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Presidential Documents

Title 3—

The President

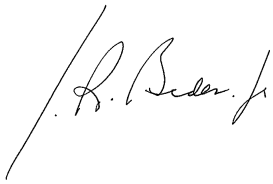
Memorandum of November 23, 2022

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $400 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, November 23, 2022

[FR Doc. 2022–26308
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Federal Register

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206–AN92

Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that would allow agencies to make term appointments in certain Science, Technology, Engineering, and Mathematics-related (''STEM-related'') occupations for up to 10 years. OPM is issuing final regulations to provide agencies with greater flexibility to staff foreseeably long-term projects of a STEM-related nature when the need for the work is not permanent. The intended effect of this change is to allow agencies the flexibility and discretion to hire individuals with knowledge, skills, and abilities tailored to a specific project that may not be required on a permanent basis or transferable to other functions of the agency. This longer-term appointment may also assist agencies in recruiting individuals with certain specialized knowledge, who may be interested in acquiring further skills and experience working on a project basis and would be less likely to pursue or accept a career position. This authority is not intended to be a substitute for regular agency hiring but is instead intended to be a supplement to existing hiring authorities that is targeted for longer-term projects that are not permanent in nature. This appointment authority provides no authority for noncompetitive conversion into a permanent competitive service position.

DATES: This rule is effective January 3, 2023.

FOR FURTHER INFORMATION CONTACT: Michelle Glynn at (202) 606–1571, by fax at (202) 606–3340, TDD at (202) 418–3134, or by email at *Michelle.Glynn@opm.gov*.

SUPPLEMENTARY INFORMATION:

Responses to Comments on the Proposed Rule

On September 14, 2020, the Office of Personnel Management (OPM) published proposed regulations in the **Federal Register** at 85 FR 56536 to allow agencies to make term appointments in certain STEM occupations; positions needed to stand-up, operate, and close-out time-limited organizations which have a specific statutory appropriation; and time-limited projects which have been funded through specific appropriation for up to 10 years at part 316 of title 5, Code of Federal Regulations (CFR). OPM received 12 comments on the proposed rule: four from individuals, six from other commenters, and two sets of comments from two Federal Employees Unions.

Based on our review of the comments and upon further consideration, OPM has decided to limit application of this ten-year term authority to certain STEM-related occupations enumerated below. OPM's determination is based on several factors.

- First, as illustrated by the public comments, the most significant demand for the ten-year term authority is for STEM-related occupations. This authority is an exception to current, long-standing regulations, which require agencies to seek OPM authorization to make initial appointments to terms that exceed four years, or to extend initial four-year term appointments. Historically, OPM has received very few requests for initial appointments beyond four-years. Based on agency input, there is a growing demand for longer term appointments tied to certain STEM-related projects. Accordingly, OPM has determined that it will scope this authority to the most common demand expressed by agencies—to support STEM-related projects that are time-limited in nature but are expected to last beyond four years.
- Second, some of the public comments on the proposed regulation argued that OPM should not move forward with this ten-year term authority at all. Those comments expressed concerns about potential for abuse or adverse effects on employees of widespread use of this appointing authority. Though we are not aware of any documented instances of abuse or adverse effects, we take seriously our role in protecting merit system principles, and we appreciate the concerns expressed in these comments. We therefore have decided that, because this is a new delegation of authority, it is prudent to evaluate how it will be applied to a subset of occupations—namely, STEM-related occupations—before extending it further. The final rule therefore does not include positions needed to stand-up, operate, and close-out time-limited organizations which have a specific statutory appropriation or positions related to time-limited projects which have been funded through specific appropriation.
- Third, OPM views the new ten-year term authority as a version of a delegation of authority to agencies. Currently, agencies must seek authorization from OPM in advance of using initial term appointments of more than four years or extending initial term appointments beyond four years. A 2021 report of the National Academy of Public Administration (NAPA), commissioned by Congress, recommended (among other things) that OPM shift to a risk-based approach to human resources transactions, which includes delegation of certain transaction functions, subject to periodic OPM oversight. In furtherance of this recommendation, we believe that an initial delegation to agencies of the authority to make initial appointments of up to ten years for certain STEM-related occupations is prudent. The scope of these regulations will allow for a number of STEM-related positions to be filled via term appointments of up to ten years, which will allow OPM to evaluate agencies' use of the longer term appointment authorities and the resulting impact on the Federal workforce. To date, we are aware of no documented evidence of abuse of a similar authority that the Department of Defense holds. Accordingly, delegating this authority to agencies subject to OPM oversight is in line with the NAPA report's recommendation of applying a risk-based approach to delegations of transactional HR activities.
- Fourth, as indicated above, OPM has determined that scoping this authority to certain STEM-related occupations is in the best interests of

the efficiency of the service. In scoping this authority to those occupations, we note that the nature of work can be project-based and people performing those functions move among employers more regularly. Because of the project nature of this work, the use of contractors by Federal agencies is more prevalent in those fields. By expanding the term appointment authority to ten years for STEM-related positions, agencies will now have a more streamlined option to use Federal employees, in addition to or instead of contractors, for longer-term projects.

• Fifth, we note that even though we are narrowing the scope of this authority from what was initially proposed, agencies continue to have the ability to appoint employees for terms of up to four years, and can request a longer initial term, or an extension, from OPM (see 5 CFR 316.301(b)). When an agency needs to request an initial term appointment to fill a position or group of positions in excess of 4 years, the agency needs to provide OPM with the following information: the position title(s); occupational series; and grade level(s); the geographic location(s) of the position; a description of the work to be performed by the position incumbent(s); and a statement explaining why the agency expects the work to last longer than 4 years. The last item should include any applicable timelines, the length of time the agency expects the work to last, and any other information the agency believes is relevant to its request. To further assist agencies, OPM intends to develop guidance (*i.e.,* templates) for agencies to use when submitting their requests for an initial term appointment beyond the current 4-year limitation. If we see an increased demand from agencies for longer term appointments in occupations not covered by this final rule, and we see no significant abuse or negative effects on the Federal workforce from this delegation, we will consider expanding the scope of occupations in the future.

Our responses to specific comments are below.

One individual commented that 10-year term appointments would likely be of interest to political appointees desiring to ''burrow'' into the competitive service and recommends OPM expand its oversight responsibilities with respect to political appointees, to include this authority. While a political appointee is not excluded from fair consideration for a non-political position in the Federal Government, we agree with the suggestion to expand OPM's oversight and, upon issuance of this regulation, OPM will amend its guidance to agencies and add the requirement that review will be required before an agency may place a political appointee in a position covered by this rule. Additionally, OPM will conduct oversight of the 10-year term hiring authority for certain STEM-related occupations, to ensure the appropriate use and intent of this hiring authority. In addition, Enterprise Human Resources Integration (EHRI) data will allow OPM to review the number of term appointments made to the positions covered by this authority.

Another individual requested OPM clarify whether agencies can use this authority to fill positions in the Senior Executive Service (SES). The 10-year term appointment authority is not available to fill positions in the SES, as it applies only to covered positions filled in the competitive service under 5 CFR part 316. Senior Executives are appointed to the SES, which is separate from the competitive service and the excepted service. See 5 U.S.C. 2101a, 2102, and 2103.

Another individual expressed concern over term employees' health and safety, as well as their workload burden. This individual also stated that term employees should have a basic right to health and safety and an earned right to apply for any permanent position at any time. The first comment is beyond the scope of this rulemaking as it appears, in context, to be a specific complaint against the commenter's employing agency that is not related to creation of a new 10-year term appointment authority. With respect to permanent positions, term appointees always have the right to apply for positions open to all U.S. citizens, and nothing about the new 10-year term appointment authority limits those rights. There is no right to a non-competitive conversion to a permanent Federal job, as explained in 5 CFR part 316, and we do not intend to change that rule for purposes of these appointments, which are expressly intended to be time-limited appointments designed for project work related to certain STEM-related fields. We do note that some individuals hired under these rules may be eligible for non-competitive conversion if they are subject to such statutory provisions as the Land Management Workforce Flexibilities Act, or 5 U.S.C. 3112 pertaining to disabled veterans.

One individual suggested OPM simplify the steps to renew multi-year appointments, and that supervisors should be made aware of appointment deadlines. This individual also asked whether employees appointed under these rules would be eligible for promotion, and whether employees could apply for permanent Federal jobs, and be considered as internal agency employees when doing so. OPM is unclear as to whether these comments were aimed at Federal contractors or Federal employees appointed under 5 CFR part 316 because the individual referred to employee ''contracts.'' To be clear, these rules apply to individuals appointed under 5 CFR part 316 (*i.e.,* Federal employees). OPM believes the proposed rule on extending appointments is clear: ''An agency may extend an appointment made for more than 1 year but fewer than 10 years up to the 10-year limit in increments determined by the agency. The vacancy announcement must state that the agency has the option of extending a term appointment under this section up to the 10-year limit.'' The manner in which agencies choose to notify supervisors of appointment deadlines is within the agencies' discretion and, therefore, beyond the scope of these rules. Individuals serving on term appointments under this authority may be promoted, in accordance with 5 CFR 335.102(e), provided the vacancy announcement specified the possibility of promotion. In addition, under long-standing policy, individuals may apply and be selected for new term appointments following the expiration of their existing term. Lastly, as discussed above, any term employee appointed under 5 CFR part 316 may apply for a permanent position. In general, a term appointment (no matter the duration) does not provide incumbents with competitive status in order to be considered as an internal employee or a ''status'' candidate for purposes of applying for a permanent position in the competitive service.

Two commenters stated they concur without comments or recommendations to the proposed rule.

Another commenter suggested OPM modify the proposed rule to allow for a one-time extension (beyond the 10-year limit) by OPM for 1 additional year to accommodate time-limited organizations and/or time-limited projects appropriated for additional funding by Congress. A different commenter also commented it was unclear as to what type of positions can be used for positions needed to stand-up, operate, and close-out time-limited organizations which have specific statutory appropriation, or time-limited projects which have been funded through specific congressional appropriation.

These comments were based on OPM's proposal to allow agencies to use the 10-year appointing authority for positions needed: to stand-up, operate,

and close-out time-limited organizations which have a specific statutory appropriation; or for time-limited projects which have been funded through specific congressional appropriation.

As discussed above, however, OPM is not extending the use of this appointing authority to those positions (unless the work to be performed by a time-limited organization, or a time-limited project funded through specific appropriations, requires the use of a covered STEM-related position).

