiver'' means ''the component of the firearm which provides a housing for the component which the operator interacts with to initiate the firing sequence of the firearm (*i.e.,* the triggering mechanism, or the equivalent thereof)''; or (3) ''Firearm frame or receiver'' means ''the component of the firearm which incorporates or provides a housing for the component which interacts with the barrel to form the chamber of the firearm.''

One commenter stated that ATF's goal to update the definition of ''frame or receiver'' to accommodate split-framed firearms would be met simply by re-writing the existing definition to read: ''the part of a firearm that provides housing for the hammer, bolt or breechblock, firing mechanism, or at its forward portion receives the barrel.'' Another commenter similarly suggested that ATF use ''or'' rather than ''and'' as the conjoiner in the current definition of ''firearm frame or receiver,'' such that the list of the components housed by the frame or receiver would read ''the hammer, bolt or breechblock, *or* firing mechanism.'' Another commenter suggested that ATF adopt the definition of ''receiver'' that is in the Sporting Arms and Ammunition Manufacturers' Institute's (''SAAMI's'') Glossary of Industry Terms available on that organization's website.[119] Another commenter suggested a point system that would assign points (*e.g.,* the ''fire control group'' would be three points, the hammer would be one point, and

[116] *See* footnote 7, *supra.*

[117] *Id.*

[118] Prasanta Kumar Das, Lalit Pratim Das, & Dev Pratim Das, *Science and Engineering of Small Arms,* Ch. 5.4 (2022).

[119] SAAMI defines the term ''receiver'' as ''[t]he basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled. In revolvers, pistols, and break-open guns, it is called the Frame.'' *See* SAAMI, *Glossary of Industry Terms, available at https://saami.org/saami-glossary/?letter=R* (last visited Mar. 25, 2022).

the striker would be one point). Under this suggestion, the external part that has the most points would be the frame or receiver.

While some commenters suggested ATF should just accept the manufacturer-designated component identified as ''firearm'' for each model, another commenter, SAAMI, suggested that, with respect to the AR–15 Colt Sporter, ATF could simply amend the existing regulation to specify that the lower receiver is the ''frame or receiver'' of that firearm. Another commenter suggested that frame or receiver should be defined as: ''that portion of the weapon, that holds the fire control group, consisting of any of the following, trigger, sear, safety and hammer if the weapon is hammer fired.'' According to the commenter, this would consistently mean the lower receiver and encompass all weapons, *i.e.,* the lower on an AR–15, the lower on a Glock, the lower on a break open shotgun (not including barrel), the lower on a revolver, and the lower on a semiautomatic pistol would be the ''firearm'' regardless of the striker fire or hammer fire (because it holds the trigger or sear). This, according to the commenter, would also encompass the side plate on certain machineguns.

To address the cases in which ATF has not prevailed in litigation, one commenter suggested a more specific fix that would define frame or receiver as the ''mounting point, housing structure, or the significant part thereof for a firearm's barrel, barrels or barrel assembly since all guns have at least one barrel.'' Or, to address that striker-fired mechanisms are not fully captured under the current law, commenters said the definition could be easily amended to ''that part of a firearm which provides housing for the hammer *or striker,* bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.''

Department Response

The Department agrees with commenters who stated that ATF's current definition of ''frame or receiver'' is outdated and confusing, and that the proposed definition should be simplified. For this reason, ATF is providing a new regulatory definition of ''frame or receiver'' to encompass existing and new firearm designs. The GCA and NFA do not define the term ''frame or receiver,'' so only the regulatory definitions of that term in 27 CFR parts 478 and 479 are being redefined. For the reasons previously discussed, the Department agrees that a more concise, less complex definition that focuses on a single part of each weapon is preferable, and will adopt a definition of ''frame'' with respect to handguns and ''receiver'' with respect to rifles, shotguns, and projectiles weapons other than handguns.

The Department disagrees with commenters who suggested amending the current definitions of ''frame or receiver'' by replacing ''and'' with ''or'' as the conjoiner with respect to the listed components of the current definition. Under this alternative, any part of a firearm that houses either the hammer, or a bolt or breechblock, or a firing mechanism, or that receives the barrels would be considered frames or receivers. Thus, under this alternative, there could exist even more firearm parts that would constitute a ''frame or receiver'' than identified by the proposed rule. This alternative also does not identify a single ''receiver'' in numerous split receiver firearms. In an AR–15-type rifle, for example, the hammer, firing mechanism, and forward portion that receives the barrel are all in the lower receiver, but the bolt or breechblock is in the upper receiver. The same problem exists when applying SAAMI's definition from its Glossary of Industry Terms because the firing and breech mechanisms are not in the same ''receiver.'' While the lower receiver houses the firing mechanism and is attached to the stock, the upper receiver houses the breechblock and is attached to the barrel. Therefore, under SAAMI's published definition, in an AR–15-type firearm, for example, there would still be more than one part that would be defined as a ''frame or receiver'' on this weapon as well as on numerous split or modular models of firearms in common use today. This alternative definition also does not explain how it would apply to firearms that do not have a hammer, but are fired using a striker, which may be located in different housings depending on the type of firearm.

The Department also disagrees with the point system recommended by one commenter because it does not explain how the point values were reached, and why fire control components in other portions of the assembled weapon were not assigned any points. It would not address firearms that do not house all ''fire control group'' components within a single housing, or which have a remote trigger outside the weapon. In sum, this alternative would fall short of addressing all technologies or designs of firearms that are currently available, or may become available in the future. It also does not address potential changes in firearms terminology.

The Department agrees with SAAMI on expressing in the final rule that the lower receiver of the AR–15 Colt Sporter (and variants thereof) is the ''receiver'' of that weapon. The final rule also includes a diagram of the AR–15 receiver. The Department will also grandfather all prior ATF classifications specifying which single component of a weapon is its frame or receiver. However, the Department will not grandfather ATF determinations that a partially complete, disassembled, or nonfunctional frame or receiver, including a parts kit, was not, or did not include, a firearm ''frame or receiver'' as defined prior to this rule, including those where ATF determined that the item or kit had not yet reached a stage of manufacture to be one. In any event, simply specifying that the lower receiver of the AR–15 Colt Sporter is a ''receiver'' does not solve the problem of defining the term ''frame or receiver'' with respect to all of the firearms with a split or multi-piece frame or receiver, or those that are striker fired. The problem remains that a court could decide that the current definition of ''frame or receiver'' does not apply to those firearms. Thus, the existing definition is not adequate with respect to the vast majority of firearms currently in the United States.

The Department declines to accept the proposed alternative definition saying that a ''frame or receiver'' is the portion of a weapon ''that holds the fire control group, consisting of any of the following, trigger, sear, safety and hammer, if the weapon is hammer fired.'' First, some firearms may be initiated manually by hand or ''slam fired'' without a part that actually holds a trigger, sear, safety, and hammer, and all complete, assembled weapons must have a frame or receiver. Second, not all of these fire control components may be in the same portion of the weapon, and some fire control groups, or portions thereof, may be found outside the frame or receiver, or triggered remotely. Nonetheless, the final rule accepts this alternative insofar as the ''frame'' of a handgun will be defined as the part that provides housing for the primary energized component designed to hold back the hammer or striker, which is generally the ''sear.''

The Department also declines to accept the proposed alternative definition saying that the frame or receiver is the ''mounting point, housing structure, or the significant part thereof for a firearm's barrel, barrels or barrel assembly since all guns have at least one barrel.'' This suggested definition would be inconsistent with what ATF and the firearms industry have understood to be the frame or receiver of numerous semiautomatic handguns, such as Glock

and Sig Sauer pistols and variants thereof, which is the lower portion of the weapon housing the sear, trigger mechanism, and other fire control parts. In such handguns, the barrel is housed in the upper slide. This suggested definition would, therefore, create confusion for many firearm manufacturers.

The new definitions in this rule are intended to describe the specific part of weapons that has traditionally been considered the frame or receiver for almost all firearms, but are general enough to accommodate future designs and changes in parts terminology. The few exceptions, such as the AR–15 rifle and Ruger Mark IV pistol, are grandfathered into the new definitions of those terms and may continue to be marked in the same manner as they have been prior to the effective date of this rule.

The Department acknowledges comments that stated that the current definition does not include a housing for ''striker'' fired weapons. The new definitions, which focus on the housing or structure for a single fire control component (*i.e.,* sear or equivalent for handguns, and bolt, breechblock, or equivalent for all other projectile weapons), are broad enough to cover both striker and hammer-fired weapons.

e. Definition of ''Firearm Muffler or Silencer Frame or Receiver''

Comments Received

Some commenters opposed the proposed definition of ''complete muffler or silencer device,'' stating that the new definition would subject persons who possess a complete but disassembled silencer to the civil and criminal penalties associated with possession of a complete silencer. They also objected to frames or receivers of silencer devices, which may not be in an operational state, becoming subject to the new ''readily'' factors test used to establish the scope of weapon parts kits and firearm frame or receiver regulation. One manufacturer also pointed out that the definition of complete silencer device does not appear to include a silencer that uses a firearm-mounted flash-hider or other attachment devices for use if the mounting device is not included with or attached to the silencer.

Separately, while some commenters noted that the proposed definition of ''firearm muffler or silencer frame or receiver'' is an improvement on current law, there remains confusion regarding whether ATF intends for only a singular part to be the frame or receiver for firearm silencers. They stated that ATF should clarify in the final rule that firearm silencers only need to be marked on a single piece that is the frame or receiver. Another manufacturer raised a similar concern that under the proposed definition, a non-welded suppressor's end cap appears to be a frame or receiver requiring serialization. The manufacturer gave an example of Ruger Silent-SR and Silent SR ISB silencers that use a traditional baffle stack of non-welded individual baffles housed in a serialized tube. When installed, the end cap secures the baffles in place within the tube. The end cap, in this instance, seems to be a frame or receiver because it ''provides housing or a structure . . . designed to hold or integrate one or more essential internal components of the device.'' They stated that this conclusion, if accurate, would mean that a majority of suppressors utilizing a non-welded design have more than one frame or receiver, contrary to ATF's position.

The same manufacturer also raised concerns about ATF's attempt to memorialize the longstanding policy regarding silencer parts transferred between qualified individuals. The proposed rule allowed such transfers on the condition that ''upon receipt, [the parts are] actively used to manufacture a complete muffler or silencer device.'' The manufacturer argued that this section does not seem to allow a qualified manufacturer to send unmarked suppressor components to another qualified manufacturer for further manufacturing activities (*e.g.,* machining, coating, *etc.*) if the parts are not going to be assembled into a complete muffler or silencer device by the subcontractor manufacturer. Because ''actively'' is not defined, the commenting manufacturer stated it was unclear if it could transfer a large quantity of suppressor parts to a subcontractor to be consumed as needed by the manufacturer to make complete suppressors over an extended period.

Department Response

As stated previously, the Department agrees with commenters that the term ''frame or receiver'' is best read to mean a singular frame or receiver that must be identified with a single unique serial number. This would include the frame or receiver of a complete firearm muffler or silencer device. The Department also agrees with the comment that an end cap of an outer tube or modular piece could have been considered a structural component within the meaning of a frame or receiver as proposed. End caps are often damaged or destroyed upon expulsion of projectiles, leaving the muffler or silencer without any traceable markings of identification. For this reason, the Department is amending the definition of those terms in the final rule as follows: ''in the case of a firearm muffler or firearm silencer, the part of the firearm, such as an outer tube or modular piece, that provides housing or a structure for the primary internal component designed to reduce the sound of a projectile (*i.e.,* baffles, baffling material, expansion chamber, or equivalent). In the case of a modular firearm muffler or firearm silencer device with more than one such part, the terms shall mean the principal housing attached to the weapon that expels a projectile, even if an adapter or other attachments are required to connect the part to the weapon. The terms shall not include a removable end cap of an outer tube or modular piece.''

The Department also agrees with the commenter who stated that the proposed provision concerning transfers of firearm mufflers or silencers between qualified licensees could be read to exclude further manufacturing activities, such as further machining or applying protective coatings. For this reason, the Department has removed the term ''actively,'' and, instead, explained that mufflers or silencers must be marked by close of the next business day after the entire manufacturing process has been completed. The Department has also made minor amendments to the marking allowances to make clear that mufflers or silencers may be transferred between qualified manufacturers for further manufacture (*i.e.,* machining, coating, *etc.*) without immediately identifying and registering them. Once the new device with such part is completed, the manufacturer of the device must identify and register it in the manner and within the period specified in this part for a complete muffler or silencer device.

f. Definition of ''Split or Modular Frame or Receiver''

Comments Received

With respect to ATF classifying the frame or receiver of a split or modular frame or receiver, numerous commenters objected to the definition not only on the grounds that it was too broad and confusing, but that to obtain certainty, it was largely dependent on ATF making classifications. They critiqued this process as lacking transparency, objectivity, and efficiency, as well as placing too much power in the hands of ATF. Numerous commenters said they introduce new models multiple times per year, and assuming a new determination is needed for each new model or

configuration, they have serious concerns that classification process would bury them in red tape. They stated the lead time, which is currently 6–12 months or more, would be much longer if hundreds of manufacturers were submitting to determine which component qualifies as the receiver, and this would be costly and disruptive to their companies. Due to the current delays in obtaining classifications, one commenter suggested the proposal could discourage classification requests rather than encourage them.

Several industry members stated that the firearm specific definitions under ''split or modular frame or receiver'' are confusing. It is not clear if the definitions apply only to firearms produced by those manufacturers listed or if it applies to all firearms that follow the same basic design. The confusion, they stated, is evident in the first of these definitions for ''Colt 1911-type, Beretta/Browning/FN Herstal/Heckler & Koch/Ruger/Sig Sauer/Smith & Wesson/Taurus hammer fired semiautomatic pistols.'' They questioned if the definition applies only to hammer-fired semiautomatic pistols manufactured by these discrete manufacturers or applies to all firearms that integrate an operating system that matches ATF's provided definition for these firearms. Similarly, they stated ATF's use of ''-type'' was unclear and asked, for instance, if ''Sig Sauer P320-type semiautomatic pistols'' is meant to include only P320s or exact replicas thereof, or if it is meant to convey a broader meaning of any firearm that has the same basic design, even if it uses different materials or has different gross dimensions (such as the Sig P365).

Additionally, commenters stated the nonexclusive lists used in definitions for frame or receiver indicated that there are other firearms designs and configurations not listed that fall into the category of ''-type'' but that are unknown to the public. Commenters also questioned what ATF meant by ''comparable'' when the NPRM explained that split or modular firearm designs that are not comparable to an existing classification would not be grandfathered in under the rule, thus making it possible that more than one part of the firearm would be the ''frame or receiver'' under the proposed definition.

Numerous commenters noted that several models of firearms were missing from the list of examples under the supplemental definition of frame or receiver entitled ''split or modular frame or receiver'' and that without clearer, more articulate lists, it appears that several models would be subject to more marking requirements. One commenter, an FFL/SOT, expressed that the examples provided in the definitions do not include the most widespread and popular 22LR pistols such as the Ruger Mark I/II/III/IV, Browning Buckmark, S&W Model 41, and similar designs. They stated that millions of these have been sold over the past 70 years with the serialized firearm component varying between models from the assembly containing the barrel to the assembly containing the trigger mechanism. Without addressing these models, the comment said it is not clear where serialization should occur.

Similarly, another commenter provided examples of three models—the 512 Remington ''Sportmaster'' .22 rimfire bolt action tubular repeater, the 9422 Winchester .22 rimfire lever action repeater, and the 1911 and 1911A series Colt—and listed several parts of each firearm that the commenter believes would be subject to the marking requirements under the proposed definition. The FN PS90 firearm was another model raised as to which a commenter did not understand how the new definition would apply. The commenter stated that the upper of the FN PS90 is the serialized component and that the stock assembly (made entirely out of plastic) is a stock. Under the NPRM's definition, the commenter stated that the stock would need to be serialized because it is made of two externally visible parts bolted together. Therefore, the commenter questioned whether each half of the stock would require its own serial number or if the parts would need to have injection molding done by a Type 07 licensee. Another commenter opined that the example for AK-type firearms is not consistent with many existing AK-type firearms already lawfully possessed. The commenter stated that while many of these firearms are marked on the identified ''single receiver,'' many of these types of firearms have been imported with the serial number only marked on the front trunnion. Thus, the commenter asked that this example be re-evaluated since it is unlikely ATF is intending to identify an unmarked part of thousands of firearms. Other commenters similarly said that ATF made an error when it listed the frame or receiver for a Beretta AR–70 type as the lower receiver because under existing precedent, the upper receiver of the AR–70 has been treated as the frame or receiver.

Finding the nonexclusive lists of frame or receiver examples to be inadequate and likely to lead to confusion or resulting in thousands of unnamed firearm types that will, by default, have multiple frames or receivers, other commenters said ATF should make all known or existing classifications public or listed in the final rule. It is, they argued, the only way to ensure fairness.

Department Response

The Department agrees with numerous commenters that the supplement to the definition entitled ''split or modular frame or receiver'' would have been difficult for persons to apply under the proposed definition of ''frame or receiver'' that meant a housing for any fire control component. Additionally, the Department acknowledges commenters' concerns that many models of firearms were not included, and that the proposed definition could lead persons to submit new classification requests rather than relying on the definition to identify the frame or receiver.

The Department, in response to these comments, is finalizing a definition of ''frame or receiver'' in a new § 478.12 that incorporates limited subsets of the proposed definition while providing distinct definitions for ''frame'' and ''receiver.'' The new definitions under ''frame or receiver'' focus on only one housing or structural component for a given type of weapon. Because the final rule focuses on a single component based on the recommendations of commenters, there is no longer a need for the supplement entitled ''split or modular frame or receiver,'' and it is not adopted in the final rule. The Department also acknowledges that the lower portion of the AR–70 was mistakenly identified as the receiver of that firearm in the NPRM. Under the final rule, the upper portion of the AR–70 remains the receiver of that firearm as described by the new definition of ''receiver.''

Furthermore, to ensure that industry members and others can rely on ATF's prior classifications, most prior ATF classifications, and variants thereof, have been grandfathered into the new definition of ''frame or receiver'' along with examples and diagrams of some of those weapons, such as the AR–15 rifle and Ruger Mark IV pistol. The only exceptions are classifications of partially complete, disassembled, or nonfunctional frames or receivers that ATF had determined did not fall within the definition of firearm ''frame or receiver'' prior to this rule. Any such classifications, including parts kits, would need to be resubmitted for evaluation. If persons remain unclear which specific portion of a weapon or device falls within the definitions of ''frame'' or ''receiver,'' then they may

voluntarily submit a request to ATF as provided in this rule.

g. Alternative for Defense Industry Under ''Split or Modular Frame or Receiver''

Comments Received

Another commenter who represents members of the defense manufacturing industry suggested including as an example (''box-type'') of a split frame or receiver for which a single part had been previously classified by the Director ''externally powered weapons.'' The commenter explained as follows: Some externally powered designs include a part called the ''front housing'' that directly attaches to the existing frame or receiver and houses the breech. The front housing positions the breech to align with the bolt, which in turn, allows the bolt assembly to properly lock and drop the firing pin when the barrel is installed. Under the proposed definition, the commenter observed, it appears that this ''front housing'' could include this and other parts of the weapon not previously understood to be the frame or receiver, in addition to the existing ''bathtub'' or box-type receiver. As an alternative, the commenter suggested adding language that would exempt ''externally powered weapons'' that require ''a separate electronic gun control unit to fire, and which [are] used solely in a government military platform, simulation, or training exercise, and where the weapon's design does not have a civilian surrogate,'' from either the definition of ''partially complete'' frames or receivers or ''readily.''

As a completely different alternative, the same commenter requested that ATF include a simple annual notification procedure where qualified defense importer and manufacturer licensees could prove that they meet ''opt out'' requirements of the proposed rule and proceed with their processes under the existing regulatory requirements. The commenter suggested an ''opt out'' provision because the increased compliance obligations of the proposed rule would further complicate an already challenging workflow and impede contractual deadlines the commenter's clients have with the U.S. Government.

Department Response

The Department declines to adopt the commenter's suggestion to add ATF's classification of ''externally powered weapons.'' As described above, the final rule grandfathers most prior ATF classifications and variants thereof, including ''box-type'' or externally powered weapons, into the new definition of ''frame or receiver'' along with examples and a diagram of those weapons. The Department also declines to adopt the suggestion allowing qualified defense importer and manufacturer licensees to opt out from the proposed rule and proceed with their processes under the existing regulatory requirements. The GCA, 18 U.S.C. 925(a), does not exempt the manufacture of firearms for the government from the licensing, marking, and other requirements imposed on manufacturers. It only exempts the transportation, shipment, receipt, possession, or importation of firearms sold or shipped to, or issued for the use of, the government. Otherwise, unmarked, untraceable firearms manufactured for the government could be lost or stolen without any ability to trace them if later involved in crime.

h. Definition of ''Partially Complete, Disassembled, or Inoperable Frame or Receiver''

Comments Received

Commenters opposed to inclusion of partially complete frames or receivers in the proposed definition of frame or receiver stated that the proposed rule would be difficult, if not impossible, to enforce. They opined that there is no purpose in trying to ''ban 80%'' receivers or regulate partially complete receivers because the rule is easily undercut by 3D-printing technology and the availability of online tutorials, which will only become more available and affordable for the public over time. One commenter, for example, stated that, even if all unfinished, or ''80%,'' receivers were taken away, firearms could still be made through other means, citing the FGC9 as an example. Because the commenter believes that technology undercuts the rule, the commenter argued that the new definitions and marking requirements serve no purpose and should not be adopted.

Commenters also had several questions about the terms used in the definition of partially complete frame or receiver such as what it means for an item to cross the critical line to where it ''reach[es] a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon.'' Other commenters asserted that the definition lacks objectivity and there are no objective metrics to guide the factors that are listed. With the proposed changes, the commenters questioned the meaning of ''functional state.'' Similarly, although ATF stated in the preamble that unformed blocks of metal or articles in a primordial state ''without more'' would not be considered a partially complete frame or receiver, commenters stated that it is still unclear when these items fall under the definition where, for example, there were instruction booklets, metal working tools, or tutorial videos, because the definition hinges on what ''without more'' means, which ATF did not explain.

Manufacturers also raised concerns because they purchase partially machined raw materials or receiver shells without drilled fire control holes from domestic and foreign sources that are not current licensees. The manufacturers were concerned that the proposed rule would subsequently require their suppliers to obtain an FFL license, apply the markings, and keep A&D records, which would be very costly and disruptive. Another commenter suggested that ''critical stage of manufacture'' should be amended to say: ''when the article becomes sufficiently complete to function as a frame or receiver.''

Department Response

The Department disagrees with commenters who stated that inclusion of partially complete frames or receivers in the proposed definition of frame or receiver would be difficult, if not impossible, to enforce. The proposed and final rule both make clear that a partially complete frame or receiver must have reached a stage of manufacture where it is clearly identifiable as a component part of weapon to be classified as a potential frame or receiver. Such articles have been regulated for importation and exportation since at least 1939.[120] With regard to 3D-printed PMFs, this rule explains that, as technology progresses, PMFs are likely to make their way to the licensed community because firearms licensees are likely to market them for sale, accept them into pawn, or repair them through gunsmithing services. Additionally, the GCA requires out-of-State firearm transfers to go through licensees, and some States require firearm sales or transfers to be conducted through licensees.[121]

However, the Department agrees with commenters that the supplement to the

[120] *See* footnote 78, *supra.*

[121] *See* 18 U.S.C. 922(a)(5); Cal. Penal Code 27545; Colo. Rev. Stat. 18–12–112(2)(a); Conn. Gen. Stat. 29–36*l*(f), 29–37a(e)(2); D.C. Code Ann. 7–2505.02(a); Del. Code. tit. 11 1448B(a); 430 ILCS 65/3(a–10); Md. Code, Public Safety 5–204.1(c)(1); Nev. Rev. Stat. 202.2547(1); N.J. Stat. Ann. 2C:58–3(b)(2); N.M.S.A. 30–7–7.1(A)(2); N.Y. Gen. Bus. Law 898(2); Or. Rev. Stat. 166.435(2); 18 Pa. C.S.A. 6111(c); Vt. Stat. Ann. tit. 13, 4019(b)(1); Va. Code An. 18.2–308.2:5(A); Rev. Code Wash. 9.41.113(3).

proposed definition of ''frame or receiver'' entitled ''partially complete, disassembled, or inoperable frame or receiver'' should be revised to provide more guidance on the application of the definition. In the final rule, the Department has: (1) Removed the definition of ''partially complete'' as it modified the term ''frame or receiver'' and, instead, has expressly excluded from the definition of ''frame or receiver'' forgings, castings, printings, extrusions, unmachined bodies, or similar articles that have not yet reached a stage of manufacture (*e.g.,* unformed blocks of metal, liquid polymers, or other raw materials) where they are clearly identifiable as an unfinished component part of a weapon; (2) made related clarifying amendments, such as changing the term ''inoperable'' to the more accurate term ''nonfunctional,'' [122] and expressly stating that the section includes frame or receiver parts kits that are designed to be—or may readily be—completed, assembled, restored, or otherwise converted to a functional state; (3) explained the meaning of the term ''functional state'' to be a frame or receiver that houses or provides a structure for the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or firearm silencer, as the case may be; and (4) included detailed examples of what would and would not be considered a ''frame or receiver'' that may readily be completed, assembled, restored, or otherwise ''converted'' to a functional state. Thus, as the proposed rule explained, articles that are not clearly identifiable as component parts of a weapon cannot be considered frames or receivers. *See* 86 FR at 27729. And even articles that are clearly identifiable as a partially complete, disassembled, or nonfunctional frame or receiver of a weapon are not frames or receivers under the new definitions unless they are designed to function as a frame or receiver, or may readily be completed, assembled, restored, or otherwise converted to do so.

The Department disagrees with the comment that the supplement should be amended to say that a frame or receiver means one that has reached a stage in manufacture ''when the article becomes sufficiently complete to function as a frame or receiver.'' The GCA does not explain when an article becomes sufficiently complete to be a frame or receiver. As stated previously, to determine when a frame or receiver is created, this rule is guided by the definition of ''firearm'' in section 921(a)(3)(A), the definition of ''machinegun'' in 26 U.S.C. 5845(b), and relevant case law interpreting when a weapon ''may readily be converted to expel a projectile by the action of an explosive'' and ''can readily be restored to shoot.'' [123] This rule adopts these statutory concepts and case law so that ATF's regulations more plainly indicate that a clearly identifiable component part of a weapon becomes a frame or receiver when it may readily be completed, assembled, restored, or otherwise ''converted'' to function as a frame or receiver, *i.e.,* to house or provide a structure for the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or firearm silencer, as the case may be.

i. Definition of ''Destroyed Frame or Receiver''

Comments Received

A few commenters opined on the proposed definition of ''destroyed frame or receiver,'' which would not be considered a frame or receiver under the definition. Some stated that the definition for ''destroyed frame or receiver'' contradicts the definition for ''partially complete, disassembled, or inoperable frame or receiver'' because, according to the commenters, they are both in the same state as not being operable to create a working firearm and therefore ATF cannot regulate them as frames or receivers while also excluding them from the definition. Another commenter disagreed with ATF's requirement that a cutting torch needs to be used to sever at least three critical areas of the frame or receiver to be an acceptable method of destruction. The commenter stated that, for polymer frames or receivers, simply cutting the frame or receiver in three critical areas should be enough because it could never be repaired by a reverse process and that a cutting torch is unnecessary to permanently destroy polymer frames.

Department Response

The Department disagrees that the definitional supplement concerning destroyed frames or receivers contradicts the supplement entitled ''partially complete, disassembled, or inoperable'' (now ''nonfunctional'') ''frame or receiver.'' Under that supplement, a partially complete, disassembled, or nonfunctional frame or receiver is considered a ''frame or receiver'' if it is designed to, or may readily be converted to, expel a projectile by the action of an explosive. That supplement does not address destruction, which is addressed in the supplement entitled ''destroyed frame or receiver.'' A destroyed frame or receiver is one that has been permanently altered such that it may not readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver. That supplement further explains how destruction may be accomplished—completely melting, crushing, or shredding the frame or receiver, or other method approved by the Director. The torch cut method in the proposed rule was cited only as one acceptable method, but it is not the only method.[124] To avoid confusion on this issue, the final rule replaces the stated methods with ''or other method approved by the Director.''

j. Definition of ''Readily''

Comments Received

Numerous commenters criticized the proposed definition of ''readily,'' which would be relied upon to determine, in part, if a partially completed frame or receiver falls under the definition of ''frame or receiver'' or if a weapon parts kit falls under the definition of ''firearm.'' The overwhelming concern raised was that the definition of ''readily'' is a nonexclusive list of numerous factors, none of which is controlling, and which includes subjective considerations that could leave it unclear to the industry and public when an item meets any particular definition. Commenters, for instance, explained that parts could be a firearm if an expert using specialized tools assembled it in ten minutes if ATF were to focus on the factors of time and ease; alternatively, those same parts assembled in that scenario might not be a firearm if ATF were to focus on the factors of expertise and equipment. Similarly, others argued that all the terms were impermissibly vague or

[122] ''Nonfunctional'' is more accurate because, although the weapons in which they are incorporated are ''operated'' by a shooter, frames or receivers are not operated by a person. Rather, frames or receivers are better described as ''functional'' or ''nonfunctional'' in that they may or may not be in a state of completion where they can house or hold the fire control components that allow the shooter to operate the weapon.

[123] *See* footnotes 43 and 44, *supra.*

[124] *See* ATF, *How to Properly Destroy Firearms* (Aug. 14, 2019), *available at https://www.atf.gov/firearms/how-properly-destroy-firearms;* ATF Rul. 2003–1 (destruction of Browning M1919 type receivers); ATF Rul. 2003–2 (FN FAL type receivers); ATF Rul. 2003–3 (Heckler & Koch G3 type receivers); ATF Rul. 2003–4 (Sten type receivers).

arbitrary. For example, these commenters stated that ''expertise'' is wholly subjective and that ATF did not identify what knowledge or skills are essential to making a firearm.

One trade group stated that several major manufacturers communicated that as many as seven or more stages of a pistol's receiver construction could be called into question under the proposed definition because it is not clear when a frame or receiver is ''readily completed.'' Each stage of the process, the group argued, could require serialization and recordkeeping. The group said that changing the standard of requiring serialization from only finished products to those that are ''readily completed'' is confusing to both manufacturers and their suppliers. Additionally, as mentioned above, manufacturers expressed concern that the products they receive from non-licensed third-party suppliers could fall under the definition of ''partially complete.''

Various commenters argued that expansive definitions of ''readily,'' when applied to a partially complete frame or receiver, could result in steel or aluminum billets, castings, forgings, or even simple glass reinforced nylon raw materials being considered firearms. Numerous commenters focused on the factor of ''time'' under the proposed definition of ''readily,'' arguing that it is not an adequate factor, without more specificity, by which to measure if a weapon parts kit or partially completed frame or receiver may be readily convertible or assembled into a firearm. Commenters pushed back against ATF's reliance on some of the court cases ATF cited as support for the factors to define the term ''readily.'' They stated several of the cases are from the 1970s and discuss a wide range of what constitutes readily convertible, ranging from 12 minutes, to 1 hour, to an 8-hour working day in a ''properly equipped'' machine shop. Thus, what one expert may accomplish easily in 20 minutes may require hours of hard work for a novice. One manufacturer, Polymer80, also critiqued ATF for not supplying a metric for time and for stating in a footnote that Polymer 80 assembly could be completed in under 30 minutes, leaving the company to wonder if 30 minutes is the standard. One commenter suggested that eight hours of work would be a reasonable threshold.

Some commenters believed that ATF's own rulings and public statements in cases such as *California* v. *ATF,* mentioned above, contradict the notion that it is easy to finish lower receivers with simple possession of hand tools in a way that would bring them under the definition of ''frame or receiver.'' Commenters argued that the process of converting an unfinished lower receiver into a finished lower receiver requires specialized equipment, precision tools, skill, and time. Users, according to the commenters, must purchase numerous parts and assemble them with care. Similarly, other commenters, under the assumption that an ''80% lower receiver'' would be included under the definition of partially complete frame or receiver, argued that this item ''cannot fire blank cartridges, nor can it be 'readily converted' to do so,'' because multiple holes have to be drilled and complex mechanical parts need to be attached. They stated that the AR–15 lower receiver is a ''frame or receiver'' once it becomes an integral component containing a fire control group and is attached via the takedown pins to the other components required to form a complete weapon in the AR–15 design pattern.

Others pointed out technological advances, such as CNC machines, that can convert metal ingots into a functional firearm, thus raising the question of whether a CNC machine sold alongside the ingots would be considered a firearm. Similarly, commenters questioned whether a 3D printer shipped with filament and files of 3D representations of firearms would constitute a firearm under the readily convertible test. Further, according to one commenter, in a ''properly equipped'' machine shop today, it would not be uncommon for the shop to acquire a three-axis CNC machine with a fourth axis trunnion for less than $10,000 (Tormach PCNC 440 with microARC 4). Accordingly, the commenter argued that the existing case law upon which ATF relies does not serve to narrow and clarify the definition of ''readily convertible.'' Commenters asserted that no one can predict what ''instructions, guides, templates, [and] jigs'' the ATF Director will rely on in any given case. Commenters argued that ATF needs to remedy the definition with exact definitions of time, ease, expertise, equipment, availability, expense, and scope.

Other commenters noted that the term ''readily'' is used throughout the GCA in several contexts, including interstate transportation of firearms (18 U.S.C. 926A) and for the importability of firearms generally recognized as particularly suitable or readily adaptable for sporting purposes (18 U.S.C. 925(d)(3)). Commenters also noted that there are countless other uses of the term ''readily'' throughout ATF regulations, such as in 27 CFR 478.92(a)(1)(i) (stating that ''[t]he serial number must be placed in a manner not susceptible of being readily obliterated''), or in 27 CFR 479.131 (requiring that certain records be ''readily accessible for inspection at all reasonable times by ATF officers''). The commenters asserted that ATF's proposed definition will impact all these other places where the term ''readily'' qualifies certain provisions and that ATF's proposed nonexclusive list of factors would not provide clarity in those contexts, either.

One commenter suggested that the term ''readily'' be removed from the proposed definition so it reads: ''The term 'frame or receiver' shall include, in the case of a frame or receiver that is partially complete, disassembled, or inoperable, a frame or receiver that has reached a stage in manufacture where it is clearly identifiable by mechanical properties, material composition, geometry or function as an unfinished component part of a weapon. For purposes of this definition, the term 'partially complete,' as it modifies 'frame or receiver' means a forging, casting, printing, extrusion, machined body, or similar article.''

Other commenters questioned whether ''solvent traps,'' which they asserted are legitimate devices and sometimes resemble silencers, would be considered readily convertible under the new regulations. Although some individuals file an ATF Form 1 under the NFA to make solvent traps silencers, the commenters stated that persons using solvent traps as actual solvent traps should be allowed to transfer them across State lines without violating the GCA or becoming subject to the NFA.

Department Response

The Department disagrees that the term ''readily'' and the related nonexclusive list of factors when classifying firearms should be removed from the rule. As stated previously, the term ''readily'' has been adopted to determine when a weapon is considered a ''firearm'' under 18 U.S.C. 921(a)(1)(A), and also when the critical stage of manufacture has occurred in which an unfinished component part of a weapon becomes a ''frame or receiver'' under 18 U.S.C. 921(a)(3)(B). To explain the meaning of that term, this rule first sets forth a common dictionary definition of that term and then provides more clarity on how the term ''readily'' is used to classify firearms by listing relevant factors that courts have

adopted when making that determination.[125]

The Department disagrees that these factors should incorporate minimum time limits, percentages of completion, or levels of expertise, or otherwise create thresholds to determine when weapon or frame or receiver parts are ''readily'' converted. Enumerating in this rule how each of the factors would apply to the manifold designs and configurations of firearms and aggregations of firearm parts now in existence, or to those that may be produced in the future, would be difficult, if not impossible. However, the Department agrees that more clarity as to how the term ''readily'' is applied would help address commenters' concerns. In the final rule, the Department: (1) Expressly excludes from the definition of ''frame or receiver'' unformed blocks of metal, liquid polymers, and other raw materials; (2) changes the term ''inoperable'' to the more accurate term ''nonfunctional''; (3) expressly includes frame or receiver parts kits; (4) explains the meaning of ''functional state''; and (5) provides detailed examples of when an unassembled or damaged frame or receiver, frame or receiver parts kit, or partially complete billet or blank, as the case may be, would be considered a ''frame'' or ''receiver'' because it may readily be completed, assembled, restored, or otherwise converted to a functional state. Although it would indeed be difficult, if not impossible, for ATF to provide examples of every possible state of completion or configuration of weapons or weapon parts, the proposed definition provides clarity on how the term ''readily'' is applied to the definition of ''firearm,'' and numerous courts have upheld the application of that term in related criminal and civil cases against constitutional vagueness challenges.[126]

The Department disagrees that application of the term ''readily'' in this rule will require manufacturers to serialize and record frames or receivers in each stage of the manufacturing process. First, the final rule expressly excludes from the definition of ''frame or receiver'' forgings, castings, printings, extrusions, unmachined bodies, or similar articles that have not yet reached a stage of manufacture where they are clearly identifiable as unfinished component parts of a weapon, such as unformed blocks of metal, liquid polymers, and other raw materials. Thus, it is not until articles have been fashioned into unfinished frames or receivers that they are subject to the ''readily converted'' standard. Manufacturers and importers should already know that these items have been regulated as ''defense articles'' for purposes of importation and exportation for many decades.[127] Second, as the examples in the final rule illustrate, only once a frame or receiver blank or billet is produced for sale or distribution must a determination be made whether the seller or distributor of the item or kit provides, or makes available to the purchaser or recipient of the item or kit, an associated template, jig, or tool that would allow the purchaser or recipient of the billet or blank to complete the frame or receiver fairly or reasonably efficiently, quickly, and easily. Companies that sell or distribute only unfinished frame or receiver billets or blanks, and not any associated jigs, templates, or similar tools to the same customer are *not* required to be licensed or to mark those articles with identifying information. However, companies that sell or distribute firearm parts kits, jigs, templates, or tools to the same customer with partially complete frames or receivers allowing them to be efficiently, quickly, and easily converted into functional weapons or functional frames or receivers must be licensed; must apply identifying markings to the partially complete frames or receivers; and must record them as firearms in their required records. Finally, under this rule, licensed manufacturers who receive non-firearm billets or blanks are not required to mark them until after the entire manufacturing process has ended for the complete weapon, or for the frame or receiver to be sold, shipped, or distributed separately, as the case may be—seven days in the case of GCA firearms and by close of the next business day in the case of NFA firearms.

The Department agrees with commenters who said that the term ''readily'' has other applications in the statute and regulations that have nothing to do with the enumerated factors. For this reason, the Department has made minor changes to this definition in the final rule to make clear that this term can apply to any process, action, or physical state, and that the listed factors relate only to firearm classifications, as follows: ''A term that describes a process, action, or physical state that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speediest, or easiest process, action, or state. With respect to the classification of firearms under this part, factors relevant in making this determination include the following:''.

With regard to certain items marketed as ''solvent traps,'' the definition of ''firearm silencer'' in 18 U.S.C. 921(a)(24) means ''any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.'' A so-called ''solvent trap'' that has been indexed for the purpose of allowing the end user to drill a hole for the passage of a projectile to diminish the report of a portable firearm is intended only for use in fabricating a silencer. It is, by definition, a ''firearm silencer'' without regard for the definition of the term ''readily'' or the application of the term ''may readily be converted.''

k. Definition of ''Complete Weapon''

Comments Received

Some commenters argued that ATF's definition of a ''complete weapon'' is illogical because it includes ''a firearm that contains all component parts necessary to function as designed whether or not it is assembled or operable.'' They objected to the inclusion of operability, stating that, if it is inoperable, it is not a weapon. They also objected to inclusion of an unassembled weapon, as they believed this inclusion would create tremendous enforcement uncertainty. Commenters asserted that law-abiding gun owners who legally own both AR rifles and pistols could be charged with a felony if they store their firearms unassembled. Other commenters stated that the definition of ''complete weapon'' only generates confusion because, in their view, a ''firearm'' would legally be a ''firearm'' whether or not it is a ''complete weapon'' under the NPRM.

Department Response

For the reasons previously discussed, the Department disagrees that inoperable or nonfunctional firearms are not ''weapons,'' and that the application of the definition of ''firearm'' to unassembled weapons creates enforcement uncertainty.[128] Firearms manufacturing is a continuum from raw material to a functional item, and the term ''complete weapon'' is needed to explain *when* the frame or receiver of a weapon in the process of being manufactured must be identified and recorded as required by the regulations.

[125] *See* footnote 43, *supra.*

[126] *See* footnote 79, *supra.*

[127] *See* footnote 78, *supra.*

[128] *See* Section IV.B.3.h, *supra.*

Specifically, under this rule, frames or receivers of non-NFA weapons that are in the process of being manufactured as part of complete weapons may be marked and recorded by a licensed manufacturer up to seven days after the entire manufacturing process for the complete weapon has ended. Complete NFA weapons, consistent with the recordkeeping requirement in 27 CFR 478.123(a) and Form 2 submission requirement in 27 CFR 479.103, must be marked by close of the next business day after manufacture. Such complete weapons may be sold in an unassembled configuration or may be inoperable due to poor workmanship or design. But the fact that a complete weapon is sold or distributed unassembled, or happens to be currently inoperable, does not remove the requirement for identifying markings to be placed on the frame or receiver.

The term ''complete weapon'' is also used in the rule to explain that frames or receivers and other parts defined as ''firearms'' that are not component parts of a complete weapon at the time they are sold, shipped, or disposed of must be marked with all required markings within the specified time limits from completion so they can be traced if lost or stolen. The term is also needed to explain what it means to ''conspicuously'' mark firearms with serial number and other marks of identification. Markings must be unobstructed by other markings when the complete weapon is assembled.

l. Definition of ''Privately Made Firearm''

Comments Received

One organization stated that the definition of PMF, which does not include firearms made prior to October 22, 1968 (unless remanufactured after that date), does not distinguish between a commercially made pre-1969 firearm and those made privately. The organization stated that sometimes one cannot tell if a firearm has had its serial number defaced or removed. As a result, according to the organization, dealers will decline to transfer or sell a firearm with no serial number without regard to whether it is a PMF. Further, an individual may or may not know, or can be wrong or mislead a dealer about, whether a particular weapon is a PMF or just an old firearm. Other commenters objected on grounds that thousands of gun owners who bought or made firearms before 1969 would become criminals because there is no way to tell if the firearms, which do not have serial numbers, were made before or after 1969.

Department Response

The Department agrees that the exclusion for pre-October 22, 1968, firearms from the definition of PMF does not distinguish between firearms that were commercially manufactured from those that were privately made because that definition refers to firearms produced by persons licensed under the GCA on or after that date. *See* 18 U.S.C. 921(a)(10) (defining ''licensed manufacturer'' as a person licensed under the provisions of chapter 44 of title 18). To make this clear, the final rule adds the term ''manufactured'' to that exception. However, the Department disagrees that the pre-October 22, 1968, exclusion from the definition of PMF raises concerns because it is not difficult for licensees to know if a firearm, whether or not it is a PMF, was manufactured or made prior to October 22, 1968. First, pre-October 22, 1968, firearms in circulation generally have some marks of identification. PMFs, by definition, are not marked with a serial number placed by a person licensed as a manufacturer under the GCA at the time the firearm was produced. Regulations implementing the Federal Firearms Act of 1938 required all firearms manufactured after July 1, 1958, to be identified with the name of the manufacturer or importer, a serial number, caliber, and model. *See* Internal Revenue Service, Department of the Treasury, 23 FR 343 (Jan. 18, 1958). The only exception from marking the serial number and model requirements was for shotguns and .22 caliber rifles not subject to the NFA. *Id.* at 346. Thus, the name of the manufacturer and caliber would still be marked on all commercially produced weapons, even though this subset of GCA firearms may not display a serial number or model (though some will). Second, there are few firearms in circulation manufactured prior to 1969 that were not commercially produced. As the rule explains, only in the past few years has technology advanced to allow individuals to quickly and easily make their own firearms for personal use from parts kits or 3D printers. Third, if a person is in doubt about whether a particular firearm without any markings was manufactured or made prior to October 22, 1968, there are many licensee and nonlicensee experts who can evaluate the firearm and provide an expert opinion, including as to whether the serial number on the firearm has been altered or obliterated. Additionally, persons may voluntarily seek a determination from ATF as to whether a particular firearm is subject to regulation using the procedure provided in this rule.

m. Definition of ''Importer's or Manufacturer's Serial Number''

Comments Received

A few commenters stated that the new definition of ''importer's or manufacturer's serial number,'' which requires more information than under the current regulatory scheme, is confusing. They stated the term ''identification number,'' which is part of the definition of ''importer's or manufacturer's serial number,'' is not a defined term, though it seems to be referring to what the industry understands to be an identification number. They pointed out the term ''serial number'' is interchangeably used throughout the NPRM in different sections to mean both the identification number and the newly defined term.

Department Response

The Department agrees with these commenters that clarification should be made to the definition of ''importer's or manufacturer's serial number.'' First, the Department recognizes the confusion that could be generated because the proposed definition of ''importer's or manufacturer's serial number'' stated: ''When used in this part, the term 'serial number' shall mean the 'importer's or manufacturer's serial number,' '' while other parts of the proposed marking requirements in §§ 478.92 and 479.102 used the term ''serial number'' to also refer to a number that would be placed after an FFL's abbreviated license number. For this reason, the final rule clarifies the definition by defining it as the serial number placed by a licensee on a firearm, including any full or abbreviated license number, any such identification on a privately made firearm, or a serial number issued by the Director. It also specifies that, for purposes of 18 U.S.C. 922(k) and 27 CFR 478.34, the term shall include any associated licensee name or licensee city or State placed on a firearm. The inclusion of the serial number and the associated licensee's information as part of this definition means that these markings are protected by 18 U.S.C. 922(k), which prohibits possession of a firearm with a removed, obliterated, or altered serial number.

Because licensees have the option of marking the frame or receiver with either (1) a serial number and the manufacturer's or importer's city and State, or (2) a serial number beginning with its abbreviated license number and its name (or recognized abbreviation),

the final rule also makes minor changes in §§ 478.92(a) and 479.102(a). Specifically, in clarifying how a serial number may begin with an abbreviated license number as a prefix, these sections use the term ''unique identification number'' to properly describe the identifying information that would follow an FFL's abbreviated license number or an identification number placed by the maker of a PMF. Further, the rule also makes clear that the identification markings (including any unique identification number) must be ''legible,'' meaning that they must use exclusively Roman letters and Arabic numerals, or solely Arabic numerals.

Also, to avoid confusion in the regulations with the ''serial number'' marked on a firearm, the term ''transaction number'' was substituted for ''serial number'' when explaining: (1) How Federal Firearm License numbers are assigned in § 478.47(a); and (2) how ATF Forms 4473 may be ordered and recorded in §§ 478.122(b), 478.123(b), and 478.125(e). This will ensure that the sequential number stated on the FFL or Form 4473 will not be confused with the ''serial number'' marked on a firearm. Future versions of Form 4473 will reflect this change to the regulations.

n. Definition of ''Gunsmith''

Comments Received

Several commenters who identified as gunsmiths expressed concern about ATF Ruling 2010–10 being superseded upon the effective date of the final rule. ATF Ruling 2010–10 allows Type 01 gunsmiths to perform various services for manufacturers and importers without needing to mark the firearm (or frame or receiver) per 27 CFR 478.92. The commenters stated that, once Ruling 2010–10 is superseded, gunsmiths would have to apply for a Type 07 manufacturer's license if they want to continue performing services for manufacturers. One custom gunsmith of 1911s provided an example of how the process of marking frames would be overly complex, if not impossible, to comply with if Ruling 2010–10 were to be superseded. First, the frame (*e.g.,* a 1911 frame) would have the original manufacturer's marking; then, as the builder of the custom pistol, the commenter would place his company's markings on the frame or receiver; then the markings of the Type 07 licensee that provides the checkering would be applied; and finally the markings of the Type 07 licensee that provides the specialized finish would be applied. These commenters asked that ATF reconsider superseding Ruling 2010–10 or provide an exemption to allow custom gunsmiths and firearms manufacturers to use each other's services in the manufacturing process without a requirement to mark, provided that the frame or receiver, as machined, is marked and compliant before the outside service is provided.

Similarly, one manufacturer said the proposed definition of gunsmiths is underinclusive because it would allow gunsmiths to perform their services ''on existing firearms not for sale or distribution by a licensee.'' The manufacturer stated that the proposed change would preclude some Type 01 licensed gunsmiths from continuing to perform manufacturing activities on the manufacturer's behalf because those firearms will ultimately be intended for sale and distribution by the manufacturer. The manufacturer stated that this will impact several production lines at all of its primary manufacturing facilities. Another commenter stated that the proposed change to ''gunsmith'' implies that a person who is not a gunsmith would be prohibited from engraving a serial number onto the firearm. He stated that, if a person makes a PMF, that person should be able to serialize it.

Department Response

The Department agrees that the new definition of ''gunsmith'' will result in the re-licensing of many gunsmiths as manufacturers when they are involved in the production of firearms for sale or distribution by licensees. This is because persons engaged in the business of manufacturing firearms (*i.e.,* frames or receivers or complete weapons) for the purpose of sale or distribution by completing, assembling, applying coatings, or otherwise making them suitable for use, are required to be licensed as manufacturers. *See* 18 U.S.C. 921(a)(10), (a)(21)(A), 923(a). This is made clear in the revised definition of ''gunsmith'' in the final rule.

Nevertheless, in light of commenters' concern regarding the differences between gunsmithing and manufacturing, the final rule also makes clear that licensed dealer-gunsmiths are not required to be licensed as manufacturers if they perform gunsmithing services only on existing firearms for their customers or for another licensee's customers because the work is not being performed to create firearms for sale or distribution. The firearm upon which the gunsmithing service was performed is merely being returned to the individual from whom it was received.[129] These services may include customizing a customer's complete weapon by changing its appearance through painting, camouflaging, or engraving; applying protective coatings; or by replacing the original barrel, stock, or trigger mechanism with drop-in replacement parts. Licensed dealer-gunsmiths may also purchase complete weapons, make repairs (*e.g.,* by replacing worn or broken parts), and resell them without being licensed as manufacturers. Likewise, under the final rule, licensed dealer-gunsmiths may make such repairs for other licensees who plan to resell them without being licensed as a manufacturer. They may also place marks of identification on PMFs they may purchase and sell, or under the direct supervision of another licensee in accordance with this rule.

These activities are distinguished from persons who engage in the business of completing or assembling parts or parts kits; applying coatings; or otherwise producing new or remanufactured firearms (frames or receivers or complete weapons) for sale or distribution. Such persons must be licensed as manufacturers. *See, e.g., Broughman* v. *Carver,* 624 F.3d 670, 676–77 (4th Cir. 2010), *cert. denied,* 563 U.S. 1033 (2011) (licensed gunsmith who built and sold ''custom'' bolt action rifles by purchasing actions (receivers with internal parts) and barrels, fitting the barrels to the actions, bluing the actions, and making and attaching wooden stocks, was required to be licensed as a manufacturer).

The Department also agrees that superseding ATF Ruling 2010–10 by this rule could be burdensome to licensed gunsmiths required to be licensed as manufacturers because they would now be required to place their own identifying marking on firearms already marked by a licensed manufacturer or importer. For this reason, this rule as finalized allows licensed manufacturers, including persons formerly licensed as dealer-gunsmiths, to adopt the serial number and other identifying markings previously placed on a firearm by another licensed manufacturer without a variance, provided that the firearm has not been sold, shipped, or otherwise disposed of to a person other than a licensee. This change will also reduce the potential for confusion by law enforcement when tracing a firearm

[129] As noted in the NPRM, this rule, consistent with § 478.124(a), does not require completion of an ATF Form 4473 or NICS background check when a PMF is marked as a firearm 'customization' when it is returned to the person from whom it was received. 86 FR at 27731.

involved in a crime if multiple markings were to be found on those firearms. Under these circumstances, there is a reduced concern that a trace could not be successfully completed because the required records maintained by those licensees would reveal a continuous acquisition and disposition of that firearm.

However, once a firearm is sold, shipped, or otherwise disposed of to a person other than a licensee, the trace can be completed only to the first retail purchaser. After that point, it is difficult to trace the firearm to another licensed manufacturer that may have purchased it for remanufacture and resale or redistribution without the purchaser's own identifying markings. For this reason, the final rule distinguishes between licensee adoption of markings on new firearms from those that were already introduced into commerce to nonlicensees, such as those that are being remanufactured or imported. Additionally, the final rule also allows licensed gunsmiths and licensed manufacturers that conduct gunsmithing activities to adopt the existing markings on firearms when they engage in gunsmithing activities on firearms that are not for sale or distribution. These changes will thereby supersede ATF Rulings 2009–5 and 2010–10. Further, the final rule expressly clarifies that licensed manufacturers and importers, which are permitted to act as licensed dealers without obtaining a separate dealer's license (*see* 27 CFR 478.41(b)), can perform adjustments or repairs on firearms for their customers without recording an acquisition, provided the firearm is returned to the person from whom it was received on the same day.

Finally, with regard to PMFs, the Department agrees that licensed dealer-gunsmiths and other licensees that accept PMFs into inventory should be allowed to adopt a unique identification number placed by a nonlicensee if that identifying number otherwise meets the marking requirements. This allowance is reflected in the final rule. However, those licensees would still be required to place their abbreviated license number as a prefix (followed by a hyphen) to the existing serial number so that the firearm can be traced to them. Overall, the Department believes these provisions of the rule as finalized will mitigate the marking burden on licensees and make it easier for them to purchase and sell PMFs while maintaining traceability for law enforcement.

4. Concerns With Marking Requirements for Firearms

a. Information Required To Be Marked on Firearms

Comments Received

Numerous commenters, including retailers and manufacturers, objected to the new marking requirements on multiple frames or receivers or on PMFs, arguing that the requirements would be too burdensome and confusing. Several manufacturers raised questions about what would be required of them. Some expressed confusion as to whether manufacturers and importers are to mark multiple parts of a single weapon with different serial numbers or if they are to mark separate components of a single weapon with the same serial number. Others asked if manufacturers of a present split or modular firearm configuration would continue to mark only the part they presently mark or if the NPRM would require them to mark more than one part until they receive a classification.

Another manufacturer observed that, if a single firearm will have two or more frames or receivers, the manufacturer will produce and serialize them as separate parts, at different times, in different production lines. Each separate part will be a separate ''firearm,'' and the serial number on each will duplicate the serial number on other(s) until they are put together. These separate ''firearms'' may sit in different bins until assembled, all the while continuing to have duplicate serial numbers, thus violating the regulation against duplicate serial numbers. *See* 27 CFR 479.102(a)(1). There is also a risk, the manufacturer stated, that frames or receivers with different serial numbers could be mixed up during production or distribution, or even by the end user, resulting in firearms with two different serial numbers. At least one manufacturer did not understand why the rule would require manufacturers to mark the caliber and model on more than one frame or receiver if, in the alternative, this marking could otherwise appear solely on the barrel or pistol slide (if applicable).

Another manufacturer stated that, although it is technically possible to serialize more than one part, for a small manufacturer to coordinate all of these components into batches for the various models and configurations with machine-engraved numbers would be challenging and very expensive. The manufacturer pointed out that, if all items are marked in advance and any one part fails a quality control process, it would lose the value of all three components and the manufacturer's scrap costs would increase significantly.

Commenters asserted that, in the case of modular-type weapons, such as existing AR–15s, owners would be required to place serial numbers on parts that did not previously require them or would be prevented from swapping out upper and lower receivers, which is commonly done by firearms owners. Similarly, another commenter said that, without limiting the fire control components, videos show that 16 items in a typical Glock semiautomatic pistol would each be considered a frame or receiver and thus each part would need to be serialized and tracked. Others asked if there would be a controlling serial number for the firearm in the event that serialized parts are exchanged and a firearm has more than one serial number.

Additional commenters worried that the new definitions and marking requirements make transfer and background checks of firearms very confusing and potentially costly. Commenters argued that, even if a consumer thinks that he or she is purchasing only one firearm, the reality is that a firearm with numerous serial numbers would need separate background checks, which in some States would mean additional fees. Further, others argued that this would create a mess for recordkeeping and trigger multiple sales reporting. They stated that, if a firearm has multiple frames or receivers, each part with a different serial number is a ''firearm'' unto itself. They questioned whether an FFL selling this type of firearm(s) would list several serial numbers on the ATF Form 4473 or whether the consumer would have to fill out more than one ATF Form 4473. In these types of scenarios, they questioned whether an FFL would be required to file a multiple handgun sales report or for—those retailers in the States of Texas, New Mexico, Arizona, and California—fulfill the multiple rifle reporting requirement. Others argued that the NPRM did not address States where residents are limited to purchasing one handgun a month. They argued that, if a firearm has multiple frames or receivers, each of which is a firearm by law, then individuals could be prevented from buying a handgun in States with these limitations.

Another issue that several commenters raised is that they would not be able to fit all the new information on certain parts that will now be considered frames or receivers. For example, they stated that the NPRM requires serial number of an internal or drop in chassis frame or receiver (*e.g.,*

P320–type) to be unobstructed to the naked eye. The commenters said it is unclear how a manufacturer can safely place a lengthy abbreviated FFL number and the other requirements in the ''window'' of the polymer frame pistol so that the required information is visible. They stated that the inability to fit the new marking requirements is even more acute on smaller pistols or on certain curio and relic bolt action firearms.

Another manufacturer said that it would need to design and acquire dozens of new molds to fulfill the new requirements for marking and that a typical mold costs approximately $100,000. The manufacturer stated it also would need to essentially modify all molds for polymer grip frames with the expanded marking requirements (such as by measuring from the flat surface of the metal and not the peaks or ridges, and by ensuring the markings are not susceptible to obliteration). This manufacturer also inquired how FFLs are supposed to measure the depth of markings after certain coatings are applied. Assuming the grip frames and trigger assembles will be frames or receivers under the NPRM, the manufacturer stated that it would have to modify each grip frame or trigger assembly to include a metallic plate suitable for marking a serial number, which would increase the costs for itself and suppliers of these parts, and also require it to obtain a marking variance.

With regard to the content of the markings, one commenter wrote that the preamble of the NPRM contemplates that the new marking requirement could be satisfied by solely marking the licensee's name and RDS code plus a unique number (''RDS+'') and that the RDS+ would satisfy the unique ''serial number'' requirement. The commenter expressed confusion because the preamble indicates that the RDS+ suffix could include alphabetic characters, but the rule, despite defining ''legibly,'' seems to limit the suffix to numerals only, as the rule uses the term ''number'' in several sections, such as § 479.102(a)(1). The commenter indicated that the contradictory information between the explanation in the preamble and the regulatory text itself is problematic because almost all manufacturers use alphabetic characters in their serial numbers. Other commenters pointed out that a modular lower can have its caliber changed and that, absent an upper, there is no way a manufacturer can mark a weapon with its caliber. They stated that the caliber should not be required on modular type weapons. They also asserted that requiring the caliber to be marked would be futile because owners can simply change the caliber by replacing the upper.

Department Response

As stated previously, the Department agrees with numerous commenters that there should be only one ''frame or receiver'' in a given weapon or device. The Department has, therefore, added a new definition of ''frame or receiver'' in 27 CFR 478.11 and 479.11, as described herein, that focuses on one housing or structural component of a particular fire control or internal sound reduction component for a given weapon or device. Because of these revisions, there would almost always be one unique serial number marked on any such weapon or device, even if the components of a split or modular weapon were removed and reassembled using different components. To ensure that industry members and others can rely on ATF's prior classifications, almost all classifications and variants thereof have been grandfathered into the definition of ''frame or receiver.'' Frame or receiver designs that have been grandfathered under the definitions may continue to be marked in the same manner as before the effective date of the final rule. This change should address concerns raised by manufacturers that their costs would increase in order to mark their existing frames or receivers with the new marking requirements or to record multiple markings in connection with complete weapons or complete muffler or silencer devices, and by retailers that would have been required to run more background checks for more items classified as the ''frame or receiver'' under the rule as proposed.

In response to comments on the content of the markings, the Department agrees with the comment that there could be confusion in the regulatory text as to the ''number'' that must be marked after the RDS Key, described in the rule as the licensee's abbreviated Federal firearms license number. For this reason, the regulatory text has been amended to change the word ''number'' to ''unique identification number'' in §§ 478.92(a) and 479.102(a), where appropriate, to ensure that this particular marking is part of the ''serial number'' in that scenario. The unique identification number may include both alphabetic and numeric characters as stated in the definition of ''legibly.''

The Department disagrees with the comment saying that caliber or gauge should not be a required marking for split or modular weapons. Information concerning the caliber or gauge of a weapon is useful to distinguish between firearms during a trace or when matching projectiles to a particular weapon found at a crime scene. To mitigate the problem raised by commenters that a modular weapon's caliber can change, the final rule makes clear the model designation and caliber or gauge may be omitted if that information is unknown at the time a frame or receiver is sold, shipped, or otherwise disposed of separately from the complete weapon or complete muffler or silencer device.

b. Markings on ''Split or Modular Frames or Receivers''

Comments Received

Some manufacturers asked how they would handle warranty repairs of a modular or split receiver firearm under the NPRM if one of the marked parts must be replaced to make the firearm safe to use. They stated that a manufacturer would not be able to provide a replacement part because it cannot reuse the serial number or return the firearm with unmarked component(s) that are now considered to be the frame or receiver. If they did, the replacement part would be marked with a different serial number, placing the manufacturer in violation of section 923(i) of the GCA. They also asked if disassembly (*e.g.,* routine cleaning or replacement or repair of a part ATF would classify as frame or receiver) would constitute removal of the manufacturer or importer serial number in violation of 18 U.S.C. 922(k).

Department Response

Unlike the proposed rule, this final rule does not require multiple parts of a split frame or receiver to be marked (*i.e.,* only the upper receiver of a split receiver rifle need be marked, unless the lower is the grandfathered part). Thus, non-serialized parts of a split frame or receiver may be replaced without violating section 923(i). However, the final rule explains that similar modular subparts of a ''multi-piece frame or receiver'' (*e.g.,* two similar left and right halves of a frame or receiver) must be marked with the same serial number and associated licensee information. If one of those parts is removed and replaced with an unserialized part, then the possessor would violate section 922(k) for possessing a firearm with a removed serial number. However, the final rule sets forth a process by which a marked modular subpart of a non-NFA multi-piece frame or receiver may be removed and replaced without violating section 922(k). The replacement modular subpart must be marked by its manufacturer with the same original

serial number and associated licensee information, and the original part must be destroyed prior to such placement.

More specifically, under 18 U.S.C. 923(i) and 26 U.S.C. 5842(a), ATF has the authority to prescribe by regulations the manner in which licensed manufacturers and importers (and makers of NFA firearms) must identify a serial number on the frame or receiver of a weapon. Because multi-piece frames or receivers may be partitioned into similar modular subparts that could be produced and sold separately, each subpart must be identified with the same serial number and associated licensee information so that the frame or receiver, once complete (assembled or unassembled), can be traced to its manufacturer. The serial number identified on each subpart must be the same number so that the complete frame or receiver does not have a serial number duplicated on any other firearm produced by the manufacturer. Once the modular subparts are aggregated as a complete multi-piece frame or receiver, a modular subpart identified with the serial number cannot be removed and replaced unless the destruction procedure set forth in this rule is followed. *See* 18 U.S.C. 922(k); 27 CFR 478.34 (prohibiting possession or receipt of a firearm that has had the importer's or manufacturer's serial number removed); *see also* 26 U.S.C. 5861(g), (h) (prohibiting removal of the serial number or possession of an NFA firearm from which the serial number has been removed).[130]

c. Size and Depth of Markings

Comments Received

Another issue raised by commenters is the feasibility of doing an engraving to meet the new size specifications. One organization stated that, currently, the print size and depth limitations pertain only to serial numbers and not the additional information (*i.e.,* manufacturer's or importer's city or State). The proposed change to require that the serial number and additional information be engraved to a minimum depth of .003 inches and in a print size no smaller than 1/16 inch, per the proposed § 478.92(a)(i)(iv), would assertedly make it difficult or impossible to comply.

Department Response

The Department agrees with this comment, and as stated in the preamble of the proposed rule, this rule would not change the existing requirements for size and depth of markings. Consequently, the text of this paragraph in the final rule is amended to clarify that only the serial number and any associated license number must be in a print size no smaller than 1/16 inch.

d. Period of Time To Identify Firearms

Comments Received

Some commenters were concerned that the seven-day time limit in the proposed rule for qualified manufacturers to identify NFA firearms contradicts existing law because ATF Form 2, Notice of Firearms Manufactured or Imported, must be filed by the close of the next business day after manufacture, pursuant to 27 CFR 478.103. *Accord United States* v. *Walsh,* 791 F.2d 811, 818 (10th Cir. 1986) (''The registration procedure for manufactured firearms contained in the Treasury regulation does not provide additional time within which to place a serial number on a firearm.''). One of these commenters was also concerned that the term ''active manufacturing process'' for purposes of applying the seven-day time limit was vague because a suppressor may be functional in some capacity even if the manufacturer is waiting for additional baffles to replace damaged or incorrectly manufactured parts that were previously produced.

Department Response

The Department agrees with these commenters that the proposed seven-day time limit to mark NFA firearms is inconsistent with the ''close of next business day'' filing requirement for ATF Form 2, which must include the serial number of the firearms manufactured. For this reason, the final rule makes clear that weapons and parts defined as ''firearms'' only under the GCA, but not the NFA, must be identified not later than the seventh day following the date the entire manufacturing process has ended for the weapon (or frame or receiver, if disposed of separately), or prior to disposition, whichever is sooner. Weapons and parts defined as ''firearms'' produced under the NFA must be marked by close of the next business day. In this way, the marking requirements under the GCA or NFA will be consistent with their applicable recordkeeping requirements, while providing reasonable grace periods in which to identify firearms after the entire manufacturing process has ended.

The Department also believes that the phrases ''actively awaiting materials'' and ''completion of the active manufacturing process'' should be made clearer in the final rule. For this reason, the final rule no longer uses the term ''actively awaiting materials'' and instead establishes a presumption that firearms awaiting materials, parts, or equipment repair to be completed are, absent reliable evidence to the contrary, in the manufacturing process. The final rule also substitutes the phrase ''completion of the active manufacturing process'' for ''the entire manufacturing process has ended'' in determining the applicable time limit to identify firearms.

e. Marking ''Privately Made Firearms''

Comments Received

Numerous commenters objected to the requirement that PMFs be serialized. Many believed that the proposed rule would require makers of PMFs that are non-NFA weapons to serialize their firearms and emphasized that it should be optional, not required, for a person to serialize the person's own guns. They asserted that holding private individuals to the same standards as commercial or corporate FFLs is unreasonably burdensome. Others pointed out that most PMFs are made from polymer or plastic and that there is no way to insert a piece of metal, which would be required per the proposed regulations, unless they go to a dealer or gunsmith and pay for extensive modifications. Commenters also said that forcing dealers to mark PMFs with their license information simply because a PMF owner took a firearm in for repair or upgrade is an added cost because the dealers will have to obtain additional equipment that is not needed for their daily operations and could be subject to liability if their FFL information is attached to a PMF. Commenters also asserted that PMF owners would not want their PMFs marked and that the rule would therefore prevent them from getting their PMFs repaired by FFLs or gunsmiths.

With respect to marking PMFs, commenters claimed that it would not be reasonable to expect an FFL retailer to know how to safely serialize a custom PMF because the safety of the firearm could be compromised if markings are placed in critical areas. Moreover, commenters said that many FFLs will not have the capability to mark firearms with serial numbers and thus would not be able to acquire and ship non-serialized PMFs to other dealers for

[130] *Cf. United States* v. *Mixon,* 166 F.3d 1216 1998 WL 739897, at *3 (6th Cir. 1998) (table) (''The fact that the entire serial number or other indications of the serial number on the weapon were not obliterated fails to negate the fact that a portion of the serial number had been obliterated.''); *United States* v. *Frett,* 492 F. Supp. 3d 446, 4552 (D.V.I. 2020) (''[T]he Court holds that a firearm bearing multiple serial numbers, only one of which is removed, 'has had the importer's or manufacturer's serial number removed, obliterated, or altered' within the meaning of Section 922(k).'').

customers. Manufacturer FFLs and trade organizations similarly stated that PMFs are not subject to the same quality control as commercial arms and that FFLs would face more liability if they ran into problems adding a serial number to a customized PMF.