Two commenters recommended OPM define which positions are considered STEM positions for purposes of these rules. OPM is adopting this recommendation. OPM is limiting the use of this authority to fill positions in the following STEM-related series and occupations: positions in the Social Science Series, 0101, Economist Series, 0110, Psychology Series, 0180; occupations in the Natural Resources Management and Biological Sciences Group (*i.e.,* 0400 group); occupations in the Medical, Hospital, Dental, and Public Health Group (*i.e.,* 0600); occupations in the Physical Sciences group (*i.e.,* 1300 group); occupations in the Engineering and Architecture group (*i.e.,* 0800 group); occupations in the Mathematical Sciences group (*i.e.,* 1500 group); and occupations in the Information Technology group (*i.e.,* 2200 group). These occupations are defined in OPM's Handbook of Occupational Groups and Series at *https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/occupationalhandbook.pdf.*

OPM has decided to make this new authority available to fill positions in the above-listed occupations. As noted by these commenters, agencies need clarity as to which positions are covered by this new rule. And, as discussed previously, the strongest interest is for occupations necessary to deliver STEM-related projects of a time-limited nature. OPM assessed which particular occupations are most necessary to supporting the delivery of these time-limited STEM-related projects. While we recognize that any occupation in government could arguably be connected in some way to STEM-related projects, we wanted to tailor the rule to the most essential occupations. They include not only positions that might generally be known as ''STEM'' occupations, but also certain related occupations that are important to successful delivery of STEM-related projects. Accordingly, the covered job series and occupations in the final rule are those that OPM believes are most necessary to STEM-related projects across the Federal landscape that may entail work of a non-permanent duration lasting more than 4 years. By tailoring this new authority to the occupations necessary to deliver on longer-term STEM projects, the final rule carefully balances competing interests by responding to commenters who have concerns about the scope of the new authority while also offering agencies a new authority for the circumstances where they expressed the greatest need.

A different commenter suggested OPM identify STEM positions by series to limit confusion as to which occupational series are covered under these rules, and further suggested that OPM should clarify whether these rules apply only to STEM positions or also to positions that support STEM positions. As noted, OPM is adopting this suggestion and is limiting the use of this hiring to the Social Science Series, 0101, Economist Series, 0110, Psychology Series, 0180; and 6 occupational groups for positions in the 0400, 0600, 0800, 1300, 1500 and 2200 job series.

The same commenter asked OPM to clarify the types of situations in which term appointments could be extended beyond 4 years without OPM approval. Term appointments made pursuant to 5 CFR 316.301(a), *i.e.,* for a period of more than 1 year but not more than 4 years, require OPM approval in order to extend beyond 4 years in accordance with 5 CFR 316.301(b). Pursuant to this rulemaking and in accordance with 5 CFR 316.301(c), an agency may extend an appointment made for fewer than 10 years up to the 10-year limit in increments determined by the agency without OPM approval. The vacancy announcement must state that the agency has the option of extending a term appointment under this section up to the 10-year limit.

The same commenter asked OPM to clarify whether positions needed in support of time-limited organizations or time-limited projects funded by Congress filled under this authority are limited to STEM occupations. As described above, OPM has decided to limit use of this authority to the following positions: Social Science Series 0101, Economist Series 0110, Psychology Series 0180, and the 0400, 0600, 0800, 1300, 1500 and 2200 occupational groups. The final rule authorizes agencies to use this authority to fill positions needed in support of time-limited organizations, or time-limited projects funded by Congress only if the projects or work of the time-limited organization requires the use of STEM-related covered position(s).

This commenter also recommended OPM clarify in the final rulemaking that this authority may include positions with work in a variety of professional and technical areas, including but not limited to: environmental and biological sciences; medical, dental, and public health; mechanical and biomedical engineering; information technology and systems management; and actuarial and statistical mathematics. As explained above the final rule applies to all positions in the Social Science Series 0101, Economist Series 0110, Psychology Series, 0180, and occupational groups 0400 (Natural Resources Management and Biological Sciences Group), 0600 (Medical, Hospital, Dental, and Public Health Group), 0800 (Engineering and Architecture Group), 1300 (Physical Sciences Group), 1500 (Mathematical Sciences Group), and 2200 (Information Technology Group). For positions not covered, OPM notes that current rules in part 316 subpart C can be used to make initial term appointments in excess of 4 years upon request and contingent on OPM approval. As previously stated, OPM will develop guidance to assist agencies with making requests for initial term appointments for more than 4 years.

This commenter asked OPM to clarify the mechanism for agencies to use in identifying a 10-year term appointment under these rules as compared to the existing 4-year term appointments made under 5 CFR 316.301(a). This commenter asked if OPM will provide a new legal authority and remark code to document the appointments under the 10-year rule on the Standard Form (SF) 50. Appointments made under these provisions are made pursuant to 5 CFR 316.301(c), while a 4-year term appointment is made under 316.301(a). OPM will provide agencies with a new legal authority code and instructions for documenting appointments made under this delegation of authority.

The same commenter asked whether OPM intends to change 5 CFR 831.201(a)(14) to allow retirement benefits for term employees under this authority. This comment is beyond the scope of this rulemaking which pertains to the duration of term appointments. We do note that, in general, term appointments are excluded from coverage under the Civil Service Retirement System (CSRS) but, generally, are subject to the Federal Employees Retirement System (FERS). OPM encourages readers to visit: *https://www.opm.gov/retirement-services/* for more information about

whether and how service under a term appointment is creditable for purposes of Federal retirement.

The commenter also asked whether individuals hired under this authority will be eligible for non-competitive conversion to a permanent position in the competitive service. As noted above, in general, individuals hired under this authority, or other term appointments, are not eligible for non-competitive conversion to a permanent Federal job. Only Congress, or the President by executive order, can establish non-competitive entry into the competitive service.

This commenter suggested OPM clarify that, if funding comes from grants or industry resources (*i.e.,* funded by non-Congressional appropriations), this authority cannot be used to fill positions needed to stand-up, operate, and close-out time-limited organizations; or for time-limited projects. As stated previously, OPM is not extending this authority to such positions (unless the work to be performed requires the use of a covered STEM-related position).

Lastly, this commenter suggested no appointments should be extended beyond the 10-year limit. OPM agrees with this comment. No appointments made under this hiring authority can be extended beyond the 10-year limitation.

A different commenter asked whether individuals currently serving on term appointments pursuant to 5 CFR 316.301(a), *i.e.,* not to exceed 4 years, could be extended for up to 10 years under these provisions. The commenter asked whether a new job announcement would have to be issued in order to retain individuals currently appointed under 5 CFR 316.301(a). The commenter also asked whether time spent on a current term appointment (*i.e.,* not to exceed 4 years), including any extensions by OPM, would count against the 10-year limit under the 10-year appointment rule. Appointments pursuant to 5 CFR 316.301(a), *i.e.,* for a period of more than 1 year but not more than 4 years, cannot be extended by these provisions. Four-year term appointments and 10-year term appointments are two separate categories of term employment. Agencies seeking to extend individuals beyond their 4-year limitation must seek OPM approval in accordance with 5 CFR 316.301(b). An agency seeking to fill a term position for up to 10 years in accordance with these rules must advertise the position consistent with public notice requirements and in accordance with 5 CFR 316.301(c). No appointment may be extended beyond the 10-year limitation when making appointments under the 10-year term hiring authority for certain STEM-related positions.

The same commenter requested that OPM consider a regulatory change that would allow for 10-year competitive temporary promotions. OPM is not adopting this suggestion because it is beyond the scope of this rulemaking.

The same commenter suggested OPM broaden the proposed rule to include mission critical non-STEM-related occupations. OPM is not adopting this proposal because we do not have evidence to support the need for a 10-year term appointment covering any and all positions that would be considered ''mission-critical.''

This commenter questioned whether it could identify highly qualified applicants for positions filled under these rules. The agency also noted that filling positions under this provision could create retention issues, citing pay equity with other employment sectors as well as the lack of permanent job security and retirement benefits as potential challenges to retention. This authority is not intended to be a substitute for regular agency hiring but is instead intended to supplement existing hiring authorities. OPM proposed these rules to assist agencies in attracting individuals to time-limited STEM-related project work by giving agencies the option to offer an uninterrupted term appointment of up to ten years. This longer-term appointment may also assist agencies in recruiting individuals with specialized knowledge who may find opportunities to work on a project-by-project basis more attractive than the job duties of permanent positions. OPM encourages agencies to explore the use of recruitment, relocation, and retention incentives under 5 U.S.C. 5753 and 5754 and 5 CFR part 575, subparts A–C; the General Schedule superior qualifications and special needs pay-setting authority under 5 U.S.C. 5333 and 5 CFR 531.212; or other similar authorities to address staffing difficulties in these term positions where appropriate. For term positions under the General Schedule, agencies may also request that OPM establish or increase special salary rates under 5 U.S.C. 5305 or 5 CFR part 530, subpart C, to address significant or likely significant difficulties in recruiting or retaining well-qualified employees. As previously stated, we do note that, in general, term appointments are excluded from coverage under the Civil Service Retirement System (CSRS), but, generally, are subject to the Federal Employees Retirement System (FERS).

This commenter also suggested OPM consider granting individuals who serve on term appointments lasting longer than 5 years non-competitive conversion eligibility to a permanent position in the competitive service. OPM is not adopting this suggestion. As noted above, current rules for term appointments do not permit this, and only the Congress, or the President by executive order, can establish non-competitive entry into the competitive service.

This commenter noted that its recruitment files are destroyed after 3 years and expressed concern that no record of these appointments would exist after that time. To remedy this, the agency recommended that the length of a potential extension under these provisions (within the overall 10-year limitation on appointment) be added to the employee's SF–50 as a remark, or that employees should be required to sign a separate statement of understanding to memorialize these term appointments. OPM recommends agencies maintain separate recruitment files for the entire time an individual is employed under a 10-year term appointment in order to satisfy any internal or OPM agency audit requirements. As explained above, OPM will be issuing guidance pertaining to the new coding for purposes of documenting these term appointments.

The same commenter asked OPM to define the terms ''specific statutory appropriation'' and ''specific Congressional appropriation'' as used in proposed 5 CFR 316.301(c). This comment is no longer relevant in light of OPM's determination to limit the 10-year term authority to certain STEM-related positions and not extend it to positions needed to stand-up, operate, and close out time-limited organizations which have a specific statutory appropriation; or to time-limited projects which have been funded through specific congressional appropriation.

Two Federal employee unions raised several objections and concerns with this rule. A discussion of these comments follows.

One Federal employee union commented that the proposed rule is unnecessary and counter to good public policy. The organization believes current rules allow for 4-year extensions, and that OPM has not made a case for these 10-year term appointments. This organization also commented that, ''[a] 10-year term is a career position from a practical perspective. Federal employees vest at 5 years, as a consequence not providing full labor protections for employees for

up to 10 years does not make good policy.'' OPM disagrees with these statements. We believe this authority constitutes good public policy in that these appointments avoid an unnecessary administrative burden on agencies from having to request an extension from OPM during the 10-year period and thus helps to avoid any uncertainty among term employees as to whether their employment will continue through the life cycle of the project work for which they were hired. Additionally, this authority meets the staffing needs of projects requiring certain STEM-related skills known in advance to exceed 4 years and foreseeably require a 10- year period. Finally, employees on term appointments are not precluded from being included in bargaining units and represented by labor unions. As a reminder, there will be robust OPM oversight regarding the use of this 10-year term hiring authority. We have also clarified the limits associated with making a term appointment for certain STEM-related occupations for up to 10 years; and if agencies discover good candidates are not interested in a 10-year term appointment, OPM expects agencies will return to permanent competitive hiring procedures for these occupations.

This organization also commented that this authority has the potential of doing away with the merit system in hiring practices, and that it does away with veterans' preference in hiring. These statements are incorrect. Positions filled through this authority are filled in the same manner as existing (*i.e.,* 4 year) term appointments: by using competitive hiring procedures (which include the application of veterans' preference) in 5 CFR part 332, or noncompetitively in accordance with 5 CFR 316.302(b).

This organization also commented that, ''the Burning Glass Technologies study does not point to any instances of unmet needs based on current lengths of term appointments. The study does assert the 10-year term will grant more flexibility but it does not prove this flexibility will be effective in recruiting higher quality personnel.'' OPM believes giving agencies the flexibility to appoint individuals for durations commensurate with the work of the position to be filled will increase the pool of talented job applicants. This flexibility is necessary because agencies have reported to OPM that employees have left existing term positions due to uncertainty over whether the position will be extended. The purpose of these rules is to provide a flexibility to agencies faced with staffing certain project-related work, which, from the outset, is expected to last over 4 years and foreseeably could require up to 10 years.

This organization stated this concept has no practical benefit, noting there have not been any complaints by agencies that the 4-year term is insufficient to recruit the talent needed. During the comment period of this proposed rule, OPM received support from several agencies for making a term appointment for up to 10-years for certain STEM-related project work. OPM disagrees that there is no practical benefit to this authority. This authority relieves agencies of the administrative burden of having to request an extension from OPM for work known at the outset to continue beyond 4 years. It also allays uncertainty that employees might otherwise have about their status/prospects for continued employment while an extension request is under review. Finally, agencies have reported that the absence of a 10-year term authority has led to using contractors, rather than hiring employees, for projects that will last longer than 4 years. We anticipate that the 10-year term appointment authority will result in more employees being hired, rather than contractors.

Lastly, this organization commented that the proposed rule will significantly undermine labor protections. This entity stated extending term appointments out to 10 years will give supervisors unprecedented authority and practically eliminate any protections for workers. OPM neither agrees with nor understands the context of this comment. Individuals serving on 10-year term appointments will have the same job protections as current term employees. The job protections for individuals serving on a 10-year term include: appeal rights after completing a one-year trial period; and the same reduction-in-force (RIF) protections as other term employees (*i.e.,* being placed in the same tenure group as other term employees for purposes of retention standing pursuant to 5 CFR 351, subpart E). OPM did not propose any changes to employee protections with respect to this rulemaking.

A different Federal Employee Union also expressed several objections and concerns with this rule. The organization commented that long-term appointments undermine competitive selection principles and would deprive term employees of deserved benefits and job security. OPM disagrees, noting the selection process is the same process used for traditional term appointments. Agencies fill these positions using competitive hiring procedures (which include the application of veterans' preference) in accordance with 5 CFR part 332, or noncompetitively in accordance with 5 CFR 316.302(b). Further, by its nature, this term appointment does not displace permanent positions.

The organization stated this term appointment authority does nothing to prevent agency abuse and affords agencies more opportunities to avoid hiring permanent employees. OPM disagrees. As noted in the previous response, agencies fill positions under this authority in the same manner as traditional term appointments. In addition, positions filled under this authority are subject to the same oversight and accountability requirements as are other term appointments. OPM reminds readers that the decision to fill a position on either a permanent or time-limited basis depends upon the nature of the work to be performed (including the length of time the agency expects the work to be completed). Agencies should not use this authority to fill positions for which the need for an employee's services are permanent. Lastly, as noted above, we have constrained use of this authority to the specifically identified STEM-related occupations. Consistent with 5 CFR 316.301(a), a term appointment is appropriate when the need for an employee's services is not permanent. This authority cannot be used simply to avoid hiring permanent employees. OPM will evaluate agency usage of the authority and consider any modifications that may be necessary.

The organization commented that the Federal Government should not be expanding its use of these limited employment opportunities that do not provide additional benefits and offer only limited career advancement possibilities. The organization further noted that these limited employment opportunities provide employees with no additional standing when an individual in one of these appointments applies for a full-time position. OPM disagrees with this organization's view that OPM should not be expanding these limited employment opportunities. This delegated authority was created to address agency hiring needs for specific, time-limited projects expected to last longer than traditional term appointments (*i.e.,* 4 years), but also do not require permanent employees.

This organization also commented that extending the current term appointment limitation of up to 4 years to the proposed 10 years without more benefits is thus unlikely to make Federal employment more attractive to highly

qualified individuals. OPM disagrees. The commenter provides no evidence that the availability of this 10-year term appointment for certain time-limited projects would negatively influence the perception of Federal employment among ''highly qualified'' individuals. These appointments offer certain highly qualified individuals an opportunity that permanent employment would not provide. We also note that term employees are eligible to receive health insurance and life insurance, participate in the Thrift Savings Plan (TSP), and earn paid leave and General Schedule within-grade increases, and that time spent as a term employee may be creditable towards Federal retirement under certain circumstances. For additional information pertaining to Federal retirement coverage and eligibility, please see *https://www.opm.gov/retirement-services/*.

The organization also remarked that employees hired for a term appointment do not have higher standing when compared to outside applicants when applying for a permanent position. OPM acknowledges that term employment under this subpart does not lead to non-competitive conversion to a permanent job in the competitive service. OPM notes, however, that individuals may use the experience they acquire under this authority to qualify for permanent positions and that such experience may help them better compete when applying for a permanent job.

The organization stated that: (1) this change creates a disposable workforce for up to 10 years; (2) the practical effect of this change is that it prolongs the period agencies can reap the benefits of the services of term employees while retaining the ability to abruptly terminate those appointments after an allocated time period; and (3) that this is at odds with OPM's statement that it does not intend this change to be a substitute for a permanent workforce or for appointing employees to permanent positions for work of a permanent nature. OPM disagrees. As we previously noted, this authority is for work of a time-limited nature, *i.e.,* situations for which the need for an employee's services is not permanent. OPM is simply creating a category of term appointment for which agencies already have, in appropriate circumstances, permission to retain the appointee for up to ten years without seeking OPM approval. OPM expects agencies to continue to fill positions on a permanent basis when the nature of the work to be performed requires an employee's services permanently.

The organization also commented that this change will make agencies much less competitive with the private sector. It stated that without affording these employees the ability to appeal the end of their appointment or confer competitive status, these employees will continue to lack job security under this streamlined approach to termination. OPM disagrees. As described above, the 10-year appointment provides the opportunity to perform work that is strictly of a non-permanent nature, which, by definition, neither provides permanent employment nor displaces permanent employees. Further, the 10-year appointment rule gives agencies a flexibility to compete with the private sector that they do not currently have. We believe the prospect of employment for up to 10 years (versus the uncertainty of waiting for an extension request to be approved) will enable agencies to attract interested individuals and thus make the Federal Government more competitive for work which is strictly of a non-permanent duration. We also note that individuals hired under this authority will have the same appeal rights as traditional term employees, with respect to the balance of the stated term. In accordance with 5 CFR 316.303(b), no term employee has the right to appeal or otherwise remain on an agency's rolls beyond the expiration date of his or her term appointment. In other words, a term employee would not have adverse action procedural rights if the employee's employment terminates because the term appointment has expired. However, if a term employee has completed the one-year trial period, the employee must be provided adverse action procedural rights if the agency seeks to take an adverse action, such as a removal action, after the completion of the trial period and prior to the expiration date of the term appointment.

This organization also commented that private sector employees in STEM-related positions receive better compensation than employees in STEM-related positions in the Federal Government, so increasing recruitment incentives or special pay authority would be a better way for the Federal government to attract and keep employees. This does not take into account that these appointments are for projects of a limited duration. Compensation for time-limited positions is beyond the scope of this rulemaking. As previously discussed in this **SUPPLEMENTARY INFORMATION**, OPM encourages agencies to explore the use of available pay flexibilities to address staffing difficulties, such as recruitment and retention incentives, where appropriate and to the extent practicable.

This organization disagrees with the premise that extensions of up to ten years for term appointments is an effective recruitment tool to enable the Federal Government to compete with the private sector for applicants with needed STEM-related skills. (This entity disagrees with the reports cited: *STEM Careers and the Changing Skill Requirements of Work, The National Bureau of Economic Research* (Revised June 2019) and *Can STEM Qualifications Hold The Key To The Future Of Cybersecurity?* (Forbes September 11, 2019)). This organization stated there has been no showing that, in the current economic environment, there is a need for agencies to extend the length of term appointments for such a significant period of time or that such a change will help agencies attract and retain STEM-related talent. As OPM previously noted, this authority is intended to address situations for which the work to be performed is of a time-limited nature, *i.e.,* situations for which the need for an employee's services is not permanent. OPM believes that in these circumstances, allowing agencies to make term appointments for the duration of the project work (up to 10 years) is a better alternative (and will enhance recruitment efforts for these positions) than requiring individuals to reapply/compete after 4 years or rely on the employing agency to request and receive an extension from OPM or requiring agencies to use contractor personnel.

This organization commented that a better recruitment tool for the Federal Government to pursue would be to grant a special pay authority to match the salaries of those in the private sector and offer other recruitment incentives such as: telework, health benefits, and competitive status. Agencies already have the authority to approve a recruitment incentive without OPM approval for payments of up to 25 percent of an employee's annual rate of basic pay times the number of years in a service agreement (not to exceed 4 years or 100 percent of annual basic pay). OPM encourages agencies to use all recruitment incentives available to them to the extent feasible and appropriate. We also note that higher pay does not address the fact that the work to be performed under this authority is not permanent; it is of a time-limited nature.

The organization also stated that in the event of a reduction in force (RIF), term employees would be in the first group to lose their employment status. OPM agrees and notes the same is true

for term employees serving for any duration (including traditional 4-year term appointments). In both instances, term employees will be included in the same tenure group as other term employees for purposes of retention standing pursuant to 5 CFR part 351, subpart E.

This organization commented that OPM does not provide any evidence to support its position that these time-limited projects often last longer than 4 years, or to support the additional six years. Without evidence to support that rationale, this organization has concerns with extending these appointments up to 10 years when the current regulation affords agencies the opportunity to extend beyond four years only when the extension ''is clearly justified and is consistent with applicable statutory provisions.'' 5 CFR 316.301(b). OPM disagrees with this assertion, noting that we cited several studies in the proposed rule (85 FR 178) indicating agencies will need the flexibility and agility to attract and retain talent, for a significant period of time, with up-to-date knowledge and training in STEM-related fields for time-limited projects. Moreover, contrary to the commenter's suggestion, the 10-year term appointment is not simply a longer version of the 4-year term appointment and does not lend itself to supplanting permanent employees.