Other commenters discussed the burden associated with requiring PMFs to be marked any time one is received into inventory even if it is received for purposes limited to activities such as bore sighting or onsite adjustments at sporting events. The commenters stated that an FFL would not be able to perform a function test or other quick gunsmithing without first recording it in the A&D records and adding a serial number. Another commenter asked if an FFL would have to re-serialize a PMF if the PMF had already been marked with the private builder's own serial number. The commenter asserted it would be better for ATF to provide a best practices recommendation as to how FFLs may mark a PMF rather than making it a mandatory regulation. In addition, one commenter believed that one implication of the rule is that makers of PMFs would not be able to serialize their own PMFs because only FFLs would be able to serialize them.

Commenters also stated the marking requirement seems to require the use of laser, engraving, or CNC mill machines with engraving capabilities, given the mandatory depth and size requirements, which comments said could not be satisfied with simple and cheap engraving tools. Also, specifically with respect to PMFs, one FFL/SOT holder stated that metal plates on common polymer PMFs are often not large enough to engrave the proposed 10-plus character number to ATF size requirements. The suggestion from ATF in the NPRM that FFLs embed metal plates into PMFs, according to the commenter, does not comprehend the variety of materials—including epoxies, resins, ceramics, thermoset plastics, and well-known materials such as Bakelite—that do not allow for doing so.

A few commenters asserted that seven days is not sufficient time for FFLs to mark PMFs. Some argued there is no realistic way to mark a PMF in seven days because extra time would be needed to disassemble a completed PMF to mark it properly; or, if the FFL had no resources to engrave a serial number, then the FFL would have to send it out for marking, and it would be unlikely that the firearm could be marked within that time period if businesses that can do the marking have a backlog of work. Similarly, commenters argued that requiring FFLs to mark, or supervise the marking of, serial numbers of PMFs in their inventory within a seven-day period would severely interrupt FFLs' ability to conduct such business and they would likely turn away unmarked PMFs to avoid these burdensome regulatory requirements. Others argued that the period of time should be extended to 21 days to account for delays, which could be caused by weather, fuel shortages, or shipper incompetence when shipping PMFs to another licensee, such as a gunsmith, for marking.

Department Response

As an initial matter, the Department notes that nothing in this rule requires private individuals to mark their personally made (non-NFA) firearms or to present them to licensees for marking. Nothing in this rule requires licensees to accept PMFs into inventory, mark PMFs with the name of the private maker, or record the maker's name as the ''manufacturer'' of the firearm. This rule requires only that PMFs voluntarily taken into inventory by FFLs be marked with a serial number prefixed with the licensee's abbreviated license number and for the FFL to record the acquisition information. This requirement allows the PMF to be traced directly to the licensee, not the private maker, if later used in a crime.

This rule explains in detail how accepting PMFs into inventory without serial numbers undermines the entire purpose of maintaining transaction records and other required records. For example, if multiple unmarked PMFs of the same ''type'' are accepted into inventory—each recorded only as a ''pistol''—they would be indistinguishable from each other for tracing and other law enforcement purposes. Even if a PMF could be traced to a particular firearms licensee, there would be no information marked on that weapon that could be matched to a specific recordkeeping entry in either the acquisition or disposition book, ATF Form 4473, theft/loss report, or multiple sales report. For these reasons, PMFs must be marked with a traceable serial number like other firearms, but they do not need to be marked with the name of the private maker. As the proposed rule explained, PMFs would typically be marked by permanently embedding a metal plate into the polymer. 86 FR at 27732. Many, if not most, PMF parts kits already have a metal plate embedded into the partially complete frame or receiver for serialization purposes and to assist purchasers in complying with some State, local, or international laws.[131] If a licensee does not have the capability to mark, the licensee can arrange for private individuals to have the PMFs marked by another person before accepting them, or, after acceptance, arrange for PMFs to be marked under the licensee's direct supervision with the licensee's serial number.

The Department also disagrees that metal serial number plates cannot be embedded or overprinted[132] into polymer materials, or that the serial number plates currently embedded within polymer frames or receiver are not or cannot be made large enough to be marked with at least 10 characters at the minimum 1/16-inch print size. The Department further believes that, as technology develops, it will become easier and cheaper for licensees to embed metal plates into polymer materials. Although, upon issuance of this rule, it may be difficult for licensees to mark some PMFs that they might have taken into inventory (*i.e.,* those without previously embedded serial number plates), the Department believes the final rule provides a sufficiently long grace period for them to mark or arrange for them to be marked by another licensee. Specifically, licensees will have from the date the final rule is published until 60 days after the effective date to properly mark and identify PMFs as required by the regulations.

Nonetheless, the Department agrees with some commenters that licensees, including dealer-gunsmiths, should be allowed to adopt a unique identification number previously placed on a PMF by a private maker that is not duplicated on another firearm of the licensee and otherwise meets the identification requirements of this section provided that, within the period and in the manner herein prescribed, the licensee legibly and conspicuously places, or causes to be placed, on the frame or receiver thereof the licensee's own

[131] The European Union (EU), for example, has issued a directive specifying how member countries are to mark polymer frames or receivers: ''For frames or receivers made from a non-metallic material of a kind specified by the Member State, the marking is applied to a metal plate that is permanently embedded in the material of the frame or receiver in such a way that: (a) The plate cannot be easily or readily removed; and (b) removing the plate would destroy a portion of the frame or receiver. Member States may also permit the use of other techniques for marking such frames or receivers, provided that those techniques ensure an equivalent level of clarity and permanence for the marking.'' Commission Implementing Directive (EU) 2019/68 of 16 January 2019 Establishing Technical Specifications for the Marking of Firearms and Their Essential Components Under Council Directive 91/477/EEC on Control of the Acquisition and Possession of Weapons, annex.

[132] *See* footnote 69, *supra.*

abbreviated Federal firearms license number, which is the first three and last five digits, followed by a hyphen, before the existing unique identification number, *e.g.,* ''12345678-[unique identification number].'' Again, these markings will allow the PMF to be traced to the licensee if later recovered at a crime scene.

Finally, the Department agrees with the comment that dealer-gunsmiths, as well as licensed manufacturers and importers, should be allowed to perform a function test and quick repairs on a PMF. For this reason, the final rule clarifies that licensed dealer-gunsmiths, manufacturers, and importers may conduct same-day adjustments or repairs on PMFs without having to place identifying markings or record the receipt as an acquisition or subsequent disposition upon return. This is not a significant change from the proposed rule because it provides consistency for same-day adjustment or repair by treating PMFs the same as commercially produced firearms in that they must be recorded in inventory only if repaired overnight. ATF has long maintained that, if a firearm is brought in for adjustment or repair where the person waits while it is being adjusted or repaired, or if the gunsmith is able to return the firearm to the person during the same business day, it is not necessary to list the firearm in the gunsmith's A&D records as an ''acquisition.'' [133] If the gunsmith has possession of the firearm from one day to another or longer, the firearm received by the gunsmith must be recorded as an ''acquisition'' and then as a ''disposition'' in the gunsmith's A&D records upon return to the same customer. However, the final rule makes clear that a PMF must be recorded as an acquisition whenever it is marked for identification, including same-day or on-the-spot. The only exception is when the firearm is marked by another licensee under the licensee's direct supervision with the licensee's serial number because the firearm has already been recorded as an acquisition.

f. Adoption of Identifying Markings

Comments Received

Some commenters stated that the explanation in the NPRM's preamble on the ''Marking of Privately Made Firearms'' indicated that FFLs must always mark PMFs upon acquisition even if the private maker has already added a serial number. Commenters stated that markings PMFs with a manufacturer's name, location, and a unique serial number is equivalent to the markings of a commercial firearm and therefore the regulation should account for PMFs already so marked. Similarly, they raised questions about the effect of the proposed rule for NFA firearms that have been approved through an ATF Form 1 and already recorded in the NFRTR. They asked if the original markings, as done by the maker of the firearm and recorded in the NFRTR, can be adopted by the FFL that acquires the PMF. Others asked whether the new marking requirements would render owners of pre-1986 machineguns, short-barreled rifles, short-barreled shotguns, and any other weapons under the NFA noncompliant with the NFA, as many of these firearms have only the lower receiver serialized and not other parts that could be deemed a frame or receiver under the NPRM.

Department Response

The Department agrees with commenters who said that PMFs that were manufactured or ''made'' privately should be treated similarly to commercial firearms when they are received by FFLs. The Department therefore agrees that FFLs should be allowed to adopt a unique identification number on a PMF if it otherwise meets the marking requirements. This final rule allows such adoption as an exception. However, unlike commercially produced firearms, private makers are not required to maintain records of production and transfer, and, under the GCA, firearms involved in crime are traced to licensees, not private makers. For this reason, licensees wishing to adopt the unique identification number marked by a private maker on a PMF would still need to add their abbreviated license number as a prefix to the unique identification number so adopted. In that way, the firearm can be traced to a licensee.

With regard to privately made NFA firearms, the rule as proposed and finalized does not define the term ''privately made firearm'' to include NFA firearms that have been identified and registered in the NFRTR pursuant to chapter 53, title 26, United States Code, or any firearm manufactured or made before October 22, 1968 (unless remanufactured after that date) that were not required to be marked. Furthermore, as stated previously, this rule requires marking only of a single component and grandfathers all prior ATF classifications except for partially completed, disassembled, or nonfunctional frames or receivers, including parts kits, that ATF determined were not firearm ''frames or receivers'' as defined prior to this rule.

g. Marking of ''Firearm Muffler or Silencer Frame or Receiver''

Comments Received

Numerous commenters asserted that silencers should not be regulated at all because they are used solely to protect a shooter's hearing by reducing the sound levels of firearms and do not make a firearm any more dangerous or affect the function of a firearm other than managing recoil. Therefore, they argued, there should be no requirement to mark or serialize these devices. They stated that almost no crimes outside of Hollywood movies are committed while using silencers and that unnecessary paperwork, taxes, wait times, and regulations have deprived firearm owners from obtaining a simple device that could help them avoid hearing loss. Others pointed out that there are a number of silencers without an outer tube, such as the Q erector, and there is no clear way to fit such a device within the proposed rule. They recommended the rule be more flexible by allowing for serialization requirements to be determined by the model of the silencer.

The American Suppressor Association (''ASA'') referenced ATF's current guidance to industry that ''[t]he replacement of the outer tube is so significant an event that it amounts to the 'making' of a new silencer.'' Accordingly, ASA pointed out that, under ATF's current guidance, the new silencer needs to be marked, registered, and transferred in accordance with the NFA and GCA. ASA asserted that this current guidance is unsupported by statute and should be addressed in the NPRM. ASA opined that remaking the outer tube for a silencer does not constitute the making of a new silencer under the NFA when such remaking is: (1) Completed by the original manufacturer of the silencer in question;

[133] *See* ATF Rul.77–1 (holding that a firearm need not be entered into the bound A&D record if the firearm is brought in for adjustment or repair and the customer waits while it is being adjusted or repaired, ''or if the gunsmith returns the firearm to the customer during the same business day it is brought in,'' but noting that, if the '' the firearm is retained from one business day to another or longer, it must be recorded in the bound acquisition and disposition record''); ATF, *Does a gunsmith need to enter every firearm received for adjustment or repair into an acquisition and disposition (A&D) record?* (July 13, 2020), *available at https://www.atf.gov/firearms/qa/does-gunsmith-need-enter-every-firearm-received-adjustment-or-repair-acquisition-and.* This final rule clarifies ATF Rul. 77–1 by explaining that licensed manufacturers and importers, who may engage in the business as a licensed dealer without obtaining a separate license (*see* 27 CFR 478.41(b)), may also perform same-day adjustment or repair without an acquisition record entry.

and (2) the remade outer tube is marked with the same serial number as the replaced outer tube. ASA asked that ATF allow for the replacement of a silencer's outer tube in these instances and opined that the NPRM's new definition of ''frame or receiver'' for silencers is a perfect forum for ATF to announce and codify this reconsideration.

Department Response

The Department disagrees with comments that silencers should not be marked with serial numbers. Both the GCA and NFA regulate firearm mufflers and silencers as ''firearms.'' 18 U.S.C. 921(a)(3)(C); 26 U.S.C. 5845(a)(7). The GCA and NFA require silencers, like other firearms, to be identified with a serial number, *see* 18 U.S.C. 923(i); 26 U.S.C. 5842(a), and they could not be registered in the NFRTR without a serial number. This rule sets forth when and how silencers must be serialized. It makes it easier for manufacturers, importers, and makers to place serial numbers by requiring only one part of a complete firearm muffler or silencer device (*i.e.,* the frame or receiver, as defined), to be marked and not the other silencer parts when transferred between qualified licensees for further manufacture or repair of complete devices.

With respect to modular silencers like the Q erector, the final rule makes clear that, in the case of a modular firearm muffler or silencer device with more than one part that provides housing or a structure for the primary internal component designed to reduce the sound of a projectile (*i.e.,* baffles, baffling material, or expansion chamber), the term ''frame or receiver'' means ''the principal housing attached to the weapon that expels a projectile, even if an adapter or other attachments are required to connect the part to the weapon.''

The Department also does not agree with the comment that the final rule should allow for the replacement of a silencer's outer tube by its SOT manufacturer when the original tube is destroyed, and the replacement is marked with the original serial number. Under the NFA, 26 U.S.C. 5841(b)–(c), each qualified manufacturer must register in the NFRTR *each* firearm it manufactures and notify ATF of such manufacture to effect the registration. ATF has taken the position that the replacement of a serialized outer tube, now defined as the frame or receiver, is such a significant manufacturing activity that it results in the manufacture of a new silencer for which notification is required. *See* ATF, *National Firearms Act Handbook—Appendix B—Frequently Asked Questions—Silencers* at 175–76, *available at https://www.atf.gov/files/publications/download/p/atf-p-5320-8/atf-p-5320-8.pdf.* Additionally, unlike the return of an NFA firearm conveyed for repair, qualified manufacturers are required to pay transfer tax when a new silencer is transferred to an unlicensed person. *See* 26 U.S.C. 5811. Therefore, allowing manufacturers to create and return new NFA firearms, including silencers, without notification to ATF or payment of transfer tax would be contrary to law.

h. Firearms Designed and Configured Before Effective Date of the Rule

Comments Received

Numerous commenters expressed concern that the grandfathering provision regarding marking in the NPRM is unclear and that they would not know if the new marking requirements would be triggered without more clarity from ATF. Commenters pointed out that the NPRM says licensed manufacturers and importers may continue to identify the additional firearms (other than PMFs) of the same ''design and configuration'' as they existed before the effective date. They stated the use of ''and'' in this phrase indicates that both criteria must be met for the grandfathering clause to apply and thus they were uncertain when changes to a particular firearm model remove it from the grandfathering protection. One manufacturer stated that it routinely introduces new SKUs that differ from existing designs and configurations in minor ways. Likewise, others asked if a change in grip panels, barrel length, or fixed sights versus adjustable or red-dot capable sights would result in a change in design or configuration. Accordingly, they requested that ATF give clarity to the terms ''design'' and ''configuration'' as well as ensure that the current definition of frame or receiver is preserved for grandfathered firearms that will continue to follow the old marking requirements so as to avoid creating a third category of firearms that do not fit within either the old or new marking requirements. They also stated that they will face new burdens regarding future firearms designs and configurations without knowing the meaning of those terms.

One trade group that represents importers stated that ATF needs to clarify whether its grandfather provision for marking means that all previously manufactured models and configurations are not required to be marked under the new requirements. Specifically, the group asked if firearms manufactured overseas before the publication of the rule, but imported afterwards, are exempt from the new requirements. If they are not exempt, the group stated, then an exemption should be drafted that allows the markings to be engraved on the barrel or slide when the receiver is too small to mark conspicuously. The group argued that simply allowing for this result by variances is inefficient.

Another FFL said the rule does not address whether a manufacturer is supposed to mark, or register as acquired, parts already in its physical inventory if those parts now meet the new definition of frame or receiver when those parts are used in the assembly of a complete firearm that is of a new design or configuration. The FFL also stated it is unclear what serialization information should be put on ''newly'' defined frame or receiver parts that are vendor supplied but already in its inventory. Alternatively, it said, if serialization is not required, then the rule should address whether a licensee would be required to place the unserialized firearms in its A&D records with a serial number of ''No Serial Number'' (''NSN''). The FFL further pointed to extraneous impacts of the proposed definition and marking requirements, noting that manufacturers use outside, non-licensed vendors to supply numerous firearm components, many of which could fall under the definition of frame or receiver, thus forcing these vendors to become licensees and meet the new marking and recording requirements.

Department Response

The Department agrees with commenters that the grandfathering of firearms should be clarified by ensuring that the current definition of frame or receiver is preserved for existing firearms and by clarifying the meaning of ''design and configuration'' in the proposed rule. In light of these comments, the final rule recognizes ATF's prior classifications identifying a specific component of a given weapon as ''the'' frame or receiver, including variants thereof, as falling within the new definition of ''frame or receiver.'' Only ATF's prior determinations that a partially complete, disassembled, or nonfunctional frame or receiver, including a parts kit, was not, or did not include, a firearm ''frame or receiver'' as defined prior to this rule are excluded from the grandfathering clause. Such determinations include those in which ATF had determined that the item or kit had not yet reached a stage of

manufacture to be, or include, a ''frame or receiver'' under the existing definitions. Because this rule expressly regulates weapon and frame or receiver parts kits, and aggregations of parts with partially complete frames or receivers that are designed to, or may readily be converted to, expel a projectile, these prior ATF classifications (in which the entire kit may not have been presented to ATF at the time of classification) will need to be re-evaluated on a case-by-case basis.

To address confusion concerning the meaning of ''new design and configuration,'' the final rule retains the marking grandfathering provision, but revises the text to remove ''and configuration'' and defines ''new design'' to mean ''that the design of the existing frame or receiver has been functionally modified or altered, as distinguished from performing a cosmetic process that adds to or changes the decoration of the frame or receiver (*e.g.,* painting or engraving), or by adding or replacing stocks, barrels, or accessories to the frame or receiver.'' The Department considered commenters' concerns that the potential effect of the new rule to require new configurations of existing models to be marked under the new marking requirements would impose substantial costs (such as the cost of making new molds to conform with the new requirements) on existing product lines that are not otherwise being modified. ATF considered these comments in light of the public safety interest in ensuring appropriate markings. Because ATF has the capacity to successfully trace the many hundreds of thousands of grandfathered firearms and will be able to continue to trace them even if there is a change in configuration, the Department removed ''and configuration.'' The revised provision therefore allows manufacturers to mark the same information on the same component defined as a ''frame or receiver'' as they did before the effective date of the rule, which includes the specific component of a weapon or device (and variants thereof) that ATF classified as the frame or receiver before the rule becomes effective.

In regard to the comment on how the rule applies to new designs of firearms already in inventory, the final rule makes clear that the new marking requirements apply only to frames or receivers manufactured after the effective date of the final rule. This change will help accommodate changes in firearms technology while still ensuring that the frames or receivers with new modular designs are marked and can be traced. The new marking information substantively differs from the current marking requirements for firearms (other than PMFs) only in that the licensee's name, city and State, or, alternatively, the licensee's name (or recognized abbreviation) and manufacturer's or importer's abbreviated FFL number, must be placed on the frame or receiver in addition to the unique identification number, and cannot be placed on the slide or barrel. The reason for requiring all this information to be placed on the frame or receiver is that the associated licensee information, when marked on the slide or barrel as currently allowed, can be separated from the serialized frame or receiver in limited circumstances, rendering the firearm untraceable. A unique identification number, or traditional serial number, on the frame or receiver alone may not be sufficient because ATF may not know which licensee produced the firearm or the location where the traceable records are located. Manufacturers may, however, seek a marking variance from the Director if they find it difficult to transition to these marking requirements for new frame or receiver designs.

i. Voluntary Classifications of Firearms and Armor Piercing Ammunition

Comments Received

A few commenters said the way that § 478.92(c) is drafted does not obligate ATF to respond to a classification request, which could allow the agency to ignore a classification request and stall advancement of new products or technologies deemed politically undesirable. Commenters also noted that there is no requirement that the agency notify the submitter that the agency has accepted or rejected the classification request. Therefore, the commenters advocated that there should be a requirement that determinations be rendered within three months or that some other reasonable time-frame be added to the proposed 27 CFR 478.92(c). One commenter suggested adding language deeming the submitted product compliant as proposed by the requestor if ATF fails to respond within a specified time frame. It also recommended deleting, for purposes of flexibility, the prohibition on rendering a determination unless a firearm accessory or attachment is installed on the firearm(s) for which it is designed and intended to be used. Further, it proposed adding a sentence stating that an ATF determination is an opinion and does not have the force of law. Another commenter claimed that the codification of the classification letter process fails to abide by the Attorney General's memorandum entitled ''Prohibition on Improper Guidance Documents.''

Commenters also said that it is unrealistic to believe that a manufacturer would have the ability to submit marketing or instruction materials with a classification request per the proposed rule, as oftentimes these materials are developed just before a product launches. They also questioned whether a prior determination becomes invalid if instructions or marketing materials change, thereby triggering submission of another request and reverting the product to the proposed rule's default marking requirements pending a new determination. Other commenters argued that asking manufacturers to submit instructions and manuals is not only a huge administrative burden but also would lead to less production and fewer submissions of instructions, as it seemed possible that ATF could use the guides against the manufacturers. The lengthy waits and delays that manufacturers already face under the current process, according to the commenter, would only be compounded under the NPRM. All this would have the unintended consequence of creating a disincentive for manufacturers to develop new, safer, and more reliable firearms because of a heavy regulatory burden.

Some commenters further opined that ATF's classification process allows the agency to play favorites, pick technologies, and influence court decisions without going through the APA. They asserted that the proposed rule actually incentivizes technical developments that will create an even worse black market of untraceable firearms.

One commenter suggested altering the last sentence of proposed 27 CFR 478.92(c), to state that ATF classifications of frames or receivers issued after publication of the final rule are not considered authoritative with regard to other samples, designs, models, or configurations of frames or receivers. Adding this language, the commenter said, would allow a licensee to leverage a previous hardware determination and make it more transparent to industry that a previous hardware determination is an acceptable practice if the design was in existence prior to the publication date of the final rule.

Department Response

The Department agrees with commenters that the rule, as proposed, would have resulted in more voluntary classification requests to ATF to determine which part of a new design

of a firearm was ''the'' frame or receiver. This would have increased the burden on both licensees and ATF. The Department agrees with commenters that the statute is best read to focus on a single portion of a weapon as ''the'' frame or receiver. Accordingly, the Department establishes a new definition of ''frame or receiver'' as described to focus on a single portion of a weapon for ''frames'' of handguns; ''receivers'' for rifles, shotguns, and projectile weapons other than handguns; and ''frames'' or ''receivers'' for firearm muffler or silencers. The final rule does not adopt the proposed definitional supplement entitled ''Split or Modular Frame or Receiver.'' The Department agrees that not finalizing this provision will substantially reduce or eliminate the need for persons to submit classification requests to ATF to help them determine which portion of a weapon is the frame or receiver of a particular model.

With regard to other types of firearm classification requests, ATF has long accepted voluntary requests in furtherance of its mission to assist persons in complying with the requirements of the GCA and NFA as a public service. There is no statutory requirement for a person to submit such requests and likewise no requirement for ATF to act upon any such requests. Alternatively, anyone may seek private counsel to determine the person's legal obligations under the Federal firearms laws and regulations.

The Department disagrees with the suggestion to eliminate, for flexibility, the provision that states that the Director shall not issue a determination regarding a firearm which may be sold or distributed with an accessory or attachment unless it is installed on the firearm(s) in the configuration for which it is designed and intended to be used. The accessory or attachment itself must be attached to the weapon so that a proper firearm classification can be made under the GCA or NFA.

The Department disagrees with the suggestion to add a sentence to individual ATF firearm classifications saying that the classification is an opinion that does not have the force of law. Firearm classifications are private letter rulings issued to a particular requestor with respect to a specific item. Saying that ATF classification letters do not have the force of law may mislead the requestor into believing that the statutes and regulations referenced therein, or possible administrative actions taken by ATF (*e.g.,* one saying that the firearm cannot be returned because it would place the recipient in violation of law), are not required to be followed. The GCA and NFA, and their implementing regulations, clearly have the force and effect of law. Should a requestor ignore the classification letter and move forward to produce and sell or import items classified as firearms in violation of the GCA or NFA, the classification letter could be used to prove the willfulness of the violation in a criminal prosecution, administrative licensing or tax collection proceeding, or for seizure and forfeiture of unlawfully produced or possessed weapons.

The Department also disagrees with the comment that codification of the classification letter process fails to abide by the memorandum of the Attorney General entitled ''Prohibition on Improper Guidance Documents'' (Nov. 16, 2017), not only because classification letters are not ''guidance documents,'' but also because that memorandum was rescinded by the Attorney General by memorandum dated July 1, 2021, consistent with the President's Executive Order entitled ''Revocation of Certain Executive Orders Concerning Federal Regulations'' issued on January 20, 2021.[134]

The Department agrees with the comment that it may be burdensome for requestors to submit instructions, guides, and marketing materials with a classification request if those materials are not available at the time of submission. However, as explained in the rule, these items and materials are important for ATF to determine whether an unfinished, disassembled, or nonfunctional item or kit is a ''firearm'' subject to regulation under law. When sold or distributed with a partially complete, disassembled, or nonfunctional item or kit, they must be submitted. The final rule mitigates this burden by excluding from this requirement submission of such items and materials with firearm samples that are complete and assembled.

The Department also agrees with the comment that the requestor of a voluntary classification of a specific component as a frame or receiver should be able to rely on that classification for other models and configurations the requestor manufactures. For this reason, the final rule makes clear that: (1) Determinations made by the Director identifying the specific component of a weapon as the ''frame or receiver'' as defined are applicable to variants thereof; and (2) an ATF classification of a specific component as the ''frame'' or ''receiver'' is applicable to or authoritative with respect to any other sample, design, model, or configuration of the same weapon so that the requestor does not need to submit additional requests for future variants. In addition, defining the term ''frame or receiver'' in a more limited manner in the final rule will reduce or eliminate the need for industry members to voluntarily request a classification from ATF when deciding which particular component of a weapon is the frame or receiver, thereby reducing manufacturing costs.

5. Concerns With Recordkeeping Requirements

a. Acquisition and Disposition Records

Comments Received

Several FFLs stated they would have problems with recordkeeping and inventory if there is more than one frame or receiver. They claimed that paperwork and tracking would be very burdensome because parts swapping and replacements would result in multiple inventory entries. Likewise, many industry members asserted that serialization of multiple frames or receiver parts would create recordkeeping ''havoc.'' One commenter offered a hypothetical: Assume that ATF determines that a receiver has three separate parts, each of which must be serialized, and assume all three parts are made by the same manufacturer. If receiver part A is made on March 1, receiver part B is made on September 5, and receiver part C is made on December 8, the commenter was unsure which date would be the date of manufacture if recorded in a single entry. Or, if the dates were recorded in separate entries, the commenter stated this would be alarming because there would be duplicate serial numbers recorded for one firearm. Finally, the commenter asked whether, when all three parts were finally assembled to make a full receiver, would that action require another record, and if so, what would be that date of manufacture.

Additionally, FFLs asserted it would be impossible to comply with the marking requirements because there is no compatible software they can use for recordkeeping and inventory. A major manufacturer stated that its current electronic business suite, which is responsible for tracking all parts and product inventory and for generating the

[134] *See* Memorandum for the Heads of All Department Components, *Re: Issuance and Use of Guidance Documents by the Department of Justice* at 1 (July 1, 2021), *available at https://www.justice.gov/opa/page/file/1408606/download* (defining ''guidance document'' as ''a statement of general applicability'' that does not include either ''adjudicatory or administrative actions'' or ''rulings''); E.O. 13992, 86 FR 7049 (Jan. 20, 2021); *see also* Processes and Procedures for Issuance and Use of Guidance Documents, 86 FR 37674 (July 16, 2021) (revoking 28 CFR 50.26 and 50.27).

A&D records, is inherently incompatible with multiple serial numbers per firearm (whether matching or non-matching). It further stated it was not aware of a viable solution available to adapt this system in a way that would allow for tracking of multiple serial numbers per serialized item. This sentiment was echoed by several companies that highlighted the logistical problems with trying to keep track of multiple serial numbers on numerous frames or receivers.

Another major manufacturer stated it would take years to test and change its already highly customized software suite to comply with the rulemaking. Its systems, it said, are not equipped to (1) process or manufacture firearms with more than one serialized component; (2) serialize and track more than one component with the same serial number; (3) associate more than one serial number with a complete firearm the company otherwise acquires; (4) generate the required A&D records; or (5) ''update'' a serial number to reflect marking of a PMF. The company stated it could not comply with the proposed rule and explained how trying to comply would be costly and disruptive to its manufacturing lines. These types of cost estimates provided by various companies are described further below. *See* Section IV.B.13 of this preamble.

Manufacturers also pointed out an inconsistency between the proposed change to § 478.123(a), which would require manufacturers to record the serial number and other required information ''not later than the close of the next business day following the date of manufacture or other acquisition,'' and proposed § 478.92(a)(1)(v), which would require manufacturers to ''identify a complete weapon . . . no later than seven days following the date of completion of the active manufacturing process, or prior to disposition, or whichever is sooner.'' They asked how they can record the serial number and other information on a manufactured firearm by close of the next business day if it is not required to be identified for seven days from completion of its manufacture.

Other industry members raised concerns about recording and reconciling frames or receivers that could be ''manufactured or acquired'' prior to the time period in which the required markings must be applied. These types of firearms (*e.g.,* a fully machined, unserialized frame or receiver) could be numerous, and it appeared to commenters that ATF expected manufacturers to list these firearms that have no identifying information with an ''NSN'' serial number. This, according to commenters, would create difficulties because the manufacturer would have to keep track of unserialized parts in the A&D records and, if any of those firearms were destroyed prior to serialization, the manufacturer would have no way to identify which frame or receiver corresponded to each recorded NSN entry in the manufacturer's records. Commenters worried that this would result in countless recordkeeping errors and that theft/loss reporting of unserialized parts would be exceedingly difficult if not impossible. One suggested that a clear statement be added in the final rule that frames or receivers need not be ''acquired'' by manufacturers prior to marking if the parts being used in the manufacturing process could address this concern. Similarly, commenters stated that ATF Ruling 2012–1, which provides a manufacturer seven days following the date of completion of a firearm (or frame or receiver to be shipped or disposed of separately) to both mark and record the identifying information in its records, should be retained.

Several manufacturers contended that the ''commercial record'' exception in proposed § 478.123(a), which would exempt manufacturers from recording the manufacture or acquisition of a firearm no later than the close of the next business day so long as they held a commercial record with relevant information, is irrelevant and would never apply. They argued that a ''commercial record'' is a record of transaction between a transferor and transferee and that internal manufacturer records are not ''commercial records.'' Therefore, they argued, the exemption from the next day recording requirement and allowance of up to seven days would never apply. They made similar arguments that the ''commercial record'' exception would also not apply for repair or replacement requests, thus making it impossible to comply with the next day business rule. Accordingly, they requested that the current seven-day deadline be retained.

Department Response

Because the Department agrees with commenters that the definition of ''firearm'' in 18 U.S.C. 921(a)(3)(B) is best read to mean a single part of a weapon as being the frame or receiver, the final rule adopts three subsets of the proposed definitions of ''frame or receiver''—''frame'' for handguns and variants thereof; ''receiver'' for rifles, shotguns, and projectile weapons other than handguns and variants thereof; and ''frame'' or ''receiver'' for firearm muffler or silencer devices. The more limited definitions adopted in the final rule should address the costs and software problems that commenters raised.

The Department also agrees with commenters who pointed out the inconsistency between the marking and recordkeeping requirements for manufacturers. The Department agrees that the time period should be the same and has clarified that markings be placed, and firearms be recorded, no later than the seventh day following the date of manufacture or other acquisition for non-NFA weapons and the frames or receivers of such weapons. Likewise, to be consistent with the recordkeeping and ATF Form 2 submission requirements, NFA weapons and parts defined as firearms must be marked and recorded, and Form 2 submitted, no later than close of the next business day after manufacture. The Department also agrees that the commercial record provision is not applicable to most manufacturers and that providing the seven-day grace period to both mark and record makes the commercial record allowance for non-NFA weapons that are manufactured unnecessary. For these reasons, that provision has been amended in the final rule to apply only to NFA weapons that are otherwise acquired commercially.

b. Recordkeeping for ''Privately Made Firearms''

Comments Received

One manufacturer stated that it did not understand how FFLs are to record PMFs that are marked in accordance with State laws (*e.g.,* Connecticut), which have different requirements for assignment and structure of a serial number.

Department Response

Under the final rule, the licensee marking the frame or receiver of a PMF must place the licensee's abbreviated license number (also known as the ''RDS Key'') as a prefix before the unique identification number originally placed by the maker of the PMF that will be adopted by the licensee. The adopted markings must otherwise meet the marking requirements. This requirement allows ATF to trace the firearm to a particular licensee. If a State has issued a unique number that must be placed on a firearm, then the licensee's abbreviated FFL number would be added as a prefix to that number if the licensee is going to accept that firearm into inventory. Again, nothing in this rule requires a licensee to accept a PMF into inventory or to

mark (non-NFA) PMFs on behalf of unlicensed persons.

c. Record Retention Burden

Comments Received

Generally, commenters opposed the requirement that FFLs retain their records indefinitely until they discontinue their business, arguing that doing so would be burdensome and costly. Some pointed to the cost and burden on gunsmiths if many of them had to become licensees in order to mark PMFs. Those gunsmiths would then be subject to all the recordkeeping requirements imposed upon FFLs. Other commenters also expressed concern that having FFLs retain their records indefinitely would raise privacy concerns and subject FFLs to potential liability. FFLs, they argued, are subject to break-ins, both physical and cyber. Consequently, criminals could access ATF Form 4473s, use them to target unsuspecting firearms owners, and steal their firearms.

Department Response

The Department disagrees that the record retention rule is unreasonably burdensome; raises additional privacy concerns; increases the probability of break-ins; or exacerbates the deleterious effects of break-ins that do occur. At present, licensees are required to maintain their records of acquisition and disposition for at least 20 years. The Attorney General in this rule is exercising his authority under 18 U.S.C. 923(g)(1)(A) and (g)(2) to extend the 20-year retention period for licensees so that their records are not destroyed. The rule allows ''closed out'' paper records that are more than 20 years old to be stored in a separate warehouse, which would be considered part of the business or collection premises for this purpose and would be subject to inspection in accordance with 18 U.S.C. 923(g)(1) and 27 CFR 478.23. Alternatively, those paper records may be turned in to ATF if the licensee voluntarily chooses to discontinue its business or licensed activity for which those records were maintained, pursuant to 18 U.S.C. 923(g)(4) and 27 CFR 478.127, even if it subsequently obtains a new license.

With regard to persons who may become engaged in the business as gunsmiths so they can mark firearms, such persons have always been required by law to be licensed and maintain records of firearms they take into inventory for gunsmithing work, including engraving firearms.[135] This rule clarifies that licensed gunsmiths do not need to be re-licensed as manufacturers for the sole purpose of engraving or otherwise marking PMFs. Additionally, in response to comments, the final rule reduces costs by clarifying that licensees may have firearms engraved on-the-spot by any person under the direct supervision of the licensee (*i.e.,* without the engraver taking the firearm into an inventory) provided the marking requirements are met.

d. Record Retention Impact on Public Safety

Comments Received

Some commenters argued that requiring FFLs to maintain their records indefinitely (instead of for the current 20-year period) serves no purpose. They asked ATF to produce evidence that there is a statistically significant number of instances where a crime involved a firearm purchased outside the 20-year window to justify the change; further, they doubted that Form 4473s from over 20 years ago would be helpful in solving crimes. Other commenters stated that sales records rarely help solve cases and claimed that tracing has been known not to work. Many challenged the usefulness in changing the retention of record requirement, stating that the average time-to-crime for recovered firearms is less than 10 years and that ATF and other entities have previously said that a firearm is untraceable after 5 years. At least one commenter opined that the retention period should be shortened to seven years.

Department Response

The Department disagrees with commenters who said that the record retention requirement serves no purpose. Firearms are generally durable weapons that last many decades, and their lethality and potential use in crime does not diminish over time. As explained in this rule, firearms have been traced to retailers who destroyed numerous records that were older than 20 years, but those traces could not successfully be completed. The National Tracing Center (''NTC'') conducted an analysis of all trace requests submitted between January 1, 2010, and December 31, 2021, that were closed under a particular code in the tracing system indicating the FFL specifically informed ATF that it did not have records for that firearm because the records were more than 20 years old and had been destroyed. A total of approximately 16,324 traces, or 1,360 on average per year, could not be completed during this time period because the records had been destroyed. Of these total unsuccessful traces, approximately 182 of the traces were designated as ''Urgent,'' 1,013 were related to a homicide or attempted homicide (not including suicide), and 4,237 were related to ''Violent Crime.'' Further, with the advancement of electronic scanning and storage technology, maintaining old records is not as difficult or costly as it was when ATF first allowed records over 20 years old to be destroyed in its 1985 rulemaking. *See* 50 FR at 26702.

e. Alternatives to Record Retention Requirement

Comments Received

One commenter, who believed the extended recordkeeping to be a burden, stated that ATF needs to be consistent in its use of language. The commenter cited the difference in phrasing between § 478.129(b)—''until business is discontinued''—and § 478.129(e)—''until business or licensed activity is discontinued.'' The commenter questioned the meaning of the latter phrase, asking if it refers to the actual closing down or the lapsing of a specific license. This could impact high volume dealers in their decision to either renew a current license or to allow it to lapse and apply for a new license, as a means of relieving the burdensome recordkeeping requirements. If ATF is purposefully using the different phrases, the commenter asked ATF to provide more clarity.

Department Response

The Department agrees with the comment that discontinuance of business includes cessation of ''licensed activity'' or lapse of a specific license, and that the language of proposed § 478.129(b) and proposed § 478.129(d) should have included the same language as paragraph (e). The final regulatory text has been amended accordingly.

6. Clarity on Unlawful Conduct

Comments Received

Commenters objecting to the proposed inclusion of ''weapon parts kits'' in the definition of ''firearm'' expressed concern about the expansion of conduct that would be considered unlawful. In the NPRM, ATF explained it was clarifying that weapon parts kits are included under the definition of a ''firearm'' so that FFLs who sell these kits to unlicensed individuals would be required to complete the ATF Form 4473, background check, and recordkeeping requirements. 86 FR at

[135] *See* ATF Rul. 2009–1 (''Any person who is engaged in the business of . . . engraving firearms . . . must be licensed as a dealer, which includes a gunsmith, under the Gun Control Act.'').

27726. ATF further explained in footnote 45 of the NPRM that persons engaged in the business of selling or distributing weapon parts kits cannot avoid licensing, marking, recordkeeping, or other requirements to which FFLs are subject ''by selling or shipping the parts in more than one box or shipment to the same person, or by conspiring with another person to do so.'' *Id.* at 27726 n.45.

Commenters claimed that individuals, producers, and retailers will be left guessing what constitutes a weapon parts kit because, in the commenters' opinion, it was unclear from the proposed definition how many orders could constructively constitute a weapon parts kit over a period of time. They worried that a simple misstep, such as an individual selling components or tools that could be part of a weapon parts kit, could result in prison time if the individuals selling the components or tools could be viewed as having conspired with other dealers or manufacturers to sell a complete weapon parts kit.

Department Response

In response to some commenters who expressed confusion concerning footnote 45 of the NPRM, 86 FR at 27726, as to what conduct is acceptable with respect to the sale or distribution of weapons parts kits or aggregations of firearm parts, the Department reiterates that title 18 of the U.S. Code includes Federal felony violations that can apply to circumstances involving the final rule's requirements. These include criminal prohibitions on: Engaging in the business of importing, manufacturing, or dealing in firearms without a license (18 U.S.C. 922(a)(1)(A)); engaging in the business of importing or manufacturing ammunition without a license (18 U.S.C. 922(a)(1)(B)); aiding and abetting or causing such conduct to occur (18 U.S.C. 2); and conspiring with another to engage in such conduct (18 U.S.C. 371).[136] Additionally, persons who manufacture and sell unassembled weapons or weapon parts kits in ''knockdown condition'' (*i.e.,* unassembled but complete as to all component parts) cannot structure transactions to avoid paying Firearms Excise Tax on their sales price.[137] In sum, persons cannot undermine these requirements and prohibitions by working with others or structuring transactions to avoid the appearance that they are not commercially manufacturing and distributing firearms.[138]

7. Stifles Technological Innovation

Comments Received

Several commenters opposed the NPRM because they believed that it would discourage technological innovation and ignored the realities of the design and engineer process. Commenters stated that companies or new entrants to the market will generally manufacture in accordance with the ''safe-harbored'' products identified within the proposed definitions because they fear the risk of non-compliance and the resulting potential for liability.

Department Response

The Department disagrees that the rule will stifle innovation. Because of this rule, licensees will have a better understanding of which portion of a weapon is the frame or receiver with respect to current and new designs and will be able to mark those firearms without seeking guidance from ATF. By providing much needed clarity as to what is a frame or receiver, ATF is encouraging innovation by providing a framework under which new ideas and technology can develop. With the advancement of split and modular firearm designs in which components may become separated, these updates are necessary to identify firearms for inventory control and to allow tracing. To alleviate the cost to add the associated licensee information on existing frames or receivers, the final rule requires only new designs (*i.e.,* those that are functionally modified or altered) to be identified with the associated licensee's name, city and State, and serial number or, alternatively, the licensee's name and the serial number beginning with an abbreviated license number as a prefix to the unique identification number. Again, under this final rule, there would be only one frame or receiver of a given weapon.

8. Does Not Enhance Public Safety

Comments Received

Thousands of commenters opposed the changes in the NPRM, arguing that the NPRM will not enhance public safety and that adding serial numbers will do nothing to reduce crime. Some commenters stated that ATF presented no evidence that definitively links firearm part serialization with statistically significant violent crime reduction and failed to show evidence that serialized firearms clearly assist in law enforcement investigations that result in the return of stolen or lost firearms.

Commenters opposed to the rule claimed that PMFs or ''ghost guns'' are not generally used by criminals because they are too expensive to build and that firearms make their way into the hands of criminals through theft or other activity. In the experience of at least one commenter, 3D printing of firearms can be a time intensive process where a single print of a handgun can take anywhere from 48 to 72 hours to finish. Further, it can take several tries to get a print done, which can take a period of several days. This time investment, in the commenter's opinion, makes it less likely that criminals are using 3D printing to create firearms they intend to use in crimes.

Further, commenters wrote that, even if ATF required markings on PMFs, it is well known that criminals simply obliterate serial numbers. Numerous

[136] Further, under 18 U.S.C. 1715, except for customary trade shipments between licensees, firearms capable of being concealed on the person, including handgun frames or combinations of parts from which handguns can be assembled, are prohibited from being mailed by the United States Postal Service. 39 CFR 211.2(a)(2), (a)(3); United States Postal Service, *Publication 52—Hazardous, Restricted, and Perishable Mail* at sec. 432.2(d) (Oct. 2021), *available at https://pe.usps.com/text/pub52/pub52c4_009.htm* (last visited Mar. 23, 2022).

[137] *See* 26 U.S.C. 4181 (imposing on the manufacturer, producer, or importer an excise tax of 10 percent (pistols and revolver) or 11 percent (other firearms) on the sale prices of firearms manufactured, produced, or imported, including complete, but unfinished, weapon parts kits); Rev. Rul. 62–169, 1962–2 C.B. 245 (kits that contain all of the necessary component parts for the assembly of shotguns are complete firearms in knockdown condition even though, in assembling the shotguns the purchaser must ''final-shape,'' sand, and finish the fore-arm and the stock); Internal Revenue Service Technical Advice Memorandum 8709002, 1986 WL 372494, at *4 (Nov. 13, 1986) (for purposes of imposing Firearms Excise Tax it is irrelevant whether the components of a revolver in an unassembled knockdown condition are sold separately to the same purchaser in various related transactions, rather than sold as a complete kit in a single transaction); *cf.* Rev. Rul. 61–189, 1961–2 C.B. 185 (kits containing unassembled components and tools to complete artificial flies for fisherman were sporting goods subject to excise tax); *Hine* v. *United States,* 113 F. Supp. 340, 343 (Ct. Cl. 1953) (kits consisting of a fishing rod ''blank'' and everything necessary to complete a fishing rod were subject to excise tax having ''reached the stage of manufacture or development where they became recognizable as . . . rods . . . even though there remained one or more finishing operations to be performed''). The Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury should be consulted with respect to the imposition of Firearms and Ammunition Excise Tax. *See* U.S. Dep't of the Treasury, *Manufacturers and Producers* (Apr. 17, 2018), *available at https://www.ttb.gov/firearms/manufacturers* (last visited Mar. 23, 2022).

[138] *See, e.g., United States* v. *Evans,* 928 F.2d 858, 859–62 (9th Cir. 1991) (affirming convictions for conspiracy to cause, and aiding and abetting, the possession of unregistered machineguns where one defendant sold parts kits containing all component parts of Sten machineguns except receiver tubes and the other sold customers blank receiver tubes along with detailed instructions on how to complete them).

commenters also pointed to ATF's Motion to Dismiss in the *California* v. *ATF* lawsuit, where the State of California asked the Federal court to direct ATF to vacate its determinations that unfinished pistol frames and receivers are not subject to the same regulations as other firearms and to direct ATF to classify so-called ''80%'' frames and receivers as firearms subject to Federal firearms statutes and regulations. Paraphrasing ATF's arguments from the agency's Motion to Dismiss, commenters stated that ATF argued ''eight such crimes out of the 1.1 million violent crimes committed in the relevant six-year-period is a far cry from an overwhelming wave that would cause a State injury sufficient to confer standing . . . . Nor can California plausibly plead that those crimes would not have occurred with traditional, serialized firearms.'' Likewise, commenters also took issue with the data ATF presented in the NPRM regarding the 23,906 PMFs submitted for tracing from 2016 through 2020. They stated that ATF needed to provide context for the data it presented. They claimed the data presented is not sufficient to demonstrate that PMFs are actually used in crimes and that ATF has been able to argue only that ''suspected'' PMFs were ''reported'' to be present in ''potential'' crime scenes. Further, they opined that the PMFs recovered might actually involve hundreds of factory-made firearms with the serial numbers removed.

Other commenters countered ATF's data by citing a Bureau of Justice Statistics' (''BJS'') publication to try to show that criminals do not use PMFs. *See* BJS, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016* (Jan. 9, 2019), *available at https://bjs.ojp.gov/library/publications/source-and-use-firearms-involved-crimes-survey-prison-inmates-2016.* In that survey, 287,400 surveyed prisoners had possessed a firearm during their offense. Among these, more than half (56 percent) had either stolen it (6 percent), found it at the scene of a crime (7 percent), or obtained it off the street or from the underground market (43 percent). Most of the remainder (25 percent) had obtained it from a family member or friend as a gift. The report said only 7 percent of felons surveyed purchased their firearms legally through an FFL. In sum, commenters claimed that the NPRM is a solution in search of a problem and is not addressing an actual problem.

Department Response

As discussed in the Section II.A of this preamble, the submission of PMFs reported for tracing by law enforcement is increasing at an exponential rate, especially over the last three years, which is more recent than the 2016 BJS data relied on by commenters. Further, unlike commercially produced firearms, it is difficult for licensees to account for PMFs in their inventories and to report thefts or losses of those weapons to law enforcement and insurance companies. The current technology for privately making firearms, including 3D printing, is continually improving, and the Department and ATF have the authority and obligation to promulgate regulations to implement the GCA in light of the public safety goals of that statute.

The Department disagrees that PMFs can statistically be compared to firearms that have undergone background checks, or with firearms recovered that have been marked with serial numbers and other identifying information. As explained in this rule, PMFs are being assembled from parts without background checks. They are not yet being acquired through the primary market in quantities like commercially produced firearms. But they are easily acquired by persons prohibited by law from receiving or possessing firearms, and they therefore pose a significant threat to public safety. Moreover, unlike other firearms recovered by law enforcement, PMFs are far more difficult for law enforcement to trace when recovered at a crime scene because they lack serial numbers and other identifying markings. With the advancement of firearms technology, PMFs will, over time, eventually make their way into the primary market as they become more reliable, and where they can be marketed broadly, pawned, or repaired.

9. Tracing Efforts Hindered

Comments Received

Commenters asserted that the NPRM will not enhance public safety because the new requirements will only make it more confusing for law enforcement officers when tracing firearms. Commenters stated that criminals could simply acquire two copies of the same model and interchange or swap parts, which would send law enforcement on a wild goose chase. Other commenters stated that individuals typically swap out upper and lower assemblies to alternate calibers or to use different barrels, which would lead to more than one serial number on the firearm. In these cases, an officer may find two or three different serial numbers and submit all the numbers to ATF for tracing, which would require ATF to contact multiple manufacturers, distributors, and retailers, and possibly multiple transferees who purchased firearms.

Department Response

The Department agrees with commenters who said that, under the proposed rule, law enforcement may find it more difficult to trace firearms with more than one serial number. For this reason, the final rule accepts commenters' suggestions asserting that the term ''frame or receiver'' should be defined to mean only a single housing with one unique serial number that is not duplicated on any other firearm. The Department agrees with commenters that doing so will be less costly for licensees to mark and record, and for law enforcement to trace firearms involved in crime. Therefore, the Department has defined the term ''frame or receiver'' to focus on only one part that is marked on a particular weapon or firearm muffler or silencer. In the case of a multi-piece frame or receiver, however, the final rule makes clear that, if there are two or more similar subparts that make up a multi-piece frame or receiver, then those subparts would be marked with the same serial number and associated licensee information. Thus, there should be very few circumstances in which there are more than one unique serial numbers placed on a weapon (*e.g.,* a remanufactured or imported firearm where the manufacturer or importer chooses to mark its own serial number rather than adopting an existing serial number).

10. Punishes Law-Abiding Citizens

Comments Received

Numerous commenters objected to the NPRM because they believed it could turn law-abiding citizens into felons and would only serve to punish hobbyists who build their own firearms. Concerned that firearms in their possession would have more than one frame or receiver and therefore would need more than one part marked, commenters opposed to the rule expressed concern that they would be automatic felons once the regulation becomes effective. For instance, commenters stated that, if the upper for an AR–15 is considered a receiver under the rule, then thousands of law-abiding citizens who own these items would become felons overnight. Other commenters similarly questioned whether they will have violated the NFA or GCA if they sell or purchase an unmarked partially completed weapon parts kit after the final rule is enacted.

Department Response

The Department disagrees that this rule turns law-abiding citizens into felons and only serves to punish hobbyists who build their own firearms. Nothing in this rule prevents unlicensed law-abiding citizens and hobbyists from making their own firearms by using commercially produced parts or by using 3D printers; or from transferring PMFs to others as long as they are not engaged in a business or activity requiring a license. If such persons wish to engage in the business of manufacturing, importing, or dealing in firearms, they must obtain a license like any other manufacturer, importer, or dealer. Of course, private makers must abide by the Undetectable Firearms Act, 18 U.S.C. 922(p); NFA requirements; and any applicable State and local laws that govern privately made firearms. With regard to commenters' assertion that there would be more than one ''frame or receiver'' on a given weapon, this final rule does not define that term in a manner that would result in more than one on a particular weapon.

11. Impacts on Underserved and Minority Communities

Comments Received

Numerous commenters asserted that the NPRM is racist and would negatively impact the poor and minority communities. They requested that the rule either be rescinded or that a ''racial equity analysis'' be conducted to prevent any racially discriminatory outcomes. These types of commenters stated, for example, that the requirements for serial numbers will disproportionately impact the poor, elderly, and minorities and will place the nation's citizens at increased risk from criminals. Other commenters stated their belief that the rule will result in more Black Americans being arrested, prosecuted, and incarcerated and thus will harm already vulnerable communities. Another commenter contended the proposed rule is at odds with the President's equity initiatives in that, although the Administration is considering equity in pursuing policy changes to education, employment, and housing, this policy of promoting equity should also include ''firearms equity.'' The commenter indicated that increased costs to gun manufacturers under this proposal would not only affect small businesses but also would have a disparate impact on low-income citizens, who are disproportionately persons of color, according to the commenter. Accordingly, the commenter stated that ATF must provide data and a comprehensive analysis to prove that the NPRM does not unfairly and inequitably penalize any racial or ethnic group, nor harm any protected civil rights class. Further, the commenter argued that ATF should seek to increase gun affordability for low-income citizens and increase gun ownership among disadvantaged people.

Department Response

The Department disagrees that additional racial equity analysis needs to be conducted on the rule or that this rule is inconsistent with equity initiatives of the Administration. This final rule implements the GCA, which regulates commerce in firearms. The GCA, in part, requires that all firearms manufactured, imported, and sold by FFLs, or transferred through FFLs, be marked with serial numbers in order to be traceable wherever those firearms are recovered by law enforcement nationally or internationally. A firearms trace provides an investigative lead to law enforcement regarding the identity of the unlicensed person who first purchased the firearm from a firearms retailer (or at retail from a manufacturer, importer, or wholesaler); the identification of that person does not automatically indicate that the person is a criminal. The GCA does not distinguish between communities in the United States; further, ATF is prohibited under Federal law from maintaining a registry of firearms or firearms owners, *see* 18 U.S.C. 926, with the exception of weapons subject to the NFA, and therefore ATF does not know who owns firearms, nor does it keep track of who builds their own PMFs. Accordingly, there is no way for ATF to anticipate or measure now or in the future how the rule would impact particular communities based on racial or socio-economic distinctions. Lastly, it is not within the scope of the GCA, or the Department's or ATF's purview, to increase gun affordability for low-income citizens and increase gun ownership among any particular group of people. For additional information, see Section IV.A.5.h of this preamble.

12. Other Priorities and Efficiencies

Comments Received

Many commenters stated that the Department and ATF should not attack law-abiding citizens but should instead focus on real criminals and enforce the existing firearms laws. They stated that ATF should expand resources in the investigation and assistance of prosecution of weapons charges and more fully advise the courts on such technical issues. Other commenters stated that the government should devote resources to solving mental health issues or combating drugs on the street. Other commenters suggested that the government propose new sentencing guidelines for individuals who steal or utilize firearms in criminal activities rather than enact new rules that impact only law-abiding citizens.

Department Response

The Department agrees with commenters that mental health and drugs are important issues for the government to address, but disagrees that this rule improperly diverts ATF resources. To the contrary, the rule is absolutely necessary to allow ATF to focus its resources. The rule accomplishes this goal by helping to ensure that firearms recovered from crimes can be traced through licensee records using the information marked on the frame or receiver of each firearm. Not only do more traceable firearms lead to increased discovery and prosecutions of criminals, but they also provide ATF with key crime gun intelligence, such as firearm trafficking patterns through multiple sales reports, demand letters of licensees with a short ''time-to-crime,'' and theft/loss reports.[139]

13. Concerns With the Economic Analysis

a. Addressing an Externality

Comments Received

In the NPRM, ATF stated that this rule would address externalities. 86 FR at 27738. Commenters stated that externalities result from inefficiencies in market transactions. Commenters stated that ATF failed to address how criminals produce a negative externality by using an unmarked weapon when committing a crime. In addition, commenters stated that commercial activity should not be held responsible for any difficulties ATF experiences in enforcing Federal law.

Department Response

ATF concurs that this rule would not address externalities due to market inefficiencies; therefore, to avoid any confusion, the language in the NPRM that suggested that this rule would address a market inefficiency has been removed in the final rule. Regardless of this change, publication of this rule remains necessary to enforce the GCA and NFA.

[139] *See* footnotes 33 and 39, *supra.*

b. Overall Costs

Comments Received

Many commenters stated that the costs that ATF attributed to the rule did not account for the full number of PMFs currently in circulation. They stated that there are as many as 20 million individuals or PMFs that would be affected by this rule. In addition, one commenter suggested that the overall cost estimate in the NPRM (which the commenter calculated to be seven cents per firearm for all firearms currently in circulation) was not a realistic cost estimate given the comprehensive changes being made to the industry as a whole. One commenter suggested that a low estimate of $45 to mark each firearm should make the overall cost estimate over $100 million. Another commenter believed that the increased cost to the consumer of five dollars per firearm is too low because this cost includes engraving, paperwork retention, legal services, and engineering, all of which would be necessary to achieve compliance with the new regulations. Several commenters stated that the 20-year estimate of $1.1 million is too low. One commenter stated that, if an ''80%'' receiver or frame sells for $100, the $1.1 million estimate would mean that only 550 receivers or frames were sold per year—a number the commenter believed was ''impossibly low.'' Commenters asserted that companies would suffer substantial losses or go out of business altogether. One commenter asked if businesses would be compensated if their actual costs were above the costs estimated in the rule.

Some commenters suggested that requiring multiple serial numbers would also be cost prohibitive for manufacturers and make the rule economically significant. A commenter suggested that the manufacturing costs alone would be at least $400 million. Many commenters stated that ATF failed to compile data on unfinished receivers and kit sales and that ATF does not know how commerce would be affected by the rule change. One commenter stated that, to comply with new regulations, companies would need to seek legal advice and train employees on the regulations and form changes, which would exceed the cost estimate of $10 per company.

One commenter wanted to know if ATF had considered how higher demand for determinations would affect the agency and the manufacturers awaiting these determinations. Additionally, this commenter wanted to know if ATF had considered the costs to Federal, State, and local agencies to train law enforcement to recognize items now classified as firearms and the increased workload on ATF to regulate firearms with multiple frames or receivers.

One commenter stated that some individuals must drive long distances to reach an FFL. These trips are expensive and time consuming. Another commenter stated that the cost estimate for individuals was too low because it failed to consider the time and transportation costs of travel to an FFL to transfer parts, such as upper receivers or pistol slides, which the commenter believed would be required to be serialized under the rule.

Department Response

ATF agrees that the costs of the rule did not account for PMFs currently owned by law-abiding individuals, but this is because the rule does not affect individuals in possession of PMFs unless the individual tries to sell or otherwise dispose of the PMF though an FFL. ATF cannot agree with the commenter that there may be up to 20 million PMFs in private circulation because ATF does not maintain any data that would allow for an estimate of the number of PMFs. In any event, PMFs, by definition, are not serialized by FFLs and would only need to be serialized if the individual with the PMF transfers it to an FFL. Nonetheless, ATF significantly revised its economic analysis in preparing the final rule to better reflect the rule's impact on these affected populations.

Where feasible, the Department has reduced some of the burdens on the regulated community. Rather than requiring multiple serial numbers, the final rule amends the proposed definition of ''frame or receiver'' to identify one part of a firearm to be the ''frame'' or ''receiver'' that requires a serial number (with the exception of multi-piece frames or receivers that are composed of multiple modular subparts, which require placement of the same serial number and associated licensee information on those parts). Because there will almost always be one serial number per firearm under the final rule, no Federal, State, or local costs were considered for law enforcement to review firearms with multiple serial numbers.

ATF concurs with the comment that entities will need to provide training to employees to ensure compliance when any new regulations are published. However, ATF disagrees that these costs should be considered under the rule. Activities such as training employees and obtaining legal opinions in response to a new regulation of this type are usual activities for complying with the regulatory requirements in this industry and are not treated as new costs associated with the rule. Where manufacturers have been granted determination letters for their firearm designs, these designs have been grandfathered to be excluded from the final rule, except for those determinations that a frame or receiver had not reached a stage of manufacture to be classified as a frame or receiver. Due to these changes and the revised definitions under the final rule, ATF does not anticipate that manufacturers and retailers of currently regulated firearms will incur significant costs from the publication of this final rule.

c. Affected Populations

Comments Received

One commenter suggested that ATF underestimated the overall number of the affected populations because the number of public comments received on the proposed rule was more than the number of affected entities listed in the NPRM. One commenter stated that the total affected population should include all businesses that sell firearms components, not just makers of unfinished frames or receivers. One commenter stated that ATF failed to include ''micro-scale'' businesses that specialize in firearms customization for marksmanship competitions, and that many small businesses that sell semiautomatic pistol slides and accessories, which they believed would be reclassified as firearms by the final rule, would need to become licensed as dealers or manufacturers.

Many commenters stated that the Regulatory Impact Analysis (''RIA'') did not account for the costs incurred by individuals. Many commenters estimated a total number of PMFs already in circulation and estimated that the cost for those currently in circulation would be millions of dollars. Some commenters stated that the NPRM should have included an estimate of the number of PMFs and unfinished receivers that would be reclassified as firearms. Multiple commenters stated that there were millions of firearms produced prior to 1968 that are not serialized and that requiring application of a serial number to these firearms would lower their value.

Commenters estimated that approximately 300 million firearms would need to be serialized under the rule and that the time frame to serialize these firearms under the proposed rule would be unreasonably short. Other commenters estimated approximately 3 million PMFs would need to be marked

under the rule. For these PMFs, they estimated the costs for associated marking and transfer fees to be $180 million dollars.

Department Response

ATF disagrees that the number of entities affected by the rule is the same or similar to the number of individuals who have commented on the proposed rule. The Small Business Administration considers small entities to be businesses, non-governmental organizations, or small governmental jurisdictions—not individuals. The estimated number of entities affected by the rule will be significantly smaller than the number of individuals who commented on the rule or who currently possess PMFs. Under the final rule, PMFs owned by individuals do not have to be serialized unless the PMF is transferred to an FFL and the FFL voluntarily accepts the PMF into inventory. At the time of the NPRM, ATF assumed that individuals who own PMFs would likely choose to avoid going through an FFL when disposing of their firearms to avoid serializing their PMFs. However, for the final rule, ATF outlines the individual populations and costs if individuals choose to take their PMFs to an FFL, and if that PMF is accepted into inventory. In addition, neither the NPRM nor this final rule define ''privately made firearm'' as including firearms manufactured or made prior to October 22, 1968, and this rule does not affect pre-October 22, 1968, firearms that were not serialized unless remanufactured after that date.

ATF did not account for the costs to entities that specialize in firearms customization for marksmanship competitions because the changes to the final rule's definition of ''frame or receiver'' would not change the ability of these ''micro-sale businesses'' to customize firearms by replacing pistols slides and accessories. Under the final rule, these items would not be considered ''frames or receivers.'' Therefore, those businesses would not be required to be licensed as manufacturers if they customize firearms by replacing pistol slides and accessories for individual unlicensed customers.

d. Definition of ''Frame or Receiver''

Comments Received

Many commenters stated that having firearms with multiple serial numbers would be cost prohibitive. Some commenters suggested that, should manufacturers have to mark multiple serial numbers, retooling designs would cost a significant amount of money and investment. They also asserted manufactures would have to spend time and money to match up the firearm pieces into one firearm. Some commenters suggested that this would increase the cost of firearms for purchasers. Other commenters stated that the industry would need to change how it marks, sells, and advertises unfinished receivers that would be considered ''firearms'' under the final rule.

Commenters stated that the new regulations requiring multiple parts to be serialized would harm both citizens and the firearms industry by limiting growth and innovation in the industry. One commenter stated that the industry would be forced to seek determinations from ATF because manufacturers would be unable to determine which part of the firearm is the frame or receiver. Other commenters stated that firearms manufacturers would be forced to mark multiple parts of a firearm because they might not have requested a determination or received a response to a determination request submitted to ATF. One commenter stated that restricting the parts of a firearm that a company can sell would cause a shift in supply and demand.

One commenter asserted that the cost estimates did not align with how the manufacturing process works. The commenter claimed that, to comply with the rule, manufacturers would have to totally rework their manufacturing processes and recordkeeping systems. Another commenter stated that companies that produce raw forgings and castings would be required to become FFLs. The commenter claimed that this would increase the cost of these items or cause manufacturers to change their production to include machining of the raw materials.

Some commenters suggested that it would cost more to purchase individual pieces because they would now have to go through FFLs to purchase their firearm kits and pay a transfer fee for each frame or receiver they purchase. One commenter asked if there would be enough FFLs to serialize firearms in the required time period, asked how individuals with disabilities or without transportation would visit an FFL to have their firearms serialized, and asked if individuals would be reimbursed for unserialized firearms seized by the government.

Department Response

Based on the public comments received, the final rule changes the proposed definition of firearm ''frame or receiver'' to identify only one part of a firearm that will need to be marked. However, if a company were to sell a firearm parts kit with a partially complete ''frame or receiver,'' or a multi-piece frame or receiver where there is more than one modular subpart, the frames or receivers of these items will now need to be serialized in accordance with this rule, increasing the cost of these items.

ATF acknowledges that the proposed regulation would have posed some compliance issues for manufacturers and that some companies that were not FFLs would have needed to become FFLs under the proposed rule. ATF modified the rule to alleviate those concerns by expressly excluding raw materials, by further clarifying certain terms, and by allowing manufacturers to adopt existing marks of identification in several circumstances. Further, retailers were required under the NPRM—and are required under the final rule—to mark only unserialized firearms that they currently have in inventory and any PMFs they take into inventory after the implementation of the final rule. In this regard, licensees will continue to have 60 days until after the effective date of the final rule to serialize firearm parts kits with partially complete ''frames or receivers'' that they currently have in inventory.

ATF concurs that individuals will now need to visit an FFL to purchase those firearm parts kits with a partially complete ''frame or receiver'' that may readily be completed, like other firearms. However, because there will only be one frame or receiver per kit, there will be no additional transfer fees.

e. Firearm Kits With ''Partially Complete Frames or Receivers''

Comments Received

ATF received various comments regarding the methodology used for determining populations and costs for non-FFL manufacturers of partially complete frames or receivers and firearm kits. Several commenters treated the manufacturers and retailers of these items as one group and stated that the population estimated by ATF was too low. One commenter claimed that ATF misstated the number (36) of non-FFLs selling firearm parts kits with a partially complete ''frame or receiver'' because an internet search the commenter conducted on ''80 lower'' returned more than 75 websites selling these items.

Many commenters asserted that ATF could not properly determine how much of an effect on commerce this rule will have for manufacturers. Some commenters stated that ATF did not account for non-FFL manufacturers

becoming licensed. Other commenters claimed that the new regulations would ruin non-FFL businesses that sell unregulated parts. One commenter opined that non-FFL manufacturers are not likely to become licensed and that, because most of these companies are small, this final rule will force these companies to go out of business. One commenter stated that ATF did not account for lost revenue and increased expenses for gunsmiths, companies producing firearm parts kits, and individuals. Some public commenters stated that non-FFLs would be unable to become licensed either due to the costs associated with becoming licensed or zoning restrictions, and that ATF did not account for companies going out of business.

Commenters stated that ATF did not estimate the impact on revenue this rule will have on the public and that ATF's assumptions were unsupported. One commenter stated that ATF made a flawed assumption that there would be no cost because non-FFL manufacturers would choose not to become licensed because of the ''primary marketing scheme of some of these non-FFL manufacturers.'' The commenter claimed that, even if only a few of these manufacturers choose to become licensed, the costs could be in the millions. Another commenter similarly stated that there was no analysis or evidence presented on non-FFLs choosing to become licensed or forgoing selling newly regulated items. One commenter stated that ATF failed to estimate the number of parts kits and PMFs and that it did not quantify the total costs for destroying or turning in such items. Additionally, the commenter stated that ATF failed to explain how it arrived at the conclusion that all non-FFL retailers would choose to destroy their inventory of unmarked parts kits and PMFs.

One commenter stated that, according to the RIA, parts kits and some unfinished receivers currently available will no longer be sold. This commenter asked if the RIA assumed that non-licensed manufacturers will produce kits with ''unformed blocks of metal.'' The commenter believed that sales of such kits would be lower than sales of existing kits because it would take more skill and additional tools to transform the new kits into frames or receivers. One commenter stated that ATF failed to provide an analysis of the exact amount of revenue per business that non-FFL retailers would lose if they chose to sell part kits without unfinished receivers. One commenter stated that the assumption in the RIA was that kits without a frame or receiver would not be regulated, but that the text of the proposed rule did not make this clear.

A couple of commenters stated that ATF's assumptions that 10 percent of Type 01 and Type 02 FFLs currently deal in firearm parts kits with a partially complete ''frame or receiver'' and that all dealers would have only two such items in inventory lacked any supporting evidence or data and cited only unknown subject matter experts.