This organization also commented that the current limitation on term appointments which requires justification for an extension shows the proper respect for competitive selection processes, which should be used to fill long term positions. The organization contended that OPM did not provide any analysis regarding how often extensions are currently granted and/or whether the time-limited projects were completed during these extensions. Further, it contended that agencies are already in the position to determine whether an appointment is needed beyond the 4-year term, subject to approval by OPM. It concluded that this change does no more than provide agencies the authority to abuse the term appointment system without any business justification. OPM disagrees, noting that positions filled under this authority are subject to the same appointment procedures as other term appointments, including public notice and a statement in the job announcement that the position may be extended by the agency for up to 10 years. The only difference is that the duration of the appointment is longer based on the nature of the project to be performed.

This organization also stated the lack of oversight to the change encourages agencies to abuse the term appointment system. OPM disagrees with this assertion. When using this authority agencies are required to adhere to Merit System Principles and follow the same recruitment and selection procedures as they do when making traditional (*i.e.,* 4 year) term appointments. OPM's Merit System Accountability and Compliance (MSAC) will conduct oversight of this proposed 10-year term hiring authority for certain STEM-related occupations when conducting its agency accountability audits and will decide the process, factors involved, and the timing as to when the reviews will take place for each agency. In addition, EHRI data will allow OPM to review the number of term appointments made to the positions covered by this rule.

The same organization commented that OPM did not provide any detail as to how it intends to execute this oversight with regard to this authority. It added that without clear guidance on OPM's oversight procedures, this entity has concerns with agencies' authority to utilize the 10-year appointment without seeking OPM approval. As OPM noted in the previous response we will conduct the same oversight with respect to this authority as we do with respect to traditional 4-year term appointments.

This organization expressed concerns that a 10-year appointment could be extended and that agencies will misapply the regulation and continuously move employees to new time-limited projects without job security. This entity noted that pursuant to 5 CFR 335.102(e), agencies may promote, demote, or reassign a term employee serving on a given project to another position within the project, which the agency has been authorized to fill by term appointment. OPM disagrees. The authority to promote, demote, or reassign a term employee as described in 5 CFR 335.102(e) is limited to other positions within the project. The authority to reassign an employee to another position within the project, per 5 CFR part 335, does not constitute authority to extend a term appointment. Moreover, the specific requirements for STEM-related skills suitable for a particular project make it unlikely that an employee appointed under this authority may be moved at will from project to project simply to avoid providing the employee with job security.

This organization also commented that this rule will result in agencies losing institutional knowledge acquired, applied, and passed on by permanent employees as agencies rely more heavily on short-term employees. As an initial matter, agencies regularly balance the trade-offs between term and permanent appointment. Term appointments under this authority are only appropriate for work that is time-limited, not permanent (*i.e.,* the need for an employee's services is not permanent). The decision to use this authority will thus depend on the specific nature of the work to be performed and how the agency balances the trade-offs between term and permanent employees. OPM encourages agencies to engage in strategic workforce planning and knowledge transfer/management (which may include leaving documentary materials in various media) when practicable and necessary to ensure maintenance of institutional knowledge.

Lastly, this organization requests that OPM strongly consider the impact of this change on the full-time permanent employee workforce and the loss of institutional knowledge. The organization commented that appointment of term employees for much longer periods will likely reduce the number of full-time employees with institutional knowledge, as those who possess it reach the stage of retirement and there are an insufficient number of permanent employees in line to take over. OPM does not agree that the appointment authority will have that impact. By its nature, this authority applies when particular expertise in STEM-related fields is needed for a defined project, but not on an ongoing basis once the project is completed. Should that skillset be needed again, this authority will enable the agency to seek candidates with up-to-date skills in the required STEM-related discipline. We also expect agencies will use it to bring on Federal employees to perform STEM-related project work that is currently being performed or in the future would be performed by contractors. Nonetheless, we intend to evaluate agency use of the authority and to make any adjustments that would advance the efficiency of the service.

While OPM offers the specific responses noted above to the unions' comments, we take seriously their concerns, and therefore in the final rule have decided to limit this 10-year term authority to the STEM-related positions for which agencies have indicated the highest demand.

Expected Impact of This Final Rule

A. Statement of Need

OPM is issuing the final rule to delegate its existing authority to authorize terms of longer than 4 years and up to 10 years to agencies for STEM-related occupations. OPM has been evaluating its transactional

activities to determine which can be delegated to agencies and evaluated through OPM's oversight authority rather than requiring OPM approval in advance. We have sought agency input on which transactional activities to delegate, and multiple agencies have expressed an interest in having delegated authority to appoint employees to terms of longer than 4 years and up to 10 years, particularly for STEM-related projects, which can be long-running but not permanent. After extensive consideration and review, OPM has determined that granting this authority for the STEM-related occupations identified in the final rule is appropriate, and that agency use of this delegated authority can be evaluated through OPM's normal oversight activities.

This new authority will provide agencies with the flexibility to staff foreseeably long-term project work of a STEM-related nature when the need for the work is not permanent but is expected to last longer than 4 years. This new longer term appointment hiring authority will assist agencies in recruiting and retaining individuals with certain specialized STEM-related knowledge and experience. OPM is finalizing this rule because it recognizes that the work performed by STEM-related positions often lasts longer than 4 years. For example, it may be cyclical and often project based (*e.g.,* developing a research concept, initial research to prove feasibility, and testing/evaluation) and must continue until the goal or purpose of the work has been accomplished. Such work may include, but is not limited to, the need to collect data or conduct research (including medical research) regarding a certain trend or phenomenon, sometimes over time; perform technical or professional analysis of this data or research; and prepare reports of findings and recommendations, based on the data and analysis; or develop and implement new Information Technology (IT) projects or programs. In some instances, the work performed by these individuals may be affected by environmental factors or other external circumstances beyond the agency's control, which may result in the need for a lengthier appointment.

OPM has narrowed the scope of the final rule from what was proposed to the positions listed in the **SUPPLEMENTARY INFORMATION**. OPM has determined that the justification for delegating its authority to agencies for the longer term appointments is strongest with respect to STEM-related occupations needed for projects which require longer durations on a government basis. OPM retains authority to approve longer-term appointments for other positions not contained within the scope of this final rule. That authority has been little used historically. We will be updating our guidance on use of this authority so that agencies are aware of the ability to ask OPM to approve longer terms for occupations not included in this rule. We will continue to evaluate the scope of the delegation and consider any adjustments to the occupations covered based on that evaluation.

This formulation is based on discussions with Chief Human Capital Officers, our review of public comments, interagency comments on the draft final rule, and OPM's view that the final rule should have guardrails in place to ensure use of this flexibility does not impact permanent work or employees needed to perform work a permanent nature.

B. Impact

This regulation will provide agencies a streamlined ability to attract and retain talent, for a longer period of time, with up-to-date knowledge and training in STEM-related fields for time-limited projects. This regulation will also allow agencies to hire new STEM-related personnel and grant their own extension of the term appointments, if initially hired for less than 10 years, to allow agencies the ability to shape their workforce with greater agility to adjust to current and emerging mission needs.

OPM has reviewed historical usage of four-year term appointments for STEM-related occupations. Over the last five fiscal years, approximately 36,688 appointments have been made in the STEM-related occupations covered by this final rule. Of those STEM-related appointments, approximately 13,840 (over 37%) were extended beyond the four-year term. These data suggest that there is need for this ten-year term authority and support our decision to scope this delegation of authority to agencies to appoint individuals for terms of up to 10 years to the STEM-related occupations covered in the final rule.

The impact of this rule will be an important new workforce planning tool which will help agencies better compete for certain STEM-related talent and retain that talent throughout the lifecycle of increasingly longer STEM-related projects.

C. Regulatory Alternatives

The regulatory alternative to this final rule is the option of not regulating. Current regulations at 5 CFR 316.301(b) allow agencies to request from OPM the authority to extend a term appointment beyond the four-year limitation, or to make initial term appointments in excess of four years when justified. Alternatively, agencies could rely on Federal contractors to perform this work. For certain STEM-related work agencies expect to last longer than four years, the current rule is cumbersome and may prove to be a disincentive to recruitment and retention of individuals needed for this work. The Federal procurement process can be lengthy and expensive. Affording agencies with the option to make longer term appointments pursuant to the final rule in lieu of contract support will allow the agency to have STEM-related talent throughout the life cycle of a time-limited project. In addition, this regulation may help agencies better compete for STEM-related talent because Federal term employment will offer individuals more job security and benefits (*e.g.,* health insurance, life insurance and participation in the Thrift Savings Plan (TSP)) than would contract work to individuals interested in working on special projects in order to keep abreast of new technology and enhance their skills. Currently, agencies must seek OPM approval for term appointments which last more than 4 years. For this type of work agencies are faced with greater challenges if they are not able to continue to employ certain individuals with the specific STEM-related knowledge and experience required for the time-limited work. This final rule will provide agencies with greater flexibility when making term appointments for certain STEM-related work and projects.

D. Costs

OPM anticipates the costs of the final rule will be less than the costs of using other alternatives. Costs associated with the final rule are minimal and include: the costs associated with internal agency approval processes to approve an extension pursuant to the final rule up to ten years duration, and the usual learning curve of implementing a regulatory change. To help minimize these costs, OPM intends to issue supplemental explanatory guidance as well as provide technical assistance upon request to any agency which may require such assistance. Because agency skill levels and internal processes vary, OPM cannot monetize the costs of providing this flexibility to agencies.

The costs associated with the regulatory alternative, *i.e.,* relying on existing rules and/or Federal contractors, would be greater than the costs associated with implementing the final rule. Under current rules, agencies

would be required to request OPM approval to make initial term appointments in excess of four years for STEM-related work. This process requires additional staff resources (for preparation, review, and approval) from both the requesting agency and OPM than would otherwise be the case with the final rule (the final rule would eliminate costs associated with this step). If an agency sought to make a 4-year appointment and request an extension from OPM as needed, both agencies would incur similar costs (for preparation, review, and approval) to those associated with a request pursuant to 5 CFR 316.301(b). The final rule would eliminate these costs as well. OPM cannot monetize these costs as they may vary across agencies.

The costs associated with relying on contractors to perform this STEM-related work present an additional obstacle for agencies. The use of contractors requires an agency to invoke non-human resources staff to prepare, issue, and navigate the Federal procurement process. This will add additional staff time and expenses to the process of obtaining STEM-related talent that agencies would otherwise would not incur if using the final rule. Using the contracting/procurement process represents an additional layer that adds a hidden cost in the form of time delays which will negatively impact agencies' ability to attract this in-demand talent and delay agencies' ability to meet current and emerging mission needs. OPM cannot quantify these hidden costs because procurement expertise and processes vary across agencies.