Several commenters suggested that the populations, cost assumptions, and descriptions for in-house engraving were inaccurate. One commenter stated that engraving equipment is not common at FFLs. One commenter suggested that the only viable means of engraving is with a laser engraver, associated equipment and safety supplies, and a specialized worker. Several commenters suggested the labor and equipment needed to engrave existing inventory is significantly higher than the stamping method discussed in the NPRM. Another commenter stated that the costs in the ATF's analysis were underestimated and questioned how ATF came to the conclusions about the number of FFLs that have parts kits, who would mark the kits, how they would be marked, and why kits that do not need to be serialized would have an embedded metal plate on which to mark a serial number. The commenter also noted that ATF did not include the cost estimate for the 36 non-FFL dealers to have their parts kits marked by a licensee. One commenter stated that ATF's estimate of a one-time cost for contracting out gunsmithing services in order to mark inventory that would need to be serialized was unsupported by evidence or data.

Department Response

ATF partially concurs that the population of affected dealers of firearm parts kits with partially complete frames or receivers was underestimated. In the NPRM, ATF found 71 companies selling such kits. Because the requirements for manufacturers and retailers are different, ATF accounts for them separately in different chapters of the RIA, which makes the numbers per chapter lower than the population estimates suggested by commenters. Although all 71 companies sell firearm parts kits with a partially complete frame or receiver, ATF broke up the number of companies between manufacturers and dealers of kits. After receiving comments, ATF performed a second internet search of companies and found an additional 58 companies, but broke up the total number of companies into four groups: FFL and non-FFL manufacturers, and FFL and non-FFL dealers. By categorizing the companies this way, the population numbers appear to be relatively low in each chapter of the RIA, but the overall number of companies affected is similar to the estimated total number of companies suggested by the commenter.

For the final RIA, ATF revised the methodology and costs associated with this final rule to incorporate the costs that commenters suggested will arise. ATF concurs that lost revenue was not accounted for in the proposed rule, and the final rule now incorporates both the loss in revenue for companies and additional expenses for individuals. Under the final rule, firearm parts kits with partially complete frames or receivers will no longer be able to be sold without a serial number. The RIA revised the estimates to assume that firearm parts kits with partially complete frames or receivers will be regulated. As a result, ATF revised its estimates to reflect companies that could dissolve their businesses and provided a more precise estimate as to how much revenue non-FFL retailers would lose due to the requirements of the final rule.

In response to commenters that stated ATF's assumptions were lacking a detailed methodology or were otherwise unsupported, ATF reiterates that the agency does not maintain consolidated or aggregated records on companies' inventory, regardless of whether the item in question is regulated, nor can ATF interview all manufacturers to determine their intended future actions upon publication of the final rule. Moreover, most of the items in companies' inventories are not currently regulated. ATF has made reasonable estimates based on information provided by commenters, willing participants in informational surveys, and ATF subject matter experts. In the NPRM, ATF relied on subject matter experts from the Firearms Industry Programs Branch to provide an estimated population, *i.e.,* the number of firearm parts kits with a partially complete frame or receiver in inventory. However, because such parts kits are not viewed by industry members as regulated, and because ATF does not have the inventory data that FFLs maintain, ATF is unable to obtain estimates at the level of accuracy requested by public commenters. However, to improve on these estimates for the final rule, ATF relied on general observations from its field divisions to estimate population and inventory. This was determined to be the best information available for the analysis.

Next, ATF concurs with commenters that the costs associated with the in-house engraving methods outlined in the NPRM were inaccurate, and ATF has changed its assumptions that considered only FFLs that currently have gunsmiths on staff. ATF estimates a one-time contracting cost for gunsmithing services to account for FFLs that have firearm parts kits with a partially complete frame or receiver currently in inventory but do not have gunsmithing capabilities. ATF made this assumption because, based on anecdotal commentary from various ATF field division offices, as well as comments on the NPRM, most FFLs do not have gunsmiths on staff; therefore, it is unlikely that they will purchase engraving equipment if the staff and equipment are not already part of their normal operations. It is not clear that only FFLs with gunsmithing capabilities will carry firearm parts kits with a partially complete frame or receiver; therefore, ATF assumed that a portion of the population will need to contract for gunsmithing services.

As for purchasing a laser engraver, associated equipment and safety supplies, and labor, ATF used information about such costs to illustrate engraving expenses for manufacturers. ATF disagrees that a licensed dealer will need to purchase such equipment or hire more employees with the requisite engraving skills because future firearm parts kits with a partially complete frame or receiver will be serialized by a licensed manufacturer and not the licensed dealer. ATF concurs that it did not account for costs from serializing such parts kits made from polymer materials. In order to account for these costs, ATF has now included the costs for disposing of such items if they cannot be serialized. ATF also concurs that the cost for non-FFL dealers to serialize was omitted from the analysis and therefore has incorporated such costs into its revised RIA.

f. Gunsmithing

Comments Received

ATF received numerous comments on gunsmiths. Commenters, including a licensed manufacturer that operates as a small business, stated the rule will have a major impact on the business by increasing the cost of gunsmithing services and recordkeeping requirements. The licensee claimed that the resulting decrease in profitability will affect the company's ability to expand and asserted that the new regulations would complicate the process of performing a quick activity, such as bore sighting or adjustments, because the firearm must be recorded in the A&D records and the firearm must be marked with a serial number. This licensee also stated that many gunsmiths perform services that do not involve engraving and that these FFLs would need to expand their services or lose business.

One commenter stated that persons should not have to be licensed to provide marking on firearms for nonlicensees because it is the responsibility of the FFL to ensure the firearm has been marked per regulation. The commenter also argued that licensing would increase costs without adding any benefits. Additionally, this commenter believed that ATF used the incorrect occupational code for salary and wages in the RIA and that the more precise code has a higher labor rate. One commenter described the significant burden and expense a gunsmith in training would endure to acquire the parts necessary to build 30 different firearms. The commenter explained that parts purchased online would need to be transferred through an FFL, which involves fees for completion of the Form 4473, and a second trip to the FFL after the required 10-day waiting period in his location.

One commenter asked for an explanation regarding the ''one-time cost for contract gunsmithing estimated to be $180,849'' and the $45,212 listed in chapter 4.3 of the RIA. This commenter asserted that ATF underestimated the number of A&D Record entries that gunsmiths would need to make and the cost of making these entries. The commenter argued that the hourly wage used for the calculation is out of date because the cost of labor has increased. One commenter suggested there was a discrepancy regarding contract gunsmithing. Another commenter worried that ATF significantly underestimated the activities for gunsmithing and did not understand why the number of items needing to be serialized was so low. One commenter did not agree with ATF's assessment in chapter 4 of the RIA that ''3,359 FFLs would outsource their firearms to another FFL for gunsmithing work.''

Department Response

ATF affirms that the current A&D Record requirements need to be maintained whenever firearms are acquired in inventory. The final rule clarifies that Type 01 and Type 02 FFLs that do gunsmithing work that includes marking services for nonlicensees are not required to apply for a Type 07 manufacturer's license. ATF reiterates that PMFs for personal use are not required by the GCA or this rule to be serialized (unless required by State or local law); instead, serialization is required only for those that are taken into inventory, which—as the final rule clarifies, based on ATF's longstanding view—does not include same-day adjustments or repairs. Because repairs are performed by gunsmiths, ATF assumes that only FFLs that are gunsmiths or hire gunsmiths will be performing repairs or customizations of PMFs, so ATF incorporated the annual costs for these FFLs.

As stated by various public commenters and reinforced by ATF subject matter experts, not all FFL dealers are capable of engraving; therefore, there may be FFLs that outsource their existing inventory of firearm parts kits with a partially complete frame or receiver to another FFL or a non-FFL that has engraving services available under the FFL's direct supervision. Existing PMFs currently in inventory are not required to be marked under the FFL's direct supervision so long as the marking occurs within 60 days from the effective date of the rule, or prior to final disposition, whichever is sooner. As for the affected populations, because such parts kits are not currently viewed by their manufacturers or members of the public as regulated, ATF is not able to definitively determine the number of affected items that would need to be serialized with the specificity that commenters requested.

g. Silencers

Comments Received

One commenter stated that ATF underestimated the cost to serialize all parts of a silencer while another commenter stated that the benefits of adding additional serialized parts of a silencer do not outweigh the costs. One commenter asked if ATF would pay for replacement of parts. One commenter believed that multiple parts of a silencer would be classified as the frame or receiver; the commenter also claimed that every silencer manufacture would need to request a variance and that ATF did not include the cost of processing the variances. One commenter asked if ATF would be covering the cost of a silencer part if it is damaged while the serial number is being marked. Additionally, the commenter wanted to know who would pay to have the silencer parts marked if all parts need to be marked.

Department Response

In both the proposed and final rule, ATF required or requires only that the

''frame'' or ''receiver'' of a firearm muffler or silencer device be marked, and the final rule makes clear which part is the frame or receiver of a modular silencer. Additionally, the final rule makes clear that the end cap of a silencer or a sound suppressor cannot be a ''frame'' or ''receiver.'' Based on public comments received in the ANPRM for silencers and mufflers, *see* 81 FR at 26764, the final rule will not significantly change the way the industry currently marks silencers. In most cases, the ''frame'' or ''receiver'' would be the outer tube.

Under Federal law, 26 U.S.C. 5842(a), and 27 CFR 479.102, each person manufacturing or making each ''firearm''—including a ''muffler or silencer,'' *see* 26 U.S.C. 5845(a)—is required to mark the ''firearm'' in accordance with the regulations and register it in the NFRTR. This rule as proposed and finalized eliminates the substantial cost of marking each and every individual internal part defined as a muffler or silencer, as well as the end cap of an outer tube. Additionally, under this rule, individual internal muffler or silencer parts may be transferred by NFA-qualified manufacturers to other qualified licensees for further manufacture or repair of complete devices without immediate registration or payment of NFA transfer tax, and complete devices that are registered may be temporarily conveyed for replacement of these internal parts. However, the term ''repair'' does not include replacement of the outer tube. The outer tube is the largest single part of the silencer, the main structural component of the silencer, and the part to which all other component parts are attached. ATF has, therefore, taken the position that the replacement of the outer tube is so significant an event that it amounts to the ''making'' of a new silencer. Hence, the new silencer must be marked, registered, and transferred after payment of transfer tax in accordance with the NFA and GCA.[140] By law, this transfer tax is owed by the transferor, not the government. *See* 26 U.S.C. 5811(b).

h. Markings on ''Privately Made Firearms''

Comments Received

One commenter worried that requiring firearms made from parts kits to be marked would destroy their value as collector's items. One commenter stated that the loss of tax revenue due to acquisition of marking equipment was not calculated in the costs described in ATF's RIA. Many commenters feared that FFLs would lose business because they do not have engraving machines and cannot work on PMFs. Several commenters stated that the cost of serializing a PMF ranges between $35 and $405 based on whether the services include serializing alone or related services such as cleaning, oiling, bluing, polishing, or refinishing the firearm. One commenter stated that the per-individual costs in the RIA were underestimated because individuals tend to own more than one firearm and that the per individual cost should include several handguns and at least one rifle. Another commenter claimed that the assumption that individuals will not be charged for serialization is inaccurate.

One commenter stated that the type of ''low cost, hand-embossing tools'' used for estimates of marking costs were not appropriate for marking steel or aluminum frames or receivers because the depth requirement may not be met, making the markings less durable. Many commenters asserted that a laser engraving machine would be needed to meet the marking requirements. One commenter stated that these machines cost at least $10,000 and that this type of machine is not available at most firearms retail stores. Many commenters were concerned that the estimated engraving cost of $25 is too low and suggested that the actual cost of engraving is between $45 and $65. One commenter was also skeptical of the low number of PMFs that ATF stated were in dealers' inventories because the agency provided no evidence as to how this number was determined.

One commenter stated that the rule would ''reduce consumer value'' by reducing the number of available parts kits because it would hurt hobbyists who enjoy building their own firearms and take away the privacy of owning an unmarked firearm. One commenter stated that not all FFLs have the equipment to mark firearms and that Type 07 manufacturers that do have the equipment may not want to mark PMFs. This commenter did not believe there are enough FFLs with the proper equipment for the number of firearms that will need to be marked. One commenter stated that chapter 6 of the RIA did not address the costs associated with recordkeeping for PMFs.

Department Response

ATF disagrees that it needed to calculate the loss of tax revenue due to acquiring serializing equipment. Estimating tax revenue is beyond the scope of the rule and is speculative, especially since companies are not required to purchase equipment, much less become FFLs. ATF also disagrees that it did not properly estimate the total number of PMFs affected by the rule or that it underestimated the number of firearms affected per individual. Neither the proposed nor final rule requires the serialization of all PMFs in circulation. This aspect of the rule affects only firearm parts kits with a partially complete frame or receiver held by FFLs and PMFs that are transferred through an FFL; therefore, ATF account for only kits and PMFs held by FFLs or that may go through FFLs. However, in the final analysis, ATF provides an estimate of the total number of PMFs in circulation, along with potential costs to individuals who go through an FFL for services associated with marking their PMFs.

FFLs are not required to acquire equipment to serialize firearms. Should they choose to receive a PMF from a non-FFL, the FFL could either require the individual to serialize the PMF prior to acceptance or directly oversee the engraving by another FFL or even a non-FFL. PMFs that may have been accepted into inventory prior to the effective date of this rule may also be outsourced for marking to a licensed manufacturer or gunsmith within the 60-day grace period. ATF revised the estimated costs to assume those with existing gunsmithing capabilities will perform engraving services in-house. FFLs without marking capabilities will either dispose of their inventory, outsource the inventory to another FFL that has marking capabilities, or directly oversee the engraving by a non-FFL. Furthermore, in the NPRM, ATF assumed that individuals with PMFs would not choose to undertake repairs or customization of their PMFs so as to avoid marking requirements; therefore, it did not anticipate those costs to individuals. Based on gunsmithing experience from subject matter experts from the Firearms Ammunition Technology Division, most individuals

[140] Under this rule, the frame or receiver of a muffler or silencer is the part that provides housing or a structure for the primary internal component designed to reduce the sound of a projectile. Typically, this is the largest external part, or outer tube, without which the device would have no structure to hold the primary internal sound reduction component(s) and that is marked with a serial number, registered in the NFRTR, and for which excise tax must be paid. ATF has long taken the position that the creation of the outer tube results in the making of a new silencer, *see* 26 U.S.C. 5845(i) (definition of ''make''), and the fact that a tube is used to replace a damaged outer tube is of no consequence because a functional device cannot be made without it. For this reason, the new regulatory text expressly excludes muffler or silencer frames or receivers from being transferred for replacement purposes without marking, recording, and registering them in accordance with 27 CFR parts 478 and 479.

seeking repairs or customization typically do not seek bluing or other services at the same time they are seeking engraving services. ATF concurs that the analysis in the NPRM regarding engraving was inaccurate. ATF agrees that a more likely scenario is that there may be some FFLs that sell firearm parts kits with a partially complete frame or receiver that also offer gunsmithing services. These FFLs will not need to purchase embossing equipment; rather, they can use their existing staff and equipment to serialize their existing inventory of kits. For FFLs that do not employ gunsmiths or have existing gunsmithing equipment, ATF estimates that these FFLs will contract out engraving services to another FFL, supervise the engraving services from a non-FFL, or dispose of their inventory. In order to simplify costs, ATF estimated only serialization from FFLs and not non-FFLs being supervised by the contracting FFL.

ATF concurs with commenters that there would be an additional cost for hobbyists and has updated the economic analysis accordingly. ATF revisited its estimate of the cost to have multiple serial numbers on a firearm because, under the final rule, the definitions identify only one frame or receiver per firearm and therefore the vast majority of firearms will only have one serial number per firearm. Because only one regulated part will be defined as a ''frame or receiver,'' ATF anticipates the cost would not be prohibitive for hobbyists.

Although FFLs are regulated, ATF does not have any records or data reflecting the number of weapon or frame or receiver kits with a partially complete frame or receiver that FFLs may have in their inventories. Furthermore, the Paperwork Reduction Act prevents ATF from surveying more than nine companies for information without going through the formal procedures to collect information from the public. *See* 44 U.S.C. 3502(3)(A)(i). As stated above, ATF revised the methodology to ascertain the number of FFLs affected and the number of firearm parts kit with a partially complete frame or receiver by relying on information from ATF's field divisions to estimate this population, which was determined to be the best available information available for the analysis.

i. Records Retention

1. Population

Comments Received

ATF received various comments regarding the population affected by the cost of record retention. Some commenters stated that the cost of shipping all firearm records to ATF was not accounted for or that ATF's estimated shipping cost was too low to account for shipments from all FFLs. Another commenter suggested that, regardless of whether an FFL ships records to ATF voluntarily, all FFLs should be accounted for, not only the ones that currently destroy their records that are over 20 years old. One commenter stated that ATF should have done an advanced notice of proposed rulemaking to find out the number of FFLs that retain their records for more than 20 years instead of relying on subject matter expert estimates. The commenter also believed that ATF's estimate that less than 10 percent (or 5,407) of dealers and collectors are not retaining their records beyond 20 years is too low because the RIA lists the number of FFLs at 113,204, and 10 percent of this number is 11,320, which is twice what is listed in the RIA.

Department Response

The Department disagrees with commenters who said the agency underestimated the cost per FFL and that it should have taken into account the costs borne by all FFLs. Federal law, *see* 18 U.S.C. 923(g)(4); 27 CFR 478.127, already requires FFLs to send all of their out-of-business records to ATF. ATF does not consider these costs as attributable to the rule because the duty to send out-of-business records to ATF is an existing statutory and regulatory requirement. In the NPRM, ATF estimated that most FFLs currently store records beyond 20 years and will not be affected by the indefinite records retention requirement. As described below, the cost burden for extending the record retention requirement will affect only a subset of the total number of FFLs. Furthermore, the Office of Management and Budget (''OMB'') explains that the baseline for measuring a rule's costs should be ''what the world will be like if the proposed rule is not adopted.'' [141] Prior to the publication of the NPRM, the majority of FFLs maintained records until discontinuance of business or licensed activity regardless of whether they remained in business for 20 years or not. Because any alternative, including the proposed rule, would be a comparison against this baseline, only the incremental cost above this baseline is attributed to this rule.

The 113,204 total number of FFLs is for all types of FFLs at the time of the analysis. Records retention affects a subset of all FFLs, in particular, Type 01 and Type 02 FFLs, because licensed manufacturers (Types 06, 07, and 10) and importers (Types 08 and 11) generally maintain permanent consolidated production, acquisition, and disposition records in accordance with 27 CFR 478.129(d) and ATF Rulings 2011–1 and 2016–3. Additionally, ATF estimates that licensed collectors (Type 03) generally maintain their curio or relic collection records until discontinuance of licensed activity. At the time of the NPRM, there were only 60,079 Type 01 and 02 FFLs, and of those, fewer than 10 percent were estimated to be destroying their records that were more than 20 years old. In the RIA for the final rule, ATF reiterates that records retention primarily affects Types 01 and 02 FFLs, and thus not all FFLs are listed in the overview of the analysis.

2. Costs

Comments Received

Various commenters suggested that the new reporting requirements alone should have made the rule economically significant. Commenters suggested that ATF did not account for the influx of transactions records for multiple ''frames'' or ''receivers'' or the influx of transaction records from purchases of firearm parts kit with a partially complete ''frame or receiver'' that would be disposed of as a ''firearm'' under the rule. Similarly, one commenter suggested ATF should use NICS checks and population growth models to account for the increased number of transactions and number of records in the future.

One commenter suggested that, in 2018, nine million firearms were manufactured. Accounting only for nine million firearms, the cost burden per record was estimated to be $0.02 per record. One commenter argued that the NPRM's cost estimate of $68,939 does not realistically encompass the recordkeeping requirements for all 79,869 FFLs because the number of records retained and therefore submitted will grow over time. This commenter further suggested that, based on the NPRM estimate of $68,939 for the entire industry, the per shipment cost for all records over 20 years would be $0.86 per FFL, which the commenter asserted was too low. Other commenters stated that the RIA estimated only additional storage costs for ATF but not the costs to FFLs.

[141] OMB, *Circular A–4* at 2 (Sept. 17, 2003), *available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last visited Mar. 23, 2022).

Several commenters suggested that the NPRM did not account for the increase in the number of records FFLs will have to maintain due to the increased number of transactions likely to happen if a firearm has multiple serial numbers. One estimated that the recordkeeping burden for ATF Forms 4473 would increase by 437 million.

One commenter stated FFLs that have voluntarily retained records beyond 20 years will have a greater cost of storing records indefinitely than FFLs that destroyed or surrendered records older than 20 years because the FFLs that retained their records will overall have more records that will need to be stored. This commenter believed that the rule change will encourage FFLs to destroy records beyond 20 years prior to the change, which will hurt ATF's ability to trace firearms.

One commenter estimated that it would cost the firearms industry $8.1 billion to develop and secure electronic records and that it would cost ATF $546 million annually to maintain and support electronic storage of records. Several commenters suggested that the low records retention cost described in the RIA was due to an over-reliance on savings from converting paper records to electronic storage. One commenter suggested that the cost for electronic storage should include a team of employees to create and maintain electronic storage for the FFL.

One commenter suggested that ATF relied too heavily on subject matter experts for assumptions used in the RIA and noted that the experts' methodologies were unknown to the public. Furthermore, this commenter questioned the assumption that all FFLs would send their records older than 20 years to ATF. One commenter suggested that ATF consider an alternative to this requirement with a time frame between 20 years and indefinite.

Department Response

The Department did not account for the potential increase in the number of records stored due to an increase in transactions recorded for multiple ''frames'' or ''receivers;'' however, this cost no longer needs to be accounted for as a result of changes to the definition of firearm frame or receiver. Nonetheless, the Department concurs that there will be an increase in firearms records because there could be more firearms transactions; this could increase the overall record retention cost. There were 14 million NICS checks in 2010 and almost 40 million NICS checks in 2021. In the cost section of chapter 7 of the RIA, ATF forecasts the estimated increase in Form 4473 applications based on the number of reported NICS checks and NFA applications by year and estimates the increase in shipping costs for FFLs to send their records to ATF when their business or licensed activity is discontinued.

Under the initial RIA, the $68,939 cost to retain records beyond the existing 20-year requirement was not distributed among the total 113,204 FFLs. ATF subject matter experts report that most FFLs already retain records indefinitely beyond the existing 20-year requirement until discontinuance of business or licensed activity. For most FFLs, this practice is already an industry standard and thus the cost of this practice is not attributable to this rule. Therefore, as stated in the NPRM and the final rule, not all FFLs will incur recordkeeping costs as a result of this rule's implementation. However, ATF agrees that there may be some FFLs that do not maintain records indefinitely or that transfer their records to a successor FFL. These FFLs may now incur additional recordkeeping costs to comply with this rule. Costs were estimated for these FFLs and ATF has revised the final analysis.

Because FFLs are required by 18 U.S.C. 923(g)(4) and 27 CFR 478.127 to send all of their records to ATF upon absolute discontinuance of their business or licensed activity, ATF does not consider costs for FFLs to ship their records to ATF upon such a discontinuance to be a cost of this rule; instead, it is a cost of the existing requirement in 18 U.S.C. 923(g)(4) and 27 CFR 478.127. ATF did not receive comments that would otherwise contradict the recordkeeping analysis; therefore, the NPRM cost analysis remains the same.

Most FFLs have and will continue to retain records, and this rule will not affect these FFLs. As stated above, most FFLs retain records for more than 20 years. This existing activity pre-dates the final rule, and costs of this activity thus are not attributable to the rule. However, the small number of FFLs that currently destroy records older than 20 years could incur some costs. For purposes of the final RIA, ATF estimates that, in an effort to reduce their costs, these FFLs may utilize electronic storage. Furthermore, most FFLs that use electronic formats of A&D records or electronic Forms 4473 outsource these software applications to a third party rather than hiring staff and building the program in-house; therefore, ATF is not incorporating the cost for an FFL to create and maintain electronic storage of their records.

ATF uses subject matter experts as the best available information when it lacks data because there is no requirement to regulate or track certain activities or items. However, ATF was able to use trace data and out-of-business records as a proxy to estimate the number of FFLs that do not retain records older than 20 years and that therefore could be affected by this rule. For this final rule, ATF determined this to be the best available information. Also, in its final analysis, ATF revised the costs for FFLs that currently voluntarily ship records older than 20 years. Upon promulgation of this rule, these FFLs will no longer be able to ship their records to ATF that are older than 20 years without discontinuing business or licensed activity. However, shipping out-of-business records remains an option should these FFLs choose to discontinue their current licensed business or activity and apply for a new license for a business that maintains an electronic recordkeeping system so that they may dispose of their paper records to ATF.

3. Benefits

Comments Received

Some commenters stated that ATF did not quantify or monetize benefits for the record retention requirement. One commenter suggested that the benefits do not outweigh the costs. One commenter asserted that ATF did not demonstrate how many crimes would be solved through tracing firearms over 20 years old. Some commenters believed that, with records older than 20 years, ATF would be unable to identify the most recent owner of the firearm because too much time would have passed, and this would lead to increased failures in tracing. One commenter believed ATF failed to meet the requirements of the APA because it did not explain how electronic records would lower the cost of storing records, nor did ATF explain why it did not include this information.

Department Response

Tracing a firearm that was involved in a criminal activity is an existing requirement and not a new requirement attributable to this rule. Based on the amount of records previously received by the NTC, ATF anticipates the cost burden for this requirement will be small. Commenters are incorrect in their assumption that the rule would lead to an increased rate of failed traces because the records are too old. To the contrary, being able to trace a firearm to the first unlicensed transferee of the firearm from a firearms licensee, no matter how

long ago, provides useful investigative leads to law enforcement. Furthermore, this final rule now includes, in Section IV.B.5.d of this preamble, information on the number of traces submitted over the past 12 years that could not be successfully completed because the licensee informed ATF it did not have the record for that firearm because the record was more than 20 years old and had been destroyed.

ATF disagrees with respect to putting forth additional analysis regarding electronic storage. The option for electronic storage is an existing option and this rule only expressly codifies and expands that option for licensees in an alternate method approved by the Director. *See* ATF Rul. 2016–1; ATF Rul. 2016–2. Specifically, it is anticipated that the option for maintaining electronic storage of ATF Forms 4473 will be updated via an ATF Ruling issued contemporaneously with this final rule.

j. Form Updates

Comments Received

Commenters asserted that the cost to update software for electronic recordkeeping was understated. Some commenters feared that it would cost a significant amount of money to update existing software to track multiple serial numbers because current systems allow for only a single serial number. Other commenters stated that some FFLs would need to acquire new software systems because the existing systems may no longer be supported by the original developer to make updates. Some commenters suggested that ATF did not account for extra time needed to enter multiple serial numbers into records.

Department Response

ATF concurs that, based on public comments, it would likely cost a significant amount of money to revamp software programs to account for multiple serial numbers. For this and other reasons, ATF has revised the definition of ''frame or receiver'' so that it describes a single part of a weapon as the frame or receiver, meaning that generally only one serial number would need to be recorded per firearm in the same manner as under current regulations. The rare exceptions would be if a manufacturer or importer chooses not to adopt an existing serial number on a firearm that is remanufactured or imported, or if a multi-piece frame or receiver had been assembled from modular subparts with different serial numbers marked on the same frame or receiver. Therefore, no cost was attributed to this requirement.

k. Government Costs

Comments Received

Many commenters stated that the government would incur additional costs associated with lawsuits filed against the rule. Some commenters worried that States will lose sales and tax revenue because companies will go out of business. Other commenters expressed concern that the government would spend more money arresting and incarcerating law-abiding people who they believed would become criminals under this rule. One commenter stated that the rule would lead to increased cost to the government because the government would need additional personnel, equipment, and training to enforce the rule.

Department Response

The Department did not account for the cost of lawsuits because costs due to potential lawsuits would be speculative. Although ATF estimated there could be a number of businesses that go out of business, there is no guarantee of accuracy in the number of businesses that would go out of business due to implementation of the rule; therefore, ATF deemed it too speculative to estimate a loss in tax revenue. Furthermore, ATF is not spending more money to arrest people who make and possess PMFs as a result of this rule. As stated earlier, nothing in this rule prevents unlicensed law-abiding citizens and hobbyists from making their own firearms by using commercially produced parts or by using 3D printers; or from transferring PMFs to others as long as they are not engaged in a business or activity requiring a license. If such persons wish to engage in the business of manufacturing, importing, or dealing in firearms, they must obtain a license like any other manufacturer, importer, or dealer.

l. Lack of Benefits

Comments Received

Many commenters claimed that the assertion that PMFs are used in crimes is not supported by the BJS survey on how criminals acquire firearms (referenced earlier in Section IV.B.8 of this preamble), and that the rule's asserted benefits are not supported by the FBI's Uniform Crime Statistics. Many commenters stated that firearms are used in a small percentage of crimes. They claimed that the number of firearms recovered at crime scenes is low and not all perpetrators are arrested and convicted. One commenter stated that the RIA failed to show why the lack of serial numbers is important to criminals and did not consider other methods that the criminal may use (removing a serial number or using a different type of weapon) to circumvent the new requirements. Another commenter asserted that there is no evidence that PMFs are the weapon of choice for criminals.

Many commenters argued that ATF did not show how the proposed rule would reduce crime. Some commenters stated the NPRM did not indicate the number of traces that identified the perpetrator, resulted in an arrest, or substantially affected the prosecution of the criminal. Nor did it provide the percentage of unserialized firearms used in crimes or show how many crimes could be solved if PMFs could be traced. A commenter asserted that, if the data is available, the public should be able to comment on it. Another commenter pointed to studies that suggest that firearms restrictions do not have an impact on gun violence. One commenter argued that the tracing of serialized firearms has failed to reduce deaths caused by these weapons.

Another commenter stated that the majority of firearms traces are for weapon offenses, not violent crimes such as homicides, assaults, or robberies. ''Mere weapon offenses,'' according to the commenter, ''cause no immediate harm,'' and ''thus the vast majority of traces do not involve the remediation of many violent uses of guns.'' The commenter also argued that the ''costs of failing to obtain a conviction on a weapon offense [are] minuscule,'' especially because ''the perpetrator will likely be convicted of some other associated crime.'' This commenter also stated that ATF failed to show how an increase in traces would lead to increased arrests and convictions and that ATF did not provide a monetary benefit of this supposed increase. Because only a small number of firearms required to be marked under this rule will ever be traced, according to the commenter, the ''external costs'' of failed tracing are low and do not support the burden of the rulemaking. Another commenter argued that homicides committed with PMFs would be a very small portion of cases that would be addressed by this rule, while another commenter claimed that it would take 30 years of homicides committed with PMFs to equal one year of homicides committed with serialized firearms.

One commenter stated that, although ATF reported the number of traces that include suspected PMFs and the

number of homicides related to the usage of PMFs, ATF did not attempt to monetize these deaths and injuries. Another commenter stated that ATF failed to show the value or benefits, either individually or on the whole, of regulating firearms kits with a partially complete frame or receiver or unassembled frames and receivers and related parts kits. One commenter stated that ATF failed to explain why it cannot monetize or quantify the purported benefit of consistent marking requirements. The commenter stated that the agency failed to explain who benefits and how large the benefits are, thus not meeting its burden under the APA. The commenter argued that ATF could have provided the benefit of easing marking requirements without adding additional marking requirements.

One commenter stated that there is no need for regulation because PMF owners can voluntarily mark their firearms. If they choose not to, the commenter said, it is because they do not find a benefit in it and only hurt themselves if the firearm is lost or stolen. The commenter also stated that ATF failed to provide information on the number of lost or stolen PMFs or parts kits and the number of these firearms or kits that could not be returned to the legal owner due to the lack of a serial number. Additionally, the commenter said ATF failed to show how often criminals receive PMFs using a straw purchaser. Another commenter argued that the rule will not deter straw purchasers.

Department Response

The Uniform Crime Statistics referenced by commenters are compiled through the FBI's Uniform Crime Reporting (''UCR'') Program. The UCR Program, however, does not collect crime information on PMFs. As a result, ATF did not rely upon UCR Program data to explain the rise in suspected PMFs that are recovered and traced from crime scenes. FBI Uniform Crime Statistics were not considered pertinent for present purposes and were not used in analyzing the costs and benefits of this rule.

Furthermore, based on tracing and National Integrated Ballistics Information Network data, many law enforcement agencies may not be reporting PMFs accurately, and therefore, ATF believes that the number of PMFs reported as being used in crimes is significantly smaller than the actual number. Aware of these potential reporting errors, the number of PMFs ATF has presented in the RIAs accompanying the NPRM and this final rule is likely to be much lower than the actual number recovered. ATF did, however, provide more quantifiable benefits in the final RIA based on an increased ability to trace all firearms, and particularly, PMFs. ATF reiterates that the primary benefit of the final rule is promoting public safety and restricting felons and other prohibited persons' access to firearms.

m. Proposed Alternatives

Comments Received

Thousands of commenters claimed that ATF did not mention any one of the regulatory alternatives proposed by the wider firearms industry that several commenters believe were raised with ATF during an early 2021 meeting reported by the Wall Street Journal. *See* Zusha Elinson, *Ghost-Gun Concerns Prompt Feds to Meet With Firearms Makers,* Wall St. J. (Mar. 26, 2021), *available at https://www.wsj.com/articles/ghost-gun-concerns-prompt-feds-to-meet-with-firearms-makers-11616756403* (last visited Mar. 23, 2022). Other commenters asserted that ATF failed to adequately consider or explain why it was not considering the regulatory alternatives provided in the NPRM. For example, one industry member stated that, of its four regulatory alternatives, ATF did not explain regulatory alternative number one, which was no change, and regulatory alternative number three, which was to grandfather all existing firearms. For instance, the commenter stated that ATF did not explain for alternative number three why it would be difficult to bring enforcement actions against the continued manufacturing of noncompliant receivers or explain why the burden of doing so would not be justified by the alleged fact that there are ''no costs'' associated with the third option's implementation.

Numerous commenters opposed to the NPRM stated that ATF should grandfather in all personally owned items to preserve citizens' civil liberties and to avoid criminal entrapment. Some commenters suggested that ATF allow non-FFLs to continue selling unfinished lower receivers while placing the burden on the consumer to register the firearm with an FFL once the consumer completes the process of privately manufacturing a lower receiver. The commenter argued that it is illogical to require manufacturers and retailers of unfinished lower receivers to adhere to a regulatory system that is a ''veiled scheme of forced compliance against gun owners.'' In the commenter's opinion, only when an unfinished lower receiver is finished by the end user can the final owner be identified and the markings be completed and known (*e.g.,* gauge or caliber).

One commenter suggested that ATF consider non-regulatory alternatives such as corrective taxes and subsidies, aid from non-governmental organizations, tort law, public service advocacy, and private contracting. Another commenter suggested that ATF consider other alternatives, such as requiring that records be retained for longer than 20 years (but less than indefinitely) or allowing anyone to mark weapons.

Department Response

The Department disagrees with commenters who stated that ATF did not consider regulatory alternatives proposed by the wider firearms industry during an early 2021 meeting reported by the Wall Street Journal because ATF was not presented with any regulatory alternatives other than keeping the current limited and outdated definitions.

The ''no change'' alternative has no costs or benefits because it would involve maintaining the status quo. This alternative was considered but not implemented because the GCA requires that all firearms be regulated. Currently, the vast majority of firearms fall outside the scope of the existing regulatory definition of ''frame or receiver.'' Due to recent court rulings, it would be difficult for the Department to continue to successfully prosecute criminal activity relying on the existing regulatory definition of ''frame or receiver'' because that definition does not capture the vast majority of firearm designs.

With respect to grandfathering all existing firearms, the proposed rule sought to allow manufacturers and importers to mark firearms of the same design and configuration in the same manner as before the effective date of the final rule. The final rule makes clear that almost all firearms ATF previously classified as falling within the definition of ''frame or receiver'' prior to issuance of the final rule are grandfathered and may continue to be marked in the same manner as before the effective date of the final rule. The only exceptions are certain ATF classifications of partially complete, disassembled, or nonfunctional frames or receivers because, at the time of classification of those articles, ATF may not have been provided with, or did not examine, a full and complete parts kit containing those items along with any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that were made available by the seller or distributor of the item or kit

to the purchaser or recipient of the item or kit. As explained in this final rule, these items and materials are necessary for ATF and others to make a proper firearm classification under the GCA and NFA (if applicable).

To clarify, existing firearm parts kits with a partially complete frame or receiver, and PMFs owned by or serviced by FFLs that were determined not to be ''frames or receivers'' as defined prior to this rule, will not be grandfathered in, meaning that FFLs may be required to mark these firearms in accordance with the new regulations if the FFLs wish to maintain them in their inventories. This rule does not require unlicensed PMF owners to do anything to their firearms maintained solely for personal use.

ATF has determined that the ''non-regulatory alternative'' of imposing a higher tax on firearms that are currently being regulated would only make the cost of regulated firearms more expensive to the public and would not affect the PMFs or firearm parts kits that currently fall outside of the regulatory regime. Subjecting firearms to higher taxes would not ensure that all firearms, whether commercially or privately made, are treated the same under the regulations when they enter interstate commerce. This in turn would not achieve ATF's objectives of ensuring that felons and prohibited persons are not able to obtain firearms and that firearms can be traced. The objective of this rule is not to make firearms more expensive or more difficult for the public to obtain; rather, the objectives of the rule are to ensure that all firearms, as defined by the GCA, are regulated similarly; to remove the current regulatory definitions of ''frame or receiver'' and replace them with definitions that capture the vast majority of firearm designs and advancements in firearms technology; to allow law enforcement to trace firearms, including PMFs; and to prevent felons and other prohibited persons from easily acquiring firearms. It is not clear how implementing corrective taxes would prevent criminals from obtaining firearms or help law enforcement officers solve crimes.

It is not clear how the commenter's suggested alternative scenarios using non-regulatory alternatives (*e.g.,* tort or public advocacy) would be carried out. However, these alternatives are out of ATF's purview and beyond the scope of this regulation; therefore, these alternatives were not considered.

Although the alternative of requiring record retention for longer than 20 years, but less than indefinitely, was considered, ATF determined that this alternative was not the best course of action. Because firearms are durable items that can be in circulation for many decades or even beyond 100 years, an alternative specifying a specific time frame for record retention requirements would not align with the shelf life of most firearms. Thus, without the indefinite retention requirement imposed by this rule, ATF would continue to encounter the problem of not being able to successfully trace older firearms that are used in the commission of a crime. As a result, ATF does not believe such alternatives would achieve the intended benefits of this final rule.

n. Final Regulatory Flexibility Analysis

Comments Received

Many commenters asserted that the rule will have a significant impact on small businesses. Other commenters argued that a robust small business analysis was not performed. Some commenters stated that the rule will have a negative impact on many small businesses, including those owned by veterans and families. They further stated the rule would impact businesses that sell firearms parts as well as those that specialize in firearms customization.

A major distributor of firearms parts pointed out that ATF failed to explain how there can be a significant financial impact on individual businesses but not all the businesses in the same industry. One commenter listed multiple reasons the Initial Regulatory Flexibility Act (''IRFA'') was, in the commenter's opinion, not done according to law. The reasons included a lack of a statement of objectives and legal basis for the proposed rule; a lack of evidence that the 132,023 affected entities would experience minimal or no cost; a failure to accurately estimate the affected population of non-FFL retailers; a lack of sufficient analysis on the impact on non-FFL retailers; and a failure to provide sufficient analysis of the impact on the unfinished lower receiver market. The commenter stated that there was no analysis addressing the cost of becoming licensed or providing options that would have the same result as regulation. Additionally, the commenter believed the market for unfinished receivers would be quickly diminished. One commenter stated that the IFRA analysis contained errors, such as ATF's failure to monetize or quantify benefits or explain why it did not do so and ATF's dismissal or underestimation of costs.

One commenter asserted that the rule has ''net negative benefits'' so it should not move forward. The commenter believed that the change in record retention requirements would result in fewer successful firearm traces because of the increased number of documents retained. Several commenters stated that ATF failed to provide the actual number of small businesses that would be affected and the estimated costs that the affected entities would incur.

Some commenters stated that manufacturers of unfinished receivers and firearm parts kits with an unfinished frame or receiver would choose not to obtain an FFL and instead go out of business. This would hurt firearms manufacturers because they purchase these items as part of their production process. Several commenters suggested that this rule will result in significant job losses in manufacturing. One commenter stated that this rule would affect his ability to expand his business and another commenter stated that it had put off business expansion and new hiring because of the rule. Another commenter stated that, because of the anticipated increase in the price of unfinished receivers as a result of the rule, he would no longer be able to provide classes in firearms safety, maintenance, and marksmanship.

One commenter stated that the real cost of the proposed rule is not the lost revenue of the affected companies but the loss in the value of these companies, which hurts the companies' owners. The commenter also stated that ATF failed to show the anticipated number of jobs lost and the value associated with the loss.

Many commenters asserted that ATF underestimated the cost to the industry. One commenter stated that small businesses would need to acquire engraving equipment and inventory tracking systems. Those businesses that could not afford this expense, according to the commenter, would be forced to destroy inventory. One commenter stated that both large and small entities would need to spend time and money to ensure compliance with the new regulations. One commenter argued that ATF did not consider the true cost to non-manufacturing FFLs for equipment purchases and training, and for the volume of PMFs needing serialization to recoup the return on the investment.

Department Response

ATF agrees that different entities will experience a range of costs as outlined by the different chapters of the RIA, and ATF revised the regulatory flexibility analysis to describe the largest impact on small businesses, which is that some businesses will no longer continue

operations. The IRFA has been updated to reflect these costs.

ATF concurs that large and small entities may require time to research and understand regulations. However, this is already an existing cost of regulations in this industry in general and is not a new requirement specific to this rule. Therefore, it is not considered a cost of this rule. In accordance with the Small Business Regulatory Enforcement Fairness Act (''SBREFA''), a small business compliance guide will be published because this final rule will impact a significant number of small businesses.

o. APA Requirements

Comments Received

One commenter suggested that this rule should be considered both a regulatory and economically significant rule because of its impact on a substantial number of small businesses, as indicated in the RIA. Another commenter believed that the rule violated Executive Order 12866.

Department Response

As stated in the NPRM, this rule is a ''significant regulatory action'' under section 3(f)(4) of Executive Order 12866; however, this rule is not ''economically significant,'' as that term is defined in the Executive Order. An ''economically significant'' rule is one estimated to cost $100 million or more in one given year. This rule is not expected to reach that threshold. As discussed in the Final Regulatory Flexibility Analysis (''FRFA''), ATF agrees that this rule could potentially affect small businesses that only manufacture or deal in firearm kits with a partially complete frame or receiver, but notes that whether a rule has significant impacts on small businesses does not determine if the rule is economically significant under Executive Order 12866. Nevertheless, because this rule has the potential to significantly affect small businesses, ATF has performed an IRFA and a FRFA.

p. Congressional Review Act

Comments Received

One commenter disagreed with the Department's claim in the NPRM that this rulemaking is not a ''major rule,'' which is defined in 5 U.S.C. 804(2), in part, as a rule that ''resulted in or is likely to result in . . . an annual effect on the economy of $100,000,000 or more'' or; ''significant adverse effects on . . . innovation.''

Department Response

ATF disagrees that this this is a ''major rule'' as defined under 5 U.S.C. 804(2). This rule is estimated to cost less than $100 million in any given year, as outlined in the standalone RIA. Further, the Department disagrees this rule stifles or impacts innovation. To the contrary, the regulations are being updated to accommodate changes in firearms technology and terminology, and the industry may develop new innovations to comply with the updated regulations.

q. Unfunded Mandate

One commenter believed that the rule would exceed the one-year allowable threshold of $177 million (adjusted for inflation since 1995) set by the Unfunded Mandates Reform Act. *See* 2 U.S.C. 658c.

Department Response

ATF disagrees that the rule will be a major rule under the Unfunded Mandates Reform Act. The rule is estimated to cost less than $100 million in any given year, as outlined in the standalone RIA.

14. Other Concerns With the Rule

a. Comment Process

Comments Received

At least one commenter claimed that there were concerns in online groups and boards that a number of comments meeting the guidelines for being publicly posted were ''subsequently deleted,'' thus ''forcing people to issue new comments for the rule,'' or that comments were moderated prior to publishing, raising a free speech concern. The commenter stated that, although these comments might have contained offensive language or have included threats, or may have been similar to other comments indicating spam, those comments should still have been considered as either supporting or opposing the proposed rule. Another commenter stated that the agency's instructions that commenters self-identify and provide contact information ''severely limit the degree and amount of public participation.'' They also argued that these instructions chilled speech protected by the First Amendment and discouraged members of the public from commenting. Because of this, the commenter stated that ATF should re-open the comment period.

Department Response

ATF received just over 290,000 comments during the 90-day comment period. The vast majority of comments were received through the online Federal portal (*www.regulations.gov*) with the balance coming through mail and fax. The NPRM's Public Participation section informed the public that there may be a significant delay between the time a person submits a comment through one of the three methods before it becomes visible online due to the volume of comments received on any given day. The Federal Docket Management System (''FDMS''), the portal through which Federal agencies manage their rulemaking dockets, requires the agency to review comments before making them visible to the public on regulations.gov. With the exception of a limited ability to redact, FDMS does not allow agency users of the system to alter or change the substance of a comment. ATF posted and reviewed comments, even numerous duplicate comments (*i.e.,* comments from the same submitter with the same content) that were generally consistent with the posting guidelines, *i.e.,* comments that did not contain excessive profanity or contain inappropriate or sensitive content. No comments were deleted or removed, unless upon request of a submitter.

The Department disagrees that ATF's instructions that commenters self-identify ''severely limit the degree and amount of public participation,'' chill speech, or discourage the public from commenting, as evidenced by the volume of comments received on the NPRM, as well as the content of some comments that expressly declared that they will not comply with any regulation. ATF has historically requested persons to self-identify and include contact information largely in the event that a person makes a comment that the agency would like to follow up on to gain further information or perspective from the commenter. There were recent updates to the online Federal portal that allowed the public to submit comments under an ''Anonymous'' feature; ATF accepted, posted, and considered these comments. Accordingly, the Department disagrees that ATF should re-open the comment period.

b. No Federalism Impact Statement

Comments Received

At least one commenter asserted that ATF should have prepared a federalism summary for the NPRM pursuant to Executive Order 13132, entitled ''Federalism.'' This Executive Order is a directive meant to ''guarantee the division of governmental responsibilities between the national government and the States'' and ''further the policies of the Unfunded

Mandates Reform Act.'' [142] Under Section 6 of the Executive Order, agencies are not permitted, to the extent practicable and permitted by law, to issue any regulation that has ''federalism implications'' [143] if the regulation imposes substantial direct compliance costs on State and local governments and is not required by statute, or if the regulation preempts State laws, unless the agency consults with State and local officials and prepares a federalism impact summary.

The commenter argued that, although the NPRM acknowledged that States have chosen different policymaking paths to regulate or not regulate PMFs or kits, the Department and ATF failed to engage in a federalism analysis of its ''constitutional and statutory authority for [its] action'' in accordance with section 3(b) of the Executive Order. That section requires such analysis and consultation with State or local officials if the agency's action limits the policymaking discretion of the States and if ''there are significant uncertainties as to whether national action is authorized or appropriate.'' The commenter further argued that, pursuant to section 4(a) of the Executive Order, the NPRM failed to acknowledge that the Federal re-definition of ''firearm'' and mandated marking requirements would preempt State laws, such as State laws on the storage and transportation of firearms and on the marking or registration of PMFs. Finally, the commenter observed that State laws often rely on Federal classifications. For all these reasons, according to the commenter, States might be directly affected by the NPRM.

Department Response

The Department disagrees that a federalism impact statement is needed for this rulemaking under Executive Order 13132. This rule, which implements the GCA, does not preempt State laws or impose a substantive compliance cost on States. Under the GCA, 18 U.S.C. 927, State and local jurisdictions may enact their own requirements and restrictions on firearms unless there is a direct and positive conflict such that the two cannot be reconciled or consistently stand together. State and local jurisdictions are therefore free to create their own definitions of terms such as ''firearm'' and ''frame or receiver'' to be applied for purposes of State or local law within their respective jurisdictions. They are free to mandate their own requirements concerning the marking, storage, sale, and transportation of firearms.[144] This rule points out that numerous State and local jurisdictions have, in fact, enacted their own restrictions on unmarked, unserialized, 3D-printed, or undetectable firearms, and firearms with obliterated, removed, or altered serial numbers, and have adopted requirements to report or record the serial number marked on pawned firearms.[145] This rule as proposed and finalized does not purport to impose any costs upon or otherwise limit the authority of State and local governments. To the contrary, the GCA and NFA implementing regulations at 27 CFR 478.58 and 479.52, which are not being amended, expressly state that holders of Federal firearms licenses and NFA taxpayers are not conferred any right or privilege to conduct business or activity contrary to State or other law, and that they are not immune from punishment for conducting a firearm or ammunition business or activity in violation of State or other law.

V. Final Rule

A. Definition of ''Firearm''

The rule finalizes, with minor changes, the amendments proposed in the NPRM to the definition of ''firearm'' in part 478, which clarify that this term includes a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive.

B. Definition of ''Frame or Receiver''

The final rule accepts the recommendations of numerous commenters and provides a new definition to remove and replace the terms ''firearm frame or receiver'' and ''frame or receiver'' in §§ 478.11 and 479.11 (referencing § 478.12). The new definition, set forth in a new § 478.12, separately defines ''frame'' for handguns, and ''receiver'' for rifles, shotguns, and other weapons that expel a projectile other than handguns. Rather than a definition that describes any housing for any fire control component, these definitions now describe only a single housing or structural component for one specific fire control component of a given weapon including ''variants thereof,'' a term that is also defined. For handguns, or variants thereof, it is the housing or structure for the primary energized component designed to hold back the hammer, striker, bolt, or similar component prior to initiation of the firing sequence (*i.e.,* sear or equivalent), even if pins or other attachments are required to connect such component to the housing or structure. For rifles, shotguns, and projectile weapons other than handguns, or variants thereof, it is the housing or structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (*i.e.,* bolt, breechblock, or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.

The final rule amends the definitional supplement to ''frame or receiver'' entitled ''firearm muffler or silencer frame or receiver'' to define a single component of a complete firearm muffler or silencer device as the frame or receiver, and clarifies how the definition applies to a modular device with more than one housing or structure for the primary internal sound reduction components. Specifically, the terms ''frame'' and ''receiver'' mean the housing or structure for the primary internal component designed to reduce the sound of a projectile (*i.e.,* baffles, baffling material, expansion chamber, or equivalent) (formerly, ''essential internal components''). Additionally, the terms ''frame'' and ''receiver'' now exclude ''a removable end cap of an outer tube or modular piece.''

The final rule does not adopt the definitional supplement of ''split or modular frame or receiver,'' though a definition was added to define the term ''multi-piece frame or receiver'' and text was added to explain how and when such a frame or receiver must be marked. In this regard, the rebuttable presumption in the definition of ''frame or receiver'' was amended in the final rule to explain that the marked subpart(s) of a multi-piece frame or receiver must be presumed to be part of the frame or receiver of a weapon or device absent an ATF classification or other reliable evidence to the contrary.

The final rule amends the supplement to the proposed definition of ''frame or receiver'' entitled ''partially complete, disassembled, or inoperable frame or receiver'' by: (1) Replacing the term

[142] 64 FR 43225 (Aug. 10, 1999).

[143] ''Policies that have federalism implications'' are defined as ''regulations . . . that have substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' E.O. 13132, sec. 1(a).

[144] *See* 18 U.S.C. 922(b)(2) (making it unlawful for a licensee to sell or deliver any firearm to any person in any State where the purchase or possession by such person would violate any State law or published ordinance); 18 U.S.C. 923(d)(1)(F) (requiring license applicants to certify compliance with State and local law).

[145] *See* footnotes 24, 35, and 121, *supra; see also* 86 FR at 27730 n.62. However, State and local jurisdictions are not entitled to redefine, amend, or exempt persons from the provisions of Federal law.

''inoperable'' with the more accurate term ''nonfunctional''; (2) clarifying that this supplement also addresses frame or receiver parts kits; (3) explaining what it means for a frame or receiver to function as a frame or receiver;

(4) removing the definition ''partially complete,'' and, instead, expressly excluding from the definition of ''frame or receiver'' forgings, castings, printings, extrusions, unmachined bodies, or similar articles that have not yet reached a stage of manufacture where they are clearly identifiable as an unfinished component part of a weapon (*e.g.,* unformed blocks of metal, liquid polymers, and other raw materials); (5) clarifying the items that the Director may consider when classifying a partially complete, disassembled, or nonfunctional frame or receiver; and (6) providing detailed examples of what would and would not be a ''frame or receiver'' that may readily be completed, assembled, restored, or otherwise ''converted'' to a functional state.

The final rule makes minor changes to the proposed supplement to the definition of ''frame or receiver'' entitled ''destroyed frame or receiver.'' For example, the final rule removes examples of specific ATF approved methods of destruction in the regulatory text in favor of general terminology. Additionally, the final rule clarifies that the term ''frame or receiver'' includes the specific component of a complete weapon or complete firearm muffler or silencer device, including variants thereof, determined (classified) by the Director to be defined as a firearm ''frame or receiver'' prior to publication of the final rule, except for determinations concluding that a partially complete, disassembled, or nonfunctional frame or receiver (including a weapon or frame or receiver parts kit) was not, or did not include, a firearm ''frame or receiver'' as previously defined. This ''grandfather'' provision also includes nonexclusive examples and diagrams of previously classified weapons.

C. Definition of ''Readily''

The final rule makes minor changes to the proposed definition of ''readily'' in Parts 478 and 479 to make clear that it applies to any process, action, or physical state, and that the listed factors are only relevant to firearm classifications.

D. Definitions of ''Complete Weapon'' and ''Complete Muffler or Silencer Device''

The final rule makes minor amendments to the proposed definitions of ''complete weapon'' and ''complete muffler or silencer device'' in Parts 478 and 479 by deleting ''as designed'' as it modified the phrase ''necessary to function.'' This change was necessary to ensure that firearms are not designed to avoid marking time limits by eliminating a nonessential component in the manufacturing process.

E. Definition of ''Privately Made Firearm''

The final rule makes minor changes to the proposed definition of ''privately made firearm'' in part 478 to make it consistent with the changes to the definitions of ''frame or receiver'' and ''importer's or manufacturer's serial number,'' and for clarity regarding the exclusion for pre-October 22, 1968 manufactured firearms.

F. Definition of ''Importer's or Manufacturer's Serial Number''

The final rule modifies the proposed definition of ''Importer's or manufacturer's serial number'' in part 478. The term means the serial number placed by a licensee on a firearm, including any full or abbreviated license number, any such identification on a privately made firearm, or a serial number issued by the Director. It also specifies that for purposes of 18 U.S.C. 922(k) and § 478.34, the term shall include any associated licensee name, or licensee city or State placed on a firearm. These changes ensure that these markings are considered a part of the ''importer's or manufacturer's serial number'' because a firearm is difficult to trace without this information.

G. Definition of ''Gunsmith''

This rule finalizes with clarifying changes the proposed definition of ''engaged in the business'' as it applies to a ''gunsmith'' in part 478. Most significantly, the final rule makes clear that licensed dealer-gunsmiths are not required to be licensed as manufacturers if they only perform gunsmithing services on existing firearms for their customers, or for another licensee's customers, because the work is not being performed to create firearms for sale or distribution. These services may include customizing a customer's complete weapon by changing its appearance through painting, camouflaging, or engraving, applying protective coatings, or by replacing the original barrel, stock, or trigger mechanism with drop-in replacement parts.

Licensed dealer-gunsmiths may also purchase complete weapons, make repairs (*e.g.,* by replacing worn or broken parts), and resell them without being licensed as manufacturers. Likewise, under the final rule, licensed dealer-gunsmiths may make such repairs for other licensees who plan to resell them without being licensed as a manufacturer. They may also place marks of identification on PMFs they may purchase and sell, or under the direct supervision of another licensee in accordance with this rule. Persons performing these activities are distinguished from persons who engage in the business of completing or assembling parts or parts kits, applying coatings, or otherwise producing new or remanufactured firearms (frames or receivers or complete weapons) for sale or distribution. Such persons must be licensed as manufacturers.

H. Marking Requirements for Firearms

The final rule makes a number of amendments to the proposed marking requirements in parts 478 and 479. In addition to minor changes to conform the marking requirements to the new definition of ''frame or receiver'' that describes a single component, the final rule amends the text to explain how and by when multi-piece frames or receivers are to be identified, and that an identified modular subpart thereof may only be removed and replaced under certain limited conditions. With regard to the size and depth of markings, a minor change was made to clarify that only the serial number and associated license number need be marked in a print size no smaller than 1/16 inch. In the section addressing the meaning of marking terms, the final rule also defines the term ''identify'' to mean placement of identifying markings, clarifies that the term ''legibly'' means that the unique identification number within a serial number may include non-numeric characters, and also clarifies that the term ''conspicuous'' means that the markings must be capable of being easily seen with the naked eye.

As to the time period for manufacturers to identify the firearms they produce, the term ''from completion of the active manufacturing process'' was not adopted in favor of the clearer statement ''the entire manufacturing process has ended.'' The exclusion from the time period for firearms ''actively awaiting materials'' was replaced with a rebuttable presumption that firearms awaiting materials, parts, or equipment repair to be completed are presumed, absent reliable evidence to the contrary, to be in the manufacturing process. Also, the time limits to mark firearms differentiate in the final rule between non-NFA complete weapons and frames

or receivers disposed of separately, which must be marked within seven days after completion of the manufacturing process, and NFA firearms and parts defined as firearms, which must be marked by close of the next business day. This provides a reasonable grace period in which to mark firearms manufactured and makes them consistent with their respective recordkeeping requirements under the GCA and NFA. The final rule does not adopt the proposed seven-day alternative for manufacturers to record acquisitions of non-NFA firearms if commercial records are maintained, as it was not necessary in light of the seven-day grace period to mark non-NFA weapons. NFA weapons and parts must be marked and recorded by close of the next business day after manufacture. Furthermore, the final rule does not adopt the provision allowing licensees to obtain a variance for the period of time in which to mark their firearms because the grace periods being codified in the final rule are reasonable and well known to the industry.

The final rule makes minor conforming amendments to the proposed requirement to mark PMFs. Additionally, unlike the proposed rule, the final rule allows licensed or unlicensed engravers to mark firearms on licensees' behalf (with the requesting licensee's information) provided: (1) The identification takes place under the direct supervision of the requesting licensee without the engraver taking the firearm into inventory; and (2) the markings otherwise meet the identification requirements. Also, the final rule text incorporates guidance from the NPRM's preamble that an acceptable method of identifying a PMF is by placing the serial number on a metal serial number plate permanently embedded into a polymer frame or receiver, or other method approved by the Director.

With regard to the marking exceptions, the final rule expands the rules allowing licensees to adopt (and not mark) the serial number or other identifying markings under certain conditions. Specifically, in light of comments received, the final rule allows licensed manufacturers to adopt (and not mark) the serial number and other markings previously placed on a firearm that has not been sold, shipped, or otherwise disposed of to a person other than a licensee (*i.e.,* newly manufactured firearms). This change would supersede ATF Ruling 2009–5, which requires ATF to be notified when marks are adopted as an alternative to marking. The final rule also provides more specificity than the proposed rule on how licensees who remanufacture or import firearms may adopt (and not mark) the markings on firearms that were sold, shipped, or disposed of to a nonlicensee. The final rule allows licensed manufacturers to adopt the serial number and other identifying markings previously placed on a firearm by another licensee provided the manufacturer is performing services as a gunsmith (as defined in § 478.11) on existing firearms that are not for sale or distribution by a licensee. Further, the final rule allows licensees to adopt the unique identification number placed on a PMF by its unlicensed maker so long as the number is not duplicated on another firearm of the licensee, the number otherwise meets the identification requirements, and the licensee adds their abbreviated FFL number as a prefix to the existing identification number so that the firearm can be traced to the licensee who identified the firearm.

The final rule also differs from the proposed rule in that it does not require firearm muffler or silencer parts that are transferred for further manufacture or repair to be ''actively'' in the manufacturing or repair process if those parts are being transferred for those purposes. In this regard, the definition of ''transfer'' in part 479 has been finalized as proposed to exclude temporary conveyances solely for repair, identification, evaluation, research, testing, or calibration.

The final rule retains the marking grandfathering provision, but revises the text to remove ''and configuration'' and defines ''new design'' to explain when a frame or receiver is eligible for this exception. Notably, the more limited final definition of ''new design'' only applies to changes in the design of the existing frame or receiver to the extent it has been functionally modified or altered, as distinguished from performing a cosmetic process that adds to or changes the decoration of the frame or receiver (*e.g.,* painting or engraving), or by adding or replacing stocks, barrels, or accessories to the frame or receiver.

With respect to the voluntary process for seeking an ATF classification of firearms, the final rule clarifies that a firearm sample submitted to ATF must include all accessories and attachments relevant to such classification, and that each request for classification of a partially complete, disassembled, or nonfunctional item or kit must contain any associated templates, jigs, molds, equipment, or tools that are made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit, and any instructions, guides, or marketing materials if they will be made available by the seller or distributor with the item or kit. Further, submissions of armor piercing ammunition with a projectile or projectile core constructed entirely from one or a combination of tungsten steel alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium must include a list of known handguns in which the ammunition may be used. These changes will help to ensure that ATF can make a proper classification of firearms and armor piercing ammunition. The final rule also clarifies that ATF classifications of a specific component as a frame or receiver, as distinguished from other firearms determinations, may be considered applicable to or authoritative with respect to other firearms produced by the requestor that are similar so that a separate classification does not need to be submitted to know which portion of a similar weapon to mark.[146]

I. Recordkeeping

Because firearms would not have more than one frame or receiver, the final rule does not finalize the proposed changes to Parts 447, 478, and 479 to refer to in the plural form the manufacturer or importer name, country of manufacture, or serial number in required records. However, in the unlikely event there is more than one manufacturer or importer, country of manufacture, or serial number marked on a firearm, licensees must still record more than one name, country, or serial number in accordance with the existing regulatory requirements.[147] In addition, the final rule substitutes ''transaction number'' for ''serial number'' in part 478 with respect to the manner in which ATF Forms 4473 must be maintained to avoid confusion with the ''importer's or manufacturer's serial number'' placed

[146] ATF Rulings are different from private letter firearms classifications. ATF issues formal public rulings (as distinguished from ''private letter firearm classifications'' to individual industry members) to promote uniform understanding and application of the laws and regulations it administers. ATF Rulings apply the law and regulations to a specific set of facts, and apply retroactively unless otherwise indicated, whereas private letter firearm classifications are in response to a private inquiry for a determination regarding a specific item or parts kit by ATF. Rulings do not have the force and effect of ATF regulations, but may be cited and relied upon as precedents in the disposition of similar cases. *See* 27 CFR 70.701(d) (as in effect on January 23, 2003, and continued by 28 CFR 0.133(a)(2), (3)).

[147] *See* 27 CFR 478.11 and 479.11 (''Words in the plural form shall include the singular, and vice versa . . . .''); FFL Newsletter, May 2012, at 5 (''If a firearm is marked with two manufacturer's names, or multiple manufacturer and importer names, FFLs should record each manufacturers' and importers' [sic] name in the A&D record.'').

on a firearm. Further, the proposed recordkeeping requirement in part 478 to record a ''serial number'' is amended to clarify that any license number either as a prefix, or if remanufactured or imported, separated by a semicolon, must be recorded in the serial number column for accurate tracing. The final rule also amends the proposed recordkeeping requirement for manufacturers in part 478 to make clear that production and acquisition records for non-NFA firearms manufactured or otherwise acquired must be recorded within seven days, not by close of the next business day as stated in the proposed rule, though NFA firearms must be recorded by close of the next business day unless there is a sufficient commercial record of acquisition, in which case the grace period to record would be extended until the seventh day.

With regard to the licensee's acquisition of PMFs into inventory, the final rule clarifies in part 478 that the serial number need not be immediately recorded if the firearm is being identified by the licensee, or marked under the licensee's direct supervision, in accordance with § 478.92(a)(2). Once marked, the acquisition entry must be updated. Further, unlike the proposed rule, the final rule expressly allows licensed dealer-gunsmiths, manufacturers, and importers to conduct same-day adjustments or repairs of unmarked PMFs without marking them so long as they do not accept them into inventory overnight and they are returned to the person from whom they were received. If, however, the licensee has possession of the firearm from one day to another or longer, the firearm must be recorded as an ''acquisition,'' and then as a ''disposition'' in the A&D records upon return to the same customer. PMFs are thereby treated similarly to commercially produced firearms when same-day adjustments or repairs are conducted. Additionally, the final rule clarifies that a PMF must be recorded as an acquisition whenever it is marked for identification, including same-day or on-the-spot. The only exception is when another licensee places markings for, and under the direct supervision of, the licensee who recorded the acquisition. In that circumstance, the licensee marking the firearm need not enter the PMF as an acquisition or mark the PMF with their own information.

The rule also finalizes with minor changes the proposed amendment to § 479.103 that allows manufacturers to delay submission of an ATF Form 2, Notice of Firearms Manufactured or Imported, if firearm muffler or silencer parts are transferred between qualified licensees for further manufacture or to complete new devices that are registered upon completion of the device, or to repair existing, registered devices.

J. Record Retention

This rule finalizes with few changes the proposed requirement in part 478 that all licensees retain their records until business or licensed activity is discontinued, either on paper or in an electronic alternate method approved by the Director, at the business or collection premises readily accessible for inspection. The final rule made changes to § 478.50(a) to make clear that the warehouse for storage of firearms or ammunition inventory may also be used for the storage of records over 20 years of age. The warehouse may not be used to conduct other business activities, which would require a separate license and fee. 18 U.S.C. 923(a).

K. Effect on Prior ATF Rulings and Procedures

ATF publishes formal rulings and procedures to promote uniform understanding and application of the laws and regulations it administers, and to provide uniform methods for performing operations in compliance with the requirements of the law and regulations. ATF Rulings represent ATF's guidance as to the application of the law and regulations to the entire state of facts involved, and apply retroactively unless otherwise indicated.[148] Certain ATF Rulings and one ATF Procedure are impacted by this final rule, as follows:

The following rulings are hereby superseded: ATF Ruling 2009–1 (Firearms Manufacturing Activities—Camouflaging or Engraving Firearms); ATF Ruling 2009–5 (Firearms Manufacturing Activities, Identification Markings of Firearms); ATF Ruling 2010–10 (Manufacturing Operations May be Performed by Licensed Gunsmiths Under Certain Conditions); ATF Ruling 2011–1 (Importers Consolidated Records); ATF Ruling 2012–1 (Time Period for Marking Firearms Manufactured); ATF Ruling 2013–3 (Adopting Identification of Firearms); and ATF Ruling 2016–3 (Consolidation of Records Required for Manufacturers).

The following rulings are hereby amplified:[149] ATF Ruling 2002–6 (Identification of Firearms, Armor Piercing Ammunition, and Large Capacity Ammunition Feeding Devices); ATF Ruling 2016–1 (Requirements to Keep Firearms Records Electronically) and ATF Ruling 2016–2 (Electronic ATF Form 4473).

The following rulings and procedure are hereby clarified:[150] Revenue Ruling 55–342 (FFLs Assembling Firearms from Component Parts); ATF Ruling 77–1 (Gunsmithing at Shooting Events); ATF Ruling 2009–2 (Installation of Drop In Replacement Parts); ATF Ruling 2010–3 (Identification of Maxim Side-Plate Receivers); ATF Ruling 2015–1 (Manufacturing and Gunsmithing), and ATF Procedure 2020–1 (Recordkeeping Procedure for Non-Over-the-Counter Firearm Sales By Licensees to Unlicensed In-State Residents That Are NICS Exempt).

L. Severability

Based on the comments received in opposition to this rule, there is a reasonable possibility that this rule will be subject to litigation challenges. The Department has determined that this rule implements and is fully consistent with governing law. However, in the event any provision of this rule, an amendment or revision made by this rule, or the application of such provision or amendment or revision to any person or circumstance is held to be invalid or unenforceable by its terms, the remainder of this rule, the amendments or revisions made by this rule, and the application of the provisions of such rule to any person or circumstance shall not be affected and shall be construed so as to give them the maximum effect permitted by law.

VI. Statutory and Executive Order Review

A. Executive Orders 12866 and 13563

Executive Orders 13563 (Improving Regulation and Regulatory Review) and 12866 (Regulatory Planning and Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

[148] *See* 27 CFR 70.701(d)(2) (as in effect on January 23, 2003, and continued by 28 CFR 0.133(a)(2), (3)); Rulings, ATF (Oct. 20, 2021), *available at https://www.atf.gov/rules-and-regulations/rulings.*

[149] The term ''amplified'' is used to describe a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth in the new ruling. Thus, if an earlier ruling held that a principle applied to (A), and the new ruling holds that the same principle also applies to (B), the earlier ruling is amplified. *See* Rulings, ATF (Oct. 20, 2021), *available at https://www.atf.gov/rules-and-regulations/rulings.*

[150] The term ''clarified'' is used to describe a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed. *See* Rulings, ATF (Oct. 20, 2021), *available at https://www.atf.gov/rules-and-regulations/rulings.*

approaches that maximize net benefits (including potential economic benefits, environmental benefits, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Information and Regulatory Affairs at OMB has determined that while this final rule is not economically significant, it is a ''significant regulatory action'' under section 3(f)(4) of Executive Order 12866 because this final rule raises novel legal or policy issues arising out of legal mandates. Accordingly, the rule has been reviewed by OMB.

1. Need for Federal Regulatory Action

In the NPRM, ATF stated that this rule would address externalities. Public comments stated that externalities deal with inefficiencies from market transactions, not actions dealing with the government. ATF concurs that this rule would not address externalities due to market inefficiencies; therefore, to avoid any confusion, ATF has removed language that suggested this rule would address a market inefficiency. Regardless, the publication of this final rule remains necessary to enforce the GCA and NFA.

Agencies take regulatory action for various reasons. One of the reasons is to carry out Congress's policy decisions, as expressed in statutes. Here, this rulemaking aims to implement Congress's policy decision to require licensing, marking, recordkeeping, and background checks so that firearms can be traced if used in crime, and to prevent prohibited persons from acquiring them.

This final rule is necessary is to address recent court cases, which have narrowly construed ATF's current regulatory definition of ''frame or receiver.'' Such a narrow construction of the regulatory term creates the possibility that future courts may hold that the majority of regulated firearm frames or receivers do not meet the existing definition. Furthermore, administrative inspections, criminal investigations, and prosecutions are hindered when PMFs, which are untraceable, are accepted into and disposed of from a licensee's inventory, and when firearms records are destroyed after 20 years despite the need of these records to combat criminal activities.

This final rule updates the existing definition of ''frame or receiver'' to account for technological advances in the industry and ensure that firearms continue to remain under the regulatory regime as intended by the enactment of the GCA, including accounting for manufacturing of firearm parts kits and PMFs made from those kits. The narrow interpretation of what constitutes a ''frame or receiver'' by some courts may potentially allow persons to avoid: (1) Having to obtain a license to engage in the business of manufacturing or importing frames or receivers; (2) identifying frames or receivers with a serial number and other traceable markings; (3) maintaining records of frames or receivers produced or imported through which they can be traced; and (4) running NICS checks on potential transferees to determine if they are legally prohibited from receiving or possessing firearms when they acquire frames or receivers. In turn, this would allow otherwise prohibited persons to acquire frames or receivers that can quickly be assembled into semiautomatic weapons easily and without a background check.

If no portion of split or multi-piece frames or receivers were subject to any existing regulations, such as marking, recordkeeping, or background checks, law enforcement's ability to trace semiautomatic firearms used in the commission of a crime would be severely impeded. This final rule makes consistent the marking requirements for firearms to facilitate tracing in the event a firearm is used in the commission of a crime. In order to accommodate the additional PMF marking requirements, this final rule clarifies and expands the definition of ''gunsmithing.'' In addition, this final rule requires FFLs to retain all firearms records, either in hard copy or electronically, until the Federal firearms licensed business or licensed activity is discontinued. For more specific details regarding the need for regulation, please refer to the specific chapters of the standalone RIA pertaining to each provision of this final rule.

2. Summary of Affected Population, Costs, and Benefits

Table 2 provides a summary of the affected population and anticipated costs and benefits of promulgating this rule.

TABLE 2—SUMMARY OF AFFECTED POPULATION, COSTS, AND BENEFITS

Category	Final rule
Applicability	• Definition of Frame or Receiver. • Updates Marking Requirements. • New Gunsmith Definition. • Updates Record Retention.
Affected Population	• 113,204 FFLs. • 19,449 FFL Type 07 manufacturers. • 43 Non-FFL manufacturers. • 114,001 FFL dealers, pawnbrokers, and collectors. • 24 Non-FFL dealers. • Approximately 1 million individual owners.
Total Costs to Industry, Public, and Government (7 percent Discount Rate).	$14.3 million annualized.
Benefits (7 percent Discount Rate)	Not estimated.
Benefits (Qualitative)	• Provides clarity to courts on what constitutes a firearm frame or receiver. • Adapts to new technology/terminology. • Makes consistent marking requirements. • Eases certain marking requirements. • Increases tracing of crime scene firearms to prosecute criminals. • Restricts felons and other prohibited persons from acquiring PMFs.

3. Changes From the NPRM to FR

Section V of this preamble describes the regulatory text of the final rule and the changes from the proposed rule. The following is a list of substantive changes:

(1) Definition of ''Frame or Receiver''

- The final rule describes one part of a projectile weapon that will be either the ''frame'' or ''receiver'' with examples and pictures still provided.
- The final rule defines ''variant'' and more clearly grandfathers existing classifications (*e.g.,* AR–15/M–16 variants).
- The final rule clarifies the one part of a firearm muffler or silencer device that is the frame or receiver and addresses how modular silencers are marked.
- The final rule defines ''multi-piece frame or receiver'' and specifically addresses how such parts must be marked.
- The final rule clarifies the supplement titled ''partially complete, disassembled, or inoperable [now 'nonfunctional'] frame or receiver'' and provides examples.
- The final rule clarifies the materials that need to be submitted when voluntarily seeking a firearm or armor piercing ammunition classification from ATF.

(2) PMFs

- The final rule requires FFLs to mark and record PMFs only when they are received or otherwise acquired into inventory, but allows PMFs to be adjusted or repaired and returned on the same day without marking.
- The final rule allows FFLs to directly supervise a nonlicensee who may mark the PMF for the licensee in accordance with the regulations.
- The final rule clarifies who is required to be licensed as a gunsmith eligible to mark PMFs without a manufacturer's license.

(3) Marking

- The final rule defines ''new design'' to inform manufacturers as to when they are required to mark firearms they manufacture in accordance with the new marking requirements (*i.e.,* either FFL name, city, and State; or FFL name and abbreviated FFL number placed on the frame or receiver).
- The final rule expands adoption of marking allowances and addresses an additional three circumstances where markings can be adopted. These include newly manufactured firearms, manufacturers performing gunsmithing services, and PMFs marked by nonlicensees.
- The final rule provides that an acceptable way for PMFs to be marked is by placing the serial number on a metal plate that is permanently embedded into a polymer frame or receiver, or other method approved by the Director.

(4) Recordkeeping

- The final rule clarifies that manufacturers have seven days to enter non-NFA firearms into their records, and by close of the next business day for manufactured NFA firearms.
- The final rule clarifies that licensed dealers (including gunsmiths), manufacturers, and importers may conduct adjustments or repairs of all firearms without recording them as acquisitions or dispositions provided they are returned to the person from whom they were received on the same day.
- The final rule clarifies that PMFs must be recorded as an acquisition when a licensee places marks of identification, and as a disposition upon return (unless the licensee is marking under the direct supervision of another licensee who recorded the acquisition).

(5) Record Retention

- The final rule clarifies that FFLs are required to maintain their records until licensed activity is discontinued.

B. Executive Order 13132

This regulation will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

D. Regulatory Flexibility Act (''RFA'')

The RFA establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' Public Law 96–354, sec. 2(b), 94 Stat. 1164, 1165 (1980).

Under the RFA, the agency is required to consider if this rule will have a significant economic impact on a substantial number of small entities. Agencies must perform a review to determine whether a rule will have such an impact. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

Under the RFA (5 U.S.C. 604(a)), the final regulatory flexibility analysis (''FRFA'') must contain:

- A statement of the need for, and objectives of, the rule;
- a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
- a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

ATF estimates that this final rule will have a significant impact on a substantial number of small businesses. Therefore, ATF has prepared an FRFA. For more details regarding the impacts to small businesses, please refer to the standalone RIA located on the docket.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is likely to have a significant economic impact on a substantial number of small entities under the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), 5 U.S.C. 601 *et seq.* Accordingly, the Department prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and prepared an FRFA for the final rule. 5 U.S.C. 603–04. Furthermore, a small business compliance guide will be published as required by SBREFA.

F. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* OMB's Office of Information and Regulatory Affairs has determined this rule is not a ''major rule,'' as defined by 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. While there may be impacts on employment, investment, productivity, or innovation, these impacts will not have a significant impact on the overall economy.

G. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48.

H. Paperwork Reduction Act of 1995

This rule would call for collections of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under the provisions of this proposed rule, there is a one-time increase in paperwork burdens of identification markings placed on firearms as well as additional transaction records. This requirement would be added to an existing approved collection covered by OMB control numbers 1140–0018, 1140–0032, 1140–0050, and 1140–0067.

Title: Application for a Federal Firearms License.

OMB Control Number: OMB 1140–0018.

Proposed Use of Information: This collection of information is necessary to ensure that anyone who wishes to be licensed as required by 18 U.S.C. 923 meets the requirements to obtain the desired license.

Description and Number of Respondents: Currently there are 13,000 applications for a license. This final rule will effect a one-time increase in one respondent.

Frequency of Response: There will be a recurring response for all currently existing FFLs. This final rule would affect a one-time number of one response (13,001 respondents * 1 response).

Burden of Response: This includes recurring time burden of one hour. ATF anticipates a one-time hourly burden of one hour per respondent.

Estimate of Total Annual Burden: The current burden listed in this collection of information is 13,000 hours. The new burden, as a result of this final rule, is a one-time hourly burden of 13,001 (13,001 respondents * 1 time response * 1 hourly burden per respondent).

Title: Records of Acquisition and Disposition, Type 01/02 Dealer of Firearms.

OMB Control Number: OMB 1140–0032.

Proposed Use of Information: The recordkeeping requirements as contemplated by 18 U.S.C. 923, as amended, are for the primary purpose of facilitating ATF's authority to inquire into the disposition of any firearm in the course of a criminal investigation, and conduct compliance inspections. Because the regulations require uniform formats for recordkeeping, the records serve a major secondary purpose: Granting ATF Officers the ability to examine records for firearms traces or compliance inspections, per 18 U.S.C. 923(g)(1)(B), (C).

Description and Number of Respondents: Currently there are 60,790 respondents. The final rule will not increase the number of respondents, though we anticipate that 116 current respondents will have firearm parts kits and will therefore have an additional burden under this final rule.

Frequency of Response: There will be a recurring response for all currently existing Type 01 and Type 02 FFLs. The frequency of response will be dependent on the inventory and sales of FFLs.

Burden of Response: The burden of response was estimated at 60,790 hours for inspections. No burden was attributed to entries in records.

Estimate of Total Annual Burden: The current burden listed in this collection of information is 60,790 hours. The new burden, as a result of the final rule, is an hourly burden of 116 hours (116 respondents * 10 items * 2 responses * 0.05 hourly burden per entry).

Title: Identification Markings Placed on Firearms.

OMB Control Number: OMB 1140–0050.

Proposed Use of Information: ATF would use this information in fighting crime by facilitating the tracing of firearms used in criminal activities. The systematic tracing of firearms from the manufacturer or U.S. importer to the retail purchaser also enables law enforcement agencies to identify suspects involved in criminal violations, determine if a firearm is stolen, and provide other information relevant to a criminal investigation.

Description and Number of Respondents: Currently there are 12,252 licensed manufacturers of firearms and 1,343 licensed importers. Of the potential number of licensed dealers and licensed pawnbrokers, ATF estimates that those directly affected would be a one-time surge of 42 licensed dealers and 74 licensed pawnbrokers. The final rule would affect a one-time surge of 116 respondents.

Frequency of Response: There will be a recurring response for all currently existing 13,595 licensed manufacturers and licensed importers. The final rule would affect a one-time number of 1,160 responses (116 one-time respondents *10 responses). There will be an annual increase of 101,136 responses (42 respondents * 2,408 responses).

Burden of Response: This includes a recurring time burden of one minute.

Estimate of Total Annual Burden: The current burden listed in this collection of information is 85,630 hours. The new burden, as a result of the final rule, is a one-time hourly burden of 19 (116 one-time respondents * 10 responses * 0.016667 hourly burden per respondent). The new recurring burden as a result of the final rule is 1,686 hours (42 existing respondents * 2,408 responses * 0.016667 hourly burden).

Title: Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

OMB Control Number: OMB 1140–0067.

Proposed Use of Information: ATF would use this information for criminal investigation or regulatory compliance with the Gun Control Act of 1968. The Attorney General may inspect or examine the inventory and records of a licensed importer, licensed manufacturer, or licensed dealer, without such reasonable cause or warrant, and during the course of a criminal investigation of a person or persons other than the licensee, in order to ensure compliance with the recordkeeping requirements of 18 U.S.C. 923(g)(1)(A). The Attorney General may also inspect or examine any records relating to firearms involved in a criminal investigation that are traced to the licensee, or firearms that may have been disposed of during the course of a bona fide criminal investigation. 18 U.S.C. 923(g)(1)(B), (C).

Description and Number of Respondents: The current number of respondents is 9,056 firearm manufacturers. The final rule will affect a subset of existing respondents (42 respondents).

Frequency of Response: There will be a recurring response for all 9,056 licensed manufacturers. The final rule will effect an increase in records of 202,272 responses.

Burden of Response: This includes a recurring time burden of 1 minute. The burden resulting from the final rule is 3,371 hours annually.

Estimate of Total Annual Burden: The current burden listed in this collection of information is 201,205 hours. The new burden, as a result of the final rule, is 3,371 hours (42 respondents * 0.016667 hours * 4,816 responses).

Disclosure

Copies of the final rule, proposed rule, and comments received in response to the proposed rule will be available for public inspection through the Federal eRulemaking portal, *http://regulations.gov,* or by appointment during normal business hours at: ATF Reading Room, Room 1E–063, 99 New York Ave. NE, Washington, DC 20226; telephone: (202) 648–8740.

List of Subjects

27 CFR Part 447

Administrative practice and procedure, Arms and munitions, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Exports, Freight, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Excise taxes, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Transportation.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR parts 447, 478, and 479 are amended as follows:

PART 447—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

■ 1. The authority citation for 27 CFR part 447 continues to read as follows:

Authority: 22 U.S.C. 2778; E.O. 13637, 78 FR 16129 (Mar. 8, 2013).

■ 2. Amend § 447.11 by adding, in alphabetical order, definitions for ''Frame or receiver'', and ''Privately made firearm'', to read as follows:

§ 447.11 Meaning of terms.

* * * * *

Frame or receiver. The term ''frame or receiver'' shall have the same meaning as in 27 CFR 478.12.

* * * * *

Privately made firearm. The term ''privately made firearm'' shall have the same meaning as in 27 CFR 478.11.

* * * * *

§ 447.42 [Amended]

■ 3. In § 447.42 amend paragraph (a)(1)(iv)(A) by adding the phrase ''of the defense article, or ''privately made firearm'' (if a firearm privately made in the United States)'' after the word ''manufacturer''.

§ 447.45 [Amended]

■ 4. In § 447.45 amend paragraph (a)(2)(ii) by adding the phrase '', or ''privately made firearm'' (if a firearm privately made in the United States)'' after ''defense article''.

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

■ 5. The authority citation for 27 CFR part 478 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–931; 44 U.S.C. 3504(h).

■ 6. Amend § 478.11 by:

■ a. In the introductory text, removing the word ''section'' and adding, in its place, the word ''subpart'';

■ b. Adding, in alphabetical order, definitions for ''Complete muffler or silencer device'' and ''Complete weapon'';

■ c. In the definition of ''Engaged in the business'' revising paragraph (d);

■ d. Revising the definition of ''Firearm'';

■ d. Removing the definition of ''Firearm frame or receiver'';

■ e. Adding, in alphabetical order, definitions for ''Frame or receiver'', ''Importer's or manufacturer's serial number'', ''Privately made firearm (PMF)'', and ''Readily''; and

The revisions and additions read as follows:

§ 478.11 Meaning of terms.

* * * * *

Complete muffler or silencer device. A firearm muffler or firearm silencer that contains all component parts necessary to function, whether or not assembled or operable.

Complete weapon. A firearm other than a firearm muffler or firearm silencer that contains all component parts necessary to function, whether or not assembled or operable.

* * * * *

Engaged in the business— * * *

(d) *Gunsmith.* A person who, as a service performed on existing firearms not for sale or distribution, devotes time, attention, and labor to repairing or customizing firearms, making or fitting special barrels, stocks, or trigger mechanisms to firearms, or placing marks of identification on privately made firearms in accordance with this part, as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who occasionally repairs or customizes firearms (including identification), or occasionally makes or fits special barrels, stocks, or trigger mechanisms to firearms. In the case of firearms for purposes of sale or distribution, such term shall include a person who performs repairs (*e.g.,* by replacing worn or broken parts) on complete weapons, or places marks of identification on privately made firearms, but shall not include a person who manufactures firearms (*i.e.,* frames or receivers or complete weapons) by completion, assembly, or applying coatings, or otherwise making them suitable for use, requiring a license as a manufacturer;

* * * * *

Firearm. Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include an antique firearm. In the case of a licensed collector, the term shall mean only curios and relics. The term shall include a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive. The term shall not include a weapon, including a weapon parts kit, in which the frame or receiver of such weapon is destroyed as described in the definition ''frame or receiver''.

* * * * *

Frame or receiver. The term ''frame or receiver'' shall have the same meaning as in § 478.12.

* * * * *

Importer's or manufacturer's serial number. The serial number placed by a licensee on a firearm, including any full or abbreviated license number, any such identification on a privately made firearm, or a serial number issued by the Director. For purposes of 18 U.S.C. 922(k) and § 478.34, the term shall include any associated licensee name, or licensee city or State placed on a firearm.

* * * * *

Privately made firearm (PMF). A firearm, including a frame or receiver, completed, assembled, or otherwise produced by a person other than a licensed manufacturer, and without a serial number placed by a licensed manufacturer at the time the firearm was produced. The term shall not include a firearm identified and registered in the National Firearms Registration and Transfer Record pursuant to chapter 53, title 26, United States Code, or any firearm manufactured or made before October 22, 1968 (unless remanufactured after that date).

* * * * *

Readily. A process, action, or physical state that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speediest, or easiest process, action, or physical state. With respect to the classification of firearms, factors relevant in making this determination include the following:

(1) Time, *i.e.,* how long it takes to finish the process;

(2) Ease, *i.e.,* how difficult it is to do so;

(3) Expertise, *i.e.,* what knowledge and skills are required;

(4) Equipment, *i.e.,* what tools are required;

(5) Parts availability, *i.e.,* whether additional parts are required, and how easily they can be obtained;

(6) Expense, *i.e.,* how much it costs;

(7) Scope, *i.e.,* the extent to which the subject of the process must be changed to finish it; and

(8) Feasibility, *i.e.,* whether the process would damage or destroy the subject of the process, or cause it to malfunction.

* * * * *

■ 7. Add § 478.12 to subpart B to read as follows:

§ 478.12 Definition of Frame or Receiver.

(a) Except as otherwise provided in this section, the term ''frame or receiver'' means the following—

(1) The term ''frame'' means the part of a handgun, or variants thereof, that provides housing or a structure for the primary energized component designed to hold back the hammer, striker, bolt, or similar component prior to initiation of the firing sequence (*i.e.,* sear or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.

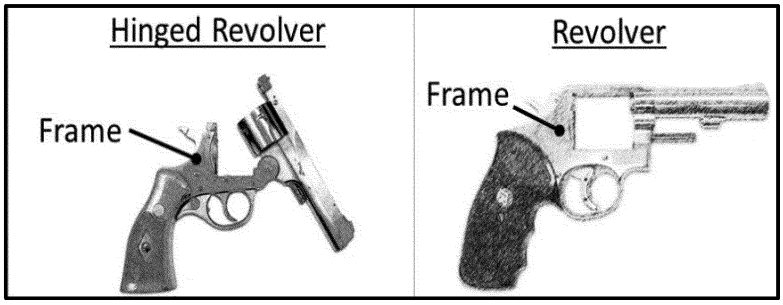
(2) The term ''receiver'' means the part of a rifle, shotgun, or projectile weapon other than a handgun, or variants thereof, that provides housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence (*i.e.,* bolt, breechblock, or equivalent), even if pins or other attachments are required to connect such component to the housing or structure.

(3) The terms ''variant'' and ''variants thereof'' mean a weapon utilizing a similar frame or receiver design irrespective of new or different model designations or configurations, characteristics, features, components, accessories, or attachments. For example, an AK-type firearm with a short stock and a pistol grip is a pistol variant of an AK-type rifle, an AR-type firearm with a short stock and a pistol grip is a pistol variant of an AR-type rifle, and a revolving cylinder shotgun is a shotgun variant of a revolver.

(4) The following are nonexclusive examples that illustrate the above definitions:

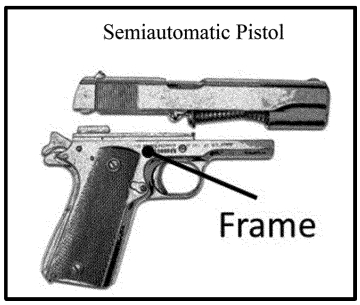
(i) *Hinged or single framed revolvers:* The frame is the part of the revolver that provides a structure designed to hold the sear.

Figure 1 to paragraph (a)(4)(i)



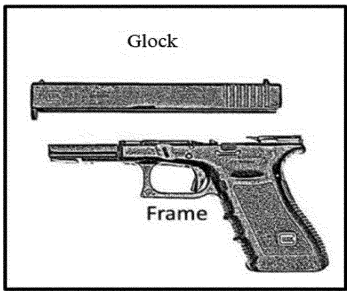
(ii) *Colt 1911, Beretta/Browning/FN Herstal/Heckler & Koch/Ruger/Sig Sauer/Smith & Wesson/Taurus hammer-fired semiautomatic pistols:* The frame is the lower portion of the pistol, or grip, that provides housing for the sear.

Figure 2 to paragraph (a)(4)(ii)



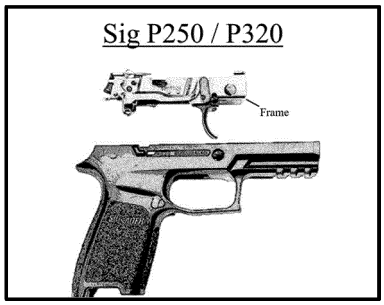
(iii) *Glock variant striker-fired semiautomatic pistols:* The frame is the lower portion of the pistol, or grip, that provides housing for the sear.

Figure 3 to paragraph (a)(4)(iii)



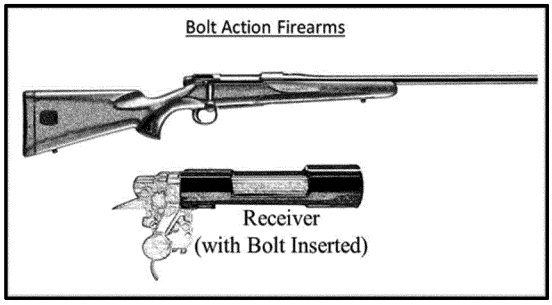
(iv) *Sig Sauer P250/P320 variant semiautomatic pistols:* The frame is the internal removable chassis of the pistol that provides housing for the energized component (*i.e.,* sear or equivalent).

Figure 4 to paragraph (a)(4)(iv)



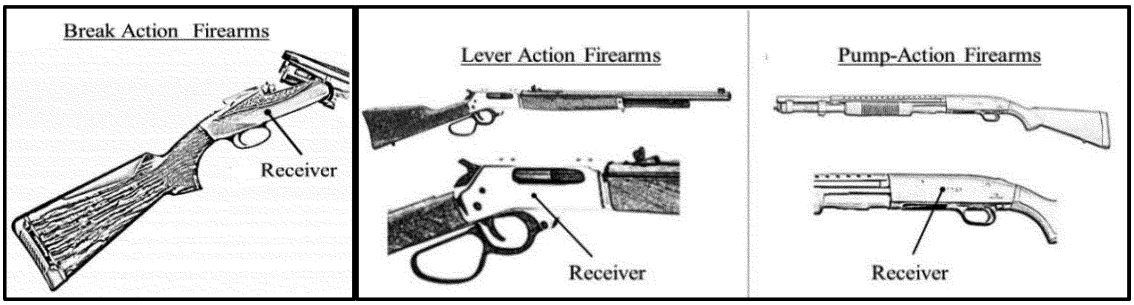
(v) *Bolt action rifles:* The receiver is the part of the rifle that provides a structure for the bolt.

Figure 5 to paragraph (a)(4)(v)



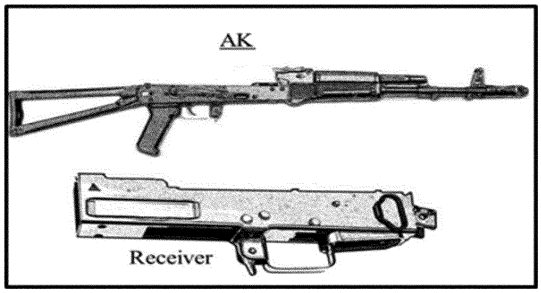
(vi) *Break action, lever action, or pump action rifles and shotguns:* The receiver is the part of the rifle or shotgun that provides housing for the bolt, breechblock, or equivalent.

Figure 6 to paragraph (a)(4)(vi)



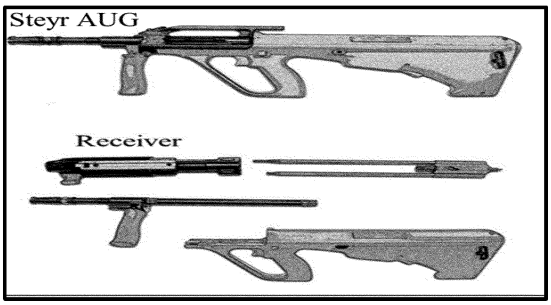
(vii) *AK variant firearms:* The receiver is the part of the weapon that provides housing for the bolt.

Figure 7 to paragraph (a)(4)(vii)



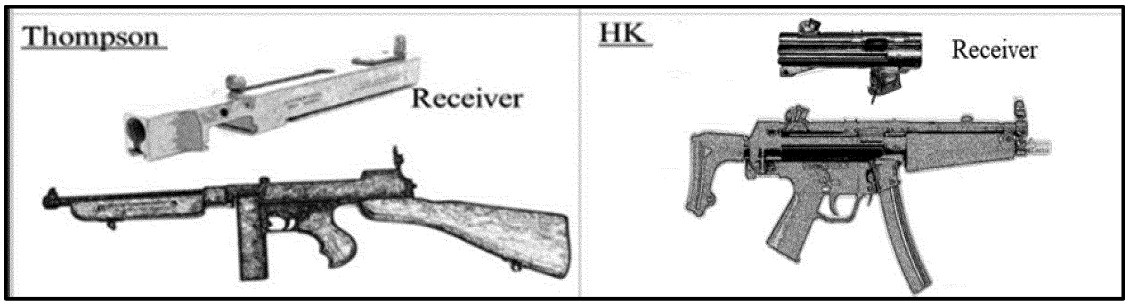
(viii) *Steyr AUG variant firearms:* The receiver is the central part of the weapon that provides housing for the bolt.

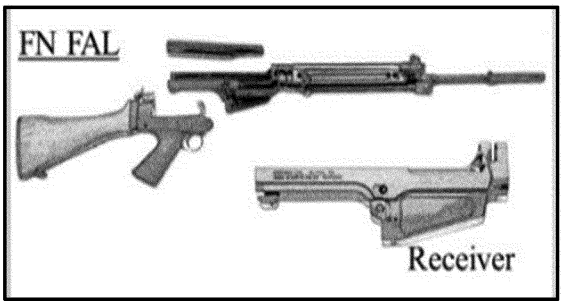
Figure 8 to paragraph (a)(4)(viii)



(ix) *Thompson machineguns and semiautomatic variants, and L1A1, FN FAL, FN FNC, MP38, MP40, and SIG 550 firearms, and HK machineguns and semiautomatic variants:* The receiver is the upper part of the weapon that provides housing for the bolt.

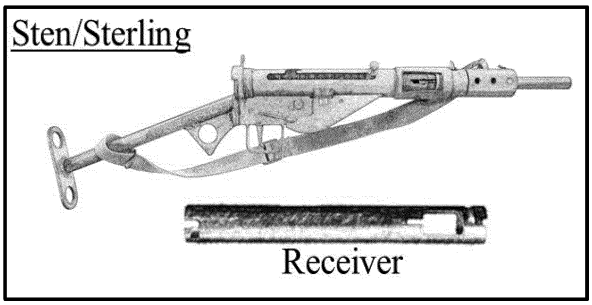
Figure 9 to paragraph (a)(4)(ix)





(x) *Sten, Sterling, and Kel-Tec SUB–2000 firearms:* The receiver is the central part of the weapon, or tube, that provides housing for the bolt.

Figure 10 to paragraph (a)(4)(x)



(b) *Firearm muffler or silencer frame or receiver.* The terms ''frame'' and ''receiver'' shall mean, in the case of a firearm muffler or firearm silencer, the part of the firearm, such as an outer tube or modular piece, that provides housing or a structure for the primary internal component designed to reduce the sound of a projectile (*i.e.,* baffles, baffling material, expansion chamber, or equivalent). In the case of a modular firearm muffler or firearm silencer device with more than one such part, the terms shall mean the principal housing attached to the weapon that expels a projectile, even if an adapter or other attachments are required to connect the part to the weapon. The terms shall not include a removable end cap of an outer tube or modular piece.

(c) *Partially complete, disassembled, or nonfunctional frame or receiver.* The terms ''frame'' and ''receiver'' shall include a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver, *i.e.,* to house or provide a structure for the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or firearm silencer, as the case may be. The terms shall not include a forging, casting, printing, extrusion, unmachined body, or similar article that has not yet reached a stage of manufacture where it is clearly identifiable as an unfinished component part of a weapon (*e.g.,* unformed block of metal, liquid polymer, or other raw material). When issuing a classification, the Director may consider any associated templates, jigs, molds, equipment, tools, instructions, guides, or marketing materials that are sold, distributed, or possessed with the item or kit, or otherwise made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit. The following are nonexclusive examples that illustrate the definitions:

Example 1 to paragraph (c)—Frame or receiver: A frame or receiver parts kit containing a partially complete or disassembled billet or blank of a frame or receiver that is sold, distributed, or possessed with a compatible jig or template is a frame or receiver, as a person with online instructions and common hand tools may readily complete or assemble the frame or receiver parts to function as a frame or receiver.

Example 2 to paragraph (c)—Frame or receiver: A partially complete billet or blank of a frame or receiver with one or more template holes drilled or indexed in the correct location is a frame or receiver, as a person with common hand tools may readily complete the billet or blank to function as a frame or receiver.

Example 3 to paragraph (c)—Frame or receiver: A complete frame or receiver of a weapon that has been disassembled, damaged, split, or cut into pieces, but not destroyed in accordance with paragraph (e), is a frame or receiver.

Example 4 to paragraph (c)—Not a receiver: A billet or blank of an AR–15 variant receiver without critical interior areas having been indexed, machined, or formed that is not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools such that it may readily be completed is not a receiver.

Example 5 to paragraph (c)—Not a receiver: A flat blank of an AK variant receiver without laser cuts or indexing that is not sold, distributed, or possessed with instructions, jigs, templates, equipment, or tools is not a receiver, as a person cannot readily fold the flat to provide housing or a structure for the primary component designed to block or seal the breech prior to initiation of the firing sequence.

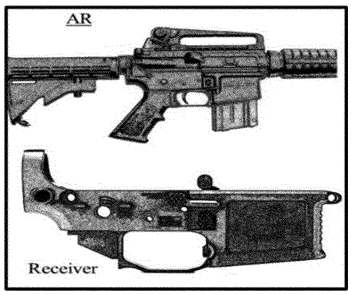
(d) *Multi-piece frame or receiver.* The term ''multi-piece frame or receiver'' shall mean a frame or receiver that may be disassembled into multiple modular subparts, *i.e.,* standardized units that may be replaced or exchanged. The term shall not include the internal frame of a pistol that is a complete removable chassis that provides housing for the energized component, unless the chassis itself may be disassembled. The modular subpart(s) identified in accordance with § 478.92 with an importer's or manufacturer's serial number shall be presumed, absent an official determination by the Director or other reliable evidence to the contrary, to be part of the frame or receiver of a weapon or device.

(e) *Destroyed frame or receiver.* The terms ''frame'' and ''receiver'' shall not include a frame or receiver that is destroyed. For purposes of these definitions, the term ''destroyed'' means that the frame or receiver has been permanently altered such that it may not readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver. Acceptable methods of destruction include completely melting, crushing, or shredding the frame or receiver, or other method approved by the Director.

(f)(1) *Frame or receiver classifications based on which part of the weapon was classified as such before* April 26, 2022. Except as provided in paragraph (f)(2) of this section, the terms ''frame'' and ''receiver'' shall include the specific part of a complete weapon, including variants thereof, determined (classified) by the Director to be defined as a firearm frame or receiver prior to April 26, 2022. Any such part that is identified with an importer's or manufacturer's serial number shall be presumed, absent an official determination by the Director or other reliable evidence to the contrary, to be the frame or receiver of the weapon. The following is a nonexclusive list of such weapons and the specific part determined by the Director to be the firearm frame or receiver as they existed on that date:

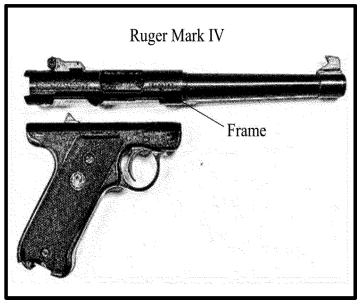
(i) *AR–15/M–16 variant firearms:* The receiver is the lower part of the weapon that provides housing for the trigger mechanism and hammer (*i.e.,* lower receiver).

Figure 11 to paragraph (f)(1)(i)



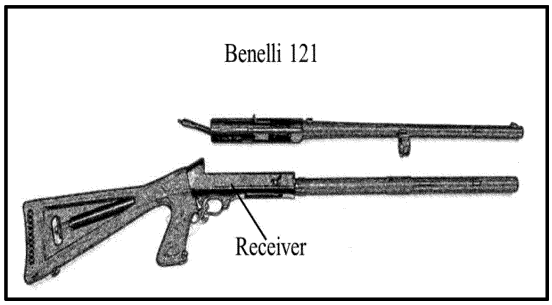
(ii) *Ruger Mark IV pistol:* The frame is the upper part of the weapon that provides housing for the bolt or breechblock.

Figure 12 to paragraph (f)(1)(ii)



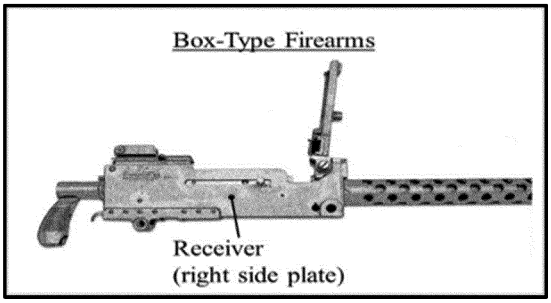
(iii) *Benelli 121 M1 Shotgun:* The receiver is the lower part of the weapon that provides housing for the trigger mechanism.

Figure 13 to paragraph (f)(1)(iii)



(iv) *Vickers/Maxim, Browning 1919, M2, and box-type machineguns and semiautomatic variants:* The receiver is the side plate of the weapon that is designed to hold the charging handle.

Figure 14 to paragraph (f)(1)(iv)



(2) *Frame or receiver classifications of partially complete, disassembled, or nonfunctional frames or receivers before* April 26, 2022. Prior determinations by the Director that a partially complete, disassembled, or nonfunctional frame or receiver, including a parts kit, was not, or did not include, a ''firearm frame or receiver'' under § 478.11, or ''frame or receiver'' under § 479.11 of this subchapter, as those terms were defined prior to April 26, 2022, shall not continue to be valid or authoritative after that date. Such determinations shall include those in which the Director determined that the item or parts kit had not yet reached a stage of manufacture to be, or include, a ''firearm frame or receiver'' under § 478.11, or ''frame or receiver'' under § 479.11 of this subchapter, as those terms were defined prior to [date of publication of the rule].

§ 478.47 [Amended]

■ 8. In § 478.47 amend paragraph (a) by removing the words ''serial number'' and adding in its place ''unique license number''.

§ 478.50 [Amended]

■ 9. In § 478.50 amend paragraph (a) by adding the phrase '', or if such warehouse is used by the licensee for the storage of records as provided in § 478.129'' after the phrase ''at the licensed premises served by such warehouse''.

§ 478.92 [Amended]

■ 10. Amend § 478.92 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 478.92 Identification of firearms and armor piercing ammunition.

(a)(1) *Firearms manufactured or imported by licensees.* Except as otherwise provided in this section, licensed manufacturers and licensed importers of firearms must legibly identify each firearm they manufacture or import as follows:

(i) *Serial number, name, place of business.* By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or otherwise placed on the frame or receiver thereof, an individual serial number, in a manner not susceptible of being readily obliterated, altered, or removed. The serial number must not duplicate any serial number placed by the licensee on any other firearm. The frame or receiver must also be marked with either: their name (or recognized abbreviation), and city and State (or recognized abbreviation) where they maintain their place of business; or their name (or recognized abbreviation) and the serial number beginning with their abbreviated Federal firearms license number, which is the first three and last five digits, as a prefix to the unique identification number, followed by a hyphen, *e.g.,* ''12345678-[unique identification number]''; and

(ii) *Model, caliber or gauge, foreign manufacturer, country of manufacture.* By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver, or barrel or pistol slide (if applicable) thereof, certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered, or removed. The additional information shall include:

(A) The model, if such designation has been made;

(B) The caliber or gauge;

(C) When applicable, the name of the foreign manufacturer; and

(D) In the case of an imported firearm, the name of the country in which it was manufactured. For additional requirements relating to imported firearms, see Customs regulations at 19 CFR part 134.

(iii) *Multi-piece frame or receiver.* In the case of a multi-piece frame or receiver, the modular subpart that is the outermost housing or structure designed to house, hold, or contain either the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or firearm silencer, as the case may be, shall be the subpart of the multi-piece frame or receiver identified in accordance with this section. If more than one subpart is similarly designed to house, hold, or contain such primary component (*e.g.,* left and right halves), each of those subparts must be identified with the same serial number and associated licensee information not duplicated on any other frame or receiver. The identified subpart(s) of a complete (assembled or unassembled) multi-piece frame or receiver shall not be removed and replaced (*see* § 478.34, 18 U.S.C. 922(k), and 26 U.S.C. 5861(g) and (h)), unless—

(A) The subpart replacement is not a firearm under 26 U.S.C. 5845;

(B) The subpart replacement is identified by the licensed manufacturer of the original subpart with the same serial number and associated licensee information in the manner prescribed by this section; and

(C) The original subpart is destroyed under the licensed manufacturer's control or direct supervision prior to such placement.

(iv) *Frame or receiver, machinegun conversion part, or muffler or silencer part disposed of separately.* Each part defined as a frame or receiver or modular subpart thereof described in paragraph (a)(1)(iii) of this section, machinegun, or firearm muffler or firearm silencer that is not a component part of a complete weapon or complete muffler or silencer device at the time it is sold, shipped, or otherwise disposed of by the licensee must be identified as required by this section with an individual serial number not duplicated on any other firearm and all additional identifying information, except that the model designation and caliber or gauge may be omitted if that information is

unknown at the time the part is identified.

(v) *Size and depth of markings.* The engraving, casting, or stamping (impressing) of the serial number and additional information must be to a minimum depth of .003 inch, and the serial number and any associated license number in a print size no smaller than 1/16 inch. The size of the serial and license number is measured as the distance between the latitudinal ends of the character impression bottoms (bases). The depth of all markings required by this section is measured from the flat surface of the metal and not the peaks or ridges.

(vi) *Period of time to identify firearms.* Licensed manufacturers shall identify firearms they manufacture within the period of time set forth in the following subparagraphs (A) and (B), and licensed importers must identify firearms they import within the period prescribed in § 478.112. For purposes of these subparagraphs, firearms awaiting materials, parts, or equipment repair to be completed are presumed, absent reliable evidence to the contrary, to be in the manufacturing process.

(A) *Complete non-National Firearms Act weapons, and frames or receivers of such weapons.* Complete weapons not defined as firearms under 26 U.S.C. 5845 shall be identified not later than the seventh day following the date the entire manufacturing process has ended for the weapon, or prior to disposition, whichever is sooner. Each part, including a replacement part, defined as a frame or receiver or modular subpart thereof described in paragraph (a)(1)(iii) of this section (other than a machinegun or firearm muffler or firearm silencer) that is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of shall be identified not later than the seventh day following the date the entire manufacturing process has ended for the frame or receiver or modular subpart, or prior to disposition, whichever is sooner.

(B) *Complete National Firearms Act weapons and devices, and machinegun and muffler or silencer parts.* Complete weapons defined as firearms under 26 U.S.C. 5845, and complete muffler or silencer devices, shall be identified not later than close of the next business day following the date the entire manufacturing process has ended for the weapon or device, or prior to disposition, whichever is sooner. Each part or modular subpart defined as a machinegun (*i.e.,* frame or receiver or conversion part), or firearm muffler or firearm silencer, that is not a component part of a complete weapon or complete firearm muffler or silencer device at the time it is sold, shipped, or otherwise disposed of shall be identified not later than close of the next business day following the date the entire manufacturing process has ended for the part, or prior to disposition, whichever is sooner.

(2) *Privately made firearms (PMFs).* Unless previously identified by another licensee in accordance with, and except as otherwise provided by, this section, licensees must legibly and conspicuously identify each privately made firearm or ''PMF'' received or otherwise acquired (including from a personal collection) not later than the seventh day following the date of receipt or other acquisition, or before the date of disposition (including to a personal collection), whichever is sooner. PMFs must be identified by placing, or causing to be placed under the licensee's direct supervision, an individual serial number on the frame or receiver, which must not duplicate any serial number placed by the licensee on any other firearm. The serial number must begin with the licensee's abbreviated Federal firearms license number, which is the first three and last five digits, as a prefix to a unique identification number, followed by a hyphen, *e.g.,* ''12345678-[unique identification number]''. The serial number must be placed in a manner otherwise in accordance with this section, including the requirements that the serial number be at the minimum size and depth, and not susceptible of being readily obliterated, altered, or removed. An acceptable method of identifying a PMF is by placing the serial number on a metal plate that is permanently embedded into a polymer frame or receiver, or other method approved by the Director.

(3) *Meaning of marking terms.* For purposes of this section, the term ''identify'' means placing marks of identification, the terms ''legible'' and ''legibly'' mean that the identification markings (including a unique identification number) use exclusively Roman letters (*e.g.,* A, a, B, b, C, c) and Arabic numerals (*e.g.,* 1, 2, 3), or solely Arabic numerals, and may include a hyphen, and the terms ''conspicuous'' and ''conspicuously'' mean that the identification markings are capable of being easily seen with the naked eye during normal handling of the firearm, and are unobstructed by other markings when the complete weapon or device is assembled.

(4) *Exceptions*—(i) *Alternate means of identification.* The Director may authorize other means of identification to identify firearms upon receipt of a letter application or prescribed form from the licensee showing that such other identification is reasonable and will not hinder the effective administration of this part.

(ii) *Destructive devices.* In the case of a destructive device, the Director may authorize other means of identification to identify that weapon upon receipt of a letter application or prescribed form from the licensee. The application shall show that engraving, casting, or stamping (impressing) such a weapon as required by this section would be dangerous or impracticable and that the alternate means of identification proposed will not hinder the effective administration of this part.

(iii) *Adoption of identifying markings.* Licensees may adopt existing markings previously placed on a firearm and are not required to mark a serial number or other identifying markings in accordance with this section, as follows:

(A) *Newly manufactured firearms:* Licensed manufacturers may adopt the serial number and other identifying markings previously placed on a firearm by another licensed manufacturer provided the firearm has not been sold, shipped, or otherwise disposed of to a person other than a licensee, and the serial number adopted is not duplicated on any other firearm.

(B) *Remanufactured or imported firearms.* Licensed manufacturers and licensed importers may adopt the serial number or other identifying markings previously placed on a firearm that otherwise meets the requirements of this section that has been sold, shipped, or otherwise disposed of to a person other than a licensee provided that, within the period and in the manner herein prescribed, the licensee legibly and conspicuously places, or causes to be placed, on the frame or receiver either: Their name (or recognized abbreviation), and city and State (or recognized abbreviation) where they maintain their place of business; or their name (or recognized abbreviation) and abbreviated Federal firearms license number, which is the first three and last five digits, individually (*i.e.,* not as a prefix to the serial number adopted) after the letters ''FFL'', in the following format: ''FFL12345678''. The serial number adopted must not duplicate any serial number adopted or placed on any other firearm, except that if a licensed importer receives two or more firearms with the same foreign manufacturer's serial number, the importer may adopt the serial number by adding letters or numbers to that serial number, and may include a hyphen.

(C) *Manufacturers performing gunsmithing services.* Licensed

manufacturers may adopt the serial number or other identifying markings previously placed on a firearm by another licensee provided the manufacturer is performing services for a nonlicensee as a gunsmith (as defined in § 478.11) on existing firearms not for sale or distribution.

(D) *Privately made firearms marked by nonlicensees.* Unless previously identified by another licensee in accordance with this section, licensees may adopt a unique identification number previously placed on a privately made firearm by an unlicensed person, but not duplicated on any other firearm of the licensee, that otherwise meets the identification requirements of this section provided that, within the period and in the manner herein prescribed, the licensee legibly and conspicuously places, or causes to be placed, on the frame or receiver thereof a serial number beginning with their abbreviated Federal firearms license number, which is the first three and last five digits, followed by a hyphen, before the existing unique identification number, *e.g.,* ''12345678-[unique identification number]''.

(iv)(A) *Firearm muffler or silencer parts transferred between qualified manufacturers for further manufacture or to complete new devices.* Licensed manufacturers qualified under 27 CFR part 479 may transfer a part defined as a firearm muffler or firearm silencer to another qualified manufacturer without immediately identifying or registering such part provided that it is for further manufacture (*i.e.,* machining, coating, *etc.*) or manufacturing a complete muffler or silencer device. Once the new device with such part is completed, the manufacturer who completes the device shall identify, record, and register it in the manner and within the period specified in this part for a complete muffler or silencer device.

(B) *Firearm muffler or silencer replacement parts transferred to qualified manufacturers or dealers to repair existing devices.* Licensed manufacturers qualified under part 479 may transfer a replacement part defined as a firearm muffler or firearm silencer other than a frame or receiver to a qualified manufacturer or dealer without identifying or registering such part provided that it is for repairing a complete muffler or silencer device that was previously identified, recorded, and registered in accordance with this part and part 479.

(v) *Frames or receivers designed before August 24, 2022.* Licensed manufacturers and licensed importers may continue to identify the same component of a firearm (other than a PMF) defined as a frame or receiver as it existed before August 24, 2022 with the same information required to be marked by paragraphs (a)(1)(i) and (a)(1)(ii) of this section that were in effect prior to that date, and any rules necessary to ensure such identification shall remain effective for that purpose. Any frame or receiver with a new design manufactured after August 24, 2022 must be marked with the identifying information and within the period prescribed by this section. For purposes of this paragraph, the term ''new design'' means that the design of the existing frame or receiver has been functionally modified or altered, as distinguished from performing a cosmetic process that adds to or changes the decoration of the frame or receiver (*e.g.,* painting or engraving), or by adding or replacing stocks, barrels, or accessories to the frame or receiver.

(vi) *Privately made firearms acquired before August 24, 2022.* Licensees shall identify in the manner prescribed by this section, or cause another person to so identify, each privately made firearm received or otherwise acquired (including from a personal collection) by the licensee before August 24, 2022within sixty (60) days from that date, or prior to the date of final disposition (including to a personal collection), whichever is sooner.

* * * * *

(c) *Voluntary classification of firearms and armor piercing ammunition.* The Director may issue a determination (classification) to a person whether an item, including a kit, is a firearm or armor piercing ammunition as defined in this part upon receipt of a written request or form prescribed by the Director. Each such voluntary request or form submitted shall be executed under the penalties of perjury with a complete and accurate description of the item or kit, the name and address of the manufacturer or importer thereof, and a sample of such item or kit for examination. A firearm sample must include all accessories and attachments relevant to such classification as each classification is limited to the firearm in the configuration submitted. Each request for classification of a partially complete, disassembled, or nonfunctional item or kit must contain any associated templates, jigs, molds, equipment, or tools that are made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit, and any instructions, guides, or marketing materials if they will be made available by the seller or distributor with the item or kit. Upon completion of the examination, the Director may return the sample to the person who made the request unless a determination is made that return of the sample would be or place the person in violation of law. Submissions of armor piercing ammunition with a projectile or projectile core constructed entirely from one or a combination of tungsten steel alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium must include a list of known handguns in which the ammunition may be used. Except for the classification of a specific component as the frame or receiver of a particular weapon, a determination made by the Director under this paragraph shall not be deemed by any person to be applicable to or authoritative with respect to any other sample, design, model, or configuration.

■ 11. Revise § 478.122 to read as follows:

§ 478.122 Records maintained by importers.

(a) Except for adjustment or repair of a firearm that is returned to the person from whom it was received on the same day, each licensed importer shall record the name of the importer and manufacturer, type, model, caliber or gauge, country or countries of manufacture (if imported), and serial number (including any associated license number either as a prefix, or if remanufactured or imported, separated by a semicolon) of each firearm imported or otherwise acquired (including a frame or receiver to be disposed of separately), the date of such importation or other acquisition, and if otherwise acquired, the name and address, or the name and license number of the person from whom it was received. Privately made firearms shall be recorded in accordance with § 478.125(i). The information required by this paragraph shall be recorded not later than 15 days following the date of importation or other acquisition in a format containing the applicable columns set forth in paragraph (b) of this section.

(b) A record of each firearm disposed of by an importer and a separate record of armor piercing ammunition dispositions to governmental entities, for exportation, or for testing or experimentation authorized under the provisions of § 478.149 shall be maintained by the licensed importer on the licensed premises. The record shall show the date of such sale or other disposition, and the name and license number of the licensee to whom the firearm was transferred, or if disposed of to a nonlicensee, the name and address of the person, or the transaction number

of the Firearms Transaction Record, Form 4473, if the licensee transferring the firearm sequentially numbers the Forms 4473 and files them numerically. In the event the licensee records a duplicate entry with the same firearm and acquisition information, whether to close out an old record book or for any other reason, the licensee shall record a reference to the date and location of the subsequent entry (*e.g.,* date of new entry, book name/number, page number, and line number) as the disposition. The information required by this paragraph (b) shall be entered in the proper record book not later than the seventh day following the date of the transaction. Such information shall be recorded in formats containing the applicable columns below, except that for armor piercing ammunition, the information and format shall also include the quantity of projectiles:

TABLE 1 TO PARAGRAPH (b)—FIREARMS IMPORTER OR MANUFACTURER ACQUISITION AND DISPOSITION RECORD

Description of firearm						Import/manufacture/acquisition		Disposition		
Importer, manufacturer, and/or "privately made firearm" (PMF) (if privately made in the U.S.)	Type	Model	Caliber or gauge	Country or countries of manufacture (if imported)	Serial No.	Date of import, manufacture, or acquisition	Name and address of nonlicensee; or if licensee, name and license No. (if acquired)	Date of disposition	Name	Address of nonlicensee; license No. of licensee; or Form 4473 transaction No. if such forms filed numerically

TABLE 2 TO PARAGRAPH (b)—ARMOR PIERCING AMMUNITION IMPORTER OR MANUFACTURER DISPOSITION RECORD

Date of disposition	Manufacturer	Caliber or gauge	Quantity of projectiles	Transferee—name and address

(c) The Director may authorize alternate records to be maintained by a licensed importer to record the acquisition and disposition of firearms and armor piercing ammunition when it is shown by the licensed importer that such alternate records will accurately and readily disclose the information required by this section. A licensed importer who proposes to use alternate records shall submit a letter application to the Director and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed importer until approval in such regard is received from the Director.

■ 12. Revise § 478.123 to read as follows:

§ 478.123 Records maintained by manufacturers.

(a) Except for adjustment or repair of a firearm that is returned to the person from whom it was received on the same day, each licensed manufacturer shall record the name of the manufacturer and importer (if any), type, model, caliber or gauge, and serial number (including any associated license number either as a prefix, or if remanufactured or imported, separated by a semicolon) of each firearm manufactured or otherwise acquired (including a frame or receiver to be disposed of separately), the date of such manufacture or other acquisition, and if otherwise acquired, the name and address or the name and license number of the person from whom it was received. Privately made firearms shall be recorded in accordance with § 478.125(i). The information required by this paragraph shall, in the case of a firearm other than a firearm defined in 26 U.S.C. 5845, be recorded not later than the seventh day following the date of such manufacture or other acquisition. In the case of a firearm defined in 26 U.S.C. 5845, such information shall be recorded by close of the next business day following the date of such manufacture or other acquisition, except that, when a commercial record is held by the licensed manufacturer separately from other commercial documents and readily available for inspection, containing all acquisition information required for the record, the period for making the required entry into the record may be delayed not to exceed the seventh day following the date of receipt. The information required by this paragraph shall be recorded in a format containing the applicable columns prescribed by § 478.122.

(b) A record of each firearm disposed of by a manufacturer and a separate record of armor piercing ammunition dispositions to governmental entities, for exportation, or for testing or experimentation authorized under the provisions of § 478.149 shall be maintained by the licensed manufacturer on the licensed premises. The record shall show the date of such sale or other disposition, and the name and license number of the licensee to whom the firearms were transferred, or if disposed of to a nonlicensee, the name and address of the person, or the transaction number of the Firearms Transaction Record, Form 4473, if the licensee transferring the firearm sequentially numbers the Forms 4473 and files them numerically. In the event the licensee records a duplicate entry with the same firearm and acquisition information, whether to close out an old record book or for any other reason, the licensee shall record a reference to the date and location of the subsequent entry (*e.g.,* date of new entry, book name/number, page number, and line number) as the disposition. The information required by this paragraph shall be entered in the proper record book not later than the seventh day following the date of the transaction. Such information shall be recorded in a format containing the applicable columns prescribed by § 478.122, except that for armor piercing ammunition, the information and format shall also include the quantity of projectiles.

(c) The Director may authorize alternate records to be maintained by a licensed manufacturer to record the acquisition or disposition of firearms and armor piercing ammunition when it is shown by the licensed manufacturer that such alternate records will accurately and readily disclose the information required by this section. A licensed manufacturer who proposes to use alternate records shall submit a letter application to the Director and shall describe the proposed alternate record and the need therefor. Such alternate records shall not be employed by the licensed manufacturer until approval in such regard is received from the Director.

■ 13. Amend § 478.124 by:

■ a. In paragraph (b) removing the word ''serial'' before ''number'';
■ b. Revising paragraph (c)(4); and
■ c. In paragraph (f) revising the fourth sentence and adding a new fifth sentence.

The addition and revision read as follows:

§ 478.124 Firearms transaction record.

* * * * *

(c) * * *

(4) The licensee shall identify the firearm to be transferred by listing on the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number (including any associated license number either as a prefix, or if remanufactured or imported, separated by a semicolon) of the firearm. Where no manufacturer name has been identified on a privately made firearm, the words ''privately made firearm'' (or abbreviation ''PMF'') shall be recorded as the name of the manufacturer.

* * * * *

(f) * * * The licensee shall identify the firearm to be transferred by listing in the Forms 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm to be transferred. Where no manufacturer name has been identified on a privately made firearm, the words ''privately made firearm'' (or abbreviation ''PMF'') shall be recorded as the name of the manufacturer. * * *

* * * * *

■ 14. Amend § 478.125 by revising paragraphs (e), (f) and (i) to read as follows:

§ 478.125 Record of receipt and disposition.

* * * * *

(e) *Firearms receipt and disposition by dealers.* Except for adjustment or repair of a firearm that is returned to the person from whom it was received on the same day, each licensed dealer shall enter into a record each receipt and disposition of firearms. In addition, before commencing or continuing a firearms business, each licensed dealer shall inventory the firearms possessed for such business and shall record the same in the record required by this paragraph. The record required by this paragraph shall be maintained in bound form in the format prescribed below. The purchase or other acquisition of a firearm shall, except as provided in paragraphs (g) and (i) of this section, be recorded not later than the close of the next business day following the date of such purchase or acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number (including any associated license number either as a prefix, or if remanufactured or imported, separated by a semicolon), type, and the caliber or gauge of the firearm. In the event the licensee records a duplicate entry with the same firearm and acquisition information, whether to close out an old record book or for any other reason, the licensee shall record a reference to the date and location of the subsequent entry (*e.g.,* date of new entry, book name/number, page number, and line number) as the disposition. The sale or other disposition of a firearm shall be recorded by the licensed dealer not later than seven days following the date of such transaction. When such disposition is made to a nonlicensee, the firearms transaction record, Form 4473, obtained by the licensed dealer shall be retained, until the transaction is recorded, separate from the licensee's Form 4473 file and be readily available for inspection. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensed dealer, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm, the name and address of the person to whom the firearm is transferred, or the name and license number of the person to whom transferred if such person is a licensee, or the firearms transaction record, Form 4473, transaction number if the licensed dealer transferring the firearm sequentially numbers the Forms 4473 and files them numerically. The format required for the record of receipt and disposition of firearms is as follows:

TABLE 2 TO PARAGRAPH (e)—FIREARMS DEALER ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition		
Manufacturer, importer (if any), or ''privately made firearm'' (PMF)	Model	Serial No.	Type	Caliber or gauge	Date	Name and address of nonlicensee; or if licensee, name and license No.	Date	Name	Address of nonlicensee; license No. of licensee; or Form 4473 transaction No. if such forms filed numerically

(f) *Firearms receipt and disposition by licensed collectors.* (1) Each licensed collector shall enter into a record each receipt and disposition of firearms curios or relics. The record required by this paragraph shall be maintained in bound form under the format prescribed below. The purchase or other acquisition of a curio or relic shall, except as provided in paragraphs (g) and (i) of this section, be recorded not later than the close of the next business day following the date of such purchase or other acquisition. The record shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number (including any associated license number either as a prefix, or if remanufactured or imported, separated by a semicolon), type, and the caliber or gauge of the firearm curio or relic. In the event the licensee records a duplicate entry with the same firearm and acquisition information, whether to close out an old record book or for any other reason, the licensee shall record a reference to the date and location of the subsequent entry (*e.g.,* date of new entry, book name/number, page number, and line number) as the disposition. The sale or other disposition of a curio or relic shall be recorded by the licensed collector not later than seven days following the date of such transaction. When such disposition is made to a licensee, the commercial record of the transaction shall be retained, until the transaction is recorded, separate from other commercial documents maintained by the licensee, and be readily available for inspection. The record shall show the date of the sale or other disposition of each firearm curio or relic, the name and address of the person to whom the firearm curio or relic is transferred, or the name and license number of the person to whom transferred if such person is a licensee,

and the date of birth of the transferee if other than a licensee. In addition, the licensee shall cause the transferee, if other than a licensee, to be identified in any manner customarily used in commercial transactions (*e.g.,* a driver's license), and note on the record the method used.

(2) The format required for the record of receipt and disposition of firearms by collectors is as follows:

TABLE 3 TO PARAGRAPH (f)(2)—FIREARMS COLLECTOR ACQUISITION AND DISPOSITION RECORD

Description of firearm					Receipt		Disposition			
Manufacturer, importer (if any), or ''privately made firearm'' (PMF)	Model	Serial No.	Type	Caliber or gauge	Date	Name and address of nonlicensee; or if licensee, name and license No.	Date	Name and address of nonlicensee; or if licensee, name and license No.	Date of birth if nonlicensee	Driver's license No. or other identification if nonlicensee

* * * * *

(i) *Privately made firearms.* Except for adjustment or repair of a firearm that is returned to the person from whom it was received on the same day, licensees must record each receipt or other acquisition (including from a personal collection) and disposition (including to a personal collection) of a privately made firearm as required by this part. For purposes of this paragraph, the terms ''receipt'' and ''acquisition'' shall include same-day or on-the-spot placement of identifying markings unless another licensee is placing the markings for, and under the direct supervision of, the licensee who recorded the acquisition. In that case, the licensee placing the markings need not record an acquisition from the supervising licensee or disposition upon return. The serial number need not be immediately recorded if the firearm is being identified by the licensee, or under the licensee's direct supervision with the licensee's serial number, in accordance with § 478.92(a)(2). Once the privately made firearm is so identified, the licensee shall update the record of acquisition entry with the serial number, including the license number prefix, and shall record its disposition in accordance with this section. In this part and part 447, where no manufacturer name has been identified on a privately made firearm (if privately made in the United States), the words ''privately made firearm'' (or abbreviation ''PMF'') shall be recorded as the name of the manufacturer.

■ 15. In § 478.125a amend paragraph (a)(4) by:

■ a. In the first sentence removing the words ''serial number'' and add in their place ''serial number (including any associated license number either as a prefix, or if remanufactured or imported, separated by a semicolon)'';

■ b. Adding a new third sentence; and

■ c. Designating the table as table 1 and revising newly designated table 1.

The addition and revision read as follows:

§ 478.125a Personal firearms collection.

(a) * * *

(4) * * * Where no manufacturer name has been identified on a privately made firearm, the words ''privately made firearm'' (or abbreviation ''PMF'') shall be recorded as the name of the manufacturer. * * *

TABLE 1 TO PARAGRAPH (a)(4)—DISPOSITION RECORD OF PERSONAL FIREARMS

Description of firearm					Disposition		
Manufacturer, importer (if any), or ''privately made firearm'' (PMF)	Model	Serial No.	Type	Caliber or gauge	Date	Name and address (business address if licensee)	Date of birth if nonlicensee

■ 16. Amend § 478.129 by revising paragraphs (b), (d) and (e) to read as follows:

§ 478.129 Record retention.

* * * * *

(b) *Firearms Transaction Record.* Licensees shall retain each Form 4473 until business or licensed activity is discontinued, either on paper, or in an electronic alternate method approved by the Director, at the business premises readily accessible for inspection under this part. Paper forms over 20 years of age may be stored at a separate warehouse, which shall be considered part of the business premises for this purpose and subject to inspection under this part. Forms 4473 shall be retained in the licensee's records as provided in § 478.124(b), provided that Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

* * * * *

(d) *Records of importation and manufacture.* Licensees shall maintain records of the importation, manufacture, or other acquisition of firearms, including ATF Forms 6 and 6A as required by subpart G of this part, until business or licensed activity is discontinued. Licensed importers' records and licensed manufacturers' records of the sale or other disposition of firearms after December 15, 1968, shall be retained until business is discontinued, either on paper or in an electronic alternate method approved by the Director, at the business premises readily accessible for inspection under this part. Paper records that do not contain any open disposition entries and with no dispositions recorded within 20 years may be stored at a separate warehouse, which shall be considered part of the business premises for this purpose and subject to inspection under this part.

(e) *Records of dealers and collectors.* The records prepared by licensed dealers and licensed collectors of the sale or other disposition of firearms and the corresponding record of receipt of such firearms shall be retained until business or licensed activity is discontinued, either on paper, or in an electronic alternate method approved by the Director, at the business or collection premises readily accessible for inspection under this part. Paper records that do not contain any open disposition entries and with no dispositions recorded within 20 years

may be stored at a separate warehouse, which shall be considered part of the business or collection premises for this purpose and subject to inspection under this part.

* * * * *

PART 479—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

■ 17. The authority citation for part 479 continues to read as follows:

Authority: 26 U.S.C. 5812; 26 U.S.C. 5822; 26 U.S.C. 7801; 26 U.S.C. 7805.

§ 479.11 [Revised]

■ 18. Amend § 479.11 as follows:

■ a. Add, in alphabetical order, definitions for ''Complete muffler or silencer device'' and ''Complete weapon'';

■ b. Revise the definition of ''Frame or receiver'';

■ c. Add the definition of ''Readily''; and

■ d. Add a sentence at the end of the definition of ''Transfer''.

The additions and revisions read as follows:

§ 479.11 Meaning of terms.

* * * * *

Complete muffler or silencer device. A muffler or silencer that contains all component parts necessary to function, whether or not assembled or operable.

Complete weapon. A firearm other than a muffler or silencer that contains all component parts necessary to function, whether or not assembled or operable.

* * * * *

Frame or receiver. The term ''frame or receiver'' shall have the same meaning as in § 478.12 of this subchapter.

* * * * *

Readily. A process, action, or physical state that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speediest, or easiest process, action, or physical state. With respect to the classification of firearms, factors relevant in making this determination include the following:

(1) Time, *i.e.,* how long it takes to finish the process;

(2) Ease, *i.e.,* how difficult it is to do so;

(3) Expertise, *i.e.,* what knowledge and skills are required;

(4) Equipment, *i.e.,* what tools are required;

(5) Parts availability, *i.e.,* whether additional parts are required, and how easily they can be obtained;

(6) Expense, *i.e.,* how much it costs;

(7) Scope, *i.e.,* the extent to which the subject of the process must be changed to finish it; and

(8) Feasibility, *i.e.,* whether the process would damage or destroy the subject of the process, or cause it to malfunction.

* * * * *

Transfer. * * * For purposes of this part, the term shall not include the temporary conveyance of a lawfully possessed firearm to a manufacturer or dealer qualified under this part for the sole purpose of repair, identification, evaluation, research, testing, or calibration and return to the same lawful possessor.

* * * * *

■ 19. Revise § 479.102 to read as follows:

§ 479.102 Identification of firearms.

(a) *Identification required.* Except as otherwise provided in this section, you, as a manufacturer, importer, or maker of a firearm, must legibly identify the firearm as follows:

(1) *Serial number, name, place of business.* By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or otherwise placed on the frame or receiver thereof, an individual serial number, in a manner not susceptible of being readily obliterated, altered, or removed. The serial number must not duplicate any serial number placed by you on any other firearm. The frame or receiver must also be marked with either: Your name (or recognized abbreviation), and city and State (or recognized abbreviation) where you as a manufacturer or importer maintain your place of business, or in the case of a maker, where you made the firearm; or if a manufacturer or importer, your name (or recognized abbreviation) and the serial number that begins with your abbreviated Federal firearms license number, which is the first three and last five digits, as a prefix to a unique identification number, followed by a hyphen, *e.g.,* ''12345678-[unique identification number]''; and

(2) *Model, caliber or gauge, foreign manufacturer, country of manufacture.* By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver, or barrel or pistol slide (if applicable) thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered, or removed. The additional information shall include:

(i) The model, if such designation has been made;

(ii) The caliber or gauge;

(iii) When applicable, the name of the foreign manufacturer or maker; and

(iv) In the case of an imported firearm, the name of the country in which it was manufactured. For additional requirements relating to imported firearms, see Customs regulations at 19 CFR part 134.

(3) *Multi-piece frame or receiver.* In the case of a multi-piece frame or receiver, the modular subpart that is the outermost housing or structure designed to house, hold, or contain either the primary energized component of a handgun, breech blocking or sealing component of a projectile weapon other than a handgun, or internal sound reduction component of a firearm muffler or firearm silencer, as the case may be, shall be the subpart of a multi-piece frame or receiver identified in accordance with this section. If more than one subpart is similarly designed to house, hold, or contain such primary component (*e.g.,* left and right halves), each of those subparts must be identified with the same serial number and associated licensee information not duplicated on any other frame or receiver. The identified subpart(s) of a complete (assembled or unassembled) multi-piece frame or receiver shall not be removed and replaced (*see* § 478.34 of this subchapter, 18 U.S.C. 922(k), and 26 U.S.C. 5861(g) and (h)), unless—

(A) The subpart replacement is not a firearm under 26 U.S.C. 5845;

(B) The subpart replacement is identified by the qualified manufacturer of the original subpart with the same serial number and associated licensee information in the manner prescribed by this section; and

(C) The original subpart is destroyed under the manufacturer's control or direct supervision prior to such placement.