E. Benefits

The benefits of the final rule are many and will be realized by both the agencies and the employees recruited under these provisions. The final rule streamlines the process through which agencies can obtain needed STEM-related employees for work of a non-permanent nature. It does this by eliminating one and/or two steps agencies would otherwise be required to follow: requesting and obtaining OPM approval to make initial term appointments in excess of four years, and the requirement for agencies to obtain OPM approval to extend a term appointment beyond the 4-year time limit. This flexibility reduces the time to fill time-limited STEM-related positions as well as the administrative costs incurred by agencies and OPM associated with these approval processes (*i.e.,* preparation, review, and approval). This will make agencies more competitive in their quest for STEM-related talent by providing them the flexibility and agility needed to better attract and retain talent, for a significant period of time, with in-demand, up-to-date knowledge and training in the STEM-related fields. The final rule will provide agencies with greater flexibility when making longer term appointments for positions involving STEM-related work and/or projects. The final rule will save agencies from the time and expense associated with utilizing contractors to perform STEM-related work covered by these provisions. This will also support agencies with their mission/service-delivery by minimizing turnover or staff transition on time-limited STEM-related projects which supports continuity and on-time delivery of mission requirements.

Individuals hired under these provisions would benefit as well. As federal employees these individuals would have more job security, employee protections, opportunities for advancement via promotion, opportunities for supervisory work, and access to benefits (*e.g.,* health insurance, life insurance and participation in the Thrift Savings Plan (TSP)) than would be the case if hired as contractors to work on special projects. By providing uninterrupted employment for up to 10 years, this flexibility will lessen the likelihood that a time-limited employee appointed under the current rules will leave an existing term position due to uncertainty over whether the position will be extended. This outcome promotes retention of these employees which leads to continuity during project work and thus benefits both agencies and employees alike.

F. List of Studies Considered

Data from Employment analytics firm Burning Glass Technologies (BGT).

''STEM Careers and the Changing Skill Requirements of Work.'' Deming, David J.; Noray, Kadeem L, The National Bureau of Economic Research, Revised June 2019.

''Can STEM Qualifications Hold The Key To The Future Of Cybersecurity?'' Feiman, Joseph, (Forbes September 11, 2019).

Executive Order 12866

Executive Order 12866 Executive Order 12866 directs 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). In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget as a significant, but not economically significant rule.

Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this regulation will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies and employees.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million or more in any year, 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.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*) requires rules to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this rule before its effective date, as required by 5 U.S.C. 801. The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this rule is not a major rule as defined by the CRA, 5 U.S.C. 804.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 316

Employment, Government employees.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM is amending 5 CFR part 316 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

■ 1. The authority citation for part 316 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; 5 CFR 2.2(c).

Subpart C—Term Employment

■ 2. Amend § 316.301 by adding paragraph (c) to read as follows:

§ 316.301 Purpose and duration.

* * * * *

(c)(1) An agency may make a term appointment for a period of more than 1 year but not more than 10 years to a covered position defined in (2) when the need for an employee's services is not permanent. An agency may extend an appointment made for more than 1 year but fewer than 10 years up to the 10-year limit in increments determined by the agency. The vacancy announcement must state that the agency has the option of extending a term appointment under this section up to the 10-year limit. No appointment made under this section may last longer than 10 years from the date of the initial appointment.

(2) An agency may make a term appointment for more than 1 year but not more than 10 years to the following positions (as described in OPM's Handbook of Occupational Groups and Series):

(i) Social Science Series, 0101;

(ii) Economist Series, 0110;

(iii) Psychology Series, 0180;

(iv) Natural Resources Management and Biological Sciences Group (*i.e.,* 0400 group);

(v) Medical, Hospital, Dental, and Public Health Group (*i.e.,* 0600 group);

(vi) Engineering and Architecture Group (*i.e.,* 0800 group);

(vii) Physical Science Group (*i.e.,*1300 group);

(viii) Mathematical Sciences Group (*i.e.,* 1500 group); and

(ix) Information Technology Group (*i.e.,* 2200 group).

■ 3. Amend § 316.302 by revising paragraph (b)(7) to read as follows:

§ 316.302 Selection of term employees.

* * * * *

(b) * * *

(7) Reappointment on the basis of having left a term appointment prior to serving the 4-year maximum amount of time allowed under the appointment per § 316.301(a), the maximum time allowed for an appointment authorized under this paragraph (b), or the 10-year maximum amount of time allowed under § 316.301(c). Reappointment must be to a position in the same agency for filling under the original term appointment and for which the individual qualifies. Combined service under the original term appointment and reappointment must not exceed the 4-year limit pursuant to § 316.301(a), the maximum time allowed for an appointment authorized under § 316.301(b), or the 10-year limit under § 316.301(c), as appropriate; or

* * * * *

[FR Doc. 2022–26221 Filed 11–30–22; 8:45 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2018–0290]

RIN 3150–AK22

American Society of Mechanical Engineers 2019–2020 Code Editions; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction and correcting amendment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) published a final rule in the **Federal Register** on October 27, 2022, amending its regulations to incorporate by reference the 2019 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III, Division 1, and Section XI, Division 1, and the 2020 Edition of the American Society of Mechanical Engineers Operation and Maintenance of Nuclear Power Plants, Division 1: OM Code: Section IST, for nuclear power plants. These amendments were made in accordance with NRC's policy to periodically update the regulations to incorporate by reference new editions of the American Society of Mechanical Engineers Codes and are intended to maintain the safety of nuclear power plants and to make NRC activities more effective and efficient. The final rule contained minor editorial errors, and this action is necessary to correct the final rule and the regulations.

DATES: Effective on December 1, 2022.

ADDRESSES: Please refer to Docket ID NRC–2018–0290 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2016–0179. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Caylee Kenny, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7150, email: *Caylee.Kenny@nrc.gov;* or Michael Benson, Office of Nuclear Reactor Regulation, telephone: 301–415–2425, email: *Michael.Benson@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2018–0290. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2018–0290); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Correction to Final Rule

The NRC is announcing the following corrected language to the final rule published at 87 FR 65128, October 27, 2022. On page 65131, in the last paragraph in the second column, ''NB 5283'' is corrected to read ''NB–5238''.

List of Subjects in 10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, 10 CFR part 50 is corrected by making the following correcting amendment:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

■ 2. In § 50.55a, revise the heading of paragraph (b)(2)(xxv)(A) to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(2) * * *

(xxv) * * *

(A) *Mitigation of defects by modification: First provision.* * * *

* * * * *

Dated: November 23, 2022.

For the Nuclear Regulatory Commission.

Alexa R. Sieracki,

Acting Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–26030 Filed 11–30–22; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1791]

RIN 7100–AG 47

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2023. The annual indexation of these amounts is required notwithstanding the Board's action in March 2020 of setting all reserve requirement ratios to zero. The Regulation D amendments set the reserve requirement exemption amount for 2023 at $36.1 million (increased from $32.4 million in 2022) and the amount of the low reserve tranche at $691.7 million (increased from $640.6 million in 2022). The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act (the ''Act''). The annual indexation of the reserve requirement exemption amount and low reserve tranche, though required by statute, will not affect depository institutions' reserve requirements, which will remain zero.

DATES:

Effective date: January 3, 2023.

Compliance date: The new low reserve tranche and reserve requirement exemption amount will apply beginning January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Benjamin Snodgrass, Senior Counsel (202–263–4877), Kristen Payne, Lead Financial Institution and Policy Analyst (202–452–2872), or Francis A. Martinez, Lead Financial Institution and Policy Analyst (202–245–4217), Division of Monetary Affairs, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired and users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. The Board's actions with respect to this provision are discussed below.

I. Reserve Requirements

Section 19(b) of the Act authorizes different ranges of reserve requirement ratios depending on the amount of transaction account balances at a depository institution. Section 19(b)(11)(A) of the Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement ratio shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. No adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period. The Act requires the percentage increase in the reserve requirement exemption amount to be 80 percent of the percentage increase in total reservable liabilities of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total reservable liabilities of all depository institutions increased by 14.1 percent, from $18,123 billion to $20,678 billion, between June 30, 2021, and June 30, 2022.[1] Accordingly, the Board is amending Regulation D to set the reserve requirement exemption amount for 2023 at $36.1 million, an increase of $3.7 million from its level in 2022.[2]

Pursuant to Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)), transaction account balances maintained at each depository institution over the reserve requirement exemption amount and up to a certain amount, known as the low reserve tranche, may be subject to a reserve requirement ratio of not more than 3 percent (and which may be zero). Transaction account balances over the low reserve tranche may be subject to a reserve requirement ratio of not more than 14 percent (and which may be zero). Section 19(b)(2) also provides that, before December 31 of each year,

[1] The June 30th value for 2021 may differ from the value used in the previous year's calculation because depository institutions may revise their deposit data to correct for inaccuracies.

[2] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The Act requires the adjustment in the low reserve tranche to be 80 percent of the percentage increase or decrease in total transaction accounts of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Net transaction accounts of all depository institutions increased 10.0 percent, from $15,813 billion to $17,390 billion, between June 30, 2021, and June 30, 2022.[3] Accordingly, the Board is amending Regulation D to set the low reserve tranche for net transaction accounts for 2023 at $691.7 million, an increase of $51.1 million from 2022.

The new reserve requirement exemption amount and low reserve tranche will be effective for all depository institutions beginning January 1, 2023.

Effective March 26, 2020, the Board reduced reserve requirement ratios on all net transaction accounts to zero percent, eliminating reserve requirements for all depository institutions. The annual indexation of the reserve requirement exemption amount and the low reserve tranche for 2023 is required by statute but will not affect depository institutions' reserve requirements, which will remain zero.

II. Regulatory Analysis

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The adjustments in the reserve requirement exemption amount and the low reserve tranche serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[4] As noted previously, the Board has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[5] the Board reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.4 is amended by revising paragraph (f) to read as follows:

§ 204.4 Computation of required reserves.

* * * * *

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios in table 1 to this paragraph (f) to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

TABLE 1 TO PARAGRAPH (f)

Reservable liability	Reserve requirement
Net Transaction Accounts:	
$0 to reserve requirement exemption amount ($36.1 million)	0 percent of amount.
Over reserve requirement exemption amount ($36.1 million) and up to low reserve tranche ($691.7 million).	0 percent of amount.
Over low reserve tranche ($691.7 million)	$0 plus 0 percent of amount over $691.7 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Monetary Affairs under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–26065 Filed 11–30–22; 8:45 am]

BILLING CODE 6210–01–P

[3] The June 30th value for 2021 may differ from the value used in the previous year's calculation because depository institutions may revise their deposit data to correct for inaccuracies.

[4] 5 U.S.C. 603 and 604.

[5] 44 U.S.C. 3506; 5 CFR part 1320.

FEDERAL RESERVE SYSTEM

12 CFR Part 209

[Regulation I; Docket No. R–1792]

RIN 7100–AG 48

Federal Reserve Bank Capital Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors (Board) is publishing a final rule that applies an inflation adjustment to the threshold for total consolidated assets in Regulation I. Federal Reserve Bank (Reserve Bank) stockholders that have total consolidated assets above the threshold receive a different dividend rate on their Reserve Bank stock than stockholders with total consolidated assets at or below the threshold. The Federal Reserve Act requires that the Board annually adjust the total consolidated asset threshold to reflect the change in the Gross Domestic Product Price Index, published by the Bureau of Economic Analysis (BEA). Based on the change in the Gross

Domestic Product Price Index as of September 29, 2022, the total consolidated asset threshold will be $12,124,000,000 through December 31, 2023.