(4) *Frame or receiver, machine gun conversion part, or silencer part disposed of separately.* Each part defined as a frame or receiver or modular subpart thereof described in paragraph (a)(3) of this section, machinegun, or firearm muffler or firearm silencer that is not a component part of a complete weapon or complete muffler or silencer device at the time it is sold, shipped, or otherwise disposed of by you must be identified as required by this section with an individual serial number not duplicated on any other firearm and all additional identifying information, except that the model designation and caliber or gauge may be omitted if that information is unknown at the time the part is identified.

(5) *Size and depth of markings.* The engraving, casting, or stamping (impressing) of the serial number and additional information must be to a minimum depth of .003 inch, and the serial number and any associated license number in a print size no smaller than 1/16 inch. The size of the serial and license number is measured as the distance between the latitudinal ends of the character impression bottoms (bases). The depth of all markings required by this section is measured from the flat surface of the metal and not the peaks or ridges.

(6) *Period of time to identify firearms.* You shall identify a complete weapon or complete muffler or silencer device no later than close of the next business day following the date the entire manufacturing process has ended for the weapon or device, or prior to disposition, whichever is sooner. You must identify each part or modular subpart defined as a machine gun (frame or receiver, or conversion part) or muffler or silencer that is not a component part of a complete weapon or complete muffler or silencer device at the time it is sold, shipped, or otherwise disposed of no later than close of the next business day following the date the entire manufacturing process has ended for the part, or prior to disposition, whichever is sooner. For purposes of this paragraph, firearms awaiting materials, parts, or equipment repair to be completed are presumed, absent reliable evidence to the contrary, to be in the manufacturing process. Importers must identify imported firearms within the period prescribed in § 478.112 of this subchapter.

(7) *Meaning of marking terms.* For purposes of this section, the term ''identify'' means placing marks of identification, the terms ''legible'' and ''legibly'' mean that the identification markings (including any unique identification number) use exclusively Roman letters (*e.g.,* A, a, B, b, C, c) and Arabic numerals (*e.g.,* 1, 2, 3), or solely Arabic numerals, and may include a hyphen, and the terms ''conspicuous'' and ''conspicuously'' mean that the identification markings are capable of being easily seen with the naked eye during normal handling of the firearm and are unobstructed by other markings when the complete weapon or device is assembled.

(b) *Exceptions*—(1) *Alternate means of identification.* The Director may authorize other means of identification to identify firearms upon receipt of a letter application or prescribed form from you showing that such other identification is reasonable and will not hinder the effective administration of this part.

(2) *Destructive devices.* In the case of a destructive device, the Director may authorize other means of identification to identify that weapon upon receipt of a letter application or prescribed form from you. The application shall show that engraving, casting, or stamping (impressing) such a weapon as required by this section would be dangerous or impracticable and that the alternate means of identification proposed will not hinder the effective administration of this part.

(3) *Adoption of identifying markings.* You may adopt existing markings and are not required to mark a serial number or other identifying markings previously placed on a firearm in accordance with this section, as follows:

(A) *Newly manufactured firearms.* Manufacturers may adopt the serial number and other identifying markings previously placed on a firearm by another manufacturer provided the firearm has not been sold, shipped, or otherwise disposed of to a person other than a qualified manufacturer, importer, or dealer, and the serial number adopted is not duplicated on any other firearm.

(B) *Remanufactured or imported firearms.* Manufacturers and importers may adopt the serial number or other identifying markings previously placed on a firearm that otherwise meets the requirements of this section that has been sold, shipped, or otherwise disposed of to a person other than a licensee provided that, within the period and in the manner herein prescribed, the manufacturer or importer legibly and conspicuously places, or causes to be placed, on the frame or receiver either: Their name (or recognized abbreviation), and city and State (or recognized abbreviation) where they maintain their place of business; or their name (or recognized abbreviation) and abbreviated Federal firearms license number, which is the first three and last five digits, individually (*i.e.,* not as a prefix to the serial number adopted) after the letters ''FFL'', in the following format: ''FFL12345678''. The serial number adopted must not duplicate any serial number adopted or placed on any other firearm, except that if an importer receives two or more firearms with the same foreign manufacturer's serial number, the importer may adopt the serial number by adding letters or numbers to that serial number, and may include a hyphen.

(C) *Manufacturers performing gunsmithing services.* Manufacturers may adopt the serial number or other identifying markings previously placed on a firearm by a qualified manufacturer, importer, or dealer, provided the manufacturer is performing services as a gunsmith (as defined in § 478.11 of this subchapter) on existing firearms not for sale or distribution.

(4)(i) *Firearm muffler or silencer parts transferred between qualified manufacturers for further manufacture or to complete new devices.* Manufacturers qualified under this part may transfer a part defined as a muffler or silencer to another qualified manufacturer without immediately identifying or registering such part provided that it is for further manufacture (*i.e.,* machining, coating, *etc.*) or manufacturing a complete muffler or silencer device. Once the new device with such part is completed, the manufacturer who completes the device shall identify and register it in the manner and within the period specified in this part for a complete muffler or silencer device.

(ii) *Firearm muffler or silencer replacement parts transferred to qualified manufacturers or dealers to repair existing devices.* Manufacturers qualified under this part may transfer a replacement part defined as a muffler or silencer other than a frame or receiver to a qualified manufacturer or dealer without identifying or registering such part provided that it is for repairing a complete muffler or silencer device that was previously identified and registered in accordance with this part and part 478.

(5) *Frames or receivers designed before August 24, 2022.* Manufacturers and importers may continue to identify the same component of a firearm defined as a frame or receiver as it existed before August 24, 2022 with the same information required to be marked by paragraphs (a)(1) and (a)(2) of this section that were in effect prior to that date, and any rules necessary to ensure such identification shall remain effective for that purpose. Any frame or receiver with a new design manufactured after August 24, 2022 must be marked with the identifying information and within the period prescribed by this section. For purposes of this paragraph, the term ''new design'' means that the design of the existing frame or receiver has been functionally modified or altered, as distinguished from performing a cosmetic process that adds to or changes the decoration of the frame or receiver (*e.g.,* painting or engraving), or by adding or replacing stocks, barrels, or accessories to the frame or receiver.

(c) *Voluntary classification of firearms.* The Director may issue a determination (classification) to a

person whether an item, including a kit, is a firearm as defined in this part upon receipt of a written request or form prescribed by the Director. Each such voluntary request or form submitted shall be executed under the penalties of perjury with a complete and accurate description of the item or kit, the name and address of the manufacturer or importer thereof, and a sample of such item or kit for examination. A firearm sample must include all accessories and attachments relevant to such classification as each classification is limited to the firearm in the configuration submitted. Each request for classification of a partially complete, disassembled, or nonfunctional item or kit must contain any associated templates, jigs, molds, equipment, or tools that are made available by the seller or distributor of the item or kit to the purchaser or recipient of the item or kit, and any instructions, guides, or marketing materials if they will be made available by the seller or distributor with the item or kit. Upon completion of the examination, the Director may return the sample to the person who made the request unless a determination is made that return of the sample would be or place the person in violation of law. Except for the classification of a specific component as the frame or receiver of a particular weapon, a determination made by the Director under this paragraph shall not be deemed by any person to be applicable to or authoritative with respect to any other sample, design, model, or configuration.

§ 479.103 [Amended]

■ 20. In § 479.103, at the beginning of the third sentence, remove the word ''All'' and add in its place ''Except as provided in § 479.102(b)(4), all''.

Merrick B. Garland,

Attorney General.

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Part III

Small Business Administration

13 CFR Part 121

Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AH09

Small Business Size Standards: Manufacturing and Industries With Employee-Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or the Agency) has reviewed its employee-based small business size definitions (commonly referred to as ''size standards'') for North American Industry Classification System (NAICS) sectors related to Mining, Quarrying, and Oil and Gas Extraction (Sector 21); Utilities (Sector 22); Manufacturing (Sector 31–33); Transportation and Warehousing (Sector 48–49); Information (Section 51); Finance and Insurance (Sector 52); Professional, Scientific and Technical Services (Sector 54); and Administrative and Support, Waste Management and Remediation Services (Sector 56) and proposes several changes. Specifically, SBA proposes to increase 150 and retain 282 employee-based size standards in those sectors. SBA also proposes to retain the current 500-employee size standard for Federal procurement of supplies under the nonmanufacturer rule. SBA's proposed revisions relied on its ''Size Standards Methodology'' (Methodology). SBA seeks comments on its proposed changes to size standards in the above sectors and the data sources it evaluated to develop the proposed size standards.

DATES: SBA must receive comments to this proposed rule on or before June 27, 2022.

ADDRESSES: Identify your comments by RIN 3245–AH09 and submit them by one of the following methods: (1) Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416.

SBA will post all comments to this proposed rule on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW, Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Samuel Castilla, Economist, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Size Standards

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (usually referred to as ''size standards'') for private sector industries in the United States. SBA uses two primary measures of business size for size standards purposes: Average annual receipts and average number of employees. SBA uses financial assets for certain financial industries and refining capacity, in addition to employees, for the petroleum refining industry to measure business size. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry-based size standards or tangible net worth and net income-based alternative size standards to determine eligibility for those programs.

In September 2010, Congress passed the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, September 27, 2010) (''Jobs Act''), requiring SBA to review all size standards every five years and make necessary adjustments to reflect current industry and market conditions. In accordance with the Jobs Act, in early 2016, SBA completed the first five-year review of all size standards—except those for agricultural enterprises for which size standards were previously set by Congress—and made appropriate adjustments to size standards for a number of industries to reflect current industry and Federal market conditions.

During the first five-year comprehensive size standards review, SBA reviewed the employee-based size standards for 25 industries within NAICS Sector 21 (Mining, Quarrying, and Oil and Gas Extraction), 364 industries within NAICS Sector 31–33 (Manufacturing), 15 industries within Sector 48–49 (Transportation and Warehousing), 12 industries within NAICS Sector 51 (Information), 2 industries and 4 subindustries (or ''exceptions'') within NAICS Sector 54 (Professional, Scientific and Technical Services), and 4 industries or subindustries (''exceptions'') with employee-based size standards in other sectors covered by this proposed rule. These reviews of employee-based size standards occurred during September 2014 to January 2016. Based on analyses of the relevant industry and Federal contracting data available at that time, SBA increased 15 and decreased 3 employee-based size standards in Sector 21, increased 4 in Sector 48–49, 8 in Sector 51, 3 in Sector 54, and 2 in other sectors (81 FR 4435 (January 26, 2016)). SBA also increased 209 size standards in Sector 31–33 (81 FR 4469 (January 26, 2016)). Table 1, Size Standards Revisions During the First 5-Year Review, provides a summary of these revisions by NAICS sector.

TABLE 1—SIZE STANDARDS REVISIONS DURING THE FIRST 5-YEAR REVIEW

Sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
21	Mining, Quarrying, and Oil and Gas Extraction	25	15	3	7
31–33	Manufacturing	364	209	0	155
48–49	Transportation and Warehousing	15	4	0	11
51	Information	12	8	0	4
54	Professional, Scientific and Technical Services	6	5	0	1

TABLE 1—SIZE STANDARDS REVISIONS DURING THE FIRST 5-YEAR REVIEW—Continued

Sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
Others	Agriculture, Forestry, Fishing and Hunting (Sector 11); Utilities (Sector 22); Finance and Insurance (Sector 52); Administrative and Support, Waste Management and Remediation Services (Sector 56).	4	2	0	2
Total		426	243	3	180

Currently, there are 27 different size standards levels covering 1,023 NAICS industries and 14 subindustry activities (commonly known as ''exceptions'' in SBA's Table of Size Standards). Of these 27 size levels, 16 are based on average annual receipts, 9 are based on average number of employees, and 2 are based on other measures.

SBA also adjusts its monetary-based size standards for inflation at least once every 5 years. An interim final rule on SBA's latest inflation adjustment to size standards, effective August 19, 2019, was published in the **Federal Register** on July 18, 2019 (84 FR 34261). SBA also updates its size standards every five years to adopt the Office of Management and Budget's (OMB) latest NAICS revisions to its Table of Size Standards. Effective October 1, 2017, SBA adopted OMB's 2017 NAICS revisions to its size standards (82 FR 44886, September 27, 2017).[1]

This proposed rule is the last of a series of proposed rules that is reviewing size standards of industries grouped by various NAICS sectors. Rather than review all size standards at one time, SBA reviewed size standards by grouping industries within various NAICS sectors that use the same size measure (*i.e.,* employees or receipts). In the current review, SBA reviewed size standards in six groups of NAICS sectors. (In the prior review, SBA reviewed size standards mostly on a sector-by-sector basis.) Once SBA completed its review of size standards for a group of sectors, it issued for public comments a proposed rule to revise size standards for those industries based on the latest available data and other factors deemed relevant by the SBA Administrator.

Below is a discussion of SBA's ''Size Standards Methodology'' (Methodology), issued on April 11, 2019, and available at *www.sba.gov/size,* for establishing, reviewing, or modifying employee-based size standards that SBA has applied to this proposed rule. SBA examines the structural characteristics of an industry as a basis to assess industry differences and the overall degree of competitiveness of an industry and of firms within the industry. Industry structure is typically examined by analyzing four primary factors—average firm size, degree of competition within an industry, start-up costs and entry barriers, and distribution of firms by size. To assess the ability of small businesses to compete for Federal contracting opportunities under the current size standards, as the fifth primary factor, SBA also examines, for each industry averaging $20 million or more in average annual Federal contract dollars, the small business share in Federal contract dollars relative to the small business share in total industry's receipts. When necessary, SBA also considers other secondary factors that are relevant to the industries and the interests of small businesses, including impacts of size standards changes on small businesses.

Size Standards Methodology

SBA has revised its Methodology for establishing, reviewing, or modifying size standards on April 11, 2019 (84 FR 14587). The Methodology is available on SBA's size standards web page at *www.sba.gov/size.* Prior to finalizing the revised Methodology, SBA issued a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to solicit comments from the public and notify stakeholders of the proposed changes to the Methodology. SBA considered all public comments in finalizing the Methodology. For a summary of comments and SBA's responses, refer to the SBA's April 11, 2019, **Federal Register** notification cited above.

The Methodology represents a major change from the previous Methodology issued on October 21, 2009 (74 FR 53940). Specifically, SBA is replacing the ''anchor'' approach applied in the previous methodology with a ''percentile'' approach for evaluating differences in characteristics among various industries. Under the ''anchor'' approach, SBA generally evaluated the characteristics of individual industries relative to the average characteristics of industries with the anchor size standard to determine whether they should have a higher or a lower size standard than the anchor. In the ''percentile'' approach used in 2019's methodology, SBA ranks industries with the same measure of size standards (such as receipts or employees) in terms of four primary industry factors, discussed in the Industry Analysis subsection below. The ''percentile'' approach is explained more fully elsewhere in this proposed rule. For a more detailed explanation, please see the revised Methodology at *www.sba.gov/size.*

Additionally, as the fifth factor, SBA evaluates the difference between the small business share in Federal contract dollars and the small business share in total industry's receipts to compute the size standard for the Federal contracting factor. The overall size standard for an industry is then obtained by averaging all size standards supported by each primary factor. The evaluation of the Federal contracting factor is explained more fully in the Industry Analysis section, below, in this proposed rule.

SBA does not apply all aspects of its Methodology to all proposed rules because not all features are relevant for every industry covered by each proposed rule. For example, since all industries covered by this proposed rule have employee-based size standards, the methodology described in this proposed rule applies only to establishing, reviewing, or modifying employee-based size standards.

Industry Analysis

Congress granted the SBA Administrator discretion to establish

[1] On December 21, 2021, OMB published its ''Notice of NAICS 2022 Final Decisions . . .'' (86 FR 72277), accepting the Economic Classification Policy Committee (ECPC) recommendations, as outlined in the July 2, 2021, **Federal Register** notice (86 FR 35350), for the 2022 revisions to the North American Industry Classification System (NAICS), ...'' In the near future, SBA will issue a proposed rule to adopt the OMB NAICS 2022 revisions for its table of size standards. SBA anticipates updating its size standards with the NAICS 2022 revisions, effective October 1, 2022.

detailed small business size standards. 15 U.S.C. 632(a)(2). Specifically, section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''. . . the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry is the basis for establishing, reviewing, or modifying small business size standards. In addition, SBA considers current economic conditions, its mission and program objectives, the Administration's current policies, impacts on small businesses under current size and proposed or revised size standards, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

The goal of SBA's size standards review is to determine whether its existing small business size standards reflect the current industry structure and Federal market conditions and revise them when the latest available data suggests that revisions are warranted. In the past, SBA compared the characteristics of each industry with the average characteristics of a group of industries associated with the ''anchor'' size standard. For example, in the first five-year comprehensive review of size standards under the Jobs Act, $7 million (now $8.0 million due to the inflation adjustment in 2019; see 84 FR 34261 (July 18, 2019)) was considered the ''anchor'' for receipts-based size standards and 500 employees was the ''anchor'' for employee-based size standards. If the characteristics of a specific industry under review were similar to the average characteristics of industries in the anchor group, SBA generally adopted the anchor size standard for that industry. If the specific industry's characteristics were significantly different from those in the anchor group, SBA assigned a size standard that was higher or lower than the anchor. To determine a size standard above or below the anchor size standard, SBA evaluated the characteristics of a second comparison group of industries with higher size standards. For industries with receipts-based standards, the second comparison group consisted of industries with size standards between $23 million and $35.5 million, with the weighted average size standard for the group equaling $29 million. For manufacturing and other industries with employee-based size standards (except for Wholesale Trade and Retail Trade), the second comparison group included industries with a size standard of 1,000 employees or 1,500 employees, with the weighted average size standard of 1,323 employees. Using the anchor size standard and average size standard for the second comparison group, SBA computed a size standard for an industry's characteristic (factor) based on the industry's position for that factor relative to the average values of the same factor for industries in the anchor and second comparison groups.

Under the ''percentile'' approach, for each industry factor, an industry is ranked and compared with the 20th percentile and 80th percentile values of that factor among the industries sharing the same measure of size standards (*i.e.,* receipts or employees). Combining that result with the 20th percentile and 80th percentile values of size standards among the industries with the same measure of size standards, SBA computes a size standard supported by each industry factor for each industry. In the previous methodology, comparison industry groups were predetermined independent of the data, while in the revised Methodology they are established using the actual industry data from the Economic Census tabulation.

The primary factors that SBA evaluates to examine industry structure include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA also evaluates, as an additional primary factor, small business success in receiving Federal contracts under the current size standards. Specifically, for the Federal contracting factor, SBA examines the small business share of Federal contract dollars relative to small business share of total receipts within an industry. These are, generally, five important factors (listed below) that SBA examines when establishing, reviewing, or revising a size standard for an industry. However, SBA will also consider and evaluate other secondary factors that it believes are relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, and other program factors). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance (including access to small business set-aside contracts and SBA's financial assistance), current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on proposed rules also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed revisions to size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry being reviewed in this proposed rule. A more detailed description of this analysis is provided in the SBA's Methodology, available at *www.sba.gov/size.*

1. Average Firm Size

SBA computes two measures of average firm size: Simple average and weighted average. For industries with employee-based size standards, the simple average is the total employees of the industry divided by the total number of firms in the industry. The weighted average firm size is the summation of all the employees of the firms in an industry multiplied by their share of employees in the industry. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms. The size standard supported by average firm size is obtained by averaging size standards supported by simple average firm size and weighted average firm size.

If the average firm size of an industry is higher than the average firm size for most other industries, this would generally support a size standard higher than the size standards for other industries. Conversely, if the industry's average firm size is lower than that of most other industries, it would provide a basis to assign a lower size standard as compared to size standards for most other industries.

2. Startup Costs and Entry Barriers

Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If firms entering an industry under review have greater capital requirements than firms in most other industries, all other factors remaining the same, this would be a basis for a higher size standard. Conversely, if the industry has smaller capital needs compared to most other industries, a lower size standard would be considered appropriate.

Given the lack of actual data on startup costs and entry barriers by industry, SBA uses average assets as a proxy for startup costs and entry barriers. To calculate average assets,

SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies, available at *https://rmau.org.* SBA then applies these ratios to the average receipts of firms in that industry obtained from the Economic Census tabulation. An industry with average assets that are significantly higher than most other industries is likely to have higher startup costs; this in turn will support a higher size standard. Conversely, an industry with average assets that are similar to or lower than most other industries is likely to have lower startup costs; this will support either lowering or maintaining the size standard.

3. Industry Competition

Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. Using the four-firm concentration ratio, SBA compares the degree of concentration within an industry to the degree of concentration of the other industries with the same measure of size standards. If a significantly higher share of economic activity within an industry is concentrated among the four largest firms compared to most other industries, all else being equal, SBA would set a size standard that is relatively higher than for most other industries. Conversely, if the market share of the four largest firms in an industry is appreciably lower than the similar share for most other industries, the industry will be assigned a size standard that is lower than those for most other industries.

4. Distribution of Firms by Size

SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment sizes in an industry. This is an additional factor SBA considers in assessing competition within an industry besides the four-firm concentration ratio. If the preponderance of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry, which would support adopting a smaller size standard. A higher size standard would be supported for an industry in which the distribution of firms indicates that most of the economic activity is concentrated among the larger firms.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient, using the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, see SBA's Methodology on its website at *www.sba.gov/size.*) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the degree of inequality of distribution for an industry under review with other industries with the same type of size standards. If an industry shows a higher degree of inequality of distribution (hence a higher Gini coefficient value) compared to most other industries in the group this would, all else being equal, warrant a size standard that is higher than the size standards assigned to most other industries. Conversely, an industry with lower degree of inequality (*i.e.,* a lower Gini coefficient value) than most others will be assigned a lower size standard relative to others.

5. Federal Contracting

As the fifth factor, SBA examines the success small businesses are having in winning Federal contracts under the current size standard as well as the possible impact a size standard change may have on Federal small business contracting opportunities. The Small Business Act requires the Federal Government to ensure that small businesses receive a ''fair proportion'' of Federal contracts. The legislative history also discusses the importance of size standards in Federal contracting. To incorporate the Federal contracting factor in the size standards analysis, SBA evaluates small business participation in Federal contracting in terms of the share of total Federal contract dollars awarded to small businesses relative to the small business share of industry's total receipts. In general, if the share of Federal contract dollars awarded to small businesses in an industry is significantly smaller than the small business share of total industry's receipts, all else remaining the same, a justification would exist for considering a size standard higher than the current size standard. In cases where small business share of the Federal market is already appreciably high relative to the small business share of the overall market, SBA generally assumes that the existing size standard is adequate with respect to the Federal contracting factor.

The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required to perform Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal market conditions. Besides the impact on Federal contracting, SBA also examines impacts on SBA's loan programs both under the current and revised size standards.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule for evaluating industry characteristics and developing size standards is a special tabulation of the Economic Census from the U.S. Census Bureau (*www.census.gov/econ/census*). The tabulation based on the 2012 Economic Census was the latest available when this proposed rule was developed. The special tabulation provides industry data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by Industry (6-digit level), Industry Group (4-digit level), Subsector (3-digit level), and Sector (2-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The special tabulation also contains information for different levels of NAICS categories on average and median firm size in terms of both receipts and employment, total receipts generated by the four and eight largest firms, the Herfindahl-Hirschman Index (HHI), the Gini coefficient, and size distributions of firms by various receipts and employment size groupings.

In some cases where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS two-digit (Sector),

three-digit (Subsector), or four-digit (Industry Group) level. In some instances, SBA's analysis was based only on those factors for which data were available or estimates of missing values were possible.

To evaluate some industries that are not covered by the Economic Census, SBA used a similar special tabulation of the latest County Business Patterns (CBP) published by the U.S. Census Bureau (*www.census.gov/programs-surveys/cbp.html*). Similarly, to evaluate industries in NAICS Sector 11 that are also not covered by the Economic Census and CBP, SBA evaluated a similar special tabulation based on the 2012 Census of Agriculture (*www.nass.usda.gov*) from the National Agricultural Statistics Service (NASS). Besides the Economic Census, Agricultural Census and CBP tabulations, SBA also evaluates relevant industry data from other sources when necessary, especially for industries that are not covered by the Economic Census or CBP. These include the Quarterly Census of Employment and Wages (QCEW, also known as ES–202 data) (*www.bls.gov/cew/*) and Business Employment Dynamics (BED) data (*www.bls.gov/bdm/*) from the U.S. Bureau of Labor Statistics. Similarly, to evaluate certain financial industries that have asset-based size standards, SBA examines the data from the Statistics on Depository Institutions (SDI) database (*www5.fdic.gov/sdi/main.asp*) of the Federal Depository Insurance Corporation (FDIC) data. Finally, to evaluate the capacity component of the Petroleum Refiners (NAICS 324110) size standard, SBA evaluates the petroleum production data from the Energy Information Administration (*www.eia.gov*).

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual eStatement Studies, 2016–2018 (*https://rmau.org*). To evaluate the Federal contracting factor, SBA examined the data on Federal prime contract awards from the Federal Procurement Data System—Next Generation (FPDS–NG) (*www.fpds.gov*) for fiscal years 2016–2018. To assess the impact on financial assistance to small businesses, SBA examined its internal data on 7(a) and 504 loan programs for fiscal years 2018–2020. For some portion of impact analysis, SBA also evaluated data from FPDS–NG for fiscal years 2018–2020 and the System for Award Management (SAM) (*www.sam.gov*).

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in SBA's Methodology, which is available at *www.sba.gov/size.*

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is: (1) Independently owned and operated; (2) Not dominant in its field of operation; and (3) Within a specific small business definition or size standard established by the SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed or revised size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed or revised size standard as well as the distribution of firms by size. Market share and size distribution may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

In the 2009 Methodology, SBA applied to the first five-year comprehensive review of size standards, SBA adopted a fixed number of size standards levels as part of its effort to simplify size standards. In response to public comments to the 2009 Methodology white paper, and the 2013 amendment to the Small Business Act (section 3(a)(8)) under section 1661 of the National Defense Authorization Act for Fiscal Year 2013 (''NDAA 2013'') (Pub. L. 112–239, January 2, 2013), in the 2019 Methodology, SBA has relaxed the limitation on the number of small business size standards. Specifically, section 1661 of NDAA 2013 states ''SBA cannot limit the number of size standards, and shall assign the appropriate size standard to each industry identified by NAICS.''

In the revised Methodology, SBA calculates a separate size standard for each NAICS industry. However, to account for errors and limitations associated with various data SBA evaluates in the size standards analysis, SBA rounds the calculated size standard value for a receipts-based size standard to the nearest $500,000, except for agricultural industries in Subsectors 111 and 112 for which the calculated size standards will be rounded to the nearest $250,000. Similarly, the calculated value for an employee-based size standard is rounded to the nearest 50 employees for industries in manufacturing and other sectors (except Wholesale Trade and Retail Trade) and to the nearest 25 employees for industries in Wholesale Trade and Retail Trade. This rounding procedure is applied both in calculating a size standard for each of the five primary factors and in calculating the overall size standard for the industry.

As a policy decision, SBA continues to maintain the minimum and maximum levels for both receipts and employee-based size standards. Accordingly, SBA will not generally propose or adopt a size standard that is either below the minimum level or above the maximum, even though the calculations may yield values below the minimum or above the maximum. The minimum size standard reflects the size an established small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts (but does not account for small businesses that are newly formed or just starting operations). On the other hand, the maximum size standard represents the level above which businesses, if qualified as small, would outcompete much smaller businesses when accessing Federal assistance.

With respect to employee-based size standards, SBA has established 250 employees and 1,500 employees, respectively, as the minimum and maximum size standard levels for Manufacturing and other industries (excluding Wholesale and Retail Trade). SBA has established 50 employees and 250 employees, respectively, as the minimum and maximum employee-based size standard levels for Wholesale and Retail Trade. These levels reflect the current minimum of 100 employees and the current maximum of 1,500 employees in SBA's existing size standards. The industry data suggests that a 250-employee minimum and 1,500-employee maximum size standards would be too high for Wholesale and Retail Trade industries. Accordingly, SBA has established 50 employees as the minimum size standard and 250 employees as the maximum size standard for Wholesale and Retail Trade industries.

Evaluation of Industry Factors

As mentioned in the previous section, to assess the appropriateness of the current size standards, SBA evaluates the structure of each industry in terms of four economic characteristics or factors: average firm size, average assets size as a proxy for startup costs and entry barriers, the four-firm concentration ratio as a measure of industry competition, and size

distribution of firms using the Gini coefficient. For each size standard type (*i.e.,* receipts-based, or employee-based), SBA ranks industries both in terms of each of the four industry factors and in terms of the existing size standard and computes the 20th percentile and 80th percentile values for both. SBA then evaluates each industry by comparing its value for each industry factor to the 20th percentile and 80th percentile values for the corresponding factor for industries under a particular type of size standard.

If the characteristics of an industry under review within a particular size standard type are similar to the average characteristics of industries within the same size standard type in the 20th percentile, SBA will consider adopting as an appropriate size standard for that industry the 20th percentile value of size standards for those industries. For each size standard type, if the industry's characteristics are similar to the average characteristics of industries in the 80th percentile, SBA will assign a size standard that corresponds to the 80th percentile in the size standard rankings of industries. A separate size standard is established for each factor based on the amount of differences between the factor value for an industry under a particular size standard type and 20th percentile and 80th percentile values for the corresponding factor for all industries in the same type. Specifically, the actual level of the new size standard for each industry factor is derived by a linear interpolation using the 20th percentile and 80th percentile values of that factor and corresponding percentiles of size standards. Each calculated size standard is bounded between the minimum and maximum size standards levels, as discussed before. As noted earlier, the calculated value for an employee-based size standard is rounded to the nearest 50 employees for industries in Manufacturing and other sectors (except Wholesale Trade and Retail Trade) and to the nearest 25 employees for industries in Wholesale Trade and Retail Trade.

Table 2, 20th and 80th Percentiles of Industry Factors for Employee-Based Size Standards, shows the 20th percentile and 80th percentile values for average firm size (simple and weighted), average assets size, four-firm concentration ratio, and Gini coefficient for industries with employee-based size standards.

TABLE 2—20TH AND 80TH PERCENTILES OF INDUSTRY FACTORS FOR EMPLOYEE-BASED SIZE STANDARDS

Industries/percentiles	Simple average firm size (number of employees)	Weighted average firm size (number of employees)	Average assets size ($ million)	Four-firm concentration ratio (%)	Gini coefficient
Manufacturing and other industries, excluding Sectors 42 and 44–45					
20th percentile	29.5	250.7	4.14	24.7	0.760
80th percentile	118.3	1,629.0	40.54	61.3	0.853
Industries in Sectors 42 and 44–45					
20th percentile	12.6	199.8	3.19	16.1	0.794
80th percentile	27.9	1,693.8	11.53	38.9	0.865

Estimation of Size Standards Based on Industry Factors

An estimated size standard supported by each industry factor is derived by comparing its value for a specific industry to the 20th percentile and 80th percentile values for that factor. If an industry's value for a particular factor is near the 20th percentile value in the distribution, the supported size standard will be one that is close to the 20th percentile value of size standards for industries in the size standards group (*i.e.,* industries with employee-based size standards covered by this proposed rule), which is 500 employees. If a factor for an industry is close to the 80th percentile value of that factor, it would support a size standard that is close to the 80th percentile value in the distribution of size standards, which is 1,250 employees. For a factor that is within, above, or below the 20th-80th percentile range, the size standard is calculated using linear interpolation based on the 20th percentile and 80th percentile values for that factor and the 20th percentile and 80th percentile values of size standards.

For example, if an industry's simple average firm size in number of employees is 50 employees, that would support a size standard of 650 employees. According to Table 2, the 20th percentile and 80th percentile values of average number of employees are 29.5 and 118.3 employees, respectively. The 50-employee average firm size is 23.1% between the 20th percentile value (29.5 employees) and the 80th percentile value (118.3 employees) of simple average firm size in number of employees ((50 employees − 29.5 employees) ÷ (118.3 employees − 29.5 employees) = 0.2308 or 23.1%)). Applying this percentage to the difference between the 20th percentile value (500 employees) and 80th percentile (1,250 employees) value of size standards and then adding the result to the 20th percentile size standard value (500 employees) yields a calculated size standard value of 673 employees ([{1,250 employees − 500 employees} * 0.231] + 500 employees = 673 employees). The final step is to round the calculated 673 employee size standard to the nearest 50 employees, which in this example yields 650 employees. This procedure is applied to calculate size standards supported by other industry factors. Detailed formulas involved in these calculations are presented in SBA's Methodology, which is available on its website at *www.sba.gov/size.*

Derivation of Size Standards Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess the success of small businesses in getting Federal contracts under the existing size standards. For each industry with $20 million or more in annual Federal contract dollars, SBA evaluates the small business share of total Federal contract dollars relative to the small business share of total industry receipts. All other factors being equal, if the share of Federal contracting dollars awarded to small businesses in an industry is significantly less than the small business share of that industry's total receipts, a justification would exist for considering a size standard higher than the current size standard.

Conversely, if the small business share of Federal contracting activity is near or above the small business share in total industry receipts, this will support the current size standard.

SBA increases the existing size standards by certain percentages when the small business share of total industry receipts exceeds the small business share of total Federal contract dollars by ten or more percentage points. Proposed percentage increases generally reflect employee levels needed to bring the small business share of Federal contracts on par with the small business share of industry receipts. These proposed percentage increases for employee-based size standards are given in Table 3, Proposed Adjustments to Size Standards Based on Federal Contracting Factor.

TABLE 3—PROPOSED ADJUSTMENTS TO SIZE STANDARDS BASED ON FEDERAL CONTRACTING FACTOR

Size standards	Percentage difference between the small business shares of total Federal contract dollars in an industry and of total industry receipts		
	> −10%	−10% to −30%	< −30%
Employee-based standards:			
<500 employees	No change	Increase 30%	Increase 60%.
500 to <1,000 employees	No change	Increase 20%	Increase 40%.
1,000 to <1,500 employees	No change	Increase 15%	Increase 25%.

For example, if an industry with the current size standard of 750 employees had an average of $50 million in Federal contracting dollars, of which 15% went to small businesses, and if small businesses accounted for 40% of total receipts of that industry, the small business share of total Federal contract dollars would be 25% less than the small business share of total industry receipts (40% − 15%). According to the adjustments shown in Table 3 (above), the new size standard for the Federal contracting factor for that industry would be set by multiplying the current 750 employee standard by 1.2 (*i.e.,* 20% increase) and then by rounding the result to the nearest 50 employees, yielding a size standard of 900 employees.

SBA evaluated the small business share of total Federal contract dollars for the 210 industries covered by this proposed rule that had $20 million or more in average annual Federal contract dollars during fiscal years 2016–2018. The Federal contracting factor was significant (*i.e.,* the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was ten percentage points or more) in 64 of these industries, prompting an upward adjustment of their existing size standards based on that factor. For the remaining 146 industries that averaged $20 million or more in average annual contract dollars, the Federal contracting factor was not significant, and the existing size standard was applied for that factor. For industries with less than $20 million in average annual contract dollars, no size standard was calculated for the Federal contracting factor.

Derivation of Overall Industry Size Standard

The SBA's methodology presented above results in five separate size standards based on evaluation of the five primary factors (*i.e.,* four industry factors and one Federal contracting factor). SBA typically derives an industry's overall size standard by assigning equal weights to size standards supported by each of these five factors. However, if necessary, SBA's methodology would allow assigning different weights to some of these factors in response to its policy decisions and other considerations. For detailed calculations, see SBA's methodology, available on its website at *www.sba.gov/size.*

Calculated Size Standards Based on Industry and Federal Contracting Factors

Table 4, Size Standards Supported by Each Factor for Each Industry (Employees), below, shows the results of analyses of industry and Federal contracting factors for each industry and subindustry (''exception'') covered by this proposed rule. NAICS industries in columns 2, 3, 4, 5, 6, 7, and 8 show two numbers. The upper number is the value for the industry or Federal contracting factor shown on the top of the column and the lower number is the size standard supported by that factor. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor (the size standard for average firm size is an average of size standards supported by simple average firm size and weighted average firm size), rounded to the nearest 50 employees for industries in Manufacturing and other sectors (except Wholesale Trade and Retail Trade) and to the nearest 25 employees for industries in Wholesale Trade and Retail Trade. Analytical details involved in the averaging procedure are described in SBA's methodology, which is available on its website at *www.sba.gov/size.* For comparison with the calculated new size standards, the current size standards are in column 10 of Table 4.

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Table 4

Size Standards Supported by Each Factor for Each Industry (Employees)

Upper Value = Calculated Factor, Lower Value = Size Standard Supported

(1) NAICS Code NAICS Industry Title	(2) Type	(3) Simple Average Firm Size (Number of Employees)	(4) Weighted Average Firm Size (Number of Employees)	(5) Average Assets Size ($ Million)	(6) Four-Firm Ratio %	(7) Gini Coefficient	(8) Federal Contract Factor (%)	(9) Calculated Size Standard (Number of Employees)	(10) Current Size Standard (Number of Employees)
113310	Factor	6.2	52.1	$0.7	8.6	0.634			
Logging	Size Std.	300	400	450	250	250		350	500
211120	Factor	36.8	2537.6	$181.3	32.1	0.882			
Crude Petroleum Extraction	Size Std.	550	1500	1500	650	1500		1200	1250
211130	Factor	24.7	1371.3	$83.5	58.6	0.843	29.4		
Natural Gas Extraction	Size Std.	450	1100	1500	1200	1150	1250	1200	1250
212111	Factor	113.9	1801.1	$70.7	44.0	0.830			
Bituminous Coal and Lignite Surface Mining	Size Std.	1200	1350	1500	900	1050		1200	1250
212112	Factor	261.4	4932.4	$123.7	49.9	0.855			
Bituminous Coal Underground Mining	Size Std.	1500	1500	1500	1000	1250		1300	1500
212113	Factor	15.6	55.4	$6.8	60.8	0.722			
Anthracite Mining	Size Std.	400	400	550	1250	250		600	250
212210	Factor	401.4	2755.8	$318.0	96.4	0.823			
Iron Ore Mining	Size Std.	1500	1500	1500	1500	1000		1400	750
212221	Factor	90.9	2468.7	$77.4	80.9	0.880			
Gold Ore Mining	Size Std.	1000	1500	1500	1500	1450		1450	1500
212222	Factor	86.7	282.6	$50.6	98.2	0.799			
Silver Ore Mining	Size Std.	1000	500	1350	1500	800		1100	250

(1) NAICS Code NAICS Industry Title	(2) Type	(3) Simple Average Firm Size (Number of Employees)	(4) Weighted Average Firm Size (Number of Employees)	(5) Average Assets Size ($ Million)	(6) Four-Firm Ratio %	(7) Gini Coefficient	(8) Federal Contract Factor (%)	(9) Calculated Size Standard (Number of Employees)	(10) Current Size Standard (Number of Employees)
212230	Factor	400.4	3259.4	$334.7	80.8	0.836			
Copper, Nickel, Lead, and Zinc Mining	Size Std.	1500	1500	1500	1500	1100		1400	750
212291	Factor	36.0	102.5	$7.3	85.1	0.820			
Uranium-Radium-Vanadium Ore Mining	Size Std.	550	400	550	1500	1000		900	250
212299	Factor	169.2	849.2	$64.7	80.8	0.786			
All Other Metal Ore Mining	Size Std.	1500	850	1500	1500	700		1250	750
212311	Factor	13.6	49.9	$1.5	31.4	0.679			
Dimension Stone Mining and Quarrying	Size Std.	350	400	450	650	250		450	500
212312	Factor	42.9	618.7	$14.5	26.1	0.770			
Crushed and Broken Limestone Mining and Quarrying	Size Std.	600	700	700	550	600		650	750
212313	Factor	35.7	560.6	$12.7	62.7	0.797			
Crushed and Broken Granite Mining and Quarrying	Size Std.	550	650	650	1300	800		850	750
212319	Factor	21.6	181.9	$5.6	33.4	0.752			
Other Crushed and Broken Stone Mining and Quarrying	Size Std.	450	450	550	700	450		550	500
212321	Factor	15.4	126.0	$3.5	16.7	0.712			
Construction Sand and Gravel Mining	Size Std.	400	450	500	350	250		400	500
212322	Factor	47.4	271.9	$17.9	55.8	0.763			
Industrial Sand Mining	Size Std.	650	500	750	1150	500		750	500
212324	Factor	160.3	618.0	$51.7	88.5	0.725			
Kaolin and Ball Clay Mining	Size Std.	1500	700	1350	1500	250		1050	750

(1) NAICS Code NAICS Industry Title	(2) Type	(3) Simple Average Firm Size (Number of Employees)	(4) Weighted Average Firm Size (Number of Employees)	(5) Average Assets Size ($ Million)	(6) Four-Firm Ratio %	(7) Gini Coefficient	(8) Federal Contract Factor (%)	(9) Calculated Size Standard (Number of Employees)	(10) Current Size Standard (Number of Employees)
212325	Factor	38.8	231.4	$10.7	53.7	0.734			
Clay and Ceramic and Refractory Minerals Mining	Size Std.	600	500	600	1100	300		650	500
212391	Factor	249.7	643.4	$145.1	66.7	0.667			
Potash, Soda, and Borate Mineral Mining	Size Std.	1500	700	1500	1350	250		1050	750
212392	Factor	418.3	696.5	$414.4		.			
Phosphate Rock Mining	Size Std.	1500	750	1500		.		1350	1000
212393	Factor	75.2	277.4	$21.6		0.696			
Other Chemical and Fertilizer Mineral Mining	Size Std.	900	500	800		250		600	500
212399	Factor	19.3	121.5	$4.8	49.1	0.741			
All Other Nonmetallic Mineral Mining	Size Std.	400	450	500	1000	350		600	500
213111	Factor	62.5	2136.0	$15.2	32.9	0.855			
Drilling Oil and Gas Wells	Size Std.	800	1500	700	650	1250		950	1000
221111	Factor	25.3	170.5	$25.6	36.2	0.824	-38.8		
Hydroelectric Power Generation	Size Std.	450	450	900	750	1000	700	750	500
221112	Factor	369.7	2079.5	$1,223.3	20.5	0.742	-10.2		
Fossil Fuel Electric Power Generation	Size Std.	1500	1500	1500	400	350	900	950	750
221113	Factor	1770.8	5666.7	$1,422.1	62.4	0.677			
Nuclear Electric Power Generation	Size Std.	1500	1500	1500	1250	250		1150	750
221114	Factor	14.8	129.6	$40.0	41.3	0.739			
Solar Electric Power Generation	Size Std.	400	450	1150	850	350		700	250
221115	Factor	58.1	540.6	$549.8	66.9	0.836			
Wind Electric Power Generation	Size Std.	750	650	1500	1350	1100		1150	250

(1) NAICS Code NAICS Industry Title	(2) Type	(3) Simple Average Firm Size (Number of Employees)	(4) Weighted Average Firm Size (Number of Employees)	(5) Average Assets Size ($ Million)	(6) Four-Firm Ratio %	(7) Gini Coefficient	(8) Federal Contract Factor (%)	(9) Calculated Size Standard (Number of Employees)	(10) Current Size Standard (Number of Employees)
221116	Factor	68.6	214.3	$77.9	88.9	0.753			
Geothermal Electric Power Generation	Size Std.	850	500	1500	1500	450		1050	250
221117	Factor	20.9	59.9	$15.2	37.5	0.690			
Biomass Electric Power Generation	Size Std.	450	400	700	750	250		550	250
221118	Factor	14.0	42.8	$6.8	92.0	0.757	-64.4		
Other Electric Power Generation	Size Std.	350	400	550	1500	450	400	650	250
221121	Factor	194.8	1127.8	$311.2	39.5	0.708			
Electric Bulk Power Transmission and Control	Size Std.	1500	1000	1500	800	250		950	500
221122	Factor	300.6	8720.0	$497.3	20.1	0.841	-9.0		
Electric Power Distribution	Size Std.	1500	1500	1500	400	1150	1000	1100	1000
221210	Factor	182.9	3259.0	$243.9	20.0	0.862	1.1		
Natural Gas Distribution	Size Std.	1500	1500	1500	400	1300	1000	1150	1000
311111	Factor	72.6	1573.9	$42.0	67.8	0.863			
Dog and Cat Food Manufacturing	Size Std.	850	1200	1200	1400	1350		1250	1000
311119	Factor	31.9	378.6	$15.4	24.3	0.801			
Other Animal Food Manufacturing	Size Std.	500	550	700	500	850		650	500
311211	Factor	65.3	495.1	$53.0	50.3	0.819	16.0		
Flour Milling	Size Std.	800	650	1400	1000	1000	1000	1050	1000
311212	Factor	79.4	319.0	$46.8	46.6	0.688	27.1		
Rice Milling	Size Std.	900	550	1300	950	250	500	750	500
311213	Factor	53.4	146.4	$42.0	71.2	0.675			
Malt Manufacturing	Size Std.	700	450	1200	1450	250		900	500

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311221	Factor	213.1	1195.4	$232.7	86.4	0.818			
Wet Corn Milling	Size Std.	1500	1000	1500	1500	950		1300	1250
311224	Factor	97.8	826.8	$281.2	78.5	0.854	-11.8		
Soybean and Other Oilseed Processing	Size Std.	1100	800	1500	1500	1250	1150	1250	1000
311225	Factor	101.2	749.5	$104.6	55.3	0.814	22.6		
Fats and Oils Refining and Blending	Size Std.	1100	750	1500	1150	950	1000	1100	1000
311230	Factor	363.6	1572.1	$162.4	79.2	0.827	5.2		
Breakfast Cereal Manufacturing	Size Std.	1500	1200	1500	1500	1050	1000	1300	1000
311313	Factor	454.8	1071.8	$184.7	77.5	0.637			
Beet Sugar Manufacturing	Size Std.	1500	950	1500	1500	250		1150	750
311314	Factor	215.6	713.5	$105.7	61.1	0.662			
Cane Sugar Manufacturing	Size Std.	1500	750	1500	1250	250		1050	1000
311340	Factor	45.6	602.4	$11.3	40.9	0.861	-34.5		
Nonchocolate Confectionery Manufacturing	Size Std.	650	700	650	850	1300	1250	950	1000
311351	Factor	40.7	369.3	$15.5	54.7	0.879			
Chocolate and Confectionery Manufacturing from Cacao Beans	Size Std.	600	550	700	1100	1450		950	1250
311352	Factor	28.6	803.1	$4.8	57.7	0.875			
Confectionery Manufacturing from Purchased Chocolate	Size Std.	500	800	500	1200	1450		950	1000
311411	Factor	234.5	1900.3	$52.9	45.5	0.777	31.4		
Frozen Fruit, Juice, and Vegetable Manufacturing	Size Std.	1500	1400	1400	950	650	1000	1100	1000

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311412	Factor	141.2	2284.5	$20.6	35.1	0.821			
Frozen Specialty Food Manufacturing	Size Std.	1450	1500	800	700	1000		1000	1250
311421	Factor	85.5	1010.4	$25.8	20.4	0.842	4.0		
Fruit and Vegetable Canning	Size Std.	950	900	900	400	1150	1000	900	1000
311422	Factor	118.5	1573.5	$59.4	74.4	0.870	8.2		
Specialty Canning	Size Std.	1250	1200	1500	1500	1400	1250	1400	1250
311423	Factor	89.5	435.5	$26.1	35.0	0.782	34.3		
Dried and Dehydrated Food Manufacturing	Size Std.	1000	600	900	700	700	750	750	750
311511	Factor	204.5	5659.4	$49.4	46.3	0.813	39.5		
Fluid Milk Manufacturing	Size Std.	1500	1500	1300	950	900	1000	1150	1000
311512	Factor	64.9	304.7	$36.9	74.6	0.776			
Creamery Butter Manufacturing	Size Std.	800	550	1100	1500	600		1000	750
311513	Factor	113.8	1531.2	$40.7	29.9	0.848	-11.3		
Cheese Manufacturing	Size Std.	1200	1200	1150	600	1200	1450	1100	1250
311514	Factor	118.1	655.4	$54.4	44.0	0.792			
Dry, Condensed, and Evaporated Dairy Product Manufacturing	Size Std.	1250	700	1400	900	750		1000	750
311520	Factor	53.4	1114.4	$8.9	45.9	0.860			
Ice Cream and Frozen Dessert Manufacturing	Size Std.	700	950	600	950	1300		950	1000
311611	Factor	109.3	13266.5	$15.8	60.7	0.885	49.7		
Animal (except Poultry) Slaughtering	Size Std.	1150	1500	700	1250	1500	1000	1150	1000
311612	Factor	81.7	2757.3	$11.9	32.8	0.847			
Meat Processed from Carcasses	Size Std.	950	1500	650	650	1200		950	1000

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311613	Factor	78.8	644.6	$14.4	44.5	0.779			
Rendering and Meat Byproduct Processing	Size Std.	900	700	700	900	650		750	750
311615	Factor	703.8	15091.1	$65.0	39.8	0.856	17.1		
Poultry Processing	Size Std.	1500	1500	1500	800	1250	1250	1250	1250
311710	Factor	65.5	835.9	$8.9	22.9	0.806	-37.1		
Seafood Product Preparation and Packaging	Size Std.	800	800	600	450	850	1050	750	750
311811	Factor	8.2	36.8	$0.2	4.7	0.653			
Retail Bakeries	Size Std.	300	400	450	250	250		350	500
311812	Factor	49.4	3609.9	$5.0	41.2	0.868	-8.8		
Commercial Bakeries	Size Std.	650	1500	500	850	1350	1000	950	1000
311813	Factor	98.0	479.0	$10.6	30.3	0.780			
Frozen Cakes, Pies, and Other Pastries Manufacturing	Size Std.	1100	600	600	600	650		700	750
311821	Factor	99.5	2126.8	$22.4	59.8	0.876			
Cookie and Cracker Manufacturing	Size Std.	1100	1500	850	1200	1450		1200	1250
311824	Factor	63.1	594.3	$19.5	38.2	0.842	6.2		
Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour	Size Std.	800	700	800	800	1150	750	850	750
311830	Factor	51.6	1995.3	$4.6	60.2	0.832			
Tortilla Manufacturing	Size Std.	700	1450	500	1250	1100		1000	1250
311911	Factor	77.8	550.7	$24.6	31.0	0.799	33.6		
Roasted Nuts and Peanut Butter Manufacturing	Size Std.	900	650	850	650	800	750	750	750

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311919	Factor	90.1	2340.1	$27.2	73.9	0.874			
Other Snack Food Manufacturing	Size Std.	1000	1500	900	1500	1400		1250	1250
311920	Factor	36.8	1046.9	$14.4	57.5	0.873			
Coffee and Tea Manufacturing	Size Std.	550	950	700	1150	1400		1000	750
311930	Factor	53.8	374.9	$30.4	74.6	0.845			
Flavoring Syrup and Concentrate Manufacturing	Size Std.	700	550	1000	1500	1200		1100	1000
311941	Factor	51.5	489.7	$16.1	39.8	0.841			
Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing	Size Std.	700	650	700	800	1150		850	750
311942	Factor	49.2	286.8	$12.5	32.4	0.786			
Spice and Extract Manufacturing	Size Std.	650	500	650	650	700		650	500
311991	Factor	59.4	817.5	$6.1	29.6	0.834	40.0		
Perishable Prepared Food Manufacturing	Size Std.	750	800	550	600	1100	500	700	500
311999	Factor	44.6	484.8	$10.2	27.8	0.822	-19.9		
All Other Miscellaneous Food Manufacturing	Size Std.	650	650	600	550	1000	600	700	500
312111	Factor	194.4	5797.3	$79.0	68.3	0.853			
Soft Drink Manufacturing	Size Std.	1500	1500	1500	1400	1250		1400	1250
312112	Factor	43.0	1396.2	$16.0	70.6	0.867	-24.4		
Bottled Water Manufacturing	Size Std.	600	1100	700	1450	1350	1150	1100	1000
312113	Factor	15.5	543.1	$1.2	61.7	0.778			
Ice Manufacturing	Size Std.	400	650	450	1250	650		750	750
312120	Factor	31.5	3258.6	$24.2	87.8	0.887			
Breweries	Size Std.	500	1500	850	1500	1500		1200	1250

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312130	Factor	14.9	454.2	$8.7	45.3	0.851			
Wineries	Size Std.	400	600	600	900	1250		800	1000
312140	Factor	30.0	412.9	$41.3	64.9	0.878			
Distilleries	Size Std.	500	600	1150	1300	1450		1100	1000
312230	Factor	155.2	1834.2	$401.4	87.8	0.871			
Tobacco Manufacturing	Size Std.	1500	1350	1500	1500	1400		1450	1500
313110	Factor	99.0	1284.5	$14.9	49.0	0.831			
Fiber, Yarn, and Thread Mills	Size Std.	1100	1050	700	1000	1050		950	1250
313210	Factor	60.8	573.5	$8.0	28.5	0.820	5.9		
Broadwoven Fabric Mills	Size Std.	750	700	550	600	1000	1000	800	1000
313220	Factor	34.0	152.2	$3.1	28.3	0.771			
Narrow Fabric Mills and Schiffli Machine Embroidery	Size Std.	550	450	500	550	600		550	500
313230	Factor	79.2	597.5	$22.1	45.5	0.798	-16.3		
Nonwoven Fabric Mills	Size Std.	900	700	850	950	800	900	850	750
313240	Factor	42.0	184.6	$5.2	27.7	0.737			
Knit Fabric Mills	Size Std.	600	450	500	550	300		500	500
313310	Factor	27.3	234.1	$2.9	18.8	0.807	-25.0		
Textile and Fabric Finishing Mills	Size Std.	500	500	500	400	900	1150	700	1000
313320	Factor	39.3	131.5	$6.5	22.6	0.695	-14.1		
Fabric Coating Mills	Size Std.	600	450	550	450	250	1150	600	1000
314110	Factor	122.7	2364.9	$21.1	54.1	0.862			
Carpet and Rug Mills	Size Std.	1300	1500	800	1100	1300		1150	1500

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314120	Factor	14.7	180.9	$1.1	19.7	0.817			
Curtain and Linen Mills	Size Std.	350	450	450	400	950		550	750
314910	Factor	14.2	92.7	$0.9	13.3	0.766	-11.9		
Textile Bag and Canvas Mills	Size Std.	350	400	450	250	550	600	450	500
314994	Factor	44.7	261.4	$6.2	48.4	0.800			
Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills	Size Std.	650	500	550	1000	800		750	1000
314999	Factor	13.6	232.4	$0.8	21.4	0.820	-7.7		
All Other Miscellaneous Textile Product Mills	Size Std.	350	500	450	450	1000	500	550	500
315110	Factor	73.4	485.2	$3.6	39.9	0.761			
Hosiery and Sock Mills	Size Std.	850	650	500	800	500		650	750
315190	Factor	21.9	104.5	$2.3	67.8	0.829			
Other Apparel Knitting Mills	Size Std.	450	400	450	1400	1050		850	750
315210	Factor	13.6	118.7	$0.3	8.0	0.731	-15.3		
Cut and Sew Apparel Contractors	Size Std.	350	450	450	250	250	900	450	750
315220	Factor	29.5	267.6	$1.6	24.9	0.801	19.0		
Men's and Boys' Cut and Sew Apparel Manufacturing	Size Std.	500	500	450	500	850	750	600	750
315240	Factor	12.7	1105.8	$0.9	21.9	0.824	20.8		
Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing	Size Std.	350	950	450	450	1000	750	650	750
315280	Factor	23.6	169.8	$1.4	32.6	0.786			
Other Cut and Sew Apparel Manufacturing	Size Std.	450	450	450	650	700		550	750

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315990	Factor	15.4	118.0	$1.0	34.3	0.808	10.0		
Apparel Accessories and Other Apparel Manufacturing	Size Std.	400	450	450	700	900	500	600	500
316110	Factor	18.6	127.8	$4.3	54.7	0.849			
Leather and Hide Tanning and Finishing	Size Std.	400	450	500	1100	1200		800	500
316210	Factor	57.8	641.0	$6.4	45.1	0.841	7.7		
Footwear Manufacturing	Size Std.	750	700	550	900	1150	1000	850	1000
316992	Factor	15.2	275.2	$1.2	75.4	0.819			
Women's Handbag and Purse Manufacturing	Size Std.	400	500	450	1500	950		850	750
316998	Factor	16.2	187.5	$0.9	19.4	0.786			
All Other Leather Good and Allied Product Manufacturing	Size Std.	400	450	450	400	700		500	500
321113	Factor	24.5	363.5	$4.4	13.9	0.800			
Sawmills	Size Std.	450	550	500	300	800		550	500
321114	Factor	23.6	197.3	$4.3	32.2	0.766			
Wood Preservation	Size Std.	450	450	500	650	550		550	500
321211	Factor	54.3	335.7	$6.2	36.1	0.760			
Hardwood Veneer and Plywood Manufacturing	Size Std.	700	550	550	750	500		600	500
321212	Factor	199.1	1333.6	$25.5	50.3	0.750			
Softwood Veneer and Plywood Manufacturing	Size Std.	1500	1100	900	1000	400		900	1250
321213	Factor	31.0	139.8	$4.1	50.8	0.740			
Engineered Wood Member (except Truss) Manufacturing	Size Std.	500	450	500	1050	350		600	750

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321214	Factor	28.1	183.9	$1.6	20.8	0.701			
Truss Manufacturing	Size Std.	500	450	450	400	250		400	500
321219	Factor	90.8	526.0	$17.8	37.0	0.787			
Reconstituted Wood Product Manufacturing	Size Std.	1000	650	750	750	700		750	750
321911	Factor	46.2	1329.8	$3.5	39.6	0.833			
Wood Window and Door Manufacturing	Size Std.	650	1100	500	800	1100		850	1000
321912	Factor	27.1	301.1	$3.9	26.2	0.747			
Cut Stock, Resawing Lumber, and Planing	Size Std.	500	550	500	550	400		500	500
321918	Factor	18.5	225.7	$1.4	16.9	0.789			
Other Millwork (including Flooring)	Size Std.	400	500	450	350	750		500	500
321920	Factor	20.5	315.9	$1.0	11.5	0.700	-55.1		
Wood Container and Pallet Manufacturing	Size Std.	400	550	450	250	250	700	450	500
321991	Factor	114.3	2635.0	$8.7	51.2	0.784	-1.0		
Manufactured Home (Mobile Home) Manufacturing	Size Std.	1200	1500	600	1050	700	1250	1000	1250
321992	Factor	22.2	130.0	$1.7	25.9	0.751			
Prefabricated Wood Building Manufacturing	Size Std.	450	450	450	500	400		450	500
321999	Factor	15.4	98.8	$1.4	10.8	0.774			
All Other Miscellaneous Wood Product Manufacturing	Size Std.	400	400	450	250	600		450	500
322110	Factor	322.0	800.9	$131.3	59.6	0.641			
Pulp Mills	Size Std.	1500	800	1500	1200	250		1050	750
322121	Factor	792.3	4025.5	$289.7	54.4	0.759	-1.9		
Paper (except Newsprint) Mills	Size Std.	1500	1500	1500	1100	500	1250	1150	1250

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322122	Factor	238.2	408.5	$90.7	66.7	0.510			
Newsprint Mills	Size Std.	1500	600	1500	1350	250		1050	750
322130	Factor	563.1	3291.9	$241.4	56.4	0.743			
Paperboard Mills	Size Std.	1500	1500	1500	1150	350		1150	1250
322211	Factor	103.3	4528.2	$18.9	50.3	0.808	58.7		
Corrugated and Solid Fiber Box Manufacturing	Size Std.	1100	1500	750	1000	900	1250	1050	1250
322212	Factor	117.1	1207.4	$20.8	35.9	0.737			
Folding Paperboard Box Manufacturing	Size Std.	1250	1000	800	750	300		750	750
322219	Factor	102.7	1031.9	$15.5	47.4	0.829			
Other Paperboard Container Manufacturing	Size Std.	1100	950	700	950	1050		950	1000
322220	Factor	78.9	871.7	$17.5	29.8	0.787	40.8		
Paper Bag and Coated and Treated Paper Manufacturing	Size Std.	900	850	750	600	700	750	750	750
322230	Factor	56.4	650.8	$8.5	37.7	0.807			
Stationery Product Manufacturing	Size Std.	750	700	600	750	900		750	750
322291	Factor	165.8	1089.2	$62.1	58.1	0.777			
Sanitary Paper Product Manufacturing	Size Std.	1500	950	1500	1200	650		1150	1500
322299	Factor	36.0	191.8	$5.0	18.2	0.746	39.9		
All Other Converted Paper Product Manufacturing	Size Std.	550	450	500	350	400	500	450	500
323111	Factor	17.8	2225.3	$1.5	16.6	0.815	9.4		
Commercial Printing (except Screen and Books)	Size Std.	400	1500	450	350	950	500	650	500
323113	Factor	12.9	183.1	$0.6	17.5	0.772			
Commercial Screen Printing	Size Std.	350	450	450	350	600		450	500

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323117	Factor	53.6	1359.3	$4.1	43.5	0.827			
Books Printing	Size Std.	700	1100	500	900	1050		850	1250
323120	Factor	17.0	283.4	$1.0	25.1	0.789			
Support Activities for Printing	Size Std.	400	500	450	500	750		550	500
324110	Factor	893.5	3956.6	$4,242.9	46.9	0.788	27.0		
Petroleum Refineries	Size Std.	1500	1500	1500	950	700	1500	1250	1500
324121	Factor	30.4	195.0	$13.3	24.8	0.722			
Asphalt Paving Mixture and Block Manufacturing	Size Std.	500	450	650	500	250		500	500
324122	Factor	68.4	844.9	$40.5	63.9	0.830			
Asphalt Shingle and Coating Materials Manufacturing	Size Std.	850	800	1150	1300	1050		1100	750
324191	Factor	42.4	243.0	$37.5	50.8	0.823	-26.6		
Petroleum Lubricating Oil and Grease Manufacturing	Size Std.	600	500	1100	1050	1000	900	900	750
324199	Factor	38.4	204.0	$32.2	59.2	0.836			
All Other Petroleum and Coal Products Manufacturing	Size Std.	550	450	1000	1200	1100		950	500
325110	Factor	231.9	1171.1	$1,391.4	77.7	0.814			
Petrochemical Manufacturing	Size Std.	1500	1000	1500	1500	950		1300	1000
325120	Factor	111.8	1021.8	$53.0	56.1	0.859	13.3		
Industrial Gas Manufacturing	Size Std.	1200	900	1400	1150	1300	1000	1200	1000
325130	Factor	74.3	428.8	$46.6	57.3	0.823			
Synthetic Dye and Pigment Manufacturing	Size Std.	900	600	1250	1150	1000		1050	1000

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325180	Factor	98.7	699.9	$61.4	25.7	0.798	-17.0		
Other Basic Inorganic Chemical Manufacturing	Size Std.	1100	750	1500	500	800	1150	1000	1000
325193	Factor	61.1	306.7	$156.8	35.7	0.623			
Ethyl Alcohol Manufacturing	Size Std.	750	550	1500	700	250		800	1000
325194	Factor	89.6	417.1	$94.1	54.7	0.786			
Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	Size Std.	1000	600	1500	1100	700		1050	1250
325199	Factor	104.9	3110.9	$87.4	33.6	0.843			
All Other Basic Organic Chemical Manufacturing	Size Std.	1150	1500	1500	700	1150		1200	1250
325211	Factor	75.0	1001.9	$54.5	34.3	0.855	10.5		
Plastics Material and Resin Manufacturing	Size Std.	900	900	1400	700	1250	1250	1100	1250
325212	Factor	53.9	256.1	$39.4	42.3	0.798			
Synthetic Rubber Manufacturing	Size Std.	700	500	1150	850	800		850	1000
325220	Factor	134.0	1037.2	$47.0	50.2	0.793			
Artificial and Synthetic Fibers and Filaments Manufacturing	Size Std.	1400	950	1300	1000	750		1050	1000
325311	Factor	32.6	321.8	$32.8	68.9	0.853			
Nitrogenous Fertilizer Manufacturing	Size Std.	550	550	1000	1400	1250		1050	1000
325312	Factor	129.1	1085.6	$126.8	85.3	0.845			
Phosphatic Fertilizer Manufacturing	Size Std.	1350	950	1500	1500	1200		1350	750
325314	Factor	23.4	174.9	$9.6	29.2	0.766			
Fertilizer (Mixing Only) Manufacturing	Size Std.	450	450	600	600	550		550	500

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325320	Factor	64.4	607.6	$50.4	57.0	0.853			
Pesticide and Other Agricultural Chemical Manufacturing	Size Std.	800	700	1350	1150	1250		1150	1000
325411	Factor	71.1	810.8	$16.9	35.8	0.810	-51.4		
Medicinal and Botanical Manufacturing	Size Std.	850	800	750	750	900	1250	900	1000
325412	Factor	158.0	4025.5	$97.4	37.2	0.873	-11.6		
Pharmaceutical Preparation Manufacturing	Size Std.	1500	1500	1500	750	1400	1450	1300	1250
325413	Factor	142.3	1425.4	$44.8	46.0	0.842	20.8		
In-Vitro Diagnostic Substance Manufacturing	Size Std.	1450	1150	1250	950	1150	1250	1200	1250
325414	Factor	178.4	1619.8	$79.6	37.8	0.863	-6.3		
Biological Product (except Diagnostic) Manufacturing	Size Std.	1500	1250	1500	750	1300	1250	1250	1250
325510	Factor	35.3	901.3	$11.8	42.5	0.845	27.7		
Paint and Coating Manufacturing	Size Std.	550	850	650	850	1200	1000	900	1000
325520	Factor	46.9	265.2	$16.2	18.5	0.770	31.7		
Adhesive Manufacturing	Size Std.	650	500	700	350	600	500	550	500
325611	Factor	36.3	820.9	$19.3	70.1	0.876			
Soap and Other Detergent Manufacturing	Size Std.	550	800	800	1450	1450		1100	1000
325612	Factor	31.8	292.6	$9.3	58.0	0.848			
Polish and Other Sanitation Good Manufacturing	Size Std.	500	500	600	1200	1200		900	750
325613	Factor	45.4	255.9	$46.0	67.8	0.838			
Surface Active Agent Manufacturing	Size Std.	650	500	1250	1400	1100		1100	750

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325620	Factor	56.7	724.8	$24.9	48.7	0.869			
Toilet Preparation Manufacturing	Size Std.	750	750	900	1000	1400		1000	1250
325910	Factor	48.5	481.5	$10.5	44.4	0.799	-38.1		
Printing Ink Manufacturing	Size Std.	650	650	600	900	800	700	750	500
325920	Factor	116.6	410.7	$21.2	46.7	0.710	-13.3		
Explosives Manufacturing	Size Std.	1250	600	800	950	250	900	750	750
325991	Factor	43.9	270.1	$11.6	21.6	0.790			
Custom Compounding of Purchased Resins	Size Std.	600	500	650	450	750		600	500
325992	Factor	45.5	1567.3	$15.0	66.6	0.874	66.2		
Photographic Film, Paper, Plate, and Chemical Manufacturing	Size Std.	650	1200	700	1350	1400	1500	1200	1500
325998	Factor	34.2	347.2	$11.4	18.9	0.819	-23.1		
All Other Miscellaneous Chemical Product and Preparation Manufacturing	Size Std.	550	550	650	400	1000	600	650	500
326111	Factor	98.8	601.4	$16.8	27.5	0.765			
Plastics Bag and Pouch Manufacturing	Size Std.	1100	700	750	550	550		700	750
326112	Factor	101.3	1383.8	$23.3	36.6	0.751			
Plastics Packaging Film and Sheet (including Laminated) Manufacturing	Size Std.	1100	1100	850	750	450		800	1000
326113	Factor	75.6	538.5	$17.3	21.8	0.789			
Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing	Size Std.	900	650	750	450	750		700	750
326121	Factor	52.1	231.9	$9.4	29.6	0.773			
Unlaminated Plastics Profile Shape Manufacturing	Size Std.	700	500	600	600	600		600	500