DATES:

Effective date: January 3, 2023.

Applicability date: The adjusted threshold for total consolidated assets will apply beginning January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division; or Rebecca Rider, Senior Financial Institutions Policy Analyst (202–736–1926), Reserve Bank Operations and Payments Systems Division. Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired and users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation I governs the issuance and cancellation of capital stock by the Reserve Banks. Under section 5 of the Federal Reserve Act [1] and Regulation I,[2] a member bank must subscribe to capital stock of the Reserve Bank of its district in an amount equal to six percent of the member bank's capital and surplus. The member bank must pay for one-half of this subscription when the Reserve Bank issues the capital stock, while the remaining half of the subscription shall be subject to call by the Board.[3]

Section 7(a)(1) of the Federal Reserve Act [4] provides that Reserve Bank stockholders with $10 billion or less in total consolidated assets shall receive a six percent dividend on paid-in capital stock, while stockholders with more than $10 billion in total consolidated assets shall receive a dividend on paid-in capital stock equal to the *lesser* of six percent and ''the rate equal to the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of such dividend.'' Section 7(a)(1) requires that the Board adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index, published by the BEA.

Regulation I implements section 7(a)(1) of the Federal Reserve Act by (1) defining the term ''total consolidated assets,'' [5] (2) incorporating the statutory dividend rates for Reserve Bank stockholders [6] and (3) providing that the Board shall adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index.[7] The Board has explained that it ''expects to make this adjustment [to the threshold for total consolidated assets] using the final second quarter estimate of the Gross Domestic Product Price Index for each year, published by the Bureau of Economic Analysis.'' [8]

II. Adjustment

The Board annually adjusts the $10 billion total consolidated asset threshold based on the change in the Gross Domestic Product Price Index between the second quarter of 2015 (the baseline year) and the second quarter of the current year.[9] The second quarter 2022 Gross Domestic Product Price Index estimate published by the BEA in September 2022 (126.914) is 21.24 percent higher than the second quarter 2015 Gross Domestic Product Price Index estimate published by the BEA in September 2022 (104.683). Based on this change in the Gross Domestic Product Price Index, the threshold for total consolidated assets in Regulation I will be $12,124,000,000 as of January 3, 2023.

III. Administrative Law Matters

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments that are required by statute and Regulation I and are consistent with a method previously set forth by the Board.[10] Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[11] As noted previously, the Board has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[12] the Board has reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 209

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation I, 12 CFR part 209, as follows:

PART 209—FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 12 U.S.C. 222, 248, 282, 286–288, 289, 321, 323, 327–328, and 466.

■ 2. In part 209, remove all references to ''$11,229,000,000'' and add in their place ''$12,124,000,000'' wherever they appear.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–26066 Filed 11–30–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General License 28A

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a Web General License.

SUMMARY: The Department of the Treasury's Office of Foreign Assets

[1] 12 U.S.C. 287.

[2] 12 CFR 209.4(a).

[3] 12 U.S.C. 287 and 12 CFR 209.4(c)(2).

[4] 12 U.S.C. 289(a)(1).

[5] 12 CFR 209.1(d)(3).

[6] 12 CFR 209.4(e), (c)(1)(ii), and (d)(1)(ii); 209.2(a); and 209.3(d)(5).

[7] 12 CFR 209.4(f).

[8] 81 FR 84415, 84417 (Nov. 23, 2016).

[9] The BEA makes ongoing revisions to its estimates of the Gross Domestic Product Price Index for historical calendar quarters. The Board calculates annual adjustments from the baseline year (rather than from the prior-year total consolidated asset threshold) to ensure that the adjusted total consolidated asset threshold accurately reflects the cumulative change in the BEA's most recent estimates of the Gross Domestic Product Price Index.

[10] *See* 12 CFR 209.4(f) and n. 8 and accompanying text, *supra.*

[11] 5 U.S.C. 603 and 604.

[12] 44 U.S.C. 3506; 5 CFR part 1320.

Control (OFAC) is publishing one general license (GL) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GL 28A, which was previously made available on OFAC's website.

DATES: GL 28A was issued on October 17, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On October 17, 2022, OFAC issued GL 28A to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GL 28A was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of GL 28A is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 28A

Authorizing Certain Transactions Involving Public Joint Stock Company Transkapitalbank and Afghanistan

(a) Except as provided in paragraph (c) of this general license, all transactions involving Public Joint Stock Company Transkapitalbank (TKB), or any entity in which TKB owns, directly or indirectly, a 50 percent or greater interest, that are ultimately destined for or originating from Afghanistan and prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern standard time, January 18, 2023.

(b) Except as provided in paragraph (c) of this general license, U.S. financial institutions are authorized to operate correspondent accounts on behalf of TKB, or any entity in which TKB owns, directly or indirectly, a 50 percent or greater interest, provided such accounts are used solely to effect transactions authorized in paragraph (a) of this general license.

(c) This general license does not authorize:

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

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

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective October 17, 2022, General License No. 28, dated April 20, 2022, is replaced and superseded in its entirety by this General License No. 28A.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: October 17, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–26138 Filed 11–30–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 51 and 52

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing two general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 51 and 52, each of which was previously made available on OFAC's website.

DATES: GL 51 and GL 52 were issued on September 15, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On September 15, 2022, OFAC issued GLs 51 and 52 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GL 51 has an expiration date of October 15, 2022. Each GL was made available on OFAC's website (*www.treas.gov/ofac*) at the time of publication. The texts of GLs 51 and 52 are provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 51

Authorizing the Wind Down of Transactions Involving Limited Liability Company Group of Companies Akvarius

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of any transaction involving Limited Liability Company Group of Companies Akvarius (Aquarius), or any entity in which Aquarius owns, directly or indirectly, a 50 percent or greater interest, that are prohibited by Executive Order (E.O.) 14024, are authorized through 12:01 a.m. eastern daylight time, October 15, 2022, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(b) This general license does not authorize:

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

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

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

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: September 15, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 52

Journalistic Activities and Establishment of News Bureaus

(a) Except as provided in paragraph (c) of this general license, news reporting organizations that are U.S. persons, and individual U.S. persons who are journalists (including photojournalists) or broadcast or

technical personnel, are authorized to engage in the following transactions, where such transactions are ordinarily incident and necessary to such U.S. persons' journalistic activities or to the establishment or operation of a news bureau and are prohibited by Executive Order (E.O.) 14024 or section (1)(a)(i) of E.O. 14071, provided that the only involvement of blocked persons is the processing of funds by financial institutions blocked pursuant to E.O. 14024:

(1) Compensating support staff (*e.g.,* stringers, translators, interpreters, camera operators, technical experts, freelance producers, or drivers), persons to handle logistics, or other office personnel;

(2) Leasing or renting office space;

(3) Purchasing, leasing, or renting goods and services (*e.g.,* mobile phones and related airtime); or

(4) Paying for all other expenses ordinarily incident and necessary to journalistic activities, including sales or employment taxes.

(b) For the purposes of this general license, the term ''news reporting organization'' means an entity whose primary purpose is the gathering and dissemination of news to the general public.

(c) This general license does not authorize:

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

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

(3) Any transactions involving Joint Stock Company Channel One Russia, Joint Stock Company NTV Broadcasting Company, Television Station Russia-1, Limited Liability Company Algoritm, New Eastern Outlook, or Oriental Review, unless separately authorized; or

(4) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Note to General License No. 52. See Russia-related General License No. 25C for an authorization for transactions ordinarily incident and necessary to the receipt or transmission of telecommunications involving the Russian Federation.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: September 15, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–26137 Filed 11–30–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General License 53

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General License.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GL 53, which was previously made available on OFAC's website.

DATES: GL 53 was issued on November 10, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On November 10, 2022, OFAC issued GL 53 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. The GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of the GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 53

Authorizing Transactions for Diplomatic Missions of the Russian Federation Prohibited by Directive 4 under Executive Order 14024

(a) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to engage in all transactions ordinarily incident and necessary to the official business of diplomatic or consular missions of the Government of the Russian Federation (''Russian missions''), where the transactions are prohibited by Directive 4 under Executive Order (E.O.) 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation.*

(b) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to engage in all transactions ordinarily incident and necessary to the compensation of employees of Russian missions, including payment of salaries and reimbursement of expenses, where the transactions are prohibited by Directive 4 under E.O. 14024.

(c) This general license does not authorize:

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

(2) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: November 10, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–26135 Filed 11–30–22; 8:45 am]

BILLING CODE 0481–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 598

Publication of Foreign Narcotics Kingpin Sanctions Regulations Web General Licenses 2, 3, 3A, and 3B

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing four general licenses (GLs) issued pursuant to the Foreign Narcotics Kingpin Sanctions Regulations: GLs 2, 3, 3A, and 3B, each of which was previously made available on OFAC's website.

DATES: GL 2 was issued on May 5, 2015. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On May 5, 2016, OFAC issued GLs 2 and 3 to authorize certain transactions otherwise prohibited by the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 589. Subsequently, OFAC issued two further iterations of GL 3: on June 3, 2016, OFAC issued GL 3A, which superseded GL 3; and on January 5, 2017, OFAC issued GL 3B, which superseded GL 3A. Each of these GLs is now expired.

Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 2

Authorizing Certain Transactions and Activities To Wind Down Operations for the Hotel Operating at Millennium Plaza, Panama

(a) Except as provided in paragraph (b), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are necessary to maintain lodging services or are for the winding down of operations, contracts, or other agreements involving hotel goods or services with the hotel operating at Millennium Plaza, Avenida A. Waked, Corredor Zona Libre, Colon, Panama, that were ongoing or in effect prior to May 5, 2016, are authorized through 12:01 a.m. eastern daylight time, May 26, 2016.

(b) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598;

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity other than the hotel operating at Millennium Plaza, Avenida A. Waked, Corredor Zona Libre, Colon, Panama; Plaza Milenio, S.A.; or Administracion Millenium Plaza, S.A. that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked;

(3) Any payment incident to and necessary for the transactions authorized in paragraph (a) to or for the benefit of the entity Plaza Milenio, S.A. or Administracion Millenium Plaza, S.A. unless such payment is made into a blocked interest-bearing account in accordance with 31 CFR 598.206(a).

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: May 5, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 3

Authorizing Certain Transactions and Activities Necessary To Maintain Existing Operations of *La Estrella* and *El Siglo* Newspapers

(a) Except as provided in paragraph (b), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are necessary to maintain all existing operations of the Panamanian newspapers, *La Estrella* and *El Siglo,* are authorized through 12:01 a.m. eastern daylight time, July 6, 2016.

(b) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity other than the *La Estrella* and *El Siglo* newspapers that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: May 5, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 3A

Authorizing Certain Transactions and Activities Necessary To Maintain Existing Operations of *La Estrella* and *El Siglo* Newspapers

(a) General License No. 3, dated May 5, 2016, is replaced and superseded in its entirety by this General License No. 3A.

(b) Except as provided in paragraph (c), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are necessary to maintain all existing operations of the Panamanian newspapers, *La Estrella* and *El Siglo,* are authorized through 12:01 a.m. eastern daylight time, January 6, 2017.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR Chapter V, or any transactions or dealings with any individual or entity other than the *La Estrella* and *El Siglo* newspapers that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

John H. Battle,

Acting Director, Office of Foreign Assets Control.

Dated: June 3, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 3B

Authorizing Certain Transactions and Activities To Wind Operations Involving *La Estrella* and *El Siglo* Newspapers

(a) General License No. 3A, dated June 3, 2016, is replaced and superseded in its entirety by this General License No. 3B.

(b) Except as provided in paragraph (c), all transactions or activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are for the wind down of operations, contracts, or other agreements involving goods or services with *Grupo Editorial La Estrella y El Siglo* or the Panamanian newspapers, *La Estrella* and *El Siglo* (hereinafter Grupo GESE), are authorized through 12:01 a.m. eastern daylight time, July 13, 2017.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR. chapter V, or any transactions or dealings with any individual or entity other than Grupo GESE that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: January 5, 2017.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–26201 Filed 11–30–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 598

Publication of Foreign Narcotics Kingpin Sanctions Regulations Web General License 4 and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing eight general licenses (GLs) issued pursuant to the Foreign Narcotics Kingpin Sanctions Regulations: GLs 4, 4A, 4B, 4C, 4D, 4E, 4F, and 4G, each of which was previously made available on OFAC's website.

DATES: GL 4 was issued on May 5, 2016. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On May 5, 2016, OFAC issued GL 4 to authorize certain transactions otherwise prohibited by the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598. Subsequently, OFAC issued seven further iterations of GL 4: on May 13, 2016, OFAC issued GL 4A, which superseded GL 4; on June 10, 2016, OFAC issued GL 4B, which superseded GL 4A; on July 1, 2016, OFAC issued GL 4C, which superseded GL 4B; on August 19, 2016, OFAC issued GL 4D, which superseded GL 4C; on January 5, 2017, OFAC issued GL 4E, which superseded GL 4D; on March 9, 2017, OFAC issued GL 4F, which superseded GL 4E; and on April 27, 2017, OFAC issued GL 4G, which superseded GL 4F. Each of these GLs is now expired.

Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 4

Authorizing Certain Transactions Involving Individuals or Entities Located in the Panamanian Mall, Soho Panama, S.A. (a.k.a. Soho Mall Panama)

(a) Except as provided in paragraph (b), the following transactions and other activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are for the wind down of operations, contracts, or other agreements involving goods or services are authorized through 12:01 a.m. eastern daylight time, July 6, 2016:

(1) All transactions and other activities involving non-designated individuals or entities located in the designated Panamanian mall, Soho Panama, S.A. (a.k.a. Soho Mall Panama), provided that the transactions and other activities do not involve any orders for shipment of goods to the mall placed after May 5, 2016; and

(2) Payments by non-designated individuals or entities located in the designated Panamanian mall, Soho Panama, S.A., to or for the benefit of the entity Soho Panama, S.A., provided the payment is made into a blocked interest-bearing account in accordance with 31 CFR 598.206(a).

(b) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked other than the limited transactions with the entity Soho Panama, S.A. that are authorized in paragraph (a)(2).

(c) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the activities conclude, to file a report on the transactions with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Such reports shall include the following numbered sections and information:

(1) Estimated or actual dollar value of the transaction(s), as determined by the value of the goods, services, or contract;

(2) The parties involved;

(3) The type and scope of activities conducted; and

(4) The dates and duration of the activities.

Reports may also be filed via email to *OFACReport@treasury.gov.*

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: May 5, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 4A

Authorizing Certain Transactions Involving Individuals or Entities Located in the Panamanian Mall and Associated Complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama)

(a) General License No. 4, dated May 5, 2016, is replaced and superseded in its entirety by this General License No. 4A.

(b) Except as provided in paragraph (c), the following transactions and other activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are (1) for the wind down of operations, contracts, or other agreements involving goods or services, (2) related to building maintenance, or (3) for the provision of financial services by, for, or on behalf of non-designated individuals or entities, are authorized through 12:01 a.m. eastern daylight time, July 6, 2016:

(1) All transactions and other activities involving non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama), provided that the transactions and other activities do not involve any orders for shipment of goods to the mall and associated complex placed after May 5, 2016; and

(2) Payments by non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A., to or for the benefit of the entities Soho Panama, S.A. or Westline Enterprises, Inc., provided the payments are made into a blocked interest-bearing account in accordance with 31 CFR 598.206(a).

(c) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked other than the limited transactions with the entities Soho Panama, S.A. or Westline Enterprises, Inc., that are authorized in paragraph (b)(2);

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the activities conclude, to file a report on the transactions with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the

Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Such reports shall include the following numbered sections and information:

(1) Estimated or actual dollar value of the transaction(s), as determined by the value of the goods, services, or contract;

(2) The parties involved;

(3) The type and scope of activities conducted; and

(4) The dates and duration of the activities.

Reports may also be filed via email to *OFACReport@treasury.gov.*

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: May 13, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 4B

Authorizing Certain Transactions Involving Individuals or Entities Located in the Panamanian Mall and Associated Complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama)

(a) General License No. 4A, dated May 13, 2016, is replaced and superseded in its entirety by this General License No. 4B.

(b) Except as provided in paragraph (c), the following transactions and other activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are (i) for the wind down of operations, contracts, or other agreements involving goods or services, (ii) related to building maintenance, or (iii) for the provision of financial services by, for, or on behalf of non-designated individuals or entities, are authorized through 12:01 a.m. eastern daylight time, July 6, 2016:

(1) All transactions and other activities involving non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama), provided that the transactions and other activities do not involve any orders for shipment of goods to the mall placed after May 5, 2016; and

(2) Payments by non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A., to or for the benefit of the entities Soho Panama, S.A. or Westline Enterprises, Inc., provided the payments are made into a blocked interest-bearing account in accordance with 31 CFR 598.206(a).

(c) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked other than the limited transactions with the entities Soho Panama, S.A. or Westline Enterprises, Inc., that are authorized in paragraph (b)(2);

(d) U.S. persons participating in transactions authorized by or related to (b)(i) or (b)(ii) of this general license are required, within 10 business days after the activities conclude, to file a report on the transactions with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Such reports shall include the following numbered sections and information:

(1) Estimated or actual dollar value of the transaction(s), as determined by the value of the goods, services, or contract;

(2) The parties involved;

(3) The type and scope of activities conducted; and

(4) The dates and duration of the activities.

Reports may also be filed via email to *OFACReport@treasury.gov.*

Gregory T. Gatjanis,

Acting Director, Office of Foreign Assets Control.

Dated: June 10, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 4C

Authorizing Certain Transactions Involving Individuals or Entities Located in the Panamanian Mall and Associated Complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama)

(a) General License No. 4B, dated June 10, 2016, is replaced and superseded in its entirety by this General License No. 4C.

(b) Except as provided in paragraph (c), the following transactions and other activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, are authorized through 12:01 a.m. eastern daylight time, January 6, 2017:

(1) All transactions or other activities involving non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama), for the wind down of operations, contracts, or other agreements involving goods or services, provided that the transactions or other activities do not involve any orders for shipment of goods to the mall placed after May 5, 2016;

(2) All transactions or other activities related to building maintenance in the designated Panamanian mall and associated complex, Soho Panama, S.A., provided the transactions or other activities do not involve any Specially Designated Narcotics Trafficker (SDNT) other than Soho Panama S.A., Westline Enterprises, Inc., or SDNTs located in the mall;

(3) All transactions or other activities related to the provision of financial services by, for, or on behalf of non-designated financial institutions that were physically located at the designated mall and associated complex, Soho Panama, S.A., prior to May 5, 2016, including financial services for non-designated entities located in the designated mall and associated complex, provided that the transactions or other activities do not otherwise involve financial services for any SDNT; and

(4) Payments by non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A., and payments by persons providing maintenance under (b)(2) to or for the benefit of the entities Soho Panama, S.A. or Westline Enterprises, Inc., provided the payments are made into a blocked interest-bearing account in accordance with 31 CFR 598.206(a).

(c) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity, including any property or interest in property of such individual or entity, that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked, other than the limited transactions with the entities Soho Panama, S.A., Westline Enterprises, Inc., or other SDNTs located in the designated Panamanian mall and associated complex, Soho Panama, S.A., that are authorized in paragraphs (b)(l), (b)(2), and (b)(3).

(d) U.S. persons participating in transactions authorized by or related to paragraph (b)(1) or (b)(2) of this general license are required, within 10 business days after the activities conclude, to file a report on the transactions with the Office of Foreign Assets Control, Compliance Programs Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Such reports shall include the following numbered sections and information:

(1) Estimated or actual dollar value of the transaction(s), as determined by the value of the goods, services, or contract;

(2) The parties involved;

(3) The type and scope of activities conducted; and

(4) The dates and duration of the activities.

Reports may also be filed via email to *OFACReport@treasury.gov.*

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: July 1, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 4D

Authorizing Certain Transactions Involving the Panamanian Mall and Associated Complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama)

(a) General License No. 4C, dated July 1, 2016, is replaced and superseded in its entirety by this General License No. 4D.

(b) Except as provided in paragraph (c), the following transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, are authorized through 12:01 a.m. eastern daylight time, January 6, 2017:

(1) All transactions or activities involving non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama) (hereinafter Soho Mall Panama), for the wind down of operations, contracts, or other agreements involving goods or services, provided that the transactions or activities do not involve any shipment of goods to the mall after May 5, 2016;

(2) All transactions or activities related to building management or maintenance in Soho Mall Panama, provided the transactions or activities do not involve any Specially Designated Nationals (SDN) other than Soho Mall Panama, Westline Enterprises, Inc., or SDNs located in the mall;

(3) All transactions or activities related to the provision of financial services by, for, or on behalf of non-designated financial institutions that were physically located at Soho Mall Panama prior to May 5, 2016, including financial services for non-designated entities located in Soho Mall Panama, provided that the transactions or activities do not otherwise involve financial services for any SDN;

(4) Payments by non-designated individuals or entities located in Soho Mall Panama, and payments by persons providing management or maintenance services under (b)(2) to or for the benefit of the entities Soho Mall Panama or Westline Enterprises, Inc., provided the payments are made into a blocked interest-bearing account in accordance with 31 CFR 598.206(a); and

(5) All transactions and activities that are necessary to facilitate, negotiate, or agree to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc., provided the transactions or activities do not otherwise involve any SDN.