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326122	Factor	70.1	497.0	$17.1	28.0	0.760	14.5		
Plastics Pipe and Pipe Fitting Manufacturing	Size Std.	850	650	750	550	500	750	650	750
326130	Factor	47.9	402.2	$8.7	30.6	0.779			
Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing	Size Std.	650	600	600	600	650		650	500
326140	Factor	80.8	1510.3	$12.6	52.8	0.811			
Polystyrene Foam Product Manufacturing	Size Std.	950	1200	650	1100	900		950	1000
326150	Factor	63.2	586.7	$9.2	22.7	0.771			
Urethane and Other Foam Product (except Polystyrene) Manufacturing	Size Std.	800	700	600	450	600		600	750
326160	Factor	172.0	1831.0	$41.3	55.0	0.823			
Plastics Bottle Manufacturing	Size Std.	1500	1350	1150	1100	1000		1200	1250
326191	Factor	39.9	396.1	$4.1	35.5	0.769			
Plastics Plumbing Fixture Manufacturing	Size Std.	600	600	500	700	550		600	750
326199	Factor	58.8	797.1	$7.6	7.2	0.792	19.3		
All Other Plastics Product Manufacturing	Size Std.	750	800	550	250	750	750	600	750
326211	Factor	546.8	7542.1	$142.3	73.3	0.877	-4.7		
Tire Manufacturing (except Retreading)	Size Std.	1500	1500	1500	1500	1450	1500	1500	1500
326212	Factor	21.2	193.2	$2.7	24.8	0.701			
Tire Retreading	Size Std.	450	450	450	500	250		400	500
326220	Factor	101.9	847.2	$15.0	39.2	0.788	46.6		
Rubber and Plastics Hoses and Belting Manufacturing	Size Std.	1100	800	700	800	700	750	800	750

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326291	Factor	71.9	477.6	$9.0	31.8	0.785			
Rubber Product Manufacturing for Mechanical Use	Size Std.	850	600	600	650	700		700	750
326299	Factor	51.5	327.9	$9.6	30.1	0.795	15.6		
All Other Rubber Product Manufacturing	Size Std.	700	550	600	600	800	500	650	500
327110	Factor	20.1	448.7	$1.8	41.5	0.858			
Pottery, Ceramics, and Plumbing Fixture Manufacturing	Size Std.	400	600	450	850	1300		800	1000
327120	Factor	52.8	323.7	$10.6	23.8	0.768			
Clay Building Material and Refractories Manufacturing	Size Std.	700	550	600	500	550		600	750
327211	Factor	220.1	1138.2	$38.6	62.6	0.785			
Flat Glass Manufacturing	Size Std.	1500	1000	1150	1300	700		1100	1000
327212	Factor	36.7	758.9	$4.3	42.7	0.858			
Other Pressed and Blown Glass and Glassware Manufacturing	Size Std.	550	800	500	850	1300		850	1250
327213	Factor	767.6	2999.6	$125.2	86.3	0.754			
Glass Container Manufacturing	Size Std.	1500	1500	1500	1500	450		1250	1250
327215	Factor	41.0	1009.5	$4.9	28.5	0.858			
Glass Product Manufacturing Made of Purchased Glass	Size Std.	600	900	500	600	1300		800	1000
327310	Factor	103.1	711.3	$31.8	39.8	0.827			
Cement Manufacturing	Size Std.	1100	750	1000	800	1050		950	1000
327320	Factor	33.8	450.0	$5.4	14.1	0.721			
Ready-Mix Concrete Manufacturing	Size Std.	550	600	500	300	250		400	500

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327331	Factor	29.5	425.6	$5.2	29.1	0.734			
Concrete Block and Brick Manufacturing	Size Std.	500	600	500	600	300		500	500
327332	Factor	51.4	564.1	$8.3	43.5	0.737			
Concrete Pipe Manufacturing	Size Std.	700	650	600	900	300		650	750
327390	Factor	28.4	372.3	$3.0	16.8	0.774	34.5		
Other Concrete Product Manufacturing	Size Std.	500	550	500	350	600	500	500	500
327410	Factor	124.7	645.8	$37.4	76.4	0.781			
Lime Manufacturing	Size Std.	1300	700	1100	1500	650		1050	750
327420	Factor	53.5	990.2	$14.1	65.8	0.862			
Gypsum Product Manufacturing	Size Std.	700	900	700	1350	1300		1050	1500
327910	Factor	49.2	806.5	$11.6	61.4	0.822			
Abrasive Product Manufacturing	Size Std.	650	800	650	1250	1000		900	750
327991	Factor	13.7	89.7	$0.9	12.2	0.694	-2.4		
Cut Stone and Stone Product Manufacturing	Size Std.	350	400	450	250	250	500	350	500
327992	Factor	46.5	194.6	$11.2	35.1	0.755			
Ground or Treated Mineral and Earth Manufacturing	Size Std.	650	450	650	700	450		600	500
327993	Factor	78.4	917.9	$13.7	52.4	0.836			
Mineral Wool Manufacturing	Size Std.	900	850	650	1050	1100		950	1500
327999	Factor	34.8	796.7	$8.9	40.4	0.809			
All Other Miscellaneous Nonmetallic Mineral Product Manufacturing	Size Std.	550	800	600	800	900		750	500
331110	Factor	402.2	6828.0	$209.4	49.0	0.853	26.4		
Iron and Steel Mills and Ferroalloy Manufacturing	Size Std.	1500	1500	1500	1000	1250	1500	1350	1500

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331210	Factor	172.6	685.6	$53.4	31.2	0.719			
Iron and Steel Pipe and Tube Manufacturing from Purchased Steel	Size Std.	1500	750	1400	650	250		850	1000
331221	Factor	41.6	200.4	$17.1	38.5	0.756			
Rolled Steel Shape Manufacturing	Size Std.	600	450	750	800	450		650	1000
331222	Factor	54.2	299.9	$12.8	27.4	0.782			
Steel Wire Drawing	Size Std.	700	550	650	550	650		650	1000
331313	Factor	245.0	1638.1	$82.0	73.7	0.793			
Alumina Refining and Primary Aluminum Production	Size Std.	1500	1250	1500	1500	750		1300	1000
331314	Factor	60.1	215.0	$28.3	40.1	0.728			
Secondary Smelting and Alloying of Aluminum	Size Std.	750	500	950	800	250		650	750
331315	Factor	213.9	2009.7	$91.2	65.7	0.848	-13.8		
Aluminum Sheet, Plate, and Foil Manufacturing	Size Std.	1500	1450	1500	1350	1200	1450	1400	1250
331318	Factor	112.3	833.1	$19.4	34.9	0.762			
Other Aluminum Rolling, Drawing, and Extruding	Size Std.	1200	800	800	700	500		750	750
331410	Factor	60.9	474.2	$37.0	50.2	0.854	47.3		
Nonferrous Metal (except Aluminum) Smelting and Refining	Size Std.	750	600	1100	1000	1250	1000	1000	1000
331420	Factor	118.8	590.4	$56.4	35.5	0.800	-36.9		
Copper Rolling, Drawing, Extruding, and Alloying	Size Std.	1250	700	1450	700	800	1250	1050	1000
331491	Factor	63.8	1290.9	$16.9	50.2	0.818	42.0		
Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding	Size Std.	800	1050	750	1000	950	750	900	750

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331492	Factor	48.1	287.4	$27.4	46.2	0.808			
Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)	Size Std.	650	500	900	950	900		850	750
331511	Factor	108.8	1031.5	$19.3	35.2	0.785			
Iron Foundries	Size Std.	1150	900	750	700	700		800	1000
331512	Factor	137.5	1550.9	$22.4	65.9	0.783			
Steel Investment Foundries	Size Std.	1400	1200	850	1350	700		1050	1000
331513	Factor	90.6	502.3	$15.3	32.5	0.766			
Steel Foundries (except Investment)	Size Std.	1000	650	700	650	550		700	500
331523	Factor	77.9	633.3	$11.6	28.4	0.796			
Nonferrous Metal Die-Casting Foundries	Size Std.	900	700	650	600	800		700	500
331524	Factor	38.4	214.3	$4.2	27.6	0.764			
Aluminum Foundries (except Die-Casting)	Size Std.	600	500	500	550	550		550	500
331529	Factor	32.0	161.6	$4.5	21.2	0.747			
Other Nonferrous Metal Foundries (except Die-Casting)	Size Std.	500	450	500	450	400		450	500
332111	Factor	70.9	445.6	$20.0	28.3	0.787			
Iron and Steel Forging	Size Std.	850	600	800	550	700		700	750
332112	Factor	133.9	514.1	$31.9	58.7	0.768			
Nonferrous Forging	Size Std.	1400	650	1000	1200	550		950	750
332114	Factor	49.1	253.0	$10.6	34.8	0.769			
Custom Roll Forming	Size Std.	650	500	600	700	550		600	500

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332117	Factor	67.0	297.2	$9.5	35.2	0.701			
Powder Metallurgy Part Manufacturing	Size Std.	800	550	600	700	250		550	500
332119	Factor	37.6	173.4	$4.7	10.4	0.713			
Metal Crown, Closure, and Other Metal Stamping (except Automotive)	Size Std.	550	450	500	250	250		400	500
332215	Factor	43.1	383.7	$13.8	68.7	0.862			
Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing	Size Std.	600	550	650	1400	1300		1000	750
332216	Factor	29.6	345.3	$4.1	22.9	0.808	-24.3		
Saw Blade and Hand tool Manufacturing	Size Std.	500	550	500	450	900	900	650	750
332311	Factor	38.7	611.9	$4.8	30.6	0.804	15.2		
Prefabricated Metal Building and Component Manufacturing	Size Std.	600	700	500	600	850	750	650	750
332312	Factor	31.4	445.1	$4.7	14.0	0.773	23.1		
Fabricated Structural Metal Manufacturing	Size Std.	500	600	500	300	600	500	500	500
332313	Factor	29.4	116.9	$2.9	11.4	0.706			
Plate Work Manufacturing	Size Std.	500	450	500	250	250		400	750
332321	Factor	48.0	442.0	$4.3	16.8	0.792			
Metal Window and Door Manufacturing	Size Std.	650	600	500	350	750		550	750
332322	Factor	25.9	205.6	$2.3	8.1	0.734	-31.6		
Sheet Metal Work Manufacturing	Size Std.	450	500	450	250	300	700	450	500
332323	Factor	13.8	136.9	$1.2	14.6	0.770			
Ornamental and Architectural Metal Work Manufacturing	Size Std.	350	450	450	300	600		450	500

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332410	Factor	90.8	762.7	$14.7	27.3	0.731	-47.8		
Power Boiler and Heat Exchanger Manufacturing	Size Std.	1000	800	700	550	250	1050	700	750
332420	Factor	56.5	258.4	$8.3	15.2	0.710	26.0		
Metal Tank (Heavy Gauge) Manufacturing	Size Std.	750	500	550	300	250	750	500	750
332431	Factor	283.5	2406.1	$130.7	75.0	0.848			
Metal Can Manufacturing	Size Std.	1500	1500	1500	1500	1200		1450	1500
332439	Factor	39.7	248.0	$6.0	30.6	0.796	33.9		
Other Metal Container Manufacturing	Size Std.	600	500	550	600	800	500	600	500
332510	Factor	47.0	566.0	$7.4	29.4	0.822	18.4		
Hardware Manufacturing	Size Std.	650	650	550	600	1000	750	700	750
332613	Factor	45.1	398.6	$5.7	31.5	0.761			
Spring Manufacturing	Size Std.	650	600	550	650	500		600	500
332618	Factor	27.6	160.3	$3.2	9.3	0.748	-8.3		
Other Fabricated Wire Product Manufacturing	Size Std.	500	450	500	250	400	500	450	500
332710	Factor	13.0	80.4	$1.1	2.3	0.730	-26.7		
Machine Shops	Size Std.	350	400	450	250	250	600	400	500
332721	Factor	29.0	124.1	$3.1	4.6	0.675	-19.2		
Precision Turned Product Manufacturing	Size Std.	500	450	500	250	250	600	400	500
332722	Factor	51.1	533.0	$7.7	22.8	0.785	-4.4		
Bolt, Nut, Screw, Rivet, and Washer Manufacturing	Size Std.	700	650	550	450	700	500	600	500
332811	Factor	33.9	250.2	$7.2	41.3	0.773			
Metal Heat Treating	Size Std.	550	500	550	850	600		650	750

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332812	Factor	21.4	151.4	$3.0	23.7	0.812			
Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers	Size Std.	450	450	500	500	900		600	500
332813	Factor	22.7	109.2	$1.5	11.7	0.715			
Electroplating, Plating, Polishing, Anodizing, and Coloring	Size Std.	450	400	450	250	250		350	500
332911	Factor	92.1	721.9	$18.5	24.0	0.798	38.9		
Industrial Valve Manufacturing	Size Std.	1050	750	750	500	800	750	750	750
332912	Factor	117.5	1735.0	$16.9	39.6	0.814	19.7		
Fluid Power Valve and Hose Fitting Manufacturing	Size Std.	1250	1300	750	800	950	1000	950	1000
332913	Factor	70.0	469.2	$22.5	60.4	0.823			
Plumbing Fixture Fitting and Trim Manufacturing	Size Std.	850	600	850	1250	1000		950	1000
332919	Factor	69.3	280.3	$11.7	17.2	0.731	7.8		
Other Metal Valve and Pipe Fitting Manufacturing	Size Std.	850	500	650	350	250	750	550	750
332991	Factor	203.8	1597.7	$40.9	45.8	0.809	23.5		
Ball and Roller Bearing Manufacturing	Size Std.	1500	1250	1150	950	900	1250	1150	1250
332992	Factor	97.3	2909.2	$17.9	84.2	0.873	-11.4		
Small Arms Ammunition Manufacturing	Size Std.	1050	1500	750	1500	1400	1450	1300	1250
332993	Factor	239.2	2273.0	$40.1	68.8	0.816	0.8		
Ammunition (except Small Arms) Manufacturing	Size Std.	1500	1500	1150	1400	950	1500	1300	1500
332994	Factor	51.2	571.9	$11.6	33.6	0.842	-23.5		
Small Arms, Ordnance, and Ordnance Accessories Manufacturing	Size Std.	700	650	650	700	1150	1150	850	1000

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332996	Factor	42.0	337.6	$5.9	25.8	0.772	18.8		
Fabricated Pipe and Pipe Fitting Manufacturing	Size Std.	600	550	550	500	600	500	550	500
332999	Factor	19.2	136.2	$2.0	8.5	0.768	-25.2		
All Other Miscellaneous Fabricated Metal Product Manufacturing	Size Std.	400	450	450	250	550	900	500	750
333111	Factor	60.8	3158.5	$20.7	61.1	0.860	31.6		
Farm Machinery and Equipment Manufacturing	Size Std.	750	1500	800	1250	1300	1250	1150	1250
333112	Factor	106.6	2170.2	$29.6	65.5	0.861			
Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing	Size Std.	1150	1500	950	1350	1300		1250	1500
333120	Factor	89.5	2663.5	$40.4	58.6	0.863	14.0		
Construction Machinery Manufacturing	Size Std.	1000	1500	1150	1200	1350	1250	1250	1250
333131	Factor	67.8	922.4	$18.6	48.9	0.814			
Mining Machinery and Equipment Manufacturing	Size Std.	800	850	750	1000	950		900	500
333132	Factor	91.9	1516.2	$32.8	35.8	0.819			
Oil and Gas Field Machinery and Equipment Manufacturing	Size Std.	1050	1200	1000	750	1000		1000	1250
333241	Factor	37.4	196.8	$6.8	19.7	0.746	3.2		
Food Product Machinery Manufacturing	Size Std.	550	450	550	400	400	500	450	500
333242	Factor	89.6	1209.7	$35.4	66.8	0.850			
Semiconductor Machinery Manufacturing	Size Std.	1000	1000	1050	1350	1200		1150	1500
333243	Factor	30.3	257.1	$5.0	24.4	0.771			
Sawmill, Woodworking, and Paper Machinery Manufacturing	Size Std.	500	500	500	500	600		550	500

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333244	Factor	24.0	166.9	$3.1	27.7	0.728	-65.5		
Printing Machinery and Equipment Manufacturing	Size Std.	450	450	500	550	250	1050	550	750
333249	Factor	25.3	177.3	$4.0	10.1	0.771	-32.5		
Other Industrial Machinery Manufacturing	Size Std.	450	450	500	250	600	700	500	500
333314	Factor	43.1	447.0	$8.2	28.0	0.796	-23.7		
Optical Instrument and Lens Manufacturing	Size Std.	600	600	550	550	800	600	600	500
333316	Factor	24.3	185.8	$5.4	53.5	0.825	-10.6		
Photographic and Photocopying Equipment Manufacturing	Size Std.	450	450	500	1100	1000	1150	850	1000
333318	Factor	44.7	493.9	$7.7	13.5	0.804	-25.0		
Other Commercial and Service Industry Machinery Manufacturing	Size Std.	650	650	550	250	850	1150	700	1000
333413	Factor	60.2	533.3	$7.4	21.3	0.750	18.9		
Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing	Size Std.	750	650	550	450	400	500	500	500
333414	Factor	42.8	256.7	$7.8	18.1	0.756	-2.8		
Heating Equipment (except Warm Air Furnaces) Manufacturing	Size Std.	600	500	550	350	450	500	500	500
333415	Factor	116.4	2291.4	$18.8	35.8	0.840	28.4		
Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	Size Std.	1250	1500	750	750	1150	1250	1050	1250
333511	Factor	21.6	119.1	$2.3	6.7	0.711			
Industrial Mold Manufacturing	Size Std.	450	450	450	250	250		350	500

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333514	Factor	16.9	127.2	$1.8	12.8	0.732			
Special Die and Tool, Die Set, Jig, and Fixture Manufacturing	Size Std.	400	450	450	250	250		350	500
333515	Factor	17.6	229.3	$2.0	15.7	0.766	-6.0		
Cutting Tool and Machine Tool Accessory Manufacturing	Size Std.	400	500	450	300	550	500	450	500
333517	Factor	53.1	217.7	$10.3	28.3	0.696	13.1		
Machine Tool Manufacturing	Size Std.	700	500	600	550	250	500	500	500
333519	Factor	33.3	167.6	$5.5	20.0	0.736			
Rolling Mill and Other Metalworking Machinery Manufacturing	Size Std.	550	450	500	400	300		450	500
333611	Factor	269.7	2649.4	$88.2	61.3	0.805	-1.3		
Turbine and Turbine Generator Set Units Manufacturing	Size Std.	1500	1500	1500	1250	850	1500	1300	1500
333612	Factor	74.9	425.6	$15.4	33.9	0.771	-19.4		
Speed Changer, Industrial High-Speed Drive, and Gear Manufacturing	Size Std.	900	600	700	700	600	900	750	750
333613	Factor	72.1	377.4	$16.3	24.7	0.760	20.3		
Mechanical Power Transmission Equipment Manufacturing	Size Std.	850	550	700	500	500	750	650	750
333618	Factor	139.9	2520.6	$68.0	62.1	0.867	21.6		
Other Engine Equipment Manufacturing	Size Std.	1450	1500	1500	1250	1350	1500	1400	1500
333912	Factor	81.4	619.7	$26.0	28.2	0.815	52.1		
Air and Gas Compressor Manufacturing	Size Std.	950	700	900	550	950	1000	850	1000

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333914	Factor	87.9	701.1	$19.9	19.5	0.808	36.1		
Measuring, Dispensing, and Other Pumping Equipment Manufacturing	Size Std.	1000	750	800	400	900	750	750	750
333921	Factor	41.8	284.5	$6.4	44.6	0.773			
Elevator and Moving Stairway Manufacturing	Size Std.	600	500	550	900	600		650	1000
333922	Factor	42.7	183.8	$6.7	14.2	0.693	-17.3		
Conveyor and Conveying Equipment Manufacturing	Size Std.	600	450	550	300	250	600	450	500
333923	Factor	70.6	1312.5	$18.8	67.2	0.837	31.7		
Overhead Traveling Crane, Hoist, and Monorail System Manufacturing	Size Std.	850	1100	750	1350	1100	1250	1100	1250
333924	Factor	66.6	954.8	$15.8	48.8	0.837	21.1		
Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing	Size Std.	800	900	700	1000	1100	750	900	750
333991	Factor	55.4	599.8	$16.1	56.2	0.840			
Power-Driven Hand Tool Manufacturing	Size Std.	700	700	700	1150	1150		950	500
333992	Factor	46.3	1187.9	$10.5	57.5	0.833	45.6		
Welding and Soldering Equipment Manufacturing	Size Std.	650	1000	600	1150	1100	1250	1000	1250
333993	Factor	36.6	303.8	$5.6	26.8	0.779			
Packaging Machinery Manufacturing	Size Std.	550	550	550	550	650		600	500
333994	Factor	33.6	177.2	$4.6	19.9	0.693			
Industrial Process Furnace and Oven Manufacturing	Size Std.	550	450	500	400	250		400	500
333995	Factor	95.9	1443.0	$14.3	36.3	0.782			
Fluid Power Cylinder and Actuator Manufacturing	Size Std.	1050	1150	700	750	650		800	750

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333996	Factor	82.7	1201.3	$17.3	66.8	0.828	47.0		
Fluid Power Pump and Motor Manufacturing	Size Std.	950	1000	750	1350	1050	1250	1100	1250
333997	Factor	43.4	283.3	$5.9	56.4	0.770	-24.7		
Scale and Balance Manufacturing	Size Std.	600	500	550	1150	600	600	700	500
333999	Factor	31.2	402.4	$5.0	15.0	0.777	-13.1		
All Other Miscellaneous General Purpose Machinery Manufacturing	Size Std.	500	600	500	300	650	600	500	500
334111	Factor	53.7	2659.2	$13.4	50.9	0.867	-8.2		
Electronic Computer Manufacturing	Size Std.	700	1500	650	1050	1350	1250	1100	1250
334112	Factor	106.8	955.5	$40.2	75.3	0.872	41.2		
Computer Storage Device Manufacturing	Size Std.	1150	900	1150	1500	1400	1250	1250	1250
334118	Factor	41.3	478.9	$9.8	35.2	0.832	20.3		
Computer Terminal and Other Computer Peripheral Equipment Manufacturing	Size Std.	600	600	600	700	1100	1000	800	1000
334210	Factor	73.3	707.1	$17.3	46.2	0.828	3.3		
Telephone Apparatus Manufacturing	Size Std.	850	750	750	950	1050	1250	950	1250
334220	Factor	96.8	3491.4	$21.1	42.7	0.855	2.2		
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	Size Std.	1050	1500	800	850	1250	1250	1100	1250
334290	Factor	41.6	520.2	$7.8	38.6	0.820	-25.4		
Other Communications Equipment Manufacturing	Size Std.	600	650	550	800	1000	900	800	750
334310	Factor	21.7	222.3	$3.3	30.2	0.808	2.6		
Audio and Video Equipment Manufacturing	Size Std.	450	500	500	600	900	750	650	750

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334412	Factor	45.3	509.6	$4.2	22.3	0.755	-38.4		
Bare Printed Circuit Board Manufacturing	Size Std.	650	650	500	450	450	1050	600	750
334413	Factor	129.3	5111.9	$38.3	38.9	0.868	-9.6		
Semiconductor and Related Device Manufacturing	Size Std.	1350	1500	1100	800	1350	1250	1200	1250
334416	Factor	54.4	407.7	$5.9	33.6	0.754	27.2		
Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing	Size Std.	700	600	550	700	450	500	550	500
334417	Factor	108.0	855.6	$17.3	37.9	0.816	31.5		
Electronic Connector Manufacturing	Size Std.	1150	850	750	750	950	1000	900	1000
334418	Factor	69.7	663.6	$10.3	28.9	0.785	-12.3		
Printed Circuit Assembly (Electronic Assembly) Manufacturing	Size Std.	850	700	600	600	700	900	700	750
334419	Factor	43.3	364.5	$5.0	11.0	0.785	-37.7		
Other Electronic Component Manufacturing	Size Std.	600	550	500	250	700	1050	600	750
334510	Factor	99.9	2034.8	$23.3	38.6	0.850	-10.7		
Electromedical and Electrotherapeutic Apparatus Manufacturing	Size Std.	1100	1450	850	800	1250	1450	1150	1250
334511	Factor	279.8	10648.7	$64.4	54.7	0.882	-2.2		
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing	Size Std.	1500	1500	1500	1100	1500	1250	1350	1250
334512	Factor	39.6	644.1	$4.6	39.3	0.790	3.0		
Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use	Size Std.	600	700	500	800	750	500	650	500

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334513	Factor	45.2	978.2	$8.8	33.2	0.816	-0.2		
Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables	Size Std.	650	900	600	650	950	750	750	750
334514	Factor	74.5	772.9	$20.8	41.2	0.826	48.5		
Totalizing Fluid Meter and Counting Device Manufacturing	Size Std.	900	800	800	850	1050	750	850	750
334515	Factor	41.5	430.6	$11.0	26.4	0.808	-3.1		
Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals	Size Std.	600	600	600	550	900	750	700	750
334516	Factor	69.5	1010.4	$12.8	29.4	0.827	-5.8		
Analytical Laboratory Instrument Manufacturing	Size Std.	850	900	650	600	1050	1000	850	1000
334517	Factor	100.3	1539.8	$37.8	63.2	0.848	-21.5		
Irradiation Apparatus Manufacturing	Size Std.	1100	1200	1100	1300	1200	1150	1200	1000
334519	Factor	42.2	429.4	$9.1	21.1	0.803	0.8		
Other Measuring and Controlling Device Manufacturing	Size Std.	600	600	600	400	850	500	600	500
334613	Factor	15.9	251.3	$2.0	57.6	0.773			
Blank Magnetic and Optical Recording Media Manufacturing	Size Std.	400	500	450	1200	600		700	1000
334614	Factor	31.8	1524.1	$2.9	52.4	0.834	-4.0		
Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing	Size Std.	500	1200	500	1050	1100	1250	950	1250
335110	Factor	124.9	1401.5	$16.5	83.7	0.827			
Electric Lamp Bulb and Part Manufacturing	Size Std.	1300	1150	700	1500	1050		1150	1250

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335121	Factor	20.1	313.1	$1.9	56.1	0.817			
Residential Electric Lighting Fixture Manufacturing	Size Std.	400	550	450	1150	950		750	750
335122	Factor	45.5	422.1	$5.3	29.1	0.771			
Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing	Size Std.	650	600	500	600	600		600	500
335129	Factor	46.1	318.6	$6.5	24.8	0.787	18.7		
Other Lighting Equipment Manufacturing	Size Std.	650	550	550	500	700	500	550	500
335210	Factor	94.2	560.0	$20.7	43.8	0.818			
Small Electrical Appliance Manufacturing	Size Std.	1050	650	800	900	950		900	1500
335220	Factor	303.6	6306.6	$80.0	76.1	0.882			
Major Household Appliance Manufacturing	Size Std.	1500	1500	1500	1500	1500		1500	1500
335311	Factor	83.7	981.8	$15.7	44.5	0.800	19.6		
Power, Distribution, and Specialty Transformer Manufacturing	Size Std.	950	900	700	900	800	750	800	750
335312	Factor	75.8	1085.5	$16.1	41.4	0.836	2.9		
Motor and Generator Manufacturing	Size Std.	900	950	700	850	1100	1250	950	1250
335313	Factor	72.2	1381.3	$13.4	46.3	0.837	37.1		
Switchgear and Switchboard Apparatus Manufacturing	Size Std.	850	1100	650	950	1100	1250	1000	1250
335314	Factor	38.6	490.3	$7.0	29.9	0.809	29.2		
Relay and Industrial Control Manufacturing	Size Std.	600	650	550	600	900	750	700	750
335911	Factor	210.1	2714.0	$37.4	68.8	0.837	0.4		
Storage Battery Manufacturing	Size Std.	1500	1500	1100	1400	1100	1250	1250	1250

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335912	Factor	175.9	920.0	$57.1	87.2	0.857	31.7		
Primary Battery Manufacturing	Size Std.	1500	850	1450	1500	1300	1000	1300	1000
335921	Factor	61.1	360.3	$13.2	59.2	0.807	25.1		
Fiber Optic Cable Manufacturing	Size Std.	750	550	650	1200	900	1000	900	1000
335929	Factor	102.1	586.3	$34.2	40.2	0.798			
Other Communication and Energy Wire Manufacturing	Size Std.	1100	700	1050	800	800		900	1000
335931	Factor	66.6	420.3	$9.4	23.8	0.771	18.7		
Current-Carrying Wiring Device Manufacturing	Size Std.	800	600	600	500	600	500	600	500
335932	Factor	105.5	731.0	$24.2	45.4	0.817	52.9		
Noncurrent-Carrying Wiring Device Manufacturing	Size Std.	1150	750	850	900	950	1000	950	1000
335991	Factor	74.9	493.3	$15.6	51.1	0.825			
Carbon and Graphite Product Manufacturing	Size Std.	900	650	700	1050	1000		900	750
335999	Factor	34.7	230.3	$6.7	19.8	0.809	-16.4		
All Other Miscellaneous Electrical Equipment and Component Manufacturing	Size Std.	550	500	550	400	900	600	600	500
336111	Factor	414.9	7444.8	$361.9	60.2	0.894	5.0		
Automobile Manufacturing	Size Std.	1500	1500	1500	1250	1500	1500	1450	1500
336112	Factor	946.1	11272.8	$985.3	80.8	0.885	46.6		
Light Truck and Utility Vehicle Manufacturing	Size Std.	1500	1500	1500	1500	1500	1500	1500	1500
336120	Factor	424.3	4258.7	$214.2	74.5	0.868	36.7		
Heavy Duty Truck Manufacturing	Size Std.	1500	1500	1500	1500	1350	1500	1450	1500

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336211	Factor	61.6	598.6	$7.4	22.3	0.792	-40.5		
Motor Vehicle Body Manufacturing	Size Std.	750	700	550	450	750	1250	750	1000
336212	Factor	74.4	1348.4	$8.2	48.1	0.814	-35.1		
Truck Trailer Manufacturing	Size Std.	900	1100	550	1000	950	1250	950	1000
336213	Factor	124.7	1008.2	$16.3	70.1	0.844			
Motor Home Manufacturing	Size Std.	1300	900	700	1450	1200		1100	1250
336214	Factor	65.8	2791.5	$5.2	53.4	0.833	26.0		
Travel Trailer and Camper Manufacturing	Size Std.	800	1500	500	1100	1100	1000	950	1000
336310	Factor	61.7	1475.0	$24.9	49.8	0.879	35.9		
Motor Vehicle Gasoline Engine and Engine Parts Manufacturing	Size Std.	750	1150	900	1000	1450	1000	1050	1000
336320	Factor	81.8	1003.7	$18.8	33.0	0.851	26.9		
Motor Vehicle Electrical and Electronic Equipment Manufacturing	Size Std.	950	900	750	650	1250	1000	900	1000
336330	Factor	138.8	1330.1	$33.4	29.8	0.828	1.2		
Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	Size Std.	1400	1100	1050	600	1050	1000	1000	1000
336340	Factor	148.3	882.4	$41.0	38.7	0.811	34.4		
Motor Vehicle Brake System Manufacturing	Size Std.	1500	850	1150	800	900	1250	1050	1250
336350	Factor	139.7	2080.2	$54.2	38.4	0.861	-8.1		
Motor Vehicle Transmission and Power Train Parts Manufacturing	Size Std.	1450	1500	1400	800	1300	1500	1300	1500

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336360	Factor	166.5	2850.7	$35.1	47.8	0.854	42.7		
Motor Vehicle Seating and Interior Trim Manufacturing	Size Std.	1500	1500	1050	950	1250	1500	1250	1500
336370	Factor	128.9	1153.3	$28.2	26.2	0.772			
Motor Vehicle Metal Stamping	Size Std.	1350	1000	950	550	600		850	1000
336390	Factor	91.7	1027.3	$24.2	17.6	0.849	19.3		
Other Motor Vehicle Parts Manufacturing	Size Std.	1050	900	850	350	1200	1000	900	1000
336411	Factor	746.7	36379.0	$409.5	80.1	0.895	-0.9		
Aircraft Manufacturing	Size Std.	1500	1500	1500	1500	1500	1500	1500	1500
336412	Factor	221.0	10514.2	$79.8	74.5	0.870	-9.5		
Aircraft Engine and Engine Parts Manufacturing	Size Std.	1500	1500	1500	1500	1400	1500	1500	1500
336413	Factor	142.6	6675.5	$32.6	46.8	0.862	-2.7		
Other Aircraft Parts and Auxiliary Equipment Manufacturing	Size Std.	1450	1500	1000	950	1300	1250	1200	1250
336414	Factor	3010.4	14822.7	$947.8	93.3	0.789	-1.8		
Guided Missile and Space Vehicle Manufacturing	Size Std.	1500	1500	1500	1500	750	1250	1300	1250
336415	Factor	783.1	3152.9	$202.4	88.5	0.726	2.3		
Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing	Size Std.	1500	1500	1500	1500	250	1250	1200	1250
336419	Factor	120.5	1497.9	$19.0	69.5	0.817	-8.1		
Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	Size Std.	1250	1200	750	1400	950	1000	1050	1000
336510	Factor	172.0	1976.5	$74.3	58.0	0.853			
Railroad Rolling Stock Manufacturing	Size Std.	1500	1450	1500	1200	1250		1350	1500

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336611	Factor	171.9	17738.0	$25.5	61.6	0.861	-16.1		
Ship Building and Repairing	Size Std.	1500	1500	900	1250	1300	1450	1300	1250
336612	Factor	33.1	555.8	$3.7	25.2	0.826	3.7		
Boat Building	Size Std.	550	650	500	500	1050	1000	750	1000
336991	Factor	23.8	1132.2	$5.7	78.3	0.867			
Motorcycle, Bicycle, and Parts Manufacturing	Size Std.	450	1000	550	1500	1350		1050	1000
336992	Factor	311.1	1950.5	$82.8	83.7	0.798	-15.7		
Military Armored Vehicle, Tank, and Tank Component Manufacturing	Size Std.	1500	1400	1500	1500	800	1500	1350	1500
336999	Factor	32.2	676.4	$9.4	60.7	0.862	48.1		
All Other Transportation Equipment Manufacturing	Size Std.	500	750	600	1250	1300	1000	950	1000
337110	Factor	11.5	590.4	$0.5	27.3	0.794			
Wood Kitchen Cabinet and Countertop Manufacturing	Size Std.	350	700	450	550	750		600	750
337121	Factor	49.3	2189.6	$3.3	45.3	0.847			
Upholstered Household Furniture Manufacturing	Size Std.	650	1500	500	900	1200		950	1000
337122	Factor	13.2	344.2	$0.8	21.8	0.816	5.3		
Nonupholstered Wood Household Furniture Manufacturing	Size Std.	350	550	450	450	950	750	600	750
337124	Factor	33.7	497.3	$3.1	44.2	0.812			
Metal Household Furniture Manufacturing	Size Std.	550	650	500	900	900		750	750
337125	Factor	15.4	334.1	$2.0	75.4	0.859			
Household Furniture (except Wood and Metal) Manufacturing	Size Std.	400	550	450	1500	1300		950	750

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337127	Factor	37.7	193.0	$2.8	14.5	0.732	23.2		
Institutional Furniture Manufacturing	Size Std.	550	450	500	300	250	500	400	500
337211	Factor	38.5	730.1	$3.0	46.7	0.829	32.7		
Wood Office Furniture Manufacturing	Size Std.	600	750	500	950	1050	1000	850	1000
337212	Factor	18.7	74.0	$1.1	6.3	0.668			
Custom Architectural Woodwork and Millwork Manufacturing	Size Std.	400	400	450	250	250		350	500
337214	Factor	99.7	1706.1	$15.1	62.9	0.857	27.2		
Office Furniture (except Wood) Manufacturing	Size Std.	1100	1300	700	1300	1300	1000	1100	1000
337215	Factor	31.9	285.0	$2.8	17.2	0.785	24.6		
Showcase, Partition, Shelving, and Locker Manufacturing	Size Std.	500	500	450	350	700	500	500	500
337910	Factor	54.8	959.0	$7.5	55.0	0.813			
Mattress Manufacturing	Size Std.	700	900	550	1100	900		850	1000
337920	Factor	33.9	640.3	$1.7	37.2	0.817			
Blind and Shade Manufacturing	Size Std.	550	700	450	750	950		700	1000
339112	Factor	89.0	1581.6	$18.7	25.3	0.854	17.5		
Surgical and Medical Instrument Manufacturing	Size Std.	1000	1200	750	500	1250	1000	900	1000
339113	Factor	53.2	1266.9	$11.7	29.5	0.849	17.2		
Surgical Appliance and Supplies Manufacturing	Size Std.	700	1050	650	600	1200	750	800	750
339114	Factor	20.5	380.4	$3.7	39.2	0.846	6.2		
Dental Equipment and Supplies Manufacturing	Size Std.	400	550	500	800	1200	750	750	750

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339115	Factor	54.1	1059.1	$8.5	46.3	0.855	58.6		
Ophthalmic Goods Manufacturing	Size Std.	700	950	600	950	1250	1000	950	1000
339116	Factor	7.0	333.8	$0.2	21.1	0.760	22.8		
Dental Laboratories	Size Std.	300	550	450	450	500	500	450	500
339910	Factor	12.8	316.0	$1.7	33.7	0.841			
Jewelry and Silverware Manufacturing	Size Std.	350	550	450	700	1150		700	500
339920	Factor	23.5	697.7	$3.6	32.3	0.844	22.1		
Sporting and Athletic Goods Manufacturing	Size Std.	450	750	500	650	1150	750	750	750
339930	Factor	12.7	122.8	$1.9	41.5	0.828			
Doll, Toy, and Game Manufacturing	Size Std.	350	450	450	850	1050		700	500
339940	Factor	21.5	204.1	$2.8	42.4	0.833	17.5		
Office Supplies (except Paper) Manufacturing	Size Std.	450	450	500	850	1100	750	750	750
339950	Factor	12.8	235.8	$0.8	8.5	0.783	8.4		
Sign Manufacturing	Size Std.	350	500	450	250	700	500	450	500
339991	Factor	59.4	673.2	$7.5	24.0	0.787	35.5		
Gasket, Packing, and Sealing Device Manufacturing	Size Std.	750	750	550	500	700	500	600	500
339992	Factor	19.9	372.9	$2.1	36.8	0.835			
Musical Instrument Manufacturing	Size Std.	400	550	450	750	1100		700	1000
339993	Factor	29.9	318.0	$3.4	51.8	0.816			
Fastener, Button, Needle, and Pin Manufacturing	Size Std.	500	550	500	1050	950		750	750
339994	Factor	49.6	280.9	$8.3	42.7	0.821			
Broom, Brush, and Mop Manufacturing	Size Std.	650	500	600	850	1000		750	500

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339995	Factor	38.3	515.1	$3.9	69.4	0.821			
Burial Casket Manufacturing	Size Std.	550	650	500	1400	1000		900	1000
339999	Factor	8.6	230.8	$1.0	29.9	0.812	3.1		
All Other Miscellaneous Manufacturing	Size Std.	300	500	450	600	900	500	550	500
481111	Factor	1459.1	54015.5	$442.9	65.3	0.890			
Scheduled Passenger Air Transportation	Size Std.	1500	1500	1500	1350	1500		1450	1500
481112	Factor	52.4	587.6	$22.2	55.0	0.860	-25.7		
Scheduled Freight Air Transportation	Size Std.	700	700	850	1100	1300	1500	1100	1500
481211	Factor	18.4	903.1	$3.8	39.5	0.831	-31.5		
Nonscheduled Chartered Passenger Air Transportation	Size Std.	400	850	500	800	1050	1500	900	1500
481212	Factor	20.1	171.5	$17.8	82.5	0.879	-40.2		
Nonscheduled Chartered Freight Air Transportation	Size Std.	400	450	750	1500	1450	1500	1150	1500
482111	Factor	362.9	32,736.5	$134.8	85.8				
Line-Haul Railroads	Size Std.	1500	1500	1500	1500			1500	1500
482112	Factor	362.9	32,736.5	$134.8	85.8				
Short Line Railroads	Size Std.	1500	1500	1500	1500			1500	1500
483111	Factor	50.3	625.4	$88.3	59.0	0.866	19.0		
Deep Sea Freight Transportation	Size Std.	700	700	1500	1200	1350	500	1050	500
483112	Factor	462.2	3724.4	$666.3	91.2	0.866	72.6		
Deep Sea Passenger Transportation	Size Std.	1500	1500	1500	1500	1350	1500	1450	1500
483113	Factor	60.0	501.4	$26.5	27.9	0.831	-11.8		
Coastal and Great Lakes Freight Transportation	Size Std.	750	650	900	550	1050	900	800	750

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483114	Factor	17.5	82.0	$5.2	46.5	0.733			
Coastal and Great Lakes Passenger Transportation	Size Std.	400	400	500	950	300		550	500
483211	Factor	64.8	902.4	$40.6	52.9	0.864	-21.5		
Inland Water Freight Transportation	Size Std.	800	850	1150	1100	1350	900	1050	750
483212	Factor	11.9	82.7	$2.3	39.0	0.772			
Inland Water Passenger Transportation	Size Std.	350	400	450	800	600		550	500
486110	Factor	226.0	1138.6	$59.1	45.7	0.722			
Pipeline Transportation of Crude Oil	Size Std.	1500	1000	1500	950	250		1000	1500
486910	Factor	152.0	588.4	$68.0	59.2	0.757			
Pipeline Transportation of Refined Petroleum Products	Size Std.	1500	700	1500	1200	450		1050	1500
492110	Factor	110.2	217500.5	$3.6		0.888	-1.6		
Couriers and Express Delivery Services	Size Std.	1200	1500	500		1500	1500	1200	1500
511110	Factor	50.8	4289.8	$4.6	27.7	0.858			
Newspaper Publishers	Size Std.	700	1500	500	550	1300		850	1000
511120	Factor	21.8	683.5	$2.7	24.9	0.842	-39.3		
Periodical Publishers	Size Std.	450	750	450	500	1150	1250	800	1000
511130	Factor	30.7	1968.8	$8.1	40.6	0.870	19.5		
Book Publishers	Size Std.	500	1450	550	850	1400	1000	950	1000
511140	Factor	45.0	2463.7	$8.4	63.7	0.871			
Directory and Mailing List Publishers	Size Std.	650	1500	600	1300	1400		1100	1250
511191	Factor	114.5	3533.6	$21.7		0.883			
Greeting Card Publishers	Size Std.	1200	1500	800		1500		1200	1500

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511199	Factor	10.6	172.5	$1.1	28.6	0.799	-23.3		
All Other Publishers	Size Std.	350	450	450	600	800	600	550	500
512230	Factor	7.8	172.6	$4.4	63.1	0.872			
Music Publishers	Size Std.	300	450	500	1300	1400		900	750
512250	Factor	13.2	1314.2	$6.5	80.1	0.879	-13.0		
Record Production and Distribution	Size Std.	350	1100	550	1500	1450	350	900	250
517311	Factor	224.1	83937.6	$91.1	51.3	0.890	13.6		
Wired Telecommunications Carriers	Size Std.	1500	1500	1500	1050	1500	1500	1400	1500
517312	Factor	244.5	55370.2	$98.9	89.1	0.898	2.4		
Wireless Telecommunications Carriers (except Satellite)	Size Std.	1500	1500	1500	1500	1500	1500	1500	1500
517911	Factor	14.6	227.9	$3.6	47.7	0.849	-77.5		
Telecommunications Resellers	Size Std.	350	500	500	950	1200	1500	900	1500
519130	Factor	32.1	5882.4	$7.0	44.8	0.883	16.1		
Internet Publishing and Broadcasting and Web Search Portals	Size Std.	500	1500	550	900	1500	1000	1000	1000
524126	Factor	246.8	20556.3	$412.0	31.0	0.889			
Direct Property and Casualty Insurance Carriers	Size Std.	1500	1500	1500	650	1500		1300	1500
541713	Factor	45.6	2202.8	$5.4	19.6	0.835	-23.8		
Research and Development in Nanotechnology	Size Std.	650	1500	500	400	1100	1150	850	1000
541714	Factor	29.9	1316.1	$3.9	23.3	0.823	-42.7		
Research and Development in Biotechnology (except Nanobiotechnology)	Size Std.	500	1100	500	450	1000	1250	800	1000

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541715	Factor	51.7	3444.3	$5.7	14.3	0.852	-18.8		
Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)	Size Std.	700	1500	550	300	1250	1150	850	1000

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Evaluation of Size Standards for Select NAICS Industries and Subindustry Categories or ''Exceptions''

In accordance with the SBA's approach to evaluating size standards for industries or subindustries (or ''exceptions'') as described in the SBA's size standards Methodology, in the following subsections, SBA evaluates the size standards for three NAICS industries and five exceptions that are not covered by the Economic Census tabulation. The three NAICS industries are NAICS 482211 (Line Haul Railroads), NAICS 482212 (Short Line Railroads), and NAICS 324110 (Petroleum Refineries), for which the refining capacity component of the size standard is not covered by the Economic Census tabulation. The five exceptions are the three Research and Development (R&D) exceptions to NAICS 541715, the Information Technology Value Added Resellers (ITVAR) exception to NAICS 541519, and the Environmental Remediation Services (ERS) exception to NAICS 562910.

NAICS 324110—Petroleum Refineries

Among all industries for which SBA establishes size standards, only NAICS 324110 (Petroleum Refineries) comprises two size measures in its size standard—number of employees and total daily refining capacity. As explained in Footnote 4 of the SBA's Table of Size Standards (13 CFR 121.201), to qualify as small for purposes of Government procurement, the petroleum refiner, including its affiliates, must be a concern that has either no more than 1,500 employees or no more than 200,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes all domestic and foreign affiliates, all owned or leased facilities, and all facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. To qualify under the capacity size standard, the firm, together with its affiliates, must be primarily engaged in refining crude petroleum into refined petroleum products. A firm's ''primary industry'' is determined in accordance with 13 CFR 121.107.

During the first five-year review of size standards, SBA proposed to increase the capacity component of the Petroleum Refiners industry (NAICS 324110) size standard from 125,000 barrels per calendar day (BPCD) total Operable Atmospheric Crude Oil Distillation capacity to 200,000 BPCD total capacity and retain the employee component at the 1,500-employee level (79 FR 54145 (November 10, 2014)). SBA also proposed to allow business concerns to qualify as small either under the 1,500-employee size standard or under the 200,000 BPCD capacity size standard, if they, together with affiliates, are primarily engaged in petroleum refining. Finally, SBA proposed to eliminate the requirement that, for purposes of Federal contracting, ''[t]he total product to be delivered under the contract must be at least 90% refined by the successful bidder from either crude oil or bona fide feedstocks.'' SBA determined that the 90% requirement was overly restrictive for small refiners to compete for government contracts. SBA adopted these proposed changes without amendments in a 2016 final rule (81 FR 4469 (January 26, 2016)).

To evaluate the refining capacity component of the size standard for NAICS 324110 in the current review of size standards, SBA coordinated with the Defense Logistics Agency (DLA) to obtain a special tabulation of refinery production data, maintained by the Energy Information Administration (EIA). This tabulation included data on employees and various measures of production capacity. SBA also obtained the data from SAM, FPDS–NG, and other publicly available information such as corporate 10–K filings and annual reports to evaluate the economic characteristics of NAICS 324110 in terms of production capacity.

To determine if the current size standard for Petroleum Refineries is still appropriate, SBA used the above data to analyze both total and aviation fuel capacity, as well as the number of employees of all refiners operating in the United States. SBA also examined industry trends and the Federal Government's petroleum procurement needs.

SBA's analysis of the above data showed that the production capacity of the petroleum refineries industry is concentrated among the largest 30% of firms, as measured by BPCD total capacity. Specifically, the largest 30% of firms account for over 83% of the total industry production capacity. The average size of firms exceeding 200,000 BPCD total production capacity is 40,178 employees.

Currently, about 60% of firms, representing 26% of employees, are classified as small under the 200,000 BPCD total capacity size standard. The average size of these firms is 11,064 employees. SBA's analysis showed that increasing the total capacity size standard beyond the current 200,000 BPCD level, even by 150% increase from the current level, would only marginally increase the number of small firms in this industry, and would include firms with characteristics similar to the dominant firms at the top of the size distribution. Based on this analysis, SBA proposes to maintain the refining capacity component of the size standard for Petroleum Refineries at 200,000 BPCD total Operable Atmospheric Crude Oil Distillation capacity. As presented in Table 4 (above), based on the data from the 2012 Economic Census, SBA also proposes to maintain the employee component of the size standard for Petroleum Refineries at the current 1,500-employee level.

NAICS 482111—Line Haul Railroads and NAICS 482112—Short Line Railroads

SBA's primary source of industry data used in this proposed rule is a special tabulation of the 2012 Economic Census prepared by the U.S. Bureau of the Census for SBA. The 2012 Economic Census data are the latest Economic Census data available at the time of drafting this proposed rule.

In some cases, certain industries are not covered by the Economic Census; thus, they are not represented in the Census Bureau's special tabulation. For those industries, SBA first identifies companies that are registered in SAM under those industry NAICS codes and then evaluates their employment and revenue data obtained from their SAM profiles. SBA supplements the SAM data with revenue and employment data from FPDS–NG and, in some cases, the data from other Federal agencies and industry trade groups to establish the industry characteristics necessary to evaluate the size standard for the industry. In some instances, SBA's analysis is based only on those factors for which data are available or estimates of missing values are possible. SBA applied this approach to the evaluation of industry factors for two industries in NAICS Sector 48–49 that are not covered by the Economic Census, namely Line Haul Railroads (NAICS 482111) and Short Line Railroads (NAICS 482112).

During the first five-year review of size standards, based on the data from SAM, SBA proposed to maintain the 1,500-employee size standard for Line Haul Railroads and increase the size standard for Short Line Railroads from 500 employees to 1,500 employees (79 FR 53646 (September 10, 2014)). In the final rule, SBA adopted this proposal without change (81 FR 4435 (January 26, 2016)).

To evaluate the size standard for these industries during the ongoing second

five-year size standards review, SBA relied on data from SAM, industry trade groups, and other Federal agencies. SBA sought data external to SAM because of a lack of adequate representation of firms in those industries in the SAM database. For example, the Railroad Facts 2019 Edition statistical publication of the American Association of Railroads (AAR) estimates that there were 613 railroads in the U.S. in 2017; however, the number of firms registered under NAICS 482111 or 482112 as their primary NAICS code was only 37 based on the 2019 SAM data. The data for these industries in FPDS–NG was also equally inadequate for purposes of evaluating size standards for those industries. Thus, SBA was not able to rely on the SAM and FPDS–NG data alone to determine the economic characteristics of those industries. SBA also evaluated its internal data from its 7(a), 504, and disaster loan programs for purposes of determining economic characteristics of NAICS 482111 and 482112; however, SBA found that there was very limited loan activity in those industries.

To determine the economic characteristics of NAICS 482111 and 482112 and calculate the industry factors for evaluation of their size standards, SBA relied on the 2018 data from the Railroad Retirement Board (RRB), which publishes employment data for railroad employers. SBA used this data to calculate the simple and weighted average firm size in terms of employees. SBA used the data from AAR and the American Short Line and Regional Railroad Association (ASLRRA) to calculate average assets and the four-firm concentration ratio. SBA was not able to obtain suitable data on receipts to calculate the Gini coefficient values for these industries. SBA requests suggestions on sources of data for the railroad industry that include an estimate of the receipts per firm similar to the employee data provided by the RRB.

Based on the data from the RRB, SBA was unable to reliably determine the number of railroads primarily engaged in either the Line Haul Railroad or Short Line Railroad industry. For statistical and regulatory purposes, most Federal agencies and trade associations do not classify railroads in terms of line haul or short line railroads. Instead, railroads are classified based on other characteristics, such as class, revenue, or track mileage owned/operated. For example, the Surface Transportation Board (STB), the Federal agency responsible for regulating railroad rates and service, categorizes rail carriers into three classes: Class I, Class II, and Class III. These classes are based on the carrier's annual operating revenues. For 2019, Class I carriers were defined as those earning above $504.80 million in revenue; Class II carriers as those earning $40.38 million or more in revenue and less than the Class I threshold; and Class III carriers as those earning less than the Class II minimum. The AAR identifies two groups of non-Class I railroads based on revenue and track mileage covered: Regional railroads and Local railroads. Regional railroads are line haul railroads below the Class I revenue threshold, operating at least 350 miles of railroad track and earning at least $20 million in revenue, or earning revenue between $40 million and the Class I revenue threshold, regardless of track mileage operated. Local railroads are line haul railroads below the Regional criteria, plus switching and terminal railroads. The RRB classifies railroads by Class I and non-Class I operator. Based on the available data, SBA was not able to reliably determine the composition of the railroad industry at the 6-digit NAICS industry level. Thus, for purposes of analysis, SBA combines the operators in NAICS industries 482111 and 482112 to determine a size standard for those industries.

The results from SBA's analysis are presented in Table 4 (above) of this proposed rule. The analysis supports maintaining the current size standard of 1,500 employees for both the Line Haul Railroad (NAICS 482111) and Short Line Railroad industries (NAICS 482112). SBA invites comments, along with supporting information, on this proposal as well as sources of data that more clearly define the economic characteristics of these industries.

Exception to NAICS 541519—Information Technology Value Added Resellers

Information Technology Value Added Resellers (ITVAR) is a subindustry (or ''exception'') under NAICS 541519 (Other Computer Related Services). SBA first proposed to establish this subindustry category in 2002 in order to better apply small business eligibility requirements under Federal contracts that combine substantial services with the acquisition of computer hardware and software (67 FR 48419 (July 24, 2002)). The following year, SBA adopted the ITVAR industry category, as proposed, with a size standard of 150 employees (68 FR 74833 (December 28, 2003)). As stated in Footnote 18 to the SBA's Table of Size Standards, for a Federal contract to be classified under the ITVAR subindustry or ''exception'' and its 150-employee size standard, it must consist of at least 15% but not more than 50% of value added services, as measured by the total price less cost of computer hardware and software, and profit. If the contract consists of less than 15% of value-added services, it must be classified under the appropriate manufacturing NAICS industry. If the contract consists of more than 50% of value-added services, it must be classified under the NAICS industry that best describes the principal nature of services being procured.

In 2014, as part of the first 5-year review of size standards, SBA proposed to eliminate the ITVAR exception due to inconsistencies and misuse (79 FR 53646 (September 10, 2014)). For example, SBA's evaluation of FPDS–NG data and solicitations at that time revealed many cases of misuse where Federal agencies applied the 150-employee size standard, instead of the receipts-based size standard, for contracts that were predominantly for services. Moreover, SBA found the use of the ITVAR exception was discretionary and inconsistent with other SBA's regulations. Under the terms of the exception as stated in Footnote 18 in the SBA's Table of Size Standards, it is clear that the majority of the cost of the contracts that qualify under the ITVAR exception and its 150-employee size standard will be incurred for supplies. Thus, instead of using the ITVAR 150-employee size standard under NAICS 541519, a contracting officer could alternatively use a manufacturing NAICS code, such as NAICS 334111 (Electronic Computer Manufacturing) with a 1,000-employee size standard, to which the 500-employee nonmanufacturer size standard would also apply. Thus, firms may or may not be eligible or be able to compete as a small business for the exact same contract simply based on the contracting officer's selection of the NAICS code and size standard. SBA found that this was inconsistent with SBA's regulations that require contracting officers to select the NAICS code that best describes the principal purpose of the acquisition (see 13 CFR 121.402(b)). Many commenters to the 2014 SBA's proposed rule agreed with these findings but were strongly against the SBA's proposal to eliminate the ITVAR exception and its 150-employee size standard. Commenters viewed that the SBA's proposal would force small ITVARs with fewer than 150 employees to compete for Federal opportunities with large companies with up to 500 employees under the 500-employee nonmanufacturer size standard. To address these concerns, in the 2016 final

rule, SBA amended Footnote 18 by retaining the ITVAR exception and its 150-employee size standard and adding the requirement that the offeror on small business set-aside ITVAR contracts must comply with the manufacturing performance requirements or the nonmanufacturer rule (81 FR 4436 (January 26, 2016)).

In this proposed rule, to review the 150-employee size standard for the ITVAR exception to NAICS 541519, SBA evaluated the data from FPDS–NG and SAM using a two-step procedure. First, using FPDS–NG, SBA identified Product Service Codes (PSCs) that correspond to contracts under the ITVAR exception. SBA then identified firms that have received Federal contracts under those PSCs and evaluated their receipts and employees' data from SAM and FPDS–NG to derive the values of industry and Federal contracting factors. SBA uses this approach because the data that SBA receives from the Census Bureau's Economic Census tabulation are limited to the 6-digit NAICS industry level and therefore do not provide information on economic characteristics of firms at the subindustry level.

SBA found that contracting activity for the ITVAR exception is distributed over roughly 36 different PSCs. Each of these PSCs describe the activity of procuring either an IT product, or an IT service, but not both. Generally, the code structure of the PSC classification system is such that PSCs for products start with a number whereas PSCs for services begin with an alphabet. Table 5, Top 5 ITVAR Related PSCs by Average Total Dollars Obligated, below, identifies the top 5 PSCs for ITVAR related products and services. The table also displays average total dollars obligated under each PSC for fiscal years 2016–2018, and the product or services identifier for each PSC.

TABLE 5—TOP 5 ITVAR RELATED PSCS BY AVERAGE TOTAL DOLLARS OBLIGATED

PSC	PSC description	Average total dollars obligated in FY 2016–2018 ($ million)	PSC type
D399	IT and telecom—other IT and telecommunications	$2,419,341	Service.
7030	Information technology software	1,824,017	Product.
D319	IT and telecom—annual software maintenance service plans	761,227	Service.
7050	Information technology components	673,647	Product.
D318	IT and telecom—integrated hardware/software/services solutions, predominantly services	664,801	Service.

Due to the involvement of numerous PSCs discussed above, SBA was unable to reliably determine a singular PSC that would adequately represent the level of activity corresponding uniquely to the ITVAR exception, which by definition includes both product and service-related activities. For purposes of analysis, and in an effort to differentiate economic activity under the ITVAR exception and determine the economic characteristics of the firms comprising this subindustry, SBA analyzed the FPDS–NG and SAM data. For this, SBA analysts first queried the FPDS–NG data for fiscal years 2016–2018 to match firms with a primary NAICS of 541519 and at least one contract with an ITVAR PSC for products to firms with a primary NAICS of 541519 and at least one contract with an ITVAR PSC for services; that is, SBA identified firms with a primary NAICS of 541519 with at least one contract under both a product and service-related PSC. This query resulted in a total of 1,210 firms. Further analysis showed that, for many of these 1,210 firms, the percentage of total revenues from ITVAR services and products PSCs was very low, which SBA used as an indication that the revenue structure of such firms was not representative of a typical ITVAR firm. Therefore, using a similar procedure that SBA applied in the analysis of the Dredging and Surface Cleanup Activities exception to NAICS 237990 (Other Heavy and Civil Engineering Construction) (85 FR 62239 (December 1, 2020)), SBA excluded firms from the analysis whose combined dollars obligated to both ITVAR services and products PSCs did not exceed 2.5% of their total receipts. SBA further refined the analysis by excluding firms with an average revenue below $1,000. After these exclusions, SBA was left with 485 firms for purposes of analysis.[2] Together, those 485 firms represented 55% of the dollars obligated to original 1,210 firms under the top 5 ITVAR-related PSCs identified in Table 5. SBA analyzed those 485 firms to obtain the four industry factors (average firm size, average assets size, four-firm ratio, and Gini coefficient) and the Federal contracting factor for the ITVAR subindustry or exception.

In its 2003 final rule (68 FR 74833 (December 29, 2003)), SBA used a hybrid approach to create and evaluate the ITVAR exception. Specifically, based on the assumption that ITVARs operate in NAICS Industry Group 5415 (Computer System Design and Related Services) and in NAICS 423430 (Computer and Computer Peripheral Equipment and Software Merchant Wholesalers), SBA combined part of NAICS Industry Group 5415 with part of NAICS 423430 using the 1997 Economic Census data and defined the result as the ITVAR subindustry and used it as the basis to establish the characteristics of ITVAR firms. As discussed in the 2016 final rule (81 FR 4436 (January 26, 2016)), SBA now finds several problems with that approach. First, there is no need to create the ITVAR industry in that manner because, based on their primary activity of selling computer hardware and software, ITVARs are included in NAICS 423430. Accordingly, SBA now believes the industry data for NAICS 423430 alone would provide a more accurate description of ITVAR firms than the hybrid approach, especially given significant differences in economic structure between firms in NAICS Industry Group 5415 and ITVAR firms, as suggested by the Economic Census data and also confirmed by many commenters at that time. Similar to the 2016 final rule, SBA's analysis in this proposed rule is based on the premise that ITVARs are most closely related to wholesalers, supplying computer hardware and software as nonmanufacturers. Thus, any size standard exception to the ITVARs should be addressed within the context of the nonmanufacturer rule. As such, in this proposed rule, SBA uses the 20th and 80th percentile values of industry

[2] SBA analysts found that increasing the percentage of ITVAR services and products PSCs in total receipts to 5% to exclude firms for which those PSCs contributions to their receipts is very limited, and applying other refinements to the list of 1,210 firms—such as excluding firms with a majority focus on services and excluding firms having less than 1% of total receipts coming from products—ultimately produced a similar calculated size standard.

factors for employee-based size standards for Wholesale Trade and Retail Trade shown in Table 2 (above), along with the 20th and 80th percentile values of employee-based size standards in those sectors, as a basis for reviewing the size standard for the ITVAR exception.

Table 6, Size Standards Supported by Each Factor for the ITVAR Exception to NAICS 541519 (Employees), below, shows the results of analyses of industry and Federal contracting factors for the ITVAR exception, along with size standards supported by each industry and Federal contracting factors. The analysis supports maintaining the current size standard of 150 employees. As such, SBA proposes to retain the 150-employee size standard for the ITVAR exception with no additional changes to the terms of this industry exception SBA invites comments, along with supporting information, on this proposal as well as suggestions for alternative sources of data that more clearly define the economic characteristics of ITVARs.

TABLE 6—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR THE ITVAR EXCEPTION TO NAICS 541519 (EMPLOYEES)

[Upper value = calculated factor, lower value = size standard supported]

(1) NAICS code NAICS industry title	(2) Type	(3) Simple average firm size (number of employees)	(4) Weighted average firm size (number of employees)	(5) Average assets size ($ million)	(6) Four-firm ratio (%)	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard (number of employees)	(10) Current size standard (number of employees)
541519 (ITVAR Exception)	Factor	136.5	3,594.9	$13.6	19.7	0.743	25.5	.....	.....
	Size Std	250	250	250	75	50	150	150	150

Exceptions to NAICS 541715—Aircraft, Aircraft Engine and Engine Parts; Other Aircraft Parts and Auxiliary Equipment; and Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts

Currently, NAICS 541715 (Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)) has three subindustries or ''exceptions.'' As stated in Footnote 11 to the SBA's Table of Size Standards, for Research and Development (R&D) contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the corresponding manufacturing industry. The three exceptions under NAICS 541715 and their corresponding manufacturing industry counterparts and their size standards are shown in Table 7, NAICS 541715 Exceptions and Corresponding Manufacturing Size Standards (Employees), below. This table also displays the proposed size standards for each of the three exceptions and corresponding manufacturing industries.

To better match size standards for the exceptions to the corresponding employee-based industry size standards in manufacturing, SBA proposes to increase the size standard of the third exception (Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts) from 1,250 employees to 1,300 employees by adopting the highest size standard of that exception's corresponding manufacturing industry counterparts. As shown in Table 7 (below), SBA retains the current size standards for the other two exceptions.

TABLE 7—NAICS 541715 EXCEPTIONS AND CORRESPONDING MANUFACTURING SIZE STANDARDS (EMPLOYEES)

Exception	Manufacturing NAICS code and industry title	Current size standard	Calculated size standard	Proposed size standard	Proposed size standard for the exception	Current size standard for the exception
Aircraft, Aircraft Engine and Engine Parts.	336411—Aircraft Manufacturing	1,500	1,500	1,500	1,500	1,500
	336412—Aircraft Engine and Engine Parts Manufacturing.	1,500	1,500	1,500		
Other Aircraft Parts and Auxiliary Equipment.	336413—Other Aircraft Part and Auxiliary Equipment Manufacturing.	1,250	1,200	1,250	1,250	1,250
Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts.	336414—Guided Missile and Space Vehicle Manufacturing.	1,250	1,300	1,300	1,300	1,250
	336415—Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing.	1,250	1,200	1,250		
	336419—Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.	1,000	1,050	1,050	.....	.....

Exception to NAICS 562910—Environmental Remediation Services

In 2016, SBA increased the size standard for Environmental Remediation Services (ERS) exception to NAICS 562910 (Remediation Services) from 500 employees to 750 employees (81 FR 4436 (January 26, 2016)). The requirements that apply to the ERS exception and its 750-employee size standard for Federal procurement and SBA's financial assistance are defined in Footnote 14 to the SBA's Table of Size Standards (13 CFR 121.201). SBA requires that for a Government contract to be classified under the ERS exception, it should cover activities in three or more separate industries that each could be categorized in separate NAICS codes. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a distinct size standard, and that industry accounts for 50% or more of the value of the entire procurement, then the proper size standard is the one for that industry, and not the ERS exception size standard.

In 1994, SBA established the 500-employee based size standard for the ERS exception for Federal procurements and for SBA assistance (59 FR 47236 (September 15, 1994)). The Agency determined that ERS was an emergent industry in which firms perform tasks that depart from traditional activities in any one industry defined (at the time)

in the Standard Industrial Classification (SIC) system, and the types of activities were requiring larger firms to be able to perform them. When the North American Industry Classification System (NAICS) was adopted by the Federal Government in 1997, one of the new industries identified with a six-digit code was NAICS 562910 (Remediation Services), and one of the activities on the scope of NAICS 562910 was the environmental remediation services.

SBA believes that the justification for the creation of an environmental remediation services subindustry within NAICS 562910 with a special size standard in 1994 is still valid today. NAICS 562910 includes some remediation activities (*e.g.,* collection and disposal of garbage, ashes, rubbish and sweeping services), which are usually performed by smaller firms relative to the size of firms performing activities that fall under environmental remediation services.

As explained previously in the Sources of Industry and Program Data section, the data from the Census Bureau's Economic Census tabulation are limited to the 6-digit NAICS industry level and hence do not provide all the economic characteristics for the ERS subindustry. Thus, similar to the evaluation of other exceptions, in accordance with the SBA's size standards methodology, in this proposed rule, SBA analyzed the data coming from FPDS–NG and SAM to evaluate the size standard for the ERS exception.

First, using FPDS–NG data for fiscal years 2016–2018, SBA identified firms that participated in Federal contracts using the Product Service Codes (PSCs) F108 (Environmental Systems Protection—Environmental Remediation) and F999 (Other Environmental Services) within NAICS 562910. Then, SBA obtained those firms' revenue and employment data from the information related to the ERS awards in FPDS–NG, and the data from SAM was used to complement the information available in FPDS–NG.

SBA identified 1,151 firms receiving Federal contracts under NAICS 562910 and PSCs F108 and F999. Initially, the number of firms was obtained by counting the DUNS numbers, but because the DUNS numbers refer to a location, multi-establishments firms will have more than one DUNS number. So, SBA decided to identify those firms using Global DUNS numbers, reducing the number of firms to 1,033. After deleting firms with null values for number of employees or revenue, the number of firms was reduced to 979. SBA also deleted entities that could be identified as government agencies or as manufacturers, further reducing the number of ERS firms to 962.

As discussed in the SBA's size standards methodology white paper, when reviewing size standards for subindustries or ''exceptions'' using the SAM and FPDS–NG data, to reduce the impact of the differences between the industry data from the Economic Census and the data obtained from FPDS–NG and SAM, SBA may (i) identify and remove firms whose primary activity is not the subindustry or exception under review (in this case ERS), (ii) trim the data to prevent extreme observations from distorting the results, or (iii) apply a combination of these two approaches.

The dollars awarded by firms' employment size indicate a large concentration of the ERS activity among the largest firms. Small firms with less than or equal to 750 employees received about 37% of the total ERS dollar awards during fiscal years 2016–2018, while firms with more than 5,000 employees accounted for about 60% of the total ERS contract awards. Moreover, just two firms with more than 5,000 employees accounted for almost 40% of the total awards under ERS activities. The rest of the ERS contract dollars (3.5%) went to firms between 750 employees and 5,000 employees.

Since fiscal year 2016, the share of total ERS contract dollars awarded to small businesses decreased significantly, from an average of 50.0% in fiscal years 2013–2015 to an average of 37.0% in fiscal years 2016–2018. SBA believes that the large skewness in the distribution of ERS firms by the number of employees, the large percentage of ERS contracting dollars being concentrated among very large firms, and a decrease in the small business share of total ERS awards (especially after the adoption of the higher 750-employee size standard in 2016) are all indications that an additional increase to the ERS size standard is warranted. The large concentration of ERS awards among very large and diversified firms suggests that trimming the data is warranted to obtain a more representative picture of the ERS industry. Thus, to avoid the results being distorted by very large, diversified firms, SBA excluded from analysis 2.5% of the largest firms by the number of employees. That leaves the number of ERS firms at 937, which were used to calculate the industry and Federal contracting factors for the ERS exception. Table 8, Size Standards Supported by Each Factor for the Exception to NAICS 562910 (Employees), below, summarizes the results.