(c) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598;

(2) Any transactions or activities to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc.; or

Note to paragraph (c)(2): In the event a transaction or activity to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc. involves a U.S. person or is otherwise subject to U.S. jurisdiction, a separate license from the Office of Foreign Assets Control is required.

(3) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or with any individual or entity, including any property or interest in property of such individual or entity, that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked other than the limited transactions with the entities Soho Mall Panama, Westline Enterprises, Inc., or other SDNs located in Soho Mall Panama, that are authorized in paragraphs (b)(l)–(b)(5).

(d) U.S. persons participating in transactions authorized by or related to paragraphs (b)(1), (b)(2), or (b)(5) of this general license are required, within 10 business days after the activities conclude, to file a report on the transactions with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Such reports shall include the following numbered sections and information:

(1) Estimated or actual dollar value of the transaction(s), as determined by the value of the goods, services, or contract;

(2) The parties involved;

(3) The type and scope of activities conducted; and

(4) The dates and duration of the activities.

Reports may also be filed via email to *OFACReport@treasury.gov.*

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: August 19, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 4E

Authorizing Certain Transactions Involving the Panamanian Mall and Associated Complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama)

(a) General License No. 4D, dated August 19, 2016, is replaced and superseded in its entirety by this General License No. 4E.

(b) Except as provided in paragraph (c), the following transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, are authorized through 12:01 a.m. eastern daylight time, March 10, 2017:

(1) All transactions or activities involving non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama) (hereinafter Soho Mall Panama), for the wind down of operations, contracts, or other agreements involving goods or services, provided that the transactions or activities do not involve any shipment of goods to the mall after May 5, 2016;

(2) All transactions or activities related to building management or maintenance in Soho Mall Panama, provided the transactions or activities do not involve any Specially Designated Nationals (SDN) other than Soho Mall Panama, Westline Enterprises, Inc., or SDNs located in the mall;

(3) All transactions or activities related to the provision of financial services by, for, or on behalf of non-designated financial institutions that were physically located at Soho Mall Panama prior to May 5, 2016, including financial services for non-designated entities located in Soho Mall Panama, provided that the transactions or activities do not otherwise involve financial services for any SDN;

(4) Payments by non-designated individuals or entities located in Soho Mall Panama, and payments by persons providing management or maintenance services under (b)(2) to or for the benefit of the entities Soho Mall Panama or Westline Enterprises, Inc., provided the payments are made into a blocked interest-bearing account in accordance with 31 CFR 598.206(a); and

(5) All transactions and activities that are necessary to facilitate, negotiate, or agree to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc., provided the transactions or activities do not otherwise involve any SDN.

Note to paragraph (b)(5): In the event a transaction or activity to facilitate, negotiate, or agree to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc. involves a U.S. person or is otherwise subject to U.S. jurisdiction, and involves any SDN other than Soho Mall Panama or Westline Enterprises, Inc., a separate license from the Office of Foreign Assets Control is required.

(c) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598;

(2) Any transactions or activities to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc.; or

Note to paragraph (c)(2): In the event a transaction or activity to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc. involves a U.S. person or is otherwise subject to U.S. jurisdiction, a separate license from the Office of Foreign Assets Control is required.

(3) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or with any individual or entity, including any property or interest in property of such individual or entity, that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose

property and interests in property are blocked other than the limited transactions with the entities Soho Mall Panama, Westline Enterprises, Inc., or other SDNs located in Soho Mall Panama, that are authorized in paragraphs (b)(l)–(b)(5).

(d) U.S. persons participating in transactions authorized by or related to paragraphs (b)(l), (b)(2), or (b)(5) of this general license are required, within 10 business days after the activities conclude, to file a report on the transactions with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Such reports shall include the following numbered sections and information:

(1) Estimated or actual dollar value of the transaction(s), as determined by the value of the goods, services, or contract;

(2) The parties involved;

(3) The type and scope of activities conducted; and

(4) The dates and duration of the activities.

Reports may also be filed via email to *OFACReport@treasury.gov.*

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: January 5, 2017.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 4F

Authorizing Certain Transactions Involving the Panamanian Mall and Associated Complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama)

(a) General License No. 4E, dated January 5, 2017, is replaced and superseded in its entirety by this General License No. 4F.

(b) Except as provided in paragraph (c), the following transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, are authorized through 12:01 a.m. eastern daylight time, April 28, 2017:

(1) All transactions or activities involving non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama) (hereinafter Soho Mall Panama), for the wind down of operations, contracts, or other agreements involving goods or services, provided that the transactions or activities do not involve any shipment of goods to the mall after May 5, 2016;

(2) All transactions or activities related to building management or maintenance in Soho Mall Panama, provided the transactions or activities do not involve any Specially Designated Nationals (SDN) other than Soho Mall Panama, Westline Enterprises, Inc., or SDNs located in the mall;

(3) All transactions or activities related to the provision of financial services by, for, or on behalf of non-designated financial institutions that were physically located at Soho Mall Panama prior to May 5, 2016, including financial services for non-designated entities located in Soho Mall Panama, provided that the transactions or activities do not otherwise involve financial services for any SDN;

(4) Payments by non-designated individuals or entities located in Soho Mall Panama, and payments by persons providing management or maintenance services under (b)(2) to or for the benefit of the entities Soho Mall Panama or Westline Enterprises, Inc., provided the payments are made into a blocked interest-bearing account in accordance with 31 CFR 598.206(a); and

(5) All transactions and activities that are necessary to facilitate, negotiate, or agree to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc., provided the transactions or activities do not otherwise involve any SDN.

Note to paragraph (b)(5): In the event a transaction or activity to facilitate, negotiate, or agree to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc. involves a U.S. person or is otherwise subject to U.S. jurisdiction, and involves any SDN other than Soho Mall Panama or Westline Enterprises, Inc., a separate license from the Office of Foreign Assets Control is required.

(c) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598;

(2) Any transactions or activities to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc.; or

Note to paragraph (c)(2): In the event a transaction or activity to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc. involves a U.S. person or is otherwise subject to U.S. jurisdiction, a separate license from the Office of Foreign Assets Control is required.

(3) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or with any individual or entity, including any property or interest in property of such individual or entity, that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked other than the limited transactions with the entities Soho Mall Panama, Westline Enterprises, Inc., or other SDNs located in Soho Mall Panama, that are authorized in paragraphs (b)(l)–(b)(5).

(d) U.S. persons participating in transactions authorized by or related to paragraphs (b)(l), (b)(2), or (b)(5) of this general license are required, within 10 business days after the activities conclude, to file a report on the transactions with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Such reports shall include the following numbered sections and information:

(1) Estimated or actual dollar value of the transaction(s), as determined by the value of the goods, services, or contract;

(2) The parties involved;

(3) The type and scope of activities conducted; and

(4) The dates and duration of the activities.

Reports may also be filed via email to *OFACReport@treasury.gov.*

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

Dated: March 9, 2017.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 4G

Authorizing Certain Transactions Involving the Panamanian Mall and Associated Complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama)

(a) General License No. 4F, dated March 9, 2017, is replaced and superseded in its entirety by this General License No. 4G.

(b) Except as provided in paragraph (c), the following transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, are authorized through 12:01 a.m. eastern daylight time, June 15, 2017:

(1) All transactions or activities involving non-designated individuals or entities located in the designated Panamanian mall and associated complex, Soho Panama, S.A. (a.k.a. Soho Mall Panama) (hereinafter Soho Mall Panama), for the wind down of operations, contracts, or other agreements involving goods or services, provided that the transactions or activities do not involve any shipment of goods to the mall after May 5, 2016;

(2) All transactions or activities related to building management or maintenance in Soho Mall Panama, provided the transactions or activities do not involve any Specially Designated Nationals (SDN) other than Soho Mall Panama, Westline Enterprises, Inc., or SDNs located in the mall;

(3) All transactions or activities related to the provision of financial services by, for, or on behalf of non-designated financial institutions that were physically located at Soho Mall Panama prior to May 5, 2016, including financial services for non-designated entities located in Soho Mall Panama, provided that the transactions or activities do not otherwise involve financial services for any SDN;

(4) Payments by non-designated individuals or entities located in Soho Mall Panama, and payments by persons providing management or maintenance services under (b)(2) to or for the benefit of the entities Soho Mall Panama or Westline Enterprises, Inc., provided the payments are made into a blocked interest-bearing account in accordance with 31 CFR 598.206(a); and

(5) All transactions and activities that are necessary to facilitate, negotiate, or agree to

the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc., provided the transactions or activities do not otherwise involve any SDN.

Note to paragraph (b)(5): In the event a transaction or activity to facilitate, negotiate, or agree to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc. involves a U.S. person or is otherwise subject to U.S. jurisdiction, and involves any SDN other than Soho Mall Panama or Westline Enterprises, Inc., a separate license from the Office of Foreign Assets Control is required.

(c) This general license does not authorize:

(1) The unblocking of any accounts blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598;

(2) Any transactions or activities to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc.; or

Note to paragraph (c)(2): In the event a transaction or activity to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Soho Mall Panama or Westline Enterprises, Inc. involves a U.S. person or is otherwise subject to U.S. jurisdiction, a separate license from the Office of Foreign Assets Control is required.

(3) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or with any individual or entity, including any property or interest in property of such individual or entity, that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked other than the limited transactions with the entities Soho Mall Panama, Westline Enterprises, Inc., or other SDNs located in Soho Mall Panama, that are authorized in paragraphs (b)(l)–(b)(5).

(d) U.S. persons participating in transactions authorized by or related to paragraphs (b)(l), (b)(2), or (b)(5) of this general license are required, within 10 business days after the activities conclude, to file a report on the transactions with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Such reports shall include the following numbered sections and information:

(1) Estimated or actual dollar value of the transaction(s), as determined by the value of the goods, services, or contract;

(2) The parties involved;

(3) The type and scope of activities conducted; and

(4) The dates and duration of the activities.

Reports may also be filed via email to *OFACReport@treasury.gov.*

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

Dated: April 27, 2017.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–26200 Filed 11–30–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 598

Publication of Foreign Narcotics Kingpin Sanctions Regulations Web General Licenses 5, 6, and 7 and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing nine general licenses (GLs) issued pursuant to the Foreign Narcotics Kingpin Sanctions Regulations: GLs 5, 5A, 5B, 5C, 6, 6A, 6B, 6C, and 7, each of which was previously made available on OFAC's website.

DATES: GL 5 was issued on May 13, 2016. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On May 13, 2016, OFAC issued GLs 5 and 6 to authorize certain transactions otherwise prohibited by the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598. At the time of issuance, OFAC made GLs 5 and 6 available on its website (*www.treas.gov/ofac*). Subsequently, OFAC issued three further iterations of GLs 5 and 6: on June 10, 2016, OFAC issued GLs 5A and 6A, which superseded GLs 5 and 6 respectively; on July 21, 2016, OFAC issued GLs 5B and 6B, which superseded GLs