TABLE 8—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR THE EXCEPTION TO NAICS 562910 (EMPLOYEES)

[Upper value = calculated factor, lower value = size standard supported]

(1) NAICS code NAICS industry title	(2) Type	(3) Simple average firm size (number of employees)	(4) Weighted average firm size (number of employees)	(5) Average assets size ($ million)	(6) Four-firm ratio %	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard (number of employees)	(10) Current size standard (Number of employees)
562910 (Exception)	Factor	174.9	3,249.0	$22.8	35.1	0.851	64.2	.....	.....
	Size Std	1,500	1,500	850	700	1,250	750	1,000	750

Based on the above rationale and the analysis of industry and Federal contracting factors, SBA proposes to increase the ERS size standard to 1,000 employees, which would cause a very minimal impact on currently small firms in the ERS Federal procurement market while allowing a few larger small firms an expanded runway to grow and remain competitive. SBA repeated this analysis without trimming the data, which yielded a calculated size standard of 1,200 employees; however, SBA does not believe that this method most accurately reflects the economic characteristics of firms primarily engaged in the business activities related to the ERS exception since the untrimmed data includes firms whose primary activity is unrelated to ERS. Of the 25 firms excluded from the analysis due to trimming, 12 firms had less than $1 million in ERS contracts. The share of ERS dollars obligated to these firms

was less than 0.1% in terms of both their total receipts and total dollars obligated (across all NAICS codes), indicating that the ERS exception is clearly not the primary activity for these firms. Also, among the remaining 13 excluded firms that received more contract dollars under the ERS exception, these firms' share of ERS dollars in their total receipts was, on average, only 1.2%, varying from 0.0% to 5.7%. SBA found that the vast majority of these excluded firms operated in numerous, diverse NAICS codes and none of them reported the ERS exception as being their primary activity relative to their overall operations.

As such, SBA is proposing to increase the ERS size standard to 1,000 employees in accordance with SBA's size standards methodology and the trimming approach described above. As discussed previously in this subsection, in February 2016, SBA increased the size standard for the ERS exception from 500 employees to 750 employees. In fiscal years 2018–2019, still the largest number of small ERS firms were below 500 employees, receiving the largest percentage of ERS small business contract awards. By increasing the size standard to 1,000 employees, only about 2 additional firms will gain small business status. SBA believes that this will not have a significant impact on small businesses below the current 750-employee size standard.

Summary of Calculated Size Standards

Of the 427 industries and 5 subindustries (*i.e.,* ''exceptions'') reviewed in this proposed rule, the results from analyses of the latest available data on the five primary factors discussed above would support increasing employee-based size standards for 157 industries and 2 subindustries (''exceptions''), decreasing size standards for 216 industries, and maintaining size standards for 54 industries and 3 subindustries (''exceptions''). Table 9, Summary of Calculated Size Standards, below, summarizes these results by NAICS sector.

TABLE 9—SUMMARY OF CALCULATED SIZE STANDARDS

NAICS sector	NAICS sector title	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
21	Mining, Quarrying, and Oil and Gas Extraction.	24	15	9	0
22	Utilities	11	11	0	0
31–33	Manufacturing	360	123	187	50
48–49	Transportation and Warehousing	15	5	8	2
51	Information	12	3	7	2
54	Professional, Scientific and Technical Services.	7	1	3	3
Other	Agriculture, Forestry, Fishing and Hunting (Sector 11); Finance and Insurance (Sector 52); Administrative and Support, Waste Management and Remediation Services (Sector 56).	3	1	2	0
Total		432	159	216	57

Evaluation of SBA Loan Data

Before proposing or deciding on size standard revisions, SBA also considers the impact of size standards revisions on its loan programs. Accordingly, SBA examined its internal 7(a) and 504 loan data for fiscal years 2018–2020 to assess whether the calculated size standards in Table 4 (above) need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this proposed rule, the data shows that it is mostly businesses much smaller than the current or calculated size standards that receive SBA's 7(a) and 504 loans. For example, for industries covered by this rule, more than 99.0% of SBA's 7(a) and 504 loans in fiscal years 2018–2020 went to businesses below the calculated size standards.

Evaluation of Calculated Size Standards for Dominance in Field of Operation

The Small Business Act provides that a small business concern must not be dominant in its field of operation. Accordingly, to ensure that neither an existing nor a calculated or proposed size standard includes the dominant or potentially dominant firms in any industry, besides the calculation of the Gini coefficient, SBA further assessed the distribution of firms in each industry by employee size and a firm's share of total industry's receipts at the existing or calculated size standard. Generally, SBA believes shares below 40% would preclude dominant firms from qualifying as small and exerting control on any industry. Accordingly, based on the results, SBA is proposing to retain the size standards for nine industries at their current levels, even though the analytical results suggested that an increase is warranted. These industries include NAICS 212222, 212291, 311213, 221116, 212113, 212392, 311512, 316992, and 212324, for which a firm's share of total industry's receipts or employees at the calculated size standard was more than 40%. SBA proposes to adopt a smaller increase to the size standard for NAICS 221114 to ensure that the industry's dominant firms are not included in the definition of small business for the industry. SBA estimates that at the calculated size standard of 700 employees for NAICS 221114, based on the 2012 Economic Census data, a firm's share of total industry receipts would be 41.1% and the share of employees 44.2%. Thus, SBA is proposing a smaller increase to the size standard for NAICS 221114 from the current 250 employees to 500 employees to ensure that a firm's share of total industry receipts or employees at the proposed size standard is not greater than 40%. These adjustments would affect only the one or two largest firms in each of those industries. Similarly, based on the results from dominance analysis using

the 2012 Economic Census data, SBA considered proposing to reduce the size standard for NAICS 221118 from 250 employees to 100 employees, even though the analytical results supported a higher size standard of 650 employees. The results showed that the share of total receipts for a firm at the 250-employee current size standard or at the 650-employee calculated size standard would be much higher than the 40% threshold. However, after considering the level of Federal contracting activity and the Federal contracting factor for this industry as presented in Table 4 above, SBA proposes to adopt the calculated size standard of 650 employees for NAICS 221118 as there are a number of large firms participating in Federal contracting in this industry that are not classified under NAICS 221118 in the Economic Census data. Based on the FPDS–NG data for fiscal years 2018–2020, on an annual basis, SBA identified 131 firms receiving 443 contracts under NAICS 221118. The average annual total dollars obligated to these firms was about $216.0 million. Together, these firms had total employees of 1.5 million, averaging 11,771 employees. These figures are much greater than the total of 224 employees and average of 14 employees for NAICS 221118 based on the 2012 Economic Census data. Using the data from FPDS–NG for fiscal years 2018–2020 for NAICS 221118, SBA estimates the share of receipts of a firm at the calculated size standard of 650 employees to be 0.07%, which effectively precludes a firm of this size from exerting control over the industry. Thus, these results demonstrate that the Economic Census Economic Census data for this industry do not correlate well with the Federal market data from FPDS–NG that supports a higher size standard.

As explained elsewhere in this proposed rule, in industries where small business share of the Federal market is already appreciably high relative to the small business share of the overall market, SBA generally assumes that the existing size standard is adequate with respect to the Federal contracting factor. Regarding NAICS 221118 specifically, using the Federal market data for fiscal years 2016–2018, SBA estimated a Federal contracting factor of −64.4% (*i.e.,* the difference between the small business share of Federal market and the small business share of industry receipts) that supports increasing the size standard to 400 employees (see Table 4 above). Using the FPDS–NG data from fiscal years 2018–2020, SBA estimates the small business share of dollars obligated to NAICS 221118 to be 4.4% and the small business share of industry receipts, based on the 2012 Economic Census data, to be 71.6%, thereby yielding a Federal contracting factor of −67.2%.

Therefore, based on the reasons presented above, SBA is proposing to adopt the 650-employee calculated size standard for NAICS 221118 to further promote competition among all firms and create additional opportunities for small firms. Table 10, Proposed Adjustments to Calculated Size Standards Based on Dominance Analysis, below, summarizes adjustments to calculated size standards based on SBA's evaluation of dominance in field of operation.

TABLE 10—PROPOSED ADJUSTMENTS OF CALCULATED SIZE STANDARDS BASED ON DOMINANCE ANALYSIS

NAICS code	NAICS industry title	Current size standard (employees)	Calculated size standard (employees)	Adjusted/ proposed size standard (employees)
212113	Anthracite Mining	250	600	250
212222	Silver Ore Mining	250	1,100	250
212291	Uranium-Radium-Vanadium Ore Mining	250	900	250
212324	Kaolin and Ball Clay Mining	750	1,050	750
212392	Phosphate Rock Mining	1,000	1,350	1,000
221114	Solar Electric Power Generation	250	700	500
221116	Geothermal Electric Power Generation	250	1,050	250
221118	Other Electric Power Generation	250	650	650
311213	Malt Manufacturing	500	900	500
311512	Creamery Butter Manufacturing	750	1,000	750
316992	Women's Handbag and Purse Manufacturing	750	850	750

Special Considerations

On March 13, 2020, the ongoing Coronavirus Disease 2019 (COVID–19) was declared a pandemic of enough severity and magnitude to warrant an emergency declaration for all U.S. states, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide experienced economic hardship as a direct result of the Federal, State, and local public health measures that were being taken to minimize the public's exposure to the virus. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, were implemented, resulting in a dramatic decrease in economic activity as the public avoided malls, retail stores, and other businesses.

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act or the Act) (Pub. L. 116–136) was signed on March 27, 2020, to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. Section 1102 of the Act temporarily permitted SBA to guarantee 100% of 7(a) loans under a new program titled the Paycheck Protection Program (PPP). Section 1106 of the Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP. The PPP and loan forgiveness are intended to provide economic relief to small businesses nationwide adversely impacted by COVID–19. On April 24, 2020, additional funding for the CARES Act, including for the PPP, was provided (see The Paycheck Protection Program and Health Care Enhancement Act, Pub. L. 116–139). On December 27, 2020, Congress passed the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act as part of the Consolidation Appropriations Act, approving additional funding for the PPP loan program and allowing the hardest-hit small businesses to receive a second draw PPP loan (Pub. L. 116–260). Additionally, the law approved grants for shuttered-venue operators. On March 11, 2021, the American Rescue Plan Act of 2021 (Pub. L. 117–2) was

signed into law. This act provided additional relief for the Nation's small businesses and hard-hit industries by adding new support to the recovery effort, including additional funding for the PPP and the Shuttered Venue Operators Grant programs. The act also provided additional funding for targeted Economic Injury Disaster Loan (EIDL) Advance payments.

The Agency is following closely the development of the pandemic and the economic situation. A variety of economic indicators such as the Gross Domestic Product (GDP) and the unemployment rate show that the economic recession from the COVID–19 pandemic was significantly worse than any other recession since World War II. According to the Bureau of Economic Analysis (BEA), the real GDP decreased 5.1%, and the real personal consumption in goods and services decreased 6.9% in the first quarter of 2020. In the second quarter, the real GDP decreased 31.2% and the real personal consumption in goods and services decreased 33.4%. In the third quarter, the real GDP increased 33.8%, and the real personal consumption in goods and services increased 41.4%. The real GDP showed a more moderate increase of 4.5% and the real personal consumption expenditures increased 3.4% in the fourth quarter of 2020. The real GDP decreased 3.4% in 2020 from 2019 (from the 2019 annual level to the 2020 annual level), compared with an increase of 2.3% in 2019 from 2018. The real GDP increased 6.3% in the first quarter of 2021 and 6.7% in the second quarter. The real personal consumption in goods and services grew 11.4% in the first quarter of 2021 and 12.0% in the second quarter. The growth rates of both the real GDP and real personal consumption expenditures slowed significantly in the third quarter, increasing just 2.3% and 2.0%, respectively. Economic growth accelerated in the fourth quarter, with real GDP and real personal consumption expenditures increasing 6.9% and 2.5%, respectively. The real GDP increased 5.7% in 2021 from 2020 (from the 2020 annual level to the 2021 annual level), compared with an decrease of 3.4% in 2020 from 2019.[3]

In March 2022, the unemployment rate fell to 3.6%, and the number of unemployed persons to 6.0 million. Although both measures are significantly lower than their April 2020 highs (14.8% and 23.1 million, respectively), they are still higher than their pre-pandemic levels in February 2020 (3.5% and 5.7 million, respectively). Specifically, for the sectors evaluated in this proposed rule, in March 2022, the average unemployment rate was 3.4%. In February 2020, the average unemployment rate for these sectors was 3.8%.

SBA believes that lowering size standards under the current economic environment could stifle the momentum of the ongoing economic recovery by causing a large number of currently small firms to become ineligible for SBA's financial assistance and Federal contracting programs at a time when these programs could be particularly helpful to businesses in need of Federal assistance the most to survive the economic impacts of the ongoing COVID–19 pandemic. SBA is meeting the need for increased support by not lowering size standards even though analytical results suggest that some size standards might be lowered. Moreover, reducing the number of small businesses in the economy may also lead to fewer set-aside opportunities overall as it would reduce the pool of eligible firms that the Federal Government could select from when setting aside procurement opportunities for small businesses. Thus, SBA believes that lowering size standards at this time would be counter to its mission to aid, counsel, assist and protect the interests of small business concerns, preserve free competitive enterprise, and maintain and strengthen the overall economy of our Nation.

Proposed Changes to Size Standards

Based on the analytical results and SBA's policy of not lowering size standards in response to the ongoing economic impacts of the COVID–19 pandemic and Government response to mitigate the impacts discussed above, SBA proposes to increase size standards for 150 industries or subindustries (or ''exceptions'') and retain the current size standards for 282 industries. The proposed size standards are presented in Table 11, Proposed Size Standards Revisions. Also presented in Table 11 are current and calculated size standards for comparison.

TABLE 11—PROPOSED SIZE STANDARDS REVISIONS

NAICS code	NAICS industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed size standard (employees)
212113	Anthracite Mining	250	600	250
212210	Iron Ore Mining	750	1,400	1,400
212222	Silver Ore Mining	250	1,100	250
212230	Copper, Nickel, Lead, and Zinc Mining	750	1,400	1,400
212291	Uranium-Radium-Vanadium Ore Mining	250	900	250
212299	All Other Metal Ore Mining	750	1,250	1,250
212313	Crushed and Broken Granite Mining and Quarrying	750	850	850
212319	Other Crushed and Broken Stone Mining and Quarrying	500	550	550
212322	Industrial Sand Mining	500	750	750
212324	Kaolin and Ball Clay Mining	750	1,050	750
212325	Clay and Ceramic and Refractory Minerals Mining	500	650	650
212391	Potash, Soda, and Borate Mineral Mining	750	1,050	1,050
212392	Phosphate Rock Mining	1,000	1,350	1,000
212393	Other Chemical and Fertilizer Mineral Mining	500	600	600
212399	All Other Nonmetallic Mineral Mining	500	600	600
221111	Hydroelectric Power Generation	500	750	750
221112	Fossil Fuel Electric Power Generation	750	950	950
221113	Nuclear Electric Power Generation	750	1,150	1,150

[3] Source: gdp4q21_3rd.pdf (*bea.gov*), March 30, 2022. This report represents the BEA's March 30, 2022, full News Release on the U.S. Economic data for the fourth quarter of 2021 and year 2021, and associated figures and tables. Specifically included in the report are, among other things, GDP (third estimate), personal consumption expenditures (PCE), Corporate Profits, and GDP by industry for the fourth of 2021 and year 2021. Provided in the report are levels of various economic measures and percentage changes from preceding period. The report provides annual data for years 2019, 2020 and 2021, and quarterly data from the first quarter of 2018 to the fourth quarter of 2021.

TABLE 11—PROPOSED SIZE STANDARDS REVISIONS—Continued

NAICS code	NAICS industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed size standard (employees)
221114	Solar Electric Power Generation	250	700	500
221115	Wind Electric Power Generation	250	1,150	1,150
221116	Geothermal Electric Power Generation	250	1,050	250
221117	Biomass Electric Power Generation	250	550	550
221118	Other Electric Power Generation	250	650	650
221121	Electric Bulk Power Transmission and Control	500	950	950
221122	Electric Power Distribution	1,000	1,100	1,100
221210	Natural Gas Distribution	1,000	1,150	1,150
311111	Dog and Cat Food Manufacturing	1,000	1,250	1,250
311119	Other Animal Food Manufacturing	500	650	650
311211	Flour Milling	1,000	1,050	1,050
311212	Rice Milling	500	750	750
311213	Malt Manufacturing	500	900	500
311221	Wet Corn Milling	1,250	1,300	1,300
311224	Soybean and Other Oilseed Processing	1,000	1,250	1,250
311225	Fats and Oils Refining and Blending	1,000	1,100	1,100
311230	Breakfast Cereal Manufacturing	1,000	1,300	1,300
311313	Beet Sugar Manufacturing	750	1,150	1,150
311314	Cane Sugar Manufacturing	1,000	1,050	1,050
311411	Frozen Fruit, Juice, and Vegetable Manufacturing	1,000	1,100	1,100
311422	Specialty Canning	1,250	1,400	1,400
311511	Fluid Milk Manufacturing	1,000	1,150	1,150
311512	Creamery Butter Manufacturing	750	1,000	750
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	750	1,000	1,000
311611	Animal (except Poultry) Slaughtering	1,000	1,150	1,150
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour.	750	850	850
311920	Coffee and Tea Manufacturing	750	1,000	1,000
311930	Flavoring Syrup and Concentrate Manufacturing	1,000	1,100	1,100
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing	750	850	850
311942	Spice and Extract Manufacturing	500	650	650
311991	Perishable Prepared Food Manufacturing	500	700	700
311999	All Other Miscellaneous Food Manufacturing	500	700	700
312111	Soft Drink Manufacturing	1,250	1,400	1,400
312112	Bottled Water Manufacturing	1,000	1,100	1,100
312140	Distilleries	1,000	1,100	1,100
313220	Narrow Fabric Mills and Schiffli Machine Embroidery	500	550	550
313230	Nonwoven Fabric Mills	750	850	850
314999	All Other Miscellaneous Textile Product Mills	500	550	550
315190	Other Apparel Knitting Mills	750	850	850
315990	Apparel Accessories and Other Apparel Manufacturing	500	600	600
316110	Leather and Hide Tanning and Finishing	500	800	800
316992	Women's Handbag and Purse Manufacturing	750	850	750
321113	Sawmills	500	550	550
321114	Wood Preservation	500	550	550
321211	Hardwood Veneer and Plywood Manufacturing	500	600	600
322110	Pulp Mills	750	1,050	1,050
322122	Newsprint Mills	750	1,050	1,050
323111	Commercial Printing (except Screen and Books)	500	650	650
323120	Support Activities for Printing	500	550	550
324122	Asphalt Shingle and Coating Materials Manufacturing	750	1,100	1,100
324191	Petroleum Lubricating Oil and Grease Manufacturing	750	900	900
324199	All Other Petroleum and Coal Products Manufacturing	500	950	950
325110	Petrochemical Manufacturing	1,000	1,300	1,300
325120	Industrial Gas Manufacturing	1,000	1,200	1,200
325130	Synthetic Dye and Pigment Manufacturing	1,000	1,050	1,050
325220	Artificial and Synthetic Fibers and Filaments Manufacturing	1,000	1,050	1,050
325311	Nitrogenous Fertilizer Manufacturing	1,000	1,050	1,050
325312	Phosphatic Fertilizer Manufacturing	750	1,350	1,350
325314	Fertilizer (Mixing Only) Manufacturing	500	550	550
325320	Pesticide and Other Agricultural Chemical Manufacturing	1,000	1,150	1,150
325412	Pharmaceutical Preparation Manufacturing	1,250	1,300	1,300
325520	Adhesive Manufacturing	500	550	550
325611	Soap and Other Detergent Manufacturing	1,000	1,100	1,100
325612	Polish and Other Sanitation Good Manufacturing	750	900	900
325613	Surface Active Agent Manufacturing	750	1,100	1,100
325910	Printing Ink Manufacturing	500	750	750
325991	Custom Compounding of Purchased Resins	500	600	600
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	500	650	650

TABLE 11—PROPOSED SIZE STANDARDS REVISIONS—Continued

NAICS code	NAICS industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed size standard (employees)
326121	Unlaminated Plastics Profile Shape Manufacturing	500	600	600
326130	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing.	500	650	650
326220	Rubber and Plastics Hoses and Belting Manufacturing	750	800	800
326299	All Other Rubber Product Manufacturing	500	650	650
327211	Flat Glass Manufacturing	1,000	1,100	1,100
327410	Lime Manufacturing	750	1,050	1,050
327910	Abrasive Product Manufacturing	750	900	900
327992	Ground or Treated Mineral and Earth Manufacturing	500	600	600
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.	500	750	750
331313	Alumina Refining and Primary Aluminum Production	1,000	1,300	1,300
331315	Aluminum Sheet, Plate, and Foil Manufacturing	1,250	1,400	1,400
331420	Copper Rolling, Drawing, Extruding, and Alloying	1,000	1,050	1,050
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	750	900	900
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).	750	850	850
331512	Steel Investment Foundries	1,000	1,050	1,050
331513	Steel Foundries (except Investment)	500	700	700
331523	Nonferrous Metal Die-Casting Foundries	500	700	700
331524	Aluminum Foundries (except Die-Casting)	500	550	550
332112	Nonferrous Forging	750	950	950
332114	Custom Roll Forming	500	600	600
332117	Powder Metallurgy Part Manufacturing	500	550	550
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.	750	1,000	1,000
332439	Other Metal Container Manufacturing	500	600	600
332613	Spring Manufacturing	500	600	600
332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing	500	600	600
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.	500	600	600
332992	Small Arms Ammunition Manufacturing	1,250	1,300	1,300
332996	Fabricated Pipe and Pipe Fitting Manufacturing	500	550	550
333131	Mining Machinery and Equipment Manufacturing	500	900	900
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing	500	550	550
333314	Optical Instrument and Lens Manufacturing	500	600	600
333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.	750	900	900
333991	Power-Driven Hand Tool Manufacturing	500	950	950
333993	Packaging Machinery Manufacturing	500	600	600
333995	Fluid Power Cylinder and Actuator Manufacturing	750	800	800
333997	Scale and Balance Manufacturing	500	700	700
334290	Other Communications Equipment Manufacturing	750	800	800
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.	500	550	550
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	1,250	1,350	1,350
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use.	500	650	650
334514	Totalizing Fluid Meter and Counting Device Manufacturing	750	850	850
334517	Irradiation Apparatus Manufacturing	1,000	1,200	1,200
334519	Other Measuring and Controlling Device Manufacturing	500	600	600
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	500	600	600
335129	Other Lighting Equipment Manufacturing	500	550	550
335311	Power, Distribution, and Specialty Transformer Manufacturing	750	800	800
335912	Primary Battery Manufacturing	1,000	1,300	1,300
335931	Current-Carrying Wiring Device Manufacturing	500	600	600
335991	Carbon and Graphite Product Manufacturing	750	900	900
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing.	500	600	600
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing	1,000	1,050	1,050
336414	Guided Missile and Space Vehicle Manufacturing	1,250	1,300	1,300
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.	1,000	1,050	1,050
336611	Ship Building and Repairing	1,250	1,300	1,300
336991	Motorcycle, Bicycle, and Parts Manufacturing	1,000	1,050	1,050
337125	Household Furniture (except Wood and Metal) Manufacturing	750	950	950
337214	Office Furniture (except Wood) Manufacturing	1,000	1,100	1,100

TABLE 11—PROPOSED SIZE STANDARDS REVISIONS—Continued

NAICS code	NAICS industry title	Current size standard (employees)	Calculated size standard (employees)	Proposed size standard (employees)
339113	Surgical Appliance and Supplies Manufacturing	750	800	800
339910	Jewelry and Silverware Manufacturing	500	700	700
339930	Doll, Toy, and Game Manufacturing	500	700	700
339991	Gasket, Packing, and Sealing Device Manufacturing	500	600	600
339994	Broom, Brush, and Mop Manufacturing	500	750	750
339999	All Other Miscellaneous Manufacturing	500	550	550
483111	Deep Sea Freight Transportation	500	1,050	1,050
483113	Coastal and Great Lakes Freight Transportation	750	800	800
483114	Coastal and Great Lakes Passenger Transportation	500	550	550
483211	Inland Water Freight Transportation	750	1,050	1,050
483212	Inland Water Passenger Transportation	500	550	550
511199	All Other Publishers	500	550	550
512230	Music Publishers	750	900	900
512250	Record Production and Distribution	250	900	900
541715 (Exception 3)	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts.	1,250	1,300	1,300
562910 (Exception)	Environmental Remediation Services	750	1,000	1,000

As shown in the above table, SBA proposes to increase size standards for 150 industries or subindustries (''exceptions'') in those sectors, including 10 industries in NAICS Sector 21 (Mining, Quarrying, and Oil and Gas Extraction), 10 industries in NAICS Sector 22 (Utilities), 120 industries in NAICS Sector 31–33 (Manufacturing), 5 industries in Sector 48–49 (Transportation and Warehousing), 3 industries in NAICS Sector 51 (Information), and 1 subindustry (or ''exception'') each in NAICS Sector 54 (Professional, Scientific and Technical Services) and in NAICS Sector 56 (Administrative and Support, Waste Management and Remediation Services). Table 12, Summary of Proposed Size Standards Revisions by Sector, below, summarizes the proposed changes to size standards by NAICS sector.

TABLE 12—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS BY SECTOR

Sector	Sector name	Number of size standards reviewed	Number of size standards increased	Number of size standards decreased	Number of size standards maintained
21	Mining, Quarrying, and Oil and Gas Extraction	24	10	0	14
22	Utilities	11	10	0	1
31–33	Manufacturing	360	120	0	240
48–49	Transportation and Warehousing	15	5	0	10
51	Information	12	3	0	9
54	Professional, Scientific and Technical Services	7	1	0	6
Other Sectors	Agriculture, Forestry, Fishing and Hunting; Finance and Insurance; Administrative and Support, Waste Management and Remediation Services.	3	1	0	2
Total		432	150	0	282

Evaluation of Proposed Size Standards for Dominance in Field of Operation

For the vast majority of industries with proposed changes to size standards, the share of receipts of a firm at the proposed size standard levels in Table 11 (above) is, on average, 8.9%, varying from 0.2% to 38.9%. Generally, SBA believes shares below 40% would preclude dominant firms from qualifying as small and exerting control on any industry. Based on the results from the 2012 Economic Census data, only two industries had those shares above 40% at their proposed size standards levels, namely NAICS 221118 (Other Electric Power Generation) and NAICS 311213 (Malt Manufacturing). SBA proposes to increase the size standard for NAICS 221118 from 250 employees to 650 employees and to retain the current 500-employee size standard for NAICS 311213 although the industry data supported a higher 900-employee size standard.

Regarding NAICS 221118, as discussed in the Evaluation of Calculated Size Standards for Dominance in Field of Operation section above, after considering the level of Federal contracting activity and the Federal contracting factor for this industry, SBA is proposing to adopt the calculated size standard of 650 employees. Based on the Economic Census data, SBA estimated the share of industry receipts of a firm with 650 employees to be above 40%, suggesting that a dominant firm may qualify as small at the proposed size standard level. However, considering the limitation of the Economic Census data in characterizing the firms that participate in the Federal market in NAICS 221118, SBA estimates, using the data from FPDS–NG for fiscal years 2018–2020, the share of receipts of a firm at the proposed size standard of 650 employees to be 0.07%, which would effectively preclude a firm of this size from being dominant and exerting control over the industry.

Regarding NAICS 311213, SBA evaluated the industry's distribution of firms by employee size to determine whether any potentially dominant firms

existed near the proposed size standard level. SBA identified only 1 firm close to or around the proposed 500-employee size standard and determined that this firm is not dominant in its field of operation because its share of total industry receipts is only 26.5%, well below the 40% threshold that SBA considers for adjusting calculated or proposed size standards to exclude dominant firms. Thus, SBA determined that the market shares under the proposed size standards revisions for all industries effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries. In the Request for Comments section below, SBA seeks comments on its proposed revisions to size standards, including its proposal to, based on the results from dominance analysis, retain the current size standards in certain industries for which analytical results supported higher size standards.

Alternatives Considered

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs and to review every five years all size standards and make necessary adjustments to reflect the current industry structure and Federal market conditions. Other than varying the levels of size standards by industry and changing the measures of size standards (*e.g.,* using annual receipts vs. the number of employees), no practical alternatives exist to the systems of numerical size standards.

In response to the unprecedented economic impacts of the ongoing COVID–19 pandemic on small businesses and Government response, SBA is proposing to increase size standards where the data suggested increases are warranted, and to retain, in response to the COVID–19 pandemic and resultant economic impacts on small businesses, all current size standards where the data suggested lowering is appropriate. SBA is also retaining all current size standards where the data suggested no changes to the current size standards.

Nonetheless, SBA considered two other alternatives. Alternative Option One was to propose changes exactly as suggested by the analytical results, including the evaluation of dominance in field of operation. In other words, Alternative Option One would entail increasing size standards for 150 industries or subindustries (''exceptions''), decreasing for 216 industries, and retaining at their current levels for 66 industries. Alternative Option Two was to retain all current size standards, even though the analytical results suggested that changes are warranted.

SBA did not propose Alternative Option One, because it would cause, if adopted, a substantial number of currently small businesses to lose their small business status and hence to lose their eligibility for Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. Lowering size standards in the current environment would also run counter to various measures the Federal Government has implemented to help small businesses and the overall economy recover from the ongoing COVID–19 pandemic. Considering the impacts of the Great Recession and Government actions that followed to support small businesses and the overall economy, SBA also adopted a general policy of not decreasing size standards during the first five-year review of size standards, even though the data supported decreases.

As part of Alternative Option One, SBA also considered increasing 150 size standards as suggested by the analytical results and mitigating the impact of decreases to 216 size standards by adjusting the calculated size standards to minimize the impact on small business access to Federal contracts and SBA's loans. However, considering the impact of the ongoing COVID–19 pandemic on businesses and the overall economy, in the Regulatory Impact Analysis section (below), SBA presents the impacts of adopting the analytical results without adjustment to Alternative Option One and proposes to retain all size standards for which the evaluation of principal industry and Federal contracting factors suggested reductions, and to adopt only the increases based on the analytical results.

Under Alternative Option Two, given the current COVID–19 pandemic and resultant uncertainty, SBA considered retaining all size standards at their current levels even though the analytical results supported changes. Under this option, as the current situation evolves, SBA would be able to assess new data available on economic indicators, Federal procurement, and SBA loans before adopting changes to size standards. However, SBA is not adopting Alternative Option Two because the results discussed in the Regulatory Impact Analysis section show that retaining all size standards at their current levels would cause the otherwise qualified small businesses to forgo various small business benefits becoming available to them under the SBA's proposal of increasing 150 and retaining 282 size standards. Such benefits would include access to Federal contracts set aside for small businesses and capital through SBA's loan and SBIC programs, and exemptions from paperwork and other compliance requirements.

Federal Procurement Size Standard for Nonmanufacturers

Small business concerns must meet certain requirements when they offer to the Government an end item they did not manufacture, process, or produce. These requirements are known as the nonmanufacturer rule. The nonmanufacturer rule is codified in SBA's small business size regulations at 13 CFR 121.406.

To qualify for a Federal Government supply contract set aside for small business, a nonmanufacturer must have an average of 500 or fewer employees over the past 12 months, be primarily engaged in the wholesale or retail trade activities, and supply the product of a U.S. small manufacturer.[4] Under SBA's regulation, NAICS codes in Wholesale Trade (Sector 42) and Retail Trade (Sector 44–45) sectors cannot be used for classifying Federal Government acquisitions of supplies or products. Instead, the applicable manufacturing NAICS code associated with manufacturing, production, or processing of the product being procured must be used. For other purposes, such as SBA's financial assistance programs, SBA uses industry-based size standards in Sectors 42 and 44–45 to determine eligibility of applicants in those sectors. In effect, the nonmanufacturer rule has resulted in two sets of size standards for industries in NAICS Sectors 42 and 44–45—industry-based size standards for SBA's financial assistance and other Federal non-procurement programs and 500-employee size standard for Federal procurement programs under the nonmanufacturer rule.

SBA believes that, for purposes of determining eligibility for Federal set-aside procurement opportunities, using a single size standard is more appropriate than separate industry-based size standards for Wholesale or Retail Trade firms because firms in these sectors generally offer multiple products from different industries, and therefore identify themselves with multiple NAICS codes across a wide

[4] On November 2, 2021, SBA issued a proposed rule implementing section 863 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, which changed the averaging period for calculating employees for SBA's employee-based size standards from 12 months to 24 months (86 FR 60396 (November 2, 2021)).

spectrum of products and supplies. Thus, different size standards for individual industries in Wholesale Trade and Retail Trade under the nonmanufacturer rule would further complicate the contracting process, which already entails the decision to establish an applicable manufacturing NAICS code, along with its size standard, associated with manufacturing, production, or processing of the product being procured. Businesses and contracting officers would likely find it confusing if the principal NAICS code for a solicitation could vary based on factors other than the requirements prescribed at 13 CFR 121.402(b), which requires contracting officers to categorize solicitations by selecting the single NAICS code that best describes the principal purpose of the product being acquired.

While the nonmanufacturer rule applies to firms primarily engaged in business activities within Sectors 42 and 44–45, SBA did not review the 500-employee nonmanufacturer size standard in a recently published proposed rule, which reviewed industry-based size standards in Sectors 42 and 44–45 (86 FR 28012 (May 5, 2021)). In that proposed rule, SBA proposed to retain the nonmanufacturer size standard at 500 employees. Accordingly, in this proposed rule, SBA is examining whether the current 500-employee size standard for nonmanufacturers is appropriate. SBA received a total of nine comments to its May 5, 2021, proposed rule, one of which was submitted by Members of the U.S. House of Representatives Subcommittee on Contracting and Infrastructure requesting that SBA evaluate the current 500-employee size standard under the nonmanufacturer rule. Specifically, they expressed concern that because the level of revenues is immaterial to the determination of size under the 500-employee nonmanufacturer size standard, the current rule may allow a firm with billions of dollars in revenues to qualify as a small business. They suggested that SBA conduct an assessment of the nonmanufacturing industry based on revenue and/or other factors to determine what may be considered small for the size of a business qualifying as a nonmanufacturer.

In response to the Congressional comment, SBA analyzed the size standard applicable to nonmanufacturers under the nonmanufacturer rule by comparing the employee-based average industry factors (*i.e.,* average firm size, average assets, industry concentration, and distribution of firms by size) of all Wholesale Trade and Retail Trade industries combined with those of the manufacturing industries using the SBA's ''Size Standards Methodology'' for employee-based size standards. SBA believes this approach is logical because Wholesale Trade and Retail Trade firms have to compete with manufacturers for supply or product contracts set aside for small businesses. Since NAICS codes in the Wholesale Trade and Retail Trade sectors cannot be used to classify Government acquisitions for supplies, and only the applicable manufacturing code can be applied (13 CFR 121.402(b)(2)), the Federal contracting factor is not considered in evaluating industry-based size standards in these sectors.

The analytical results, presented in Table 13, Size Standards Supported by Each Factor for Nonmanufacturers (Employees), below, support raising the size standard for nonmanufacturers from 500 employees to 550 employees. However, to maintain continuity with general public familiarity with and long acceptability of the 500-employee size standard, SBA is proposing to maintain the current 500-employee size standard which, in practice, continues to work well for the majority of firms to which it applies. Moreover, the 500-employee size standard is also the most common size standard among the manufacturing industries. It is a common practice for manufacturers to bid on supply contracts where they do not propose to produce the particular product to be supplied with their own labor force, notwithstanding that they are capable of doing so. Such manufacturers must qualify as small businesses under the nonmanufacturer rule. Therefore, in an effort to minimize the adverse consequences upon such concerns and promote fair competition among manufacturers and nonmanufacturers, SBA is proposing to adopt the predominant 500-employee size standard for manufacturers as the size standard for nonmanufacturers who desire to bid on Federal supply contracts.

TABLE 13—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR NONMANUFACTURERS (EMPLOYEES)

[Upper value = calculated factor, lower value = size standard supported]

(1) NAICS code/NAICS sector title	(2) Type	(3) Simple average firm size (employees)	(4) Weighted average firm size (employees)	(5) Average assets size ($ million)	(6) Four-firm ratio (%)	(7) Gini coefficient	(8) Federal contract factor (%)	(9) Calculated size standard	(10) Proposed size standard
Wholesale Trade (Sector 42) & Retail Trade (Sector 44–45).	Factor	21.1	63.3	$4.1	4.2	0.828	.....	.....	.....
	Size Std ...	450	400	400	250	1,050	.....	550	500

SBA also evaluated the size standard for nonmanufacturers by comparing the average receipts-based industry factors of all Wholesale Trade and Retail Trade industries combined with those of receipts-based industries to calculate a receipt-based size standard for nonmanufacturers. SBA calculated a receipts-based size standard for all industries in Wholesale Trade and Retail Trade combined to be $27.0 million. Although SBA has evaluated a receipt-based size standard for nonmanufacturers, SBA believes that adopting a receipts-based size standard instead of an employee-based size standard would be inappropriate for several reasons. Specifically, the Small Business Act provides that the size of manufacturing firms be based on the number of employees and that the size of services firms be based on average annual receipts. Adopting a receipts-based size standard under the nonmanufacturer rule, which currently applies only to Government acquisitions for supplies, would cause many manufacturing concerns supplying products to the Government as nonmanufacturers under the nonmanufacturer rule to be evaluated under a receipts-based size standard. This would be contrary to the requirements of the Small Business Act.

Moreover, based on data from the 2012 Economic Census, SBA determined that under the calculated $27.0 million receipt-based size standard, a significant number of firms would lose their small business status that they currently have under the 500-employee nonmanufacturer size

standard. SBA estimates that only 95.3% of the 975,625 firms in the Wholesale Trade and Retail Trade sectors would qualify as small under the $27.0 million receipts-based size standard whereas 99.1% of firms qualify as small under the current 500-employee nonmanufacturer size standard. Even if SBA were to adopt the maximum receipts-based size standard of $41.5 million as the size standard for nonmanufacturers, only 96.6% of firms in the Wholesale Trade and Retail Trade sectors would qualify as small. Thus, SBA believes that adopting a receipts-based size standard could cause thousands of firms to lose their small business status and may likely lead to fewer set-aside opportunities for all small businesses since it would reduce the pool of eligible small firms that the Federal Government could select from when setting aside procurement of supplies for small businesses.

Regarding the concern that firms with large revenues are eligible to receive small business set-aside contracts under the nonmanufacturer rule, SBA notes that revenues are not germane to the calculation of size for firms subject to SBA's employee-based size standards. Likewise, the number of employees is not germane to the calculation of size for firms subject to SBA's receipts-based size standards. Thus, firms under any size standard may argue that the size threshold for their industry is unfair because it may allow large firms under the non-germane measure of size to compete as a small business. However, SBA's selection of size measure is not discretionary for most industries. As stated previously, the Small Business Act provides that the size of manufacturing firms be based on the number of employees and that the size of services firms be based on average annual receipts. The choice of a size measure for an industry also depends on which measure that best represents the magnitude of operations of a business concern. That is, the measure should account for the level of real business activity generated by firms in the industry. Generally, SBA prefers employees as a measure of size in industries that are highly capital intensive, horizontally structured, or have low operational costs relative to receipts. When applied to the subset of firms participating in the Federal contracting market as nonmanufacturers, these considerations, when taken together, support an employee-based size standard for nonmanufacturers. However, although SBA proposes to retain the current 500-employee size standard for nonmanufacturers participating in the Federal contracting market, in the Request for Comments section below, SBA requests comments on the appropriateness of the current 500-employee size standard and suggestions for alternative measures to an employee-based size standard that would be more appropriate for size determination of nonmanufacturers.

Request for Comments

SBA invites public comments on proposed size standards in this proposed rule, especially focusing on the following issues:

1. SBA seeks feedback on whether SBA's proposal to increase 150 employee-based size standards and retain 282 employee-based size standards is appropriate given the results from the latest available industry and Federal contracting data of each industry and subindustry (''exception'') reviewed in this proposed rule, along with ongoing uncertainty and impact on the economic activity due to the COVID–19 pandemic. SBA also seeks suggestions, along with supporting facts and analysis, for alternative size standards, if they would be more appropriate than the proposed size standards in this rule.

2. SBA seeks comments on whether SBA should retain size standards in view of the COVID–19 pandemic and its adverse impacts on small businesses as well as on the overall economy when the analytical results suggest they could be lowered. SBA believes that lowering size standards under the current economic environment would run counter to what Congress and the Federal Government are doing to aid and provide relief to the Nation's small businesses impacted by the COVID–19 pandemic.

3. SBA seeks feedback on whether SBA's proposal to maintain the current 500-employee size standard under the nonmanufacturer rule is appropriate given the results from the latest available industry data. SBA also seeks suggestions, along with supporting facts and analysis, on alternative size standards, such as annual receipts or a different level of employees, if they would be more appropriate than the current and proposed 500-employee size standard for nonmanufacturers. SBA also invites input on whether the Agency should allow the use of industry-based size standards in Wholesale Trade and Retail Trade sectors to define whether a wholesaler or retailer is a small business concern for the acquisition of supplies.

4. In calculating the overall industry size standard, SBA has assigned equal weight to each of the five primary factors in all industries and subindustries covered by this proposed rule. SBA seeks feedback on whether it should assign equal weight to each factor or on whether it should give more weight to one or more factors for certain industries or subindustries. Recommendations to weigh some factors differently than others should include suggested weights for each factor along with supporting facts and analysis.

5. SBA seeks comments on the appropriateness of its proposal to, based on the results from dominance analysis, retain current size standards in certain industries for which analytical results supported increases. For those industries, based on the data from the 2012 Economic Census, the share of industry receipts of a firm at the calculated size standard level was above the 40% threshold that SBA generally uses in determining whether the proposed or calculated size standard for the industry would include a dominant or potentially dominant firm qualifying as small. SBA invites industry analyses or suggestions for sources of more recent data that would show changes in industry structure, including a firm's share of industry receipts at various size thresholds.

6. Line Haul Railroads (NAICS 482111) and Short Line Railroads (NAICS 482112) are not covered by the Economic Census. Based on the evaluation of economic characteristics of these industries using the data from the Railroad Retirement Board (RRB) and American Short Line and Regional Railroad Association (ASLRRA), SBA is proposing to retain the current 1.500-employee size standard for both NAICS 482111 and 482112. SBA invites comments, along with supporting information, on this proposal as well as sources of data that more clearly define the economic characteristics of these industries.

7. The Economic Census tabulation does not provide the data to evaluate the size standard for the Information Technology Value Added Resellers (ITVAR) exception to NAICS 541519 (Other Computer Related Services). Based on the analysis of the FPDS–NG and SAM data, SBA is proposing to retain the current 150-employee size standard for the ITVAR exception. SBA invites comments, along with supporting information, on this proposal as well as suggestions for alternative sources of data that more clearly define the economic characteristics of ITVARs.

8. Finally, SBA seeks comments on data sources it used to examine industry

and Federal market conditions, as well as suggestions on relevant alternative data sources that the Agency should evaluate in reviewing or modifying size standards for industries or subindustries covered by this proposed rule.

Public comments on the above issues are very valuable to SBA for validating its proposed size standards revisions in this proposed rule. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to the application of size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts in their industries, the size of businesses that can undertake the contracts, start-up costs, equipment, and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Order 12866, the Congressional Review Act (5 U.S.C. 801–808), the Regulatory Flexibility Act (5 U.S.C. 601–612), Executive Orders 13563, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this proposed rule, including: (1) A statement of the need for the proposed action, (2) An examination of alternative approaches, and (3) An evaluation of the benefits and costs—both quantitative and qualitative—of the proposed action and the alternatives considered.

Regulatory Impact Analysis

1. What is the need for this regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development and counseling, and disaster assistance programs. To determine the actual intended beneficiaries of these programs, SBA establishes numerical size standards by industry to identify businesses that are deemed small. Under the Small Business Act (Act) (15 U.S.C. 632(a)), SBA's Administrator is responsible for establishing small business size definitions (or ''size standards'') and ensuring that such definitions vary from industry to industry to reflect differences among various industries. The Jobs Act requires SBA to review every five years all size standards and make necessary adjustments to reflect current industry and Federal market conditions. This proposed rule is part of the second five-year review of size standards in accordance with the Jobs Act. The first five-year review of size standards was completed in early 2016. Such periodic reviews of size standards provide SBA with an opportunity to incorporate ongoing changes to industry structure and Federal market environment into size standards and to evaluate the impacts of prior revisions to size standards on small businesses. This also provides SBA with an opportunity to seek and incorporate public input to the size standards review and analysis. SBA believes that proposed size standards revisions for industries being reviewed in this rule will make size standards more reflective of the current economic characteristics of businesses in those industries and the latest trends in Federal marketplace.

The proposed revisions to the existing employee-based size standards for 150 industries or subindustries (or ''exceptions''), including 120 industries in Sector 31–33 and 30 industries and subindustries in other sectors are consistent with SBA's statutory mandates to help small businesses grow and create jobs and to review and adjust size standards every five years. This regulatory action promotes the Administration's goals and objectives as well as meets the SBA's statutory responsibility. One of SBA's goals in support of promoting the Administration's objectives is to help small businesses succeed through fair and equitable access to capital and credit, Federal Government contracts and purchases, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries are able to access Federal small business programs that are designed to assist them to become competitive and create jobs.

2. What are the potential benefits and costs of this regulatory action?

OMB directs agencies to establish an appropriate baseline to evaluate any benefits, costs, or transfer impacts of regulatory actions and alternative approaches considered. The baseline should represent the agency's best assessment of what the world would look like absent the regulatory action. For a new regulatory action promulgating modifications to an existing regulation (such as modifying the existing size standards), a baseline assuming no change to the regulation (*i.e.,* making no changes to current size standards) generally provides an appropriate benchmark for evaluating benefits, costs, or transfer impacts of proposed regulatory changes and their alternatives.

Proposed Changes to Size Standards

Based on the results from the analyses of the latest industry and Federal contracting data, as well as consideration of impact of size standards changes on small businesses and significant adverse impacts of the COVID–19 emergency on small businesses and the overall economic activity, of the total of 432 industries and subindustries (or ''exceptions'') in Sector 31–33 and other sectors that have employee-based size standards, SBA proposes to increase size standards for 150 industries or subindustries (''exceptions'') and maintain current size standards for the remaining 282 industries or subindustries (''exceptions'').

The Baseline

For purposes of this regulatory action, the baseline represents maintaining the ''status quo,'' *i.e.,* making no changes to the current size standards. Using the number of small businesses and levels of benefits (such as set-aside contracts, SBA's loans, disaster assistance, etc.) they receive under the current size standards as a baseline, one can examine the potential benefits, costs, and transfer impacts of proposed changes to size standards on small businesses and on the overall economy.

Based on the 2012 Economic Census (the latest available when this proposed rule was prepared), of a total of about 337,524 businesses in industries in Sectors 31–33 and other sectors with employee-based size standards, 96.9% are considered small under the current size standards. That percentage varies from 86.1% in NAICS Sector 22 to 99.8% in Sector 11. Based on the data from FPDS–NG for fiscal years 2018–2020, about 43,168 unique firms in those industries received at least one Federal contract during that period, of which 83.6% were small under the current size standards. A total of $231 billion in average annual contract dollars were awarded to businesses in those industries during the period of evaluation, and 18.6% of the dollars awarded went to small businesses. For industries and subindustries (''exceptions'') reviewed in this proposed rule, providing contract

dollars to small business through set-asides is quite important. From the total small business contract dollars awarded during the period considered, 47.1% were awarded through various small business set-aside programs and 52.9% were awarded through non-set aside contracts. Based on the SBA's internal data on its loan programs for fiscal years 2018–2020, small businesses in those industries received, on an annual basis, a total of 4,997 7(a) and 504 loans in that period, totaling about $3.1 billion, of which 75.7% was issued through the 7(a) program and 24.3% was issued through the 504/CDC program. During fiscal years 2018–2020, small businesses in those industries also received 243 loans through the SBA's Economic Injury Disaster Loan (EIDL) program, totaling about $10.7 million on an annual basis.[5] Table 14, Baseline for All Industries, below, provides these baseline results by Manufacturing (Sector 31–33) and all other sectors.

TABLE 14—BASELINE FOR ALL INDUSTRIES UNDER CURRENT SIZE STANDARDS

	Sector 31–33	Other sectors	Total
Number of industries or subindustries (''exceptions'') reviewed in this proposed rule	360	72	432
Total firms in industries reviewed in this proposed rule (2012 Economic Census) [1]	266,774	70,750	337,524
Total small firms in those industries under current size standards (2012 Economic Census) [1]	258,290	68,679	326,969
Small firms as % of total firms (2012 Economic Census) [1]	96.8%	97.1%	96.9%
Total contract dollars ($ million) (FPDS–NG FY 2018–2020)	$181,818	$49,198	$231,016
Total small business contract dollars under current standards ($ million) (FPDS–NG FY2016–2018)	$28,713	$14,326	$43,039
Small business dollars as % of total dollars (FPDS–NG FY 2018–2020)	15.8%	29.1%	18.6%
Total number of unique firms getting Federal contracts (FPDS–NG FY 2018–2020)	34,209	8,959	43,168
Total number of unique small firms getting small business contracts (FPDS–NG FY 2018–2020)	29,037	7,065	36,102
Small firms getting Federal contracts as % of total firms getting Federal contracts (FPDS–NG FY 2018–2020)	84.9%	78.9%	83.6%
Number of 7(a) and 504/CDC loans (FY 2018–2020)	4,484	513	4,997
Amount of 7(a) and 504 loans ($ million) (FY 2018–2020)	$2,863	$235	$3,098
Number of EIDL loans (FY 2018–2020) [2]	202	41	243
Amount of EIDL loans ($million) (FY 2018–2020) [2]	$8.3	$2.4	$10.7

[1] These figures do not include two 6-digit NAICS industries and 5 subindustries or ''exceptions'' for which Economic Census data is not available.

[2] Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Increases to Size Standards

As stated above, of 432 employee-based size standards in Sectors 31–33 and other sectors that are reviewed in this rule, based on the results from analyses of latest industry and Federal market data as well as impacts of size standards changes on small businesses and considerations for the impacts from the COVID–19 pandemic, SBA proposes to increase 150 size standards, including 120 in Sector 31–33 and 30 in other sectors. Below are descriptions of the benefits, costs, and transfer impacts of these proposed increases to size standards.

Benefits of Increases to Size Standards

The most significant benefit to businesses from proposed increases to size standards is gaining eligibility for Federal small business assistance programs or retaining that eligibility for a longer period. These include SBA's business loan programs, EIDL program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a)/Business Development (BD) Program, the Small Disadvantaged Businesses (SDB) Program, the Historically Underutilized Business Zones (HUBZone) Program, the Women-Owned Small Businesses (WOSB) Program, the Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) Program, and the Service-Disabled Veteran-Owned Small Businesses (SDVOSB) Program.

Besides set-aside contracting and financial assistance discussed above, small businesses also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs. However, SBA has no data to estimate the number of small businesses receiving such benefits.

Based on the 2012 Economic Census (latest available when this proposed rule was prepared), SBA estimates that in 150 industries or subindustries (''exceptions'') in NAICS Sector 31–33 and other sectors with employee-based size standards for which it has proposed to increase size standards, 248 firms (see Table 15), not small under the current size standards, will become small under the proposed size standards increases and therefore become eligible for these programs. That represents about 0.3% of all firms classified as small under the current size standards in industries for which SBA has proposed increasing size standards. If adopted, proposed size standards would result in an increase to the small business share of total receipts in those industries from 26.0% to 26.5%.

With more businesses qualifying as small under the proposed increases to size standards, Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

[5] The analysis of the disaster loan data excludes physical disaster loans that are available to anyone regardless of size, disaster loans issued to nonprofit entities, and EIDLs issued under the COVID–19 relief program. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances. Thus, the disaster loan analysis presented here pertains to the regular EIDL loans only.

SBA estimates impacts of size standards changes on EIDL loans by calculating the ratio of businesses getting EIDL loans to total small businesses (based on the Economic Census data) and multiplying it by the number of impacted small firms. Due to data limitations, for FY 2019–20, some loans with both physical and EIDL loan components could not be broken into the physical and EIDL loan amounts. In such cases, SBA applied the ratio of EIDL amount to total (physical loan + EIDL) amount using FY 2016–18 data to the FY 2019–20 data to obtain the amount attributable to the EIDL loans.

Growing small businesses that are close to exceeding the current size standards will be able to retain their small business status for a longer period under the higher size standards, thereby enabling them to continue to benefit from the small business programs.

Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that 111 firms that are active in Federal contracting in those industries would gain small business status under the proposed size standards. Based on the same data, SBA estimates that those newly-qualified small businesses under the proposed increases to size standards, if adopted, could receive Federal small business contracts totaling $253 million annually. That represents a 2.4% increase to small business contract dollars from the baseline. Table 15, Impacts of Proposed Increases to Size Standards, provides these results by NAICS sector.

The added competition from more businesses qualifying as small can result in lower prices to the Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Costs could be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the proposed increases to size standards, HUBZone firms might receive more set-aside contracts and fewer full and open contracts, thereby resulting in some cost savings to agencies. SBA cannot estimate such cost savings as it is impossible to determine the number and value of unrestricted contracts to be otherwise awarded to HUBZone firms will be awarded as set-asides. However, such cost savings are likely to be relatively small as only a small fraction of full and open contracts are awarded to HUBZone businesses.

As shown in Table 15, under SBA's 7(a) and 504 loan programs, based on the data for fiscal years 2018–2020, SBA estimates up to about 9 SBA 7(a) and 504 loans totaling about $5.6 million could be made to these newly-qualified small businesses in those industries under the proposed size standards. That represents a 0.7% increase to the loan amount compared to the baseline.

TABLE 15—IMPACTS OF PROPOSED INCREASES TO SIZE STANDARDS

	Sector 31–33	Other sectors	Total
Number of industries or subindustries ("exceptions") with proposed increases to size standards	120	30	150
Total current small businesses in industries with proposed increases to size standards (2012 Economic Census) [1]	68,925	5,914	74,839
Additional firms qualifying as small under proposed increases to size standards (2012 Economic Census) [1]	194	54	248
% of additional firms qualifying as small relative to current small businesses in industries with proposed increases to size standards (2012 Economic Census) [1]	0.3%	0.9%	0.3%
Number of current unique small firms getting small business contracts in industries with proposed increases to size standards (FPDS–NG FY 2018–2020) [2]	13,759	815	14,574
Additional number of small business firms gaining small business status under proposed increases to size standards (FPDS–NG FY 2018–2020)	87	24	111
% increase to number of small businesses relative to current unique small firms getting small business contracts in industries with proposed increases to size standards (FPDS–NG FY 2018–2020)	0.6%	2.9%	0.8%
Total small business contract dollars under current size standards in industries or subindustries with proposed increases to size standards ($ million) (FPDS–NG FY 2018–2020)	$9,465	$1,243	$10,708
Estimated small business dollars available to newly-qualified small firms ($ million) (FPDS–NG FY 2018–2020) [3]	$73	$180	$253
% increase to small business dollars relative to total small business contract dollars under current standards in industries with proposed increases to size standards	0.8%	14.6%	2.4%
Total number of 7(a) and 504 loans to small business in industries with proposed increases to size standards (FY 2018–2020)	1,144	62	1,206
Total amount of 7(a) and 504 loans to small businesses in industries with proposed increases to size standards ($ million) (FY 2018–2020)	$741	$350	$776
Estimated number of 7(a) and 504 loans to newly-qualified small firms	5	4	9
Estimated 7(a) and 504 loan amount to newly-qualified small firms ($ million)	$3.2	$2.4	$5.6
% increase to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries with proposed increases to size standards	0.4%	7.0%	0.7%
Total number of EIDL loans to small businesses in industries with proposed increases to size standards (FY 2018–2020) [4]	67	12	79
Total amount of EIDL loans to small businesses in industries with proposed increases to size standards ($ million) (FY 2018–2020) [4]	$2.9	$0.8	$3.7
Estimated no. of EIDL loans to newly-qualified small firms [4]	3	4	7
Estimated EIDL loan amount to newly-qualified small firms ($ million) [4]	$0.1	$0.2	$0.3
% increase to EIDL loan amount relative to the total amount of disaster loans in industries with proposed increases to size standards [4]	4.5%	36.3%	9.1%

[1] These figures do not include two 6-digit NAICS industries and 5 subindustries or "exceptions" for which Economic Census data is not available.

[2] Total impact represents total unique number of firms impacted to avoid double counting as some firms participate in more than one industry.

[3] Additional dollars are calculated multiplying average small business dollars obligated per unique firm times change in number of firms. Numbers of firms are calculated using the SBA's current size standards, not the contracting officer's size designation.

[4] Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Newly-qualified small businesses will also benefit from the SBA's EIDL program. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a precise estimate of this impact. However, based on the disaster loan program data for fiscal years 2018–2020, SBA estimates that, on an annual basis, the newly-defined small businesses under the proposed increases to size standards, if adopted, could receive seven disaster loans, totaling about $0.3 million. Additionally, the newly-defined small businesses would also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government, but SBA has no data to quantify this impact.

Costs of Increases to Size Standards

Besides having to register in the System of Award Management (SAM) to be eligible to participate in Federal contracting and update the SAM profile annually, small businesses incur no direct costs to gain or retain their small business status as a result of proposed increases to size standards. All businesses willing to do business with the Federal Government must register in SAM and update their SAM profiles annually, regardless of their size status. SBA believes that a vast majority of impacted businesses that are willing to participate in Federal contracting are already registered in SAM and update their SAM profiles annually. More importantly, this proposed rule does not establish the new size standards for the very first time; rather it intends to modify the existing size standards in accordance with a statutory requirement, the latest data, and other relevant factors.

To the extent that the newly-qualified small businesses could become active in Federal procurement, the proposed increases to size standards, if adopted, may entail some additional administrative costs to the Federal Government as a result of more businesses qualifying as small for Federal small business programs. For example, there will be more firms seeking SBA's loans, more firms eligible for enrollment in the Dynamic Small Business Search (DSBS) database or in *certify.sba.gov,* more firms seeking certification as 8(a)/BD or HUBZone firms or qualifying for small business, SDB, WOSB, EDWOSB, and SDVOSB status, and more firms applying for SBA's 8(a)/BD mentor-protégé programs. With an expanded pool of small businesses, it is likely that Federal agencies would set aside more contracts for small businesses under the proposed increases to size standards. One may surmise that this might result in a higher number of small business size protests and additional processing costs to agencies. However, the SBA's historical data on the number of size protests processed shows that the number of size protests decreased following the increases to size standards as part of the first five-year review of size standards. Specifically, on an annual basis, the number of size protests fell from about 600 during fiscal years 2011–2013 (review of most receipts-based size standards was completed by the end of FY 2013), as compared to about 500 during fiscal years 2018–2020 when size standard increases were in effect. That represents a 17% decline.

Among those newly-defined small businesses seeking SBA's loans, there could be some additional costs associated with verification of their small business status. However, small business lenders have an option of using the tangible net worth and net income based alternative size standard instead of using the industry-based size standards to establish eligibility for SBA's loans. For these reasons, SBA believes that these added administrative costs will be minor because necessary mechanisms are already in place to handle these added requirements.

Additionally, some Federal contracts may possibly have higher costs. With a greater number of businesses defined as small due to the proposed increases to size standards, Federal agencies may choose to set aside more contracts for competition among small businesses only instead of using a full and open competition. The movement of contracts from unrestricted competition to small business set-aside contracts might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers under the proposed size standards. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses under the 8(a)/BD, SDB, HUBZone, WOSB, EDWOSB, or SDVOSB programs only if awards are expected to be made at fair and reasonable prices.

Costs may also be higher when full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences. However, with agencies likely setting aside more contracts for small businesses in response to the availability of a larger pool of small businesses under the proposed increases to size standards, HUBZone firms might end up getting fewer full and open contracts, thereby resulting in some cost savings to agencies. However, such cost savings are likely to be minimal as only a small fraction of unrestricted contracts are awarded to HUBZone businesses.

Transfer Impacts of Increases to Size Standards

The proposed increases to 150 size standards, if adopted, may result in some redistribution of Federal contracts between the newly-qualified small businesses and large businesses and between the newly-qualified small businesses and small businesses under the current standards. However, it would have no impact on the overall economic activity since total Federal contract dollars available for businesses to compete for will not change with changes to size standards. While SBA cannot quantify with certainty the actual outcome of the gains and losses from the redistribution contracts among different groups of businesses, it can identify several probable impacts in qualitative terms. With the availability of a larger pool of small businesses under the proposed increases to size standards, some unrestricted Federal contracts which would otherwise be awarded to large businesses may be set aside for small businesses. As a result, large businesses may lose some Federal contracting opportunities. Similarly, some small businesses under the current size standards may obtain fewer set aside contracts due to the increased competition from larger businesses qualifying as small under the proposed increases to size standards. This impact may be offset by a greater number of procurements being set aside for all small businesses. With larger businesses qualifying as small under the higher size standards, smaller small businesses could face some disadvantage in competing for set aside contracts against their larger counterparts. However, SBA cannot quantify these impacts.

3. What alternatives have been considered?

Under OMB Circular A–4, SBA is required to consider regulatory alternatives to the proposed changes in the proposed rule. In this section, SBA describes and analyzes two such alternatives to the proposed rule. Alternative Option One, a more stringent alternative to the SBA's proposal, would propose adopting size standards based solely on the analytical results. In other words, the size standards of 150 industries or subindustries (or ''exceptions'') for which the analytical results, as

presented in Table 4 (above), suggested raising size standards would be raised. However, the size standards of 216 industries for which the analytical results suggest lowering size standards would be lowered. For the 66 remaining industries or subindustries for which the results suggested no changes, size standards would be maintained at their current levels. Alternative Option Two would propose retaining existing size standards for all industries, given the uncertainty generated by the ongoing COVID–19 pandemic. Below, SBA discusses benefits, costs and net impacts of each option.

Alternative Option One: Adopting All Calculated Size Standards

As discussed in the Alternatives Considered section of this proposed rule, Alternative Option One would cause a substantial number of currently small businesses to lose their small business status and hence to lose their access to Federal small business assistance, especially small business set-aside contracts and SBA's financial assistance in some cases. These consequences could be mitigated. For example, in response to the 2008 Financial Crisis and economic conditions that followed, SBA adopted a general policy in the first five-year review of size standards to not lower any size standard (except to exclude one or more dominant firms) even when the analytical results suggested the size standard should be lowered. Currently, because of the economic challenges presented by the COVID–19 pandemic and the measures taken to protect public health, SBA has decided to propose the same general policy of not lowering size standards in the ongoing second five-year review of size standards review as well.

The primary benefits of adopting Alternative Option One would include: (1) SBA's procurement, management, technical and financial assistance resources would be targeted to their intended beneficiaries according to the analytical results; (2) Adopting the size standards based on the analytical results would also promote consistency and predictability of SBA's implementation of its authority to set or adjust size standards; and (3) Firms who would remain small would face less competition from larger small firms for the remaining set aside opportunities. Specifically, SBA seeks comment on the impact of adopting the size standard based on the analytical results.

As explained in the ''Size Standards Methodology'' white paper, in addition to adopting all results of the analysis of the primary factors, SBA evaluates other relevant factors as needed such as the impact of the reductions or increases of size standards on the distribution of contracts awarded to small businesses, and may adopt different results with the intention of mitigating potential negative impacts.

We have already discussed the benefits, costs and transfer impacts of increasing 150 and retaining 282 size standards. Below we discuss the benefits, costs, and transfer impacts of decreasing 216 size standards based on the analytical results.

Benefits of Decreases to Size Standards

The most significant benefit to businesses from decreases to size standards when SBA's analysis suggests such decreases is to ensure that size standards are more reflective of latest industry structure and Federal market trends and that Federal small business assistance is more effectively targeted to its intended beneficiaries. These include SBA's loan programs, disaster program, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted, set-aside opportunities for small businesses under SBA's business development programs, such as small business, 8(a)/BD, HUBZone, WOSB, EDWOSB, and SDVOSB programs. The adoption of smaller size standards when the results support them diminishes the risk of awarding contracts to firms which are not small anymore.

Decreasing size standards may reduce the administrative costs of the Government, because the risk of awarding set aside contracts to other than small businesses may diminish when the size standards reflect better the structure of the market. This may also reduce the risks of providing SBA's loans to firms that are not needing them the most or of allowing firms that are not eligible for small business set-asides to participate on the SBA procurement programs, which might provide a better chance for smaller firms to grow and benefit from the opportunities available on the Federal market, and strengthen the small business industrial base for the Federal Government. In this proposed rule, SBA is proposing to decrease the size standard for NAICS 221118 in order to exclude dominant firms from obtaining small business status in this industry. As explained in more detail in the Evaluation of Dominance in Field of Operation sections, based on the evaluation of the latest available industry data, SBA does not anticipate that decreasing the size standard for this industry will impact any currently small firms.

Costs of Decreases to Size Standards

Table 16, Impacts of Decreases to Size Standards Under Alternative Option One, shows the various impacts of lowering size standards in 216 industries based solely on the analytical results. Based on the 2012 Economic Census, about 620 (0.3%) firms would lose their small business status under Alternative Option One. Similarly, based on the FPDS–NG data for fiscal years 2018–2020, 167 (0.7%) small businesses participating in Federal contracting would lose their small status and become ineligible to compete for set-aside contracts. With fewer businesses qualifying as small under the decreases to size standards, Federal agencies will have a smaller pool of small businesses from which to draw for their small business procurement programs. For example, in Alternative Option One, during fiscal years 2018–2020, agencies awarded, on an annual basis, about $28.0 billion in small business contracts in those 216 industries for which this option considered decreasing size standards. Table 16 shows that lowering size standards in 216 industries would reduce Federal contract dollars awarded to small businesses by $247 million or about 0.9% relative to the baseline level. Because of the importance of these industries for the Federal procurement, SBA may adopt mitigating measures to reduce the negative impact. SBA could take one or more of the following three actions: (1) Accept decreases in size standards as suggested by the analytical results; (2) Decrease size standards by a smaller amount than the calculated threshold; or (3). Retain the size standards at their current levels.

TABLE 16—IMPACTS OF DECREASES TO SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE

	Sector 31–33	Other sectors	Total
Number of industries for which SBA considered decreasing size standards	187	29	216
Total current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census)	164,271	55,876	220,147

TABLE 16—IMPACTS OF DECREASES TO SIZE STANDARDS UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 31–33	Other sectors	Total
Estimated number of firms losing small status in industries for which SBA considered decreasing size standards (2012 Economic Census)	512	108	620
% of firms losing small status relative to current small businesses in industries for which SBA considered decreasing size standards (2012 Economic Census)	0.31%	0.2%	0.3%
Number of current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) [1]	19,342	6,020	24,632
Estimated number of small business firms that would have lost small business status in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) [1]	130	50	167
% decrease to small business firms relative to current unique small firms getting small business contracts in industries for which SBA considered decreasing size standards (FPDS–NG FY 2018–2020) [1]	0.7%	0.8%	0.7%
Total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards ($ million) (FPDS–NG FY 2018–2020)	$15,261	12,990	$28,251
Estimated small business dollars not available to firms losing small business status in industries for which SBA considered decreasing size standards ($ million) (FPDS–NG FY 2018–2020) [2]	$127	$120	$247
% decrease to small business dollars relative to total small business contract dollars under current size standards in industries for which SBA considered decreasing size standards	0.8%	0.9%	0.9%
Total number of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020)	2,886	389	3,275
Total amount of 7(a) and 504 loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY 2018–2020)	$1,817	$171	$1,988
Estimated number of 7(a) and 504 loans not available to firms that would have lost small business status in industries for which SBA considered decreasing size standards	10	7	17
Estimated 7(a) and 504 loan amount not available to firms that would have lost small status ($ million)	$6.5	$3.2	$9.7
% decrease to 7(a) and 504 loan amount relative to the total amount of 7(a) and 504 loans in industries for which SBA considered decreasing size standards	0.4%	1.9%	0.5%
Total number of EIDL loans to small businesses in industries for which SBA considered decreasing size standards (FY 2018–2020) [3]	113	28	141
Total amount of EIDL loans to small businesses in industries for which SBA considered decreasing size standards ($ million) (FY 2018–2020) [3]	$3.9	$1.6	$5.5
Estimated number of EIDL loans not available to firms that would have lost small business status in industries for which SBA considered decreasing size standards [3]	3	6	9
Estimated EIDL loan amount not available to firms that would have lost small business status ($ million) [3]	$0.1	$0.4	$0.5
% decrease to EIDL loan amount relative to the baseline [3]	2.7%	23.8%	8.7%

[1] Total impact represents total unique number of firms impacted to avoid double counting as some firms participate in more than one industry.
[2] Additional dollars are calculated multiplying average small business dollars obligated per unique small firm times change in number of firms. Numbers of firms are calculated using the SBA's current size standards, not the contracting officer's size designation.
[3] Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Nevertheless, since Federal agencies are still required to meet the statutory small business contracting goal of 23%, actual impacts on the overall set-aside activity is likely to be smaller as agencies are likely to award more set-aside contracts to small businesses that continue to remain small under the reduced size standards so that they could meet their small business contracting goals.

With fewer businesses qualifying as small, the decreased competition can also result in higher prices to the Government for procurements set aside or reserved for small businesses, but SBA cannot quantify this impact. Lowering size standards may cause current small business contract or option holders to lose their small business status, thereby making those dollars unavailable to count toward the agencies' small business procurement goals. Additionally, impacted small businesses will be unable to compete for upcoming options as small businesses.

As shown in Table 16, decreases to size standards would have a very minor impact on small businesses applying for SBA's 7(a) and 504 loans because a vast majority of such loans are issued to businesses that are far below the current or calculated size standards. For example, based on the loan data for fiscal years 2018–2020, SBA estimates that about 17 of SBA's 7(a) and 504 loans with total amounts of $9.7 million could not be made to those small businesses that would lose eligibility under the calculated size standards. That represents about 0.5% decrease to the loan amount compared to the baseline. However, the actual impact on businesses seeking SBA's loans could be much less as businesses losing small business eligibility under the decreases to industry-based size standards could still qualify for SBA's 7(a) and CDC/504 loans under the tangible net worth and net income-based alternative size standard.

Businesses losing small business status would also be impacted in terms of access to loans through the SBA's EIDL program. However, SBA expects such impact to be minimal as only a small number of businesses in those industries received such loans during fiscal years 2018–2020. Additionally, all those businesses were below the calculated size standards. Since this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a precise estimate of this impact. However, based on the disaster loan data for fiscal years 2018–2020, SBA estimates that, under Alternative Option One, about nine SBA's disaster loans totaling $0.5 million could not be made to those small businesses that would lose

eligibility under the calculated size standards (see Table 16).

Small businesses becoming other than small if size standards were decreased might lose benefits through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses through the Federal Government programs, but SBA has no data to quantify this impact. However, if agencies determine that SBA's size standards do not adequately serve such purposes, they can establish a different size standard with an approval from SBA if they are required to use SBA's size standards for their programs.

Transfer Impacts of Decreases to Size Standards

If the size standards were decreased under alternative option one, it may result in a redistribution of Federal contracts between small businesses losing their small business status and large businesses and between small businesses losing their small business status and small businesses remaining small under the reduced size standards. However, as under the proposed increases to size standards, it would have no impact on the overall economic activity since the total Federal contract dollars available for businesses to compete for will stay the same. While SBA cannot estimate with certainty the actual outcome of the gains and losses among different groups of businesses from contract redistribution resulting from decreases to size standards, it can identify several probable impacts. With a smaller pool of small businesses under the decreases to size standards, some set-aside Federal contracts to be otherwise awarded to small businesses may be competed on an unrestricted basis. As a result, large businesses may have more Federal contracting opportunities. However, because agencies are still required by law to award 23% of Federal dollars to small businesses, SBA expects the movement of set-aside contracts to unrestricted competition to be limited. For the same reason, small businesses under the reduced size standards are likely to obtain more set-aside contracts due to the reduced competition from fewer businesses qualifying as small under the decreases to size standards. With some larger small businesses losing small business status under the decreases to size standards, smaller small businesses would likely become more competitive in obtaining set-aside contracts. However, SBA cannot quantify these impacts.

Net Impact of Alternative Option One

To estimate the net impacts of Alternative Option One, SBA followed the same methodology used to evaluate the impacts of the proposed increases to size standards (see Table 15). However, under Alternative Option One, SBA used the calculated size standards instead of the proposed increases to determine the impacts of changes to current thresholds. The impact of the increases of size standards were shown in Table 15 (above). Table 16 (above) and Table 17, Net Impacts of Size Standards Changes under Alternative Option One, below, present the impact of the decreases of size standards and the net impact of adopting the calculated results under alternative option one, respectively. Net impacts are obtained by subtracting impacts of decreases to size standards in Table 16 from impacts of increases to size standards in Table 15.

Based on the 2012 Economic Census (the latest available when this proposed rule was developed), SBA estimates that in 366 industries and subindustries (''exceptions'') reviewed in this proposed rule for which the analytical results suggested to change size standards, about 372 firms (see Table 17), would become other than small under Alternative Option One. That represents about 0.1% of all firms classified as small under the current size standards.

Based on the FPDS–NG data for fiscal years 2018–2020, SBA estimates that about 58 unique active firms in Federal contracting in those industries would lose their small business status under alternative option one, most of them from Sector 31–33. This represents a decrease of about 0.1% of the total number of small businesses participating in Federal contracting under the current size standards. Based on the same data, SBA estimates that about $6.0 million of Federal procurement dollars would become available to all small firms, including those gaining small status. This represents an increase of 0.02% from the baseline. SBA estimates that the dollars obligated to small businesses will increase despite a reduction in the total number of small firms because the contract dollars to newly qualified small businesses in sectors other than manufacturing with increases to size standards is higher than the contract dollars to small businesses losing small business status in sectors other than manufacturing with decreases to size standards.

Based on the SBA's loan data for fiscal years 2018–2020, the total number of 7(a) and 504 loans may decrease by about eight loans, and the loan amount by about $4.1 million. This represents a 0.1% decrease of the loan amount relative to the baseline.

Firms' participation under the SBA's EIDL program will be affected as well. Since the benefit provided through this program is contingent on the occurrence and severity of a disaster in the future, SBA cannot make a meaningful estimate of this impact. However, based on the disaster loan program data for fiscal years 2018–2020, SBA estimates that the total number of EIDL loans may decrease by about two loans, and the loan amount by about $0.1 million. This represents a 1.3% decrease of the loan amount relative to the baseline.

TABLE 17—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE

	Sector 31–33	Other sectors	Total
Number of industries or subindustries (''exceptions'') with changes to size standards	307	59	366
Total number of small firms under the current size standards in industries with changes to size standards (2012 Economic Census) [1]	233,196	61,790	294,986
Additional number of firms qualifying as small under size standards changes (2012 Economic Census) [1]	−318	−54	−372
% of additional firms qualifying as small relative to total current small firms (2012 Economic Census) [1]	−0.1%	−0.1%	−0.1%
Number of current unique small firms getting small business contracts in industries with changes to size standards (FPDS–NG FY 2018–2020)	33,101	6,835	39,206
Additional number of unique small firms gaining small business status in industries with changes to size standards (FPDS–NG FY 2018–2020) [2]	−43	−26	−56
% increase to small firms relative to current unique small firms gaining small business status (FPDS–NG FY 2018–2020)	−0.1%	−0.4%	−0.1%

TABLE 17—NET IMPACTS OF SIZE STANDARDS CHANGES UNDER ALTERNATIVE OPTION ONE—Continued

	Sector 31–33	Other sectors	Total
Total small business contract dollars under current size standards in industries with changes to size standards ($ million) (FPDS–NG FY 2018–2020)	$24,726	$14,233	$38,959
Estimated small business dollars available to newly-qualified small firms ($ million) FPDS–NG FY 2018–2020)	−$54.0	$61.0	$7.0
% increase to dollars relative to total small business contract dollars under current size standards	−0.2%	0.4%	0.02%
Total number of 7(a) and 504 loans to small businesses (FY 2018–2020)	4,484	513	4,997
Total amount of 7(a) and 504 loans to small businesses (FY 2018–2020)	$2,863	$235	$3,098
Estimated number of additional 7(a) and 504 loans available to newly-qualified small firms	−5.0	−3.0	−8.0
Estimated additional 7(a) and 504 loan amount to newly-qualified small firms ($ million)	−$3.3	−$0.8	−$4.1
% increase to 7(a)and 504 loan amount relative to the total amount of 7(a) and 504 loans to small businesses	−0.1%	−0.3%	−0.1%
Total number of EIDL loans to small businesses (FY 2018–2020) [4]	202	41	243
Total amount of EIDL loans to small businesses (FY 2018–2020) [4]	$8.3	$2.4	$10.7
Estimated number of additional EIDL loans to newly qualified small firms [4]	0	−2	−2
Estimated additional EIDL loan amount to newly qualified small firms ($ million) [4]	$0.02	−$0.2	−$0.1
% increase to EIDL loan amount relative to the total amount of disaster loans to small businesses [4]	0.3%	−6.8%	−1.3%

[1] These figures do not include two 6-digit NAICS industries and 5 subindustries or "exceptions" for which Economic Census data is not available.
[2] Total impact represents total unique number of firms impacted to avoid double counting as some firms participate in more than one industry.
[3] Additional dollars are calculated multiplying average small business dollars obligated per unique firm times change in number of firms. Numbers of firms are calculated using the SBA's current size standards, not the contracting officer's size designation.
[4] Excludes COVID–19 related EIDL loans due to their temporary nature. Effective January 1, 2022, SBA stopped accepting applications for new COVID EIDL loans or advances.

Alternative Option Two: Retaining All Current Size Standards

Under this option, given the current COVID–19 pandemic, as discussed elsewhere, SBA considered retaining the current levels of all size standards even though the analytical results suggested changing them. Under this option, as the current situation develops, SBA will be able to assess new data available on economic indicators, Federal procurement, and SBA loans as well. When compared to the baseline, there is a net impact of zero (*i.e.,* zero benefit and zero cost) for retaining all size standards. However, this option would cause otherwise qualified small businesses to forgo various small business benefits (*e.g.,* access to set-aside contracts and capital) that become available to them under the option of increasing 150 and retaining 282 size standards under this proposed rule. Moreover, retaining all size standards under Alternative Option Two would also be contrary to the SBA's statutory mandate to review and adjust, every five years, all size standards to reflect current industry and Federal market conditions. Retaining all size standards without required periodic adjustments would increasingly exclude otherwise eligible small firms from small business benefits.

Congressional Review Act, 5 U.S.C. 801–808

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. The OMB's Office of Information and Regulatory Affairs has determined that this is not a major rule under 5 U.S.C. 804(2).

Initial Regulatory Flexibility Analysis

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities.

This proposed rule, if adopted, may have a significant impact on a substantial number of small businesses in the industries covered by this proposed rule. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and disaster loan programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule? (2) What is SBA's description and estimate of the number of small businesses to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule? and (5) What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small businesses?

1. What is the need for and objective of the rule?

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries covered by this proposed rule. Such changes can be enough to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the proposed standards revisions in this proposed rule more appropriately reflect the size of businesses that need Federal assistance. The 2010 Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What is SBA's description and estimate of the number of small businesses to which the rule will apply?

Based on data from the 2012 Economic Census (the latest available when this proposed rule was prepared), SBA estimates that there are nearly 295,000 small firms in industries covered by this rulemaking for which SBA is proposing to change size standards. If the proposed rule is adopted in its present form, SBA estimates that nearly 250 additional businesses will become small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule?

The proposed size standard changes impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in SAM and self-certify that they are small at least once annually (Federal Acquisition Regulation (FAR) 52.204–13). For existing contracts, small business contractors are required to update their SAM registration as necessary to ensure that they reflect the contractor's current status (FAR 52.219–28). Businesses are also required to verify that their SAM registration is current, accurate, and complete with the submission of an offer for every new contract (FAR 52.204–7 and 52.204–8). Therefore, businesses opting to participate in those programs must comply with SAM requirements. There are no costs associated with SAM registration or annual re-certification. Changing size standards alters the access to SBA's programs that assist small businesses but does not impose a regulatory burden because they neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to establish different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition, after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow SBA to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

However, SBA considered two alternatives to its proposal to increase 150 size standards and maintain 282 size standards at their current levels. The first alternative SBA considered was adopting size standards based solely on the analytical results, including the results from the evaluation of dominance and field of operation. In other words, the size standards of 150 industries for which the analytical results suggest raising size standards would be raised. However, the size standards of 216 industries for which the analytical results suggest lowering size standards would be lowered. This would cause a significant number of small businesses to lose their small business status, particularly in Sector 31–33 (see Table 16). Under the second alternative, in view of the COVID–19 pandemic, SBA considered retaining all size standards at the current levels, even though the analytical results may suggest increasing 150 size standards and decreasing 216. SBA believes retaining all size standards at their current levels would be more onerous for small businesses than the option of increasing 150 and retaining 282 size standards. Postponing the adoption of the higher calculated size standards would be detrimental for otherwise small businesses in terms of access to various small business benefits, including access to set-aside contracts and capital through SBA contracting and financial programs, and exemptions from paperwork and other compliance requirements.

Executive Order 13563

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, is included above in the Regulatory Impact Analysis under Executive Order 12866. Additionally, Executive Order 13563, section 6, calls for retrospective analyses of existing rules.

The review of size standards in the industries covered by this proposed rule is consistent with section 6 of Executive Order 13563 and the 2010 Jobs Act which requires SBA to review every five years all size standards and make necessary adjustments to reflect market conditions. Specifically, the 2010 Jobs Act requires SBA to review at least one-third of all size standards during every 18-month period from the date of its enactment (September 27, 2010) and to review all size standards not less frequently than once every 5 years, thereafter. In accordance with the Jobs Act, SBA completed the review of all small business size standards (except those for agricultural enterprises previously set by Congress), making appropriate adjustments to size standards for a number of industries to reflect current Federal and industry market conditions.

SBA issued a revised white paper entitled ''Size Standards Methodology'' and published a notification in the April 27, 2018, edition of the **Federal Register** (83 FR 18468) to advise the public that the document is available for public review and comments. The ''Size Standards Methodology'' white paper explains how SBA establishes, reviews, and modifies its receipts-based and employee-based small business size standards. SBA considered all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies before finalizing and adopting the revised Methodology. For a summary of comments received and SBA's responses, see the notification published in the **Federal Register** on April 11, 2019 (84 FR 14587).

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose any new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Public Law 116–136, Section 1114.

■ 2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' by:

■ a. Revising entries ''212210,'' ''212230,'' ''212299,'' ''212313,'' ''212319,'' ''212322,'' ''212325,'' ''212391,'' ''212393,'' ''212399,'' entries ''221111'' through ''221115,'' ''221117,'' ''221118,'' ''221121,'' ''221122,'' ''221210,'' ''311111,'' ''311119,'' ''311211,'' ''311212,'' ''311221,'' ''311224,'' ''311225,'' ''311230,'' ''311313,'' ''311314,'' ''311411,'' ''311422,'' ''311511,'' ''311514,'' ''311611,'' ''311824,'' ''311920,'' ''311930,'' ''311941,'' ''311942,'' ''311991,'' ''311999,'' ''312111,'' ''312112,'' ''312140,'' ''313220,'' ''313230,'' ''314999,'' ''315190,'' ''315990,'' ''316110,'' ''321113,'' ''321114,'' ''321211,'' ''322110,'' ''322122,'' ''323111,'' ''323120,'' ''324122,'' ''324191,'' ''324199,'' ''325110,'' ''325120,'' ''325130,'' ''325220,'' ''325311,'' ''325312,'' ''325314,'' ''325320,'' ''325412,'' ''325520,'' entries ''325611'' through ''325613,'' ''325910,'' ''325991,'' ''325998,'' ''326121,'' ''326130,'' ''326220,'' ''326299,'' ''327211,'' ''327410,'' ''327910,'' ''327992,'' ''327999,'' ''331313,'' ''331315,'' ''331420,'' ''331491,'' ''331492,'' ''331512,'' ''331513,'' ''331523,'' ''331524,'' ''332112,'' ''332114,'' ''332117,'' ''332215,'' ''332439,'' ''332613,'' ''332722,'' ''332812,'' ''332992,'' ''332996,'' ''333131,'' ''333243,'' ''333314,'' ''333924,'' ''333991,'' ''333993,'' ''333995,'' ''333997,'' ''334290,'' ''334416,'' ''334511,'' ''334512,'' ''334514,'' ''334517,'' ''334519,'' ''335122,'' ''335129,'' ''335311,'' ''335912,'' ''335931,'' ''335991,'' ''335999,'' ''336310,'' ''336414,'' ''336419,'' ''336611,'' ''336991,'' ''337125,'' ''337214,'' ''339113,'' ''339910,'' ''339930,'' ''339991,'' ''339994,'' ''339999,'' ''483111,'' ''483113,'' ''483114,'' ''483211,'' ''483212,'' ''511199,'' ''512230,'' and ''512250;''

■ b. Removing the entry ''541715'' and the three ''Except'' entries following ''541715;''

■ c. Adding entries ''541715,'' ''541715 (Exception 1)'', ''541715 (Exception 2)'', and ''541715 (Exception 3)'' in numerical order; and

■ d. Revising the entry ''562910 (Exception)''.

The revisions and additions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
	Sector 21—Mining, Quarrying, and Oil and Gas Extraction		
*	* * * *	*	*
	Subsector 212—Mining (except Oil and Gas)		
*	* * * *	*	*
212210	Iron Ore Mining		1,400
*	* * * *	*	*
212230	Copper, Nickel, Lead, and Zinc Mining		1,400
*	* * * *	*	*
212299	All Other Metal Ore Mining		1,250
*	* * * *	*	*
212313	Crushed and Broken Granite Mining and Quarrying		850
212319	Other Crushed and Broken Stone Mining and Quarrying		550
*	* * * *	*	*
212322	Industrial Sand Mining		750

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
212325	Clay and Ceramic and Refractory Minerals Mining		650
212391	Potash, Soda, and Borate Mineral Mining		1,050
*	* * * * *	*	*
212393	Other Chemical and Fertilizer Mineral Mining		600
212399	All Other Nonmetallic Mineral Mining		600
*	* * * * *	*	*
	Sector 22—Utilities **Subsector 221—Utilities**		
221111	Hydroelectric Power Generation		750
221112	Fossil Fuel Electric Power Generation		950
221113	Nuclear Electric Power Generation		1,150
221114	Solar Electric Power Generation		500
221115	Wind Electric Power Generation		1,150
*	* * * * *	*	*
221117	Biomass Electric Power Generation		550
221118	Other Electric Power Generation		650
221121	Electric Bulk Power Transmission and Control		950
221122	Electric Power Distribution		1,100
221210	Natural Gas Distribution		1,150
*	* * * * *	*	*
	Sector 31–33—Manufacturing **Subsector 311—Food Manufacturing**		
311111	Dog and Cat Food Manufacturing		1,250
311119	Other Animal Food Manufacturing		650
311211	Flour Milling		1,050
311212	Rice Milling		750
*	* * * * *	*	*
311221	Wet Corn Milling		1,300
311224	Soybean and Other Oilseed Processing		1,250
311225	Fats and Oils Refining and Blending		1,100
311230	Breakfast Cereal Manufacturing		1,300
311313	Beet Sugar Manufacturing		1,150
311314	Cane Sugar Manufacturing		1,050
*	* * * * *	*	*
311411	Frozen Fruit, Juice, and Vegetable Manufacturing		1,100
*	* * * * *	*	*
311422	Specialty Canning		1,400
*	* * * * *	*	*
311511	Fluid Milk Manufacturing		1,150
*	* * * * *	*	*
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing		1,000
*	* * * * *	*	*
311611	Animal (except Poultry) Slaughtering		1,150
*	* * * * *	*	*
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour		850
*	* * * * *	*	*
311920	Coffee and Tea Manufacturing		1,000
311930	Flavoring Syrup and Concentrate Manufacturing		1,100
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing		850
311942	Spice and Extract Manufacturing		650
311991	Perishable Prepared Food Manufacturing		700
311999	All Other Miscellaneous Food Manufacturing		700

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Subsector 312—Beverage and Tobacco Product Manufacturing		
312111	Soft Drink Manufacturing		1,400
312112	Bottled Water Manufacturing		1,100
*	* * * * *	*	*
312140	Distilleries		1,100
*	* * * * *	*	*
	Subsector 313—Textile Mills		
*	* * * * *	*	*
313220	Narrow Fabric Mills and Schiffli Machine Embroidery		550
313230	Nonwoven Fabric Mills		850
	Subsector 314—Textile Product Mills		
*	* * * * *	*	*
314999	All Other Miscellaneous Textile Product Mills		550
	Subsector 315—Apparel Manufacturing		
*	* * * * *	*	*
315190	Other Apparel Knitting Mills		850
*	* * * * *	*	*
315990	Apparel Accessories and Other Apparel Manufacturing		600
	Subsector 316—Leather and Allied Product Manufacturing		
316110	Leather and Hide Tanning and Finishing		800
*	* * * * *	*	*
	Subsector 321—Wood Product Manufacturing		
321113	Sawmills		550
321114	Wood Preservation		550
321211	Hardwood Veneer and Plywood Manufacturing		600
*	* * * * *	*	*
	Subsector 322—Paper Manufacturing		
322110	Pulp Mills		1,050
*	* * * * *	*	*
322122	Newsprint Mills		1,050
*	* * * * *	*	*
	Subsector 323—Printing and Related Support Activities		
323111	Commercial Printing (except Screen and Books)		650
*	* * * * *	*	*
323120	Support Activities for Printing		550
	Subsector 324—Petroleum and Coal Products Manufacturing		
*	* * * * *	*	*
324122	Asphalt Shingle and Coating Materials Manufacturing		1,100
324191	Petroleum Lubricating Oil and Grease Manufacturing		900
324199	All Other Petroleum and Coal Products Manufacturing		950

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Subsector 325—Chemical Manufacturing		
325110	Petrochemical Manufacturing		1,300
325120	Industrial Gas Manufacturing		1,200
325130	Synthetic Dye and Pigment Manufacturing		1,050
*	* * * * *	*	*
325220	Artificial and Synthetic Fibers and Filaments Manufacturing		1,050
325311	Nitrogenous Fertilizer Manufacturing		1,050
325312	Phosphatic Fertilizer Manufacturing		1,350
325314	Fertilizer (Mixing Only) Manufacturing		550
325320	Pesticide and Other Agricultural Chemical Manufacturing		1,150
*	* * * * *	*	*
325412	Pharmaceutical Preparation Manufacturing		1,300
*	* * * * *	*	*
325520	Adhesive Manufacturing		550
325611	Soap and Other Detergent Manufacturing		1,100
325612	Polish and Other Sanitation Good Manufacturing		900
325613	Surface Active Agent Manufacturing		1,100
*	* * * * *	*	*
325910	Printing Ink Manufacturing		750
*	* * * * *	*	*
325991	Custom Compounding of Purchased Resins		600
*	* * * * *	*	*
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing		650
	Subsector 326—Plastics and Rubber Products Manufacturing		
*	* * * * *	*	*
326121	Unlaminated Plastics Profile Shape Manufacturing		600
*	* * * * *	*	*
326130	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing.		650
*	* * * * *	*	*
326220	Rubber and Plastics Hoses and Belting Manufacturing		800
*	* * * * *	*	*
326299	All Other Rubber Product Manufacturing		650
	Subsector 327—Nonmetallic Mineral Product Manufacturing		
*	* * * * *	*	*
327211	Flat Glass Manufacturing		1,100
*	* * * * *	*	*
327410	Lime Manufacturing		1,050
*	* * * * *	*	*
327910	Abrasive Product Manufacturing		900
*	* * * * *	*	*
327992	Ground or Treated Mineral and Earth Manufacturing		600
*	* * * * *	*	*
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing		750
	Subsector 331—Primary Metal Manufacturing		
*	* * * * *	*	*
331313	Alumina Refining and Primary Aluminum Production		1,300

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
331315	Aluminum Sheet, Plate, and Foil Manufacturing		1,400
*	* * * * *	*	*
331420	Copper Rolling, Drawing, Extruding, and Alloying		1,050
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.		900
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).		850
*	* * * * *	*	*
331512	Steel Investment Foundries		1,050
331513	Steel Foundries (except Investment)		700
331523	Nonferrous Metal Die-Casting Foundries		700
331524	Aluminum Foundries (except Die-Casting)		550
*	* * * * *	*	*
Subsector 332—Fabricated Metal Product Manufacturing			
*	* * * * *	*	*
332112	Nonferrous Forging		950
332114	Custom Roll Forming		600
332117	Powder Metallurgy Part Manufacturing		550
*	* * * * *	*	*
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.		1,000
*	* * * * *	*	*
332439	Other Metal Container Manufacturing		600
*	* * * * *	*	*
332613	Spring Manufacturing		600
*	* * * * *	*	*
332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing		600
*	* * * * *	*	*
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.		600
*	* * * * *	*	*
332992	Small Arms Ammunition Manufacturing		1,300
*	* * * * *	*	*
332996	Fabricated Pipe and Pipe Fitting Manufacturing		550
*	* * * * *	*	*
Subsector 333—Machinery Manufacturing [6]			
*	* * * * *	*	*
333131	Mining Machinery and Equipment Manufacturing		900
*	* * * * *	*	*
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing		550
*	* * * * *	*	*
333314	Optical Instrument and Lens Manufacturing		600
*	* * * * *	*	*
333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing		900
333991	Power-Driven Hand Tool Manufacturing		950
*	* * * * *	*	*
333993	Packaging Machinery Manufacturing		600

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
333995	Fluid Power Cylinder and Actuator Manufacturing		800
*	* * * * *	*	*
333997	Scale and Balance Manufacturing		700
*	* * * * *	*	*
Subsector 334—Computer and Electronic Product Manufacturing [6]			
*	* * * * *	*	*
334290	Other Communications Equipment Manufacturing		800
*	* * * * *	*	*
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing		550
*	* * * * *	*	*
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.		1,350
334512	Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use.		650
*	* * * * *	*	*
334514	Totalizing Fluid Meter and Counting Device Manufacturing		850
*	* * * * *	*	*
334517	Irradiation Apparatus Manufacturing		1,200
334519	Other Measuring and Controlling Device Manufacturing		600
*	* * * * *	*	*
Subsector 335—Electrical Equipment, Appliance and Component Manufacturing [6]			
*	* * * * *	*	*
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.		600
335129	Other Lighting Equipment Manufacturing		550
*	* * * * *	*	*
335311	Power, Distribution, and Specialty Transformer Manufacturing		800
*	* * * * *	*	*
335912	Primary Battery Manufacturing		1,300
*	* * * * *	*	*
335931	Current-Carrying Wiring Device Manufacturing		600
*	* * * * *	*	*
335991	Carbon and Graphite Product Manufacturing		900
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing.		600
Subsector 336—Transportation Equipment Manufacturing [6]			
*	* * * * *	*	*
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing		1,050
*	* * * * *	*	*
336414	Guided Missile and Space Vehicle Manufacturing		1,300
*	* * * * *	*	*
336419	Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing.		1,050
*	* * * * *	*	*
336611	Ship Building and Repairing		1,300

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
336991	Motorcycle, Bicycle, and Parts Manufacturing		1,050
*	*	*	*
Subsector 337—Furniture and Related Product Manufacturing			
*	*	*	*
337125	Household Furniture (except Wood and Metal) Manufacturing		950
*	*	*	*
337214	Office Furniture (except Wood) Manufacturing		1,100
*	*	*	*
Subsector 339—Miscellaneous Manufacturing			
*	*	*	*
339113	Surgical Appliance and Supplies Manufacturing		800
*	*	*	*
339910	Jewelry and Silverware Manufacturing		700
*	*	*	*
339930	Doll, Toy, and Game Manufacturing		700
*	*	*	*
339991	Gasket, Packing, and Sealing Device Manufacturing		600
*	*	*	*
339994	Broom, Brush, and Mop Manufacturing		750
*	*	*	*
339999	All Other Miscellaneous Manufacturing		550
*	*	*	*
Sector 48–49—Transportation and Warehousing			
*	*	*	*
Subsector 483—Water Transportation			
483111	Deep Sea Freight Transportation		1,050
*	*	*	*
483113	Coastal and Great Lakes Freight Transportation		800
483114	Coastal and Great Lakes Passenger Transportation		550
483211	Inland Water Freight Transportation		1,050
483212	Inland Water Passenger Transportation		550
*	*	*	*
Sector 51—Information			
Subsector 511—Publishing Industries (except Internet)			
*	*	*	*
511199	All Other Publishers		550
*	*	*	*
Subsector 512—Motion Picture and Sound Recording Industries			
*	*	*	*
512230	Music Publishers		900

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS code	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
512250	Record Production and Distribution		900
*	* * * * *	*	*
	Sector 54—Professional, Scientific and Technical Services		
	Subsector 541—Professional, Scientific and Technical Services		
*	* * * * *	*	*
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) [11].		[11] 1,000
541715 (Exception 1)	Aircraft, Aircraft Engine and Engine Parts [11]		[11] 1,500
541715 (Exception 2)	Other Aircraft Parts and Auxiliary Equipment [11]		[11] 1,250
541715 (Exception 3)	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts [11].		[11] 1,300
*	* * * * *	*	*
	Sector 56—Administrative and Support and Waste Management and Remediation Services		
*	* * * * *	*	*
	Subsector 562—Waste Management and Remediation Services		
*	* * * * *	*	*
562910 (Exception)	Environmental Remediation Services [14]		[14] 1,000
*	* * * * *	*	*

Footnotes

* * * * * * *

[6] *NAICS Subsectors 333, 334, 335 and 336*—For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a ''manufacturer'' although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.

* * * * * * *

[11] *NAICS code 541713, 541714, and 541715*—

(a) ''Research and Development'' means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(c) For purposes of the Small Business Innovation Research (SBIR) and Small Business Transfer Technology (STTR) programs, the term ''research'' or ''research and development'' means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements. See 15 U.S.C. 638(e)(5) and section 3 of the SBIR and STTR policy directives available at *www.sbir.gov.* For size eligibility requirements for the SBIR and STTR programs, see § 121.702 of this part.

(d) ''Research and Development'' for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

* * * * * * *

[14] *NAICS 562910*—Environmental Remediation Services:

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts), although the general purpose of the procurement need not necessarily include remedial actions. Also, the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.,* engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Specialty Trade Contractors; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services, Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

* * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2022–08091 Filed 4–25–22; 8:45 am]

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Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2022–0051, Sequence No. 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2022–06; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2022–06. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

RULES LISTED IN FAC 2022–06

Item	Subject	FAR case	Analyst
I	Applicability of Small Business Regulations Outside the United States	2016–002	Uddowla.
II	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2022–06 amends the FAR as follows:

Item I—Applicability of Small Business Regulations Outside the United States (FAR Case 2016–002)

This final rule amends the Federal Acquisition Regulation (FAR) to give agencies the tools they need, especially the ability to use set-asides, to maximize opportunities for small businesses outside the United States or its outlying areas, as defined in FAR part 2. Prior to this rule, the FAR stated that the small business programs do not apply outside of the United States (FAR 19.000(b)). This rule supports the Small Business Administration (SBA) policy of including overseas contracts in agency small business contracting goals.

Item II—Technical Amendments

Editorial changes are made at FAR 4.402, 4.1103, 12.302, 12.402, 15.601, 18.205, 46.102, 52.212–5, and 52.222–54.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2022–06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2022–06 is effective April 26, 2022 except for Item I, which is effective May 26, 2022, and Item II, which is effective May 1, 2022.

Linda W. Neilson

Director, Defense Pricing and Contracting (DARS) Department of Defense.

Jeffrey A. Koses,

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19, and 52

[FAC 2022–06; FAR Case 2016–002; Item I; Docket No. 2016–0002, Sequence No. 1]

RIN 9000–AN34

Federal Acquisition Regulation: Applicability of Small Business Regulations Outside the United States

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to support the Small Business Administration (SBA) policy of including overseas contracts in agency small business contracting goals. This final rule allows small business contracting procedures, *e.g.,* set-asides, to apply to overseas procurements.

DATES: *Effective:* May 26, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868, or by email at *mahruba.uddowla@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 FAC 2022–06, FAR Case 2016–002.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 84 FR 39793 on August 12, 2019, to support SBA's policy of including overseas contracts in agency small business contracting goals by allowing small business contracting procedures, *e.g.,* set-asides, to apply to overseas procurements (*i.e.,* procurements outside the United States and its outlying areas), which is expected to expand overseas opportunities for small business concerns. Twenty-six respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments received and any changes made to the rule as a result of the public comments are provided as follows:

A. Summary of Significant Changes From the Proposed Rule

This final rule makes conforming changes to FAR solicitation provisions 52.204–8, Annual Representations and Certifications, and 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services. These changes are required to resolve conflicts between these provisions and the changes in the proposed rule to the prescriptions at FAR 19.309.

B. Analysis of Public Comments

1. Support for the Rule

Comment: Multiple respondents expressed their support for the rule.

Response: The Councils acknowledge the respondents' support for the rule.

2. Opposition to the Rule

Comment: A few respondents expressed their opposition to the rule.

Response: The Councils acknowledge the respondents' opposition to the rule. The Councils have taken into consideration all of the public comments in the development of this final rule.

3. Legal Concerns Regarding Overseas Application of the Small Business Act

Comment: One respondent stated that the Small Business Act must show an affirmative intent to apply overseas and reconcile conflicts of law, otherwise the statute is meant to apply only within the territorial jurisdiction of the United States. The respondent further stated the Small Business Act is silent regarding its application overseas and does not account for conflicts of law. A second respondent stated that it has been the position of DoD that the Small Business Act does not apply outside of the United States and its outlying areas. According to the respondent, absent a statement of Congressional intent, the Government Accountability Office (GAO) has deferred to DoD's interpretation of the Small Business Act embodied in FAR 19.000(b) (Latvian Connection Gen. Trading & Constr. LLC, B–408633, 2013 CPD 224, September 8, 2013). The respondent described GAO's deference to DoD's interpretation embodied in the FAR as an example of ''Chevron'' deference, which does not give agencies license to follow statutes to the extent they deem desirable; instead, it is deference to an agency's permissible interpretation of an ambiguous statute. A third respondent noted that the Federal Acquisition Regulatory Council (FAR Council) stated that the change in the proposed rule is being done to be consistent with SBA's own rules. The respondent stated that by revising FAR 19.000(b) to explicitly make application of FAR part 19 ''discretionary'' for overseas contracts, the FAR Council is amending the FAR to continue to conflict with SBA's regulations directly, or at the very least conflict with SBA's stated interpretation of its regulations. This respondent mentioned that SBA's interpretation of the Small Business Act is that the application of the Act overseas is mandatory, not discretionary. The respondent recommended that the FAR Council consult with SBA to ensure the FAR rule, and FAR 19.000(b) in particular, conform to SBA's regulations. Two respondents expressed concern regarding conflicts between this FAR rule and treaties and international agreements. One of the respondents stated the proposed rule did not require the contracting officer to document how they considered international agreements when exercising their discretion. The other respondent indicated that overseas contracting officers will not have the discretion to apply FAR part 19 when international treaties or international agreements require solicitation or award to host nation sources. According to this respondent, if the proposed rule is adopted, it should be revised to reflect this lack of discretion.

Response: In its October 2, 2013, final rule, SBA applied the Small Business Act to overseas acquisitions. The Councils note that, at the time of the GAO's decision in the cited Latvian Connection case, SBA's regulations were silent regarding the application of the Small Business Act outside the United States and its outlying areas. SBA's final rule amended 13 CFR 125.2, which SBA stated was issued in part to clarify its position that the Small Business Act applies ''regardless of the place of performance''.

The Councils proposed to amend the FAR to support SBA's changes to the basis for the Governmentwide small business contracting goals. This rule will allow for application of FAR part 19 overseas and thereby expand opportunities for small business concerns overseas. The Councils are aware that the SBA regulations at 13 CFR 125.2 do not make application of small business set-aside and sole-source authorities discretionary for overseas acquisitions. However, the Councils recognize that overseas acquisitions are subject to international agreements, treaties, local laws, diplomatic and other considerations that are unique to the overseas environment and may limit the Government's ability to apply the small business preferences in FAR part 19 on a mandatory basis. In addition, the Councils believe that policies issued subsequent to the promulgation of SBA's regulations, such as those in Executive Order (E.O.) 14005, Ensuring the Future Is Made in All of America by All of America's Workers, addressing steps to increase reliance on domestic manufacturing, will operate more effectively with a discretionary policy for use of set-asides overseas.

It is not practicable to list in the FAR everything that may affect the decision to set aside an overseas acquisition. Therefore, the Councils are amending the FAR to make the use of part 19 discretionary outside the United States and its outlying areas, so agencies and their contracting officers can consider these factors in the exercise of their discretion. The Councils confirm that SBA representatives participated in the development of both the proposed and final FAR rules and concurred with both the proposed and final FAR rules.

4. Rule Creates Conflicts Within the FAR

Comment: Two respondents stated that the proposed rule created conflicts

within the FAR. The respondents cited the following examples of conflicts:

• The provisions at FAR 52.204–8, Annual Representations and Certifications, and 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, explicitly provide that small business representations only apply when the resulting contract is to be performed in the United States or its outlying areas. This conflict makes the rule unclear for offerors and contracting officers.

• FAR 19.702(b)(3) and 19.708 do not explicitly require small business subcontracting plans for any contract performed entirely outside the United States or its outlying areas. The respondent believes that it is illogical for an agency to set aside an overseas contract for small business when it is prohibited from requiring small business subcontracting for those same contracts. The respondent points to Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.225–7002(b), Qualifying Country Sources as Subcontractors, as a further example that complements the FAR's prohibition on requiring a small business subcontracting plan for overseas contract.

• FAR part 25, Foreign Acquisition, is problematic to reconcile with the proposed rule. Specifically, the respondent points to the requirements at FAR 25.802 and DFARS 225.7401 for contracting officers to incorporate relevant requirements of international agreements into solicitations and contracts, while the proposed rule is silent on how contracting officers are to account for international agreements in making their discretionary set-aside decisions.

• It is difficult for a small business to comply with the requirements at FAR 52.219–14, Limitations on Subcontracting, and the ''Balance of Payments'' regulations at DFARS 225.75 (*e.g.,* World Trade Organization Government Procurement Agreement) because each requirement specifies use of certain sources.

Response: With regard to the representation provisions, the Councils concur that there is a conflict. Conforming edits have been made to resolve the conflict at FAR 52.204–8(c)(1)(xii) and (xiii) as well as FAR 52.212–3(c).

With regard to FAR subpart 19.7, the Councils note that FAR 19.702(b) states that small business subcontracting plans are not required for contracts performed entirely overseas, but it does not prohibit use of set-asides for prime contracts overseas. Therefore, there is no conflict that needs to be resolved.

With regard to FAR 25.802, this final rule provides discretion to contracting officers in making a set-aside decision for overseas acquisitions so they can choose the appropriate acquisition strategy for the location. The discretion provided in the rule will allow contracting officers to avoid possible conflicts between FAR 52.219–14 and other regulations. For further discussion related to international agreements, see the responses to comments under category 9. For further discussion related to the limitations on subcontracting, see the response to comments under category 11.

5. Application of Consolidation and Bundling to Overseas Contracts

Comment: Two respondents recommend not revising the definition of ''bundling'' in FAR subpart 2.1, Definitions, to make bundling applicable to a contract that will be awarded and performed entirely outside of the United States. The respondents believe that if the requirements of FAR 7.107–2, Consolidation; 7.107–3, Bundling; and 7.107–4, Substantial bundling, are mandatory for overseas contracts, then: (a) Contracting officers would be required to justify not applying FAR part 19, and (b) this would cause overseas procurement actions involving bundling to be extremely burdensome, time consuming, and unlikely to occur. Therefore, contracting officers should not be required to follow consolidation and bundling procedures for overseas contracts. One of the respondents stated that making bundling requirements applicable to overseas acquisitions is problematic for two reasons. First, such requirements can be inconsistent with acquisition approaches and source restrictions in international agreements, foreign military sales (FMS) letters of offer and acceptance, and other arrangements with foreign partners. Second, agencies regularly use the bundling strategy to make overseas requirements attractive to capable vendors to induce them to enter foreign markets.

Response: The Small Business Act does not exempt an agency from justifying its consolidation and bundling of contract requirements based on location of award, location of service performance, or location of supply delivery. The Councils note that the FAR currently applies the consolidation requirements to overseas contracts, which is consistent with the Small Business Act. As such, this rule is not making any changes to the FAR definition of ''consolidation or consolidated requirement'' at FAR 2.101, Definitions, nor the applicability of FAR 7.107–2, Consolidation. The bundling requirements at FAR 7.107–3, Bundling, and 7.107–4, Substantial bundling, require an agency to make a written determination that such action is necessary and justified, allowing agencies to bundle in certain circumstances. Applying the bundling requirements to overseas contracts requires agencies to provide for maximum practicable participation by small business concerns as contractors. Providing for maximum practicable participation by small business concerns is not the same as mandating the use of set-asides or creating a de facto justification requirement for not applying FAR part 19 to overseas contracts. The respondent's comments on the DoD FMS Program are outside the scope of this case.

6. Negative Impacts of the Rule

a. Higher Prices

Comment: Two respondents stated the changes in the proposed rule would negatively impact the taxpayer by driving up prices. One of the respondents believed that foreign-owned entities would almost always have better pricing for contracts performed overseas than U.S.-owned small businesses. The other respondent believed the changes would result in higher liabilities, ignorance of the market and environment, and less control over the work.

Response: The Councils recognize that overseas contracts are subject to considerations that are unique to the overseas environment, as described in the response to comments under category 3. In acknowledgment of these considerations, this final rule retains the proposed rule text to make the use of FAR part 19 discretionary outside the United States and its outlying areas to allow contracting officers to use the most appropriate acquisition strategy. When the contracting officer is determining whether to set aside the procurement, fair market price, quality, and delivery are some of the factors considered. Any new entrants into overseas markets, whether small or other than small business concerns, will experience the same challenges: Competing with native businesses who know the market, economic conditions, and applicable laws. However, each time U.S. small businesses go through the solicitation process for overseas contracts, they will gain experience and knowledge. By allowing discretionary use of small business procurement rules

for overseas contracts, contracting officers can develop appropriate acquisition strategies to encourage U.S. small businesses to participate and become competitive. Small businesses will win contracts when their proposal or bid demonstrates they can perform the work at the lowest price or based on tradeoffs among price and non-price evaluation factors.

b. Additional Acquisition Lead Time

Comment: One respondent stated that contracting officers must already consider complex sourcing requirements for overseas acquisitions, and adding small business goals and set-asides to the process will add to acquisition lead time without adding corresponding value. The respondent noted that nothing currently precludes small businesses from competing for overseas acquisitions.

Response: The Councils recognize the complex sourcing requirements for overseas acquisitions. Discretionary use of FAR part 19 for overseas procurements will address an important public policy objective of the Government to enhance the participation of small businesses in overseas Federal acquisition as appropriate.

c. Improper Influence of Government Personnel

Comment: One respondent commented that allowing for discretionary authority to set aside overseas procurements may lead to prospective offerors trying to influence Government personnel in favor of set-asides or full and open competition in corrupt ways, since there are likely to be very few U.S. small businesses capable of fulfilling any complicated Government requirement in many foreign countries.

Response: The FAR addresses improper business practices and personal conflicts of interest in Government procurement at part 3, which applies regardless of the location or situation. Part 3 states that expenditure of public funds requires the highest degree of public trust and an impeccable standard of conduct. Therefore, Government personnel are required to act in good faith when making acquisition decisions, which are subject to review as appropriate.

d. Contract Issues and Financial Hardship

Comment: One respondent believed that it is impossible for a contracting officer to take into account all the possible unforeseen impediments and costs that a U.S. small business could encounter when performing in a foreign country. By making set-aside decisions, the contracting officer would end up awarding contracts with higher rates of default, delays, and claims than contracts awarded with unrestricted competition or including participation by host nation firms. Two respondents commented that U.S. small businesses are not suitable for overseas acquisitions and may end up suffering substantial losses by operating overseas. One of the respondents believed that small businesses, unlike large businesses, are unlikely to have the capability to make the necessary capital outlay, assign the necessary personnel, or offer local partners sufficient expectation of future work, to effectively prepare to perform in foreign countries, which may lead to project delays and increased costs for which the contractor could be liable. The other respondent used the cost of Value Added Taxes (VAT) on materials and services purchased in foreign countries, which the respondent calculates as averaging 20 percent, as an example to highlight the unsuitability of a small business for overseas acquisitions. According to the respondent, while some contractors are exempt from paying VAT for work performed on behalf of the U.S. Government, the contractors must still pay the VAT at initial point of sale and then wait 6 months to a year for a refund of that VAT from the foreign government. According to the respondent, this creates financial hardship for small businesses.

Response: The Councils recognize overseas contracts are subject to considerations that are unique to the overseas environment, as described in the response to comments under category 3, for both small business concerns and other than small business concerns. In acknowledgment of these considerations, this final rule retains the proposed rule text to make the use of FAR part 19 discretionary outside the United States and its outlying areas to allow contracting officers to utilize the most appropriate acquisition strategy. The Councils note that prospective contractors are required to meet certain standards in order to be determined responsible and therefore, eligible for award. If there are questions regarding a prospective small business contractor's responsibility, the matter would be referred to SBA in accordance with FAR subpart 19.6. Offerors are expected to practice sound business judgment in deciding which overseas opportunities to pursue and be aware of potential financial risks.

7. Overseas Construction and Services Contracts

Comment: A few respondents noted that overseas construction contracts are high risk and complex. The respondents pointed to difficulties with supply chain management, meeting specified staffing requirements, understanding local market conditions, and managing local subcontractors and material suppliers as examples of the complexities of overseas construction contracts. One of the respondents stated that overseas construction and architect-engineer (A/E) contracts are inherently local in nature and require detailed knowledge of host nation laws and requirements related to construction, *e.g.,* building standards, permitting and licensing requirements, environmental matters. As such, the respondents stated that overseas construction contracts are not suitable for small businesses. Two respondents stated FAR part 19 should exclude overseas construction and service contracts. One of the respondents proposed a revision at FAR 19.000(b) to exclude construction contracts.

Response: The Councils considered the recommended revision and decided not to adopt it in the final rule since it does not reflect the best course of action for every overseas construction acquisition. The Councils recognize overseas construction and service contracts are subject to considerations that are unique to the overseas environment, as described in the response to comments under category 3, for both small business concerns and other than small business concerns. In acknowledgment of these considerations, this final rule retains the proposed rule text to make the use of FAR part 19 discretionary outside the United States and its outlying areas.

8. Clarification Needed

a. Change Not Clear

Comment: One respondent stated the proposed rule is not clear regarding what is meant by ''applying'' FAR part 19 to overseas acquisitions. The respondent requested the rule state whether application referred to where the contracting officer is located or where contract performance will take place.

Response: The final rule does not change the way FAR part 19 applies in the United States and its outlying areas. The rule is written to provide maximum flexibility to contracting officers to apply FAR part 19 outside the United States and its outlying areas.

b. Revisions Required to FAR 19.309

Comment: One respondent stated FAR 19.309 requires updating to indicate when provisions and clauses must be added.

Response: The final rule retains the proposed rule text to make changes to FAR 19.309, Solicitation provisions and contract clauses, which allows the provisions and clauses to be added when the contracting officer exercises their discretion and applies FAR part 19 to an overseas procurement.

9. Treaties and Other International Agreements

Comment: One respondent concluded that the Competition in Contracting Act (CICA) explains how it applies when international agreements and treaties apply for contracts awarded outside of the United States. Two respondents pointed out that neither the Small Business Act nor the proposed rule do the same to reconcile U.S. obligations in applicable treaties and international agreements. One of these respondents stated that the proposed rule is contrary to international treaty obligations, other applicable international agreement obligations, or local laws. Consequently, the contracting officer may not have the discretion to apply FAR part 19 to most construction and services contracts to be performed in a foreign overseas location. Treaties and international agreements are treated as paramount and are recognized as authorized restrictions on competition outside the United States.

Response: The Councils agree that the Small Business Act does not specifically address U.S. contracting obligations under applicable treaties or international agreements. The Councils also agree that contracting officers may not be able to apply FAR part 19 to overseas acquisitions when treaties or international agreements require solicitation or award to host nation sources or prohibit setting aside awards for U.S. firms. This FAR rule clarifies that FAR part 19 may be applied to procurements for supplies to be delivered or services to be performed outside the United States and its outlying areas. The proposed changes will encourage agencies to see if there are opportunities to contract with small businesses for overseas acquisitions and apply the Small Business Act to contracts awarded for performance overseas.

10. Foreign Entities

a. Rule Is Supported by Inaccurate Data on Foreign Entities

Comment: One respondent stated that SBA cannot determine size standards for foreign entities, and that the entities are not eligible for socioeconomic categories. These entities are shown by default as ''other than small'' in the System for Award Management (SAM) and Federal Procurement Data System (FPDS), even though the entities may be small. The respondent noted that the proposed changes ignore that many contracts awarded outside the United States, for performance outside the United States, are awarded to foreign entities.

Response: SBA establishes size standards corresponding to North American Industry Classification System (NAICS) codes, which apply to all offerors for a specific procurement, regardless of whether the offerors are foreign entities. SBA's regulations define ''business concern'' as an entity that is ''organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor'' (13 CFR 121.105). Such entities that meet the definition of ''business concern'' may be considered small for FAR part 19 procurements if they meet the size standard for the NAICS code assigned to a specific procurement. According to SBA, SAM and FPDS function as intended.

b. Rule Excludes Small Foreign Entities

Comment: A respondent commented that, since non-U.S. businesses are not considered ''small,'' applying small business size standards outside the United States excludes foreign entities and limits competition to U.S. companies only, contrary to CICA.

Response: As explained in the response to the comment under category 10a, SBA's regulations allow ''non-U.S. businesses'' to be considered small business concerns for the purposes of FAR part 19 procurements if they meet the criteria at 13 CFR 121.105. The Councils note that CICA provides an exception that allows agencies to exclude from competition other than small businesses in furtherance of sections 9 and 15 of the Small Business Act (see 10 U.S.C. 2304(b)(2) and 41 U.S.C. 3303(b)).

c. Rule Allows Foreign Entities To Benefit From Set-Asides

Comment: One respondent questioned why a small business that is ''foreign located, foreign owned, foreign controlled'' should be allowed to benefit from Federal procurement regulations.

Response: This FAR rule is not changing which business concerns qualify for part 19 procurements. See the response to the comment under category 10a for discussion of SBA's definition of ''business concern.''

11. Compliance With the Limitations on Subcontracting Requirements

Comment: Two respondents raised concerns that many small businesses will likely have difficulties complying with the limitations on subcontracting requirements. One respondent pointed out that unlike large businesses, small businesses lack the necessary on-site personnel to perform certain percentages of work that are required by the FAR. The respondent further stated that in some countries labor laws mandate the use of local labor, which creates the concern of how to apply and administer the limitations on subcontracting requirements. The other respondent stated that in certain countries, non-local entities would need to be ''sponsored,'' which means a U.S. small business cannot operate without contracting out all on-site performance to a local subcontractor.

Response: The Councils recognize overseas contracts are subject to considerations that are unique to the overseas environment. It is not practicable to list in the FAR every factor that may affect an overseas acquisition. In acknowledgment of these considerations, this final rule retains the proposed rule text to make the use of FAR part 19 discretionary outside the United States and its outlying areas to allow contracting officers to utilize the most appropriate acquisition strategy. In addition, the Councils note that offerors should practice sound business judgment in deciding which opportunities to pursue. The Councils also note that FAR part 9 addresses certain standards every prospective contractor is required to meet to be determined responsible and therefore eligible for award.

12. Compliance With Existing Set-Aside and Subcontracting Regulations

Comment: One respondent recommended that effort be made in forcing greater compliance with existing small business set-aside and subcontracting regulations instead of pursuing the changes in the proposed

rule. The respondent believes the proposed rule is expanding the definition of small business to include ''foreign located, foreign owned, foreign controlled'' businesses overseas.

Response: Agencies have procedures and processes in place to monitor and ensure compliance with existing acquisition regulations. For example, with respect to compliance with the acquisition regulations in FAR part 19, the agencies' Office of Small and Disadvantaged Business Utilization, or for DoD, Office of Small Business Programs, along with the procurement center representatives at SBA, have oversight of the use of FAR part 19 in the procurement process. As a result of these roles and functions, the Government has met its statutory small business goals since fiscal year 2013. This rule is expected to expand opportunities for small businesses overseas.

For further discussion related to businesses that may qualify as small for FAR part 19 procurements, see the response to comments under category 10c.

13. Small Businesses as Subcontractors for Overseas Acquisitions

Comment: One respondent stated that U.S. small businesses in most cases are better off supplying their expertise under overseas acquisitions as subcontractors to prime contractors that are able to undertake the necessary preparations to perform the Government's overall requirements. The respondent believes that small businesses incur excessive overhead charges compared to large businesses, which will result in the Government being charged significantly more overhead costs.

Response: The Councils do not concur with the assumption that small businesses are not suitable as prime contractors for overseas acquisitions. This FAR case clarifies that FAR part 19 may be applied to overseas acquisitions. The changes will encourage agencies to seek opportunities to contract to small businesses for overseas acquisitions. The Councils note that market research and competition will help to establish fair and reasonable prices, inclusive of overhead, for overseas acquisitions, regardless of whether offerors are small businesses or large businesses.

14. Exemption From Adjudication for Complaints About Noncompliance Overseas

Comment: One respondent recommended that contracting officer decisions to set aside, or not to set aside, procurements outside of the United States and its outlying areas for small business be excluded from available grounds for protest. Similarly, the respondent recommended that advertisements of procurements alleged to represent bundling of requirements for performance outside of the United States and its outlying areas also be excluded from available grounds for protest. The respondent believes that because the proposed change has the effect of making compliance with the Small Business Act optional for procurements outside of the United States and its outlying areas, those procurements should be exempt from protests related to noncompliance with the Small Business Act.

Response: The Councils do not have jurisdiction to exclude bundling actions or set-aside decisions as an available ground for protest. Agency level protests are governed by E.O. 12979, Agency Procurement Protests (October 25, 1995). GAO protests are governed by 4 CFR part 21. Protests in Federal courts are governed by 28 U.S.C. 1491. Therefore, the respondent's recommendation is not incorporated into the final rule.

15. Outside the Scope of This Rule

Comment: One respondent asked how this rule would impact the DoD requirement at DFARS 219.201 and if agencies outside of the United States would have to use the DD Form 2579, Small Business Coordination Record. A second respondent recommended that if the form 2579 was left as ''fully open and competitive with no set aside,'' even if a small business wins the award, there should be zero credit for the small business winning the award because neither the agency nor the SBA had anything to do with its award to a small business. This respondent further asked why the agency or SBA should receive credit when not making solicitations set aside for small business. A third respondent noted that the proposed rule is contrary to the countless Defense agreements that restrict competition to local contractors. This respondent specifically referred to the input a host nation would normally have regarding changes to an existing Status of Forces Agreement (SOFA). The respondent further stated that any changes without host nation input would not be well received by the host nation. One respondent noted that there are several DoD statutory exemptions for categories of contracts that should not be included by SBA for goaling purposes. The respondent also stated that these same contracting categories are exempt from SBA procurement center representative oversight. Therefore, the respondent does not believe the proposed rule is consistent with SBA's goaling guidelines. One respondent noted that SBA had a regulation stating that, unless a small business was owned and located in the United States, it was not a small business that could benefit from Federal procurement regulations.

Response: These comments are outside the scope of this rule. Although FAR 19.502–2 addresses small business set-asides, the use of the DD Form 2579 is addressed in DFARS 219.201. The procedures addressing credit for small business awards, small business procurement goals, and how they are implemented, are established in Section 15(g) of the Small Business Act and are not included in this FAR rule. DoD-specific requirements related to review by procurement center representatives are addressed in DFARS 219.402. Guidance specific to compliance with Defense agreements and SOFAs, as well as the statutory exemptions, are implemented by DoD and are DoD-specific. Past definitions of ''business concern'' in SBA's regulations are not relevant to this rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule amends the prescriptions at FAR 19.309, Solicitation provisions and contract clauses, for provision 52.219–1, Small Business Program Representations; provision 52.219–2, Equal Low Bids; and clause 52.219–28, Post-Award Small Business Program Rerepresentation. As a result of those amendments, this rule makes conforming changes to FAR provisions 52.204–8, Annual Representations and Certifications and 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services. However, this rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The provisions and clause continue to apply to acquisitions at or below the SAT, and apply or not apply to commercial products including COTS items, and for commercial services.

IV. Expected Impact of the Rule

Currently, FAR 19.000(b) states that FAR part 19, except for FAR subpart 19.6, applies only in the United States or its outlying areas. Some contracting officers have interpreted the phrase ''applies only in the United States'' to mean that they are not allowed to use

the set-aside and sole-source procedures of FAR part 19 for overseas procurements. Other contracting officers have interpreted ''applies only in the United States'' to mean that they are not required to use FAR part 19 procedures for overseas procurements but may do so if they choose. These conflicting interpretations have resulted in inconsistent use of FAR part 19 procedures for overseas procurements across Federal agencies. Conflicting interpretations may also contribute to low numbers of overseas contract actions that are set aside for small businesses.

This rule clarifies that contracting officers are allowed, but not required, to use the set-aside and sole-source procedures of FAR part 19 for overseas procurements. While SBA's regulations do not make the use of small business regulations discretionary for overseas procurements, it is necessary for the FAR to make the use of the small business preferences in FAR part 19 discretionary to resolve the conflicts between, on the one hand, the Small Business Act and SBA's regulations and, on the other hand, international treaties and agreements, local laws, diplomatic and other factors that are unique to the overseas environment. Depending on the location of contract performance or delivery, these factors may limit the Government's ability to apply the small business preferences in FAR part 19 on a mandatory basis. To resolve these conflicts, this final rule makes the use of FAR part 19 discretionary outside the United States and its outlying areas.

As a result of the clarification provided in this rule, contracting officers may set aside more overseas actions for small businesses in the future. However, this rule does not impose additional costs or reduce existing costs for small businesses who may compete. The rule merely allows additional opportunities to be provided to small businesses through set-asides and other tools in FAR part 19 for overseas procurements.

Data are not available on the number of overseas procurements contracting officers have not set aside for small business as a result of the conflicting interpretations described in the first paragraph of this section. According to data obtained from the Federal Procurement Data System (FPDS) for fiscal years 2019, 2020, and 2021 combined, there were 359,567 awards for performance overseas, including contracts, task orders and delivery orders, and calls under FAR part 13 blanket purchase agreements. Of those awards, 344,720 were made to approximately 12,002 unique large businesses, while 14,846 awards were made to approximately 3,223 unique small businesses. These numbers indicate that approximately 4 percent of actions awarded for performance outside the United States are awarded to small businesses.

Contract awards to small businesses could increase if contracting officers expand their use of set-asides and other tools in FAR part 19 for overseas procurements. FAR 19.502–2(b) states that the set-aside authority can only be used where a contracting officer has a reasonable expectation that offers will be received from two small businesses and that award will be made at a fair market price. Similarly, sole-source authority under any of the small business programs also requires certain conditions to be met before being utilized. The conditions for using the FAR part 19 sole-source authorities include, but are not limited to, making award at a fair and reasonable price. It is not possible to identify how many small businesses will have the capability, capacity, or inclination to compete for contracts performed outside the United States. In addition, it is not possible to predict how many overseas procurements contracting officers will set aside for small businesses as a result of the FAR changes.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and therefore, was not subject to the review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to give agencies the tools they need, especially the ability to use set-asides, to maximize opportunities for small businesses outside the United States. Currently, the FAR states that the small business programs do not apply outside of the United States and its outlying areas (FAR 19.000(b)). However, with the changes to the Small Business Administration's (SBA's) guidelines for establishment of small business goals in response to section 1631(c) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), contracts performed outside of the United States are now included in the Government's small business contracting goals. In addition, SBA has clarified that, as a general matter, its small business contracting regulations apply regardless of the place of performance.

This rule is seeking to increase opportunities for small business overseas and to support SBA's changes by expanding the use of set-asides and other tools to contracts performed outside of the United States.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis.

This rule may have a positive economic impact on small businesses. The rule expands existing procurement mechanisms (*e.g.,* set-asides) to contracts performed outside the United States. Therefore, small businesses available to compete for Federal contracts performed outside the United States are most directly affected by this rule.

Analysis of the System for Award Management (SAM) as of January 2022 indicates there are over 420,000 small business registrants that can potentially benefit from the implementation of this rule. It is not possible to identify which of these small businesses will have the capability, capacity, and/or inclination to compete for contracts performed outside the United States. An analysis of the Federal Procurement Data System (FPDS) for fiscal years 2019, 2020, and 2021 revealed that for the combined three years, there were approximately 359,567 awards for performance overseas, including contracts, task orders and delivery orders, and calls under part 13 blanket purchase agreements (BPAs). Of those awards, 344,720 were made to approximately 12,002 unique large businesses, while 14,846 awards were made to approximately 3,223 unique small businesses.

This number could increase if contracting officers expand their use of set-asides and other tools in FAR part 19 for overseas contracts.

Therefore, this rule could affect a smaller number of small businesses than those found in SAM, but potentially more than those

revealed by FPDS. DoD, GSA, and NASA note that the set-aside authority can only be used where a contracting officer has a reasonable expectation that offers will be received from at least two small businesses and that award will be made at a fair market price. Similarly, sole-source authority under any of the small business programs also requires certain conditions to be met before being utilized.

Nonetheless, this rule may have a significant positive economic impact on small business concerns competing for Federal contracting opportunities since it will provide additional Federal contracting opportunities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

This final rule is not expected to have a negative impact on any small entity.

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

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 2, 19, and 52

Government Procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2.101 [Amended]

■ 2. Amend section 2.101, in paragraph (b)(2), in the definition of ''Bundling'', by removing paragraph (3).

PART 19—SMALL BUSINESS PROGRAMS

■ 3. Amend section 19.000 by revising paragraph (b) to read as follows:

19.000 Scope of part.

* * * * *

(b)(1) Unless otherwise specified in this part (see subparts 19.6 and 19.7)—

(i) Contracting officers shall apply this part in the United States and its outlying areas; and

(ii) Contracting officers may apply this part outside the United States and its outlying areas.

(2) Offerors that participate in any procurement under this part are required to meet the definition of ''small business concern'' at 2.101 and the definition of ''concern'' at 19.001.

■ 4. Amend section 19.309 by revising paragraphs (a)(1), (b), and (c)(1) to read as follows:

19.309 Solicitation provisions and contract clauses.

(a)(1) Insert the provision at 52.219–1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied this part in accordance with 19.000(b)(1)(ii).

* * * * *

(b) When contracting by sealed bidding, insert the provision at 52.219–2, Equal Low Bids, in solicitations when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied this part in accordance with 19.000(b)(1)(ii).

(c)(1) Insert the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, in solicitations and contracts exceeding the micro-purchase threshold when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied this part in accordance with 19.000(b)(1)(ii).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 52.204–8 by revising the date of the provision and paragraphs (c)(1)(xii) introductory text and (c)(1)(xiii) to read as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (May 2022)

* * * * *

(c)(1) * * *

(xii) 52.219–1, Small Business Program Representations (Basic, Alternates I, and II). This provision applies to solicitations when the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii).

* * * * *

(xiii) 52.219–2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii).

* * * * *

■ 6. Amend section 52.212–3 by revising the date of the provision and paragraph (c) introductory text to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (May 2022)

* * * * *

(c) Offerors must complete the following representations when the resulting contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii). Check all that apply.

* * * * *

[FR Doc. 2022–08577 Filed 4–25–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 12, 15, 18, 46, and 52

[FAC 2022–06; Item II; Docket No. FAR–2022–0052; Sequence No. 1]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make needed editorial changes.

DATES: Effective: May 1, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2022–06, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes editorial changes to 48 CFR parts 4, 12, 15, 18, 46, and 52.

List of Subjects in 48 CFR Parts 4, 12, 15, 18, 46, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 12, 15, 18, 46, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 12, 15, 18, 46, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.402 [Amended]

■ 2. Amend section 4.402 by removing from paragraph (d)(1) the phrase ''via the Procurement Integrated Enterprise Environment (PIEE) at *https://wawf.eb.mil*'' and adding ''*https://www.dcsa.mil/is/nccs*'' in its place.

■ 3. Amend section 4.1103 by revising paragraph (a)(3) to read as follows:

4.1103 Procedures.

(a) * * *

(3) Need not verify SAM registration before placing an order or call if the contract or agreement includes the clause at 52.204–13, System for Award Management Maintenance, or a similar agency clause, except when use of the Governmentwide commercial purchase card is contemplated as a method of payment. (See 32.1108(b)(2).)

* * * * *

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

12.302 [Amended]

■ 4. Amend section 12.302 in paragraph (a) by removing from the second sentence the phrase ''commercial items'' and adding ''commercial products and commercial services'' in its place.

12.402 [Amended]

■ 5. Amend section 12.402 in paragraph (a) by removing from the fourth sentence the phrase ''commercial items'' and adding ''commercial products or commercial services'' in its place.

PART 15—CONTRACTING BY NEGOTIATION

15.601 [Amended]

■ 6. Amend section 15.601 by removing the definition of ''Commercial item offer'' and adding the definition ''Commercial product or commercial service offer'' in its place to read as follows:

15.601 Definitions.

* * * * *

Commercial product or commercial service offer means an offer of a commercial product or commercial service that the vendor wishes to see introduced in the Government's supply system as an alternate or a replacement for an existing supply item. This term does not include innovative or unique configurations or uses of commercial products or commercial services that are being offered for further development and that may be submitted as an unsolicited proposal.

* * * * *

PART 18—EMERGENCY ACQUISITIONS

18.205 [Amended]

■ 7. Amend section 18.205 by removing from paragraph (b) the link ''*https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf*'' and adding the link ''*https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf*'' in its place.

PART 46—QUALITY ASSURANCE

46.102 [Amended]

■ 8. Amend section 46.102 by removing from paragraph (g) the phrase ''(see subpart 42.1.)'' and adding ''(see 42.002 and subpart 42.2).'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(36) the date ''NOV 2021'' and adding ''MAY 2022'' in its place;

■ c. Removing from paragraph (e)(1)(xvi) the date ''NOV 2021'' and adding ''MAY 2022'' in its place; and

■ d. In Alternate II:

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (e)(1)(ii)(O) the date ''NOV 2021'' and adding ''MAY 2022'' in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (May 2022)

* * * * *

Alternate II (May 2022). * * *

* * * * *

■ 10. Amend section 52.222–54 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (c) the phrase ''*http://www.dhs.gov/E-Verify*'' and adding ''*https://www.e-Verify.gov*'' in its place.

The revision reads as follows:

52.222–54 Employment Eligibility Verification.

* * * * *

Employment Eligibility Verification (May 2022)

* * * * *

[FR Doc. 2022–08578 Filed 4–25–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2022–0051, Sequence No. 3]

Federal Acquisition Regulation; Federal Acquisition Circular 2022–06; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC)

2022–06, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2022–06, which precedes this document.

DATES: April 26, 2022.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2022–06 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2022–06

Item	Subject	FAR case	Analyst
*I	Applicability of Small Business Regulations Outside the United States	2016–002	Uddowla.
II	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2022–06 amends the FAR as follows:

Item I—Applicability of Small Business Regulations Outside the United States (FAR Case 2016–002)

This final rule amends the Federal Acquisition Regulation (FAR) to give agencies the tools they need, especially the ability to use set-asides, to maximize opportunities for small businesses outside the United States or its outlying areas, as defined in FAR part 2. Prior to this rule, the FAR stated that the small business programs do not apply outside of the United States (FAR 19.000(b)). This rule supports the Small Business Administration (SBA) policy of including overseas contracts in agency small business contracting goals.

Item II—Technical Amendments

Editorial changes are made at FAR 4.402, 4.1103, 12.302, 12.402, 15.601, 18.205, 46.102, 52.212–5, and 52.222–54.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–08579 Filed 4–25–22; 8:45 am]

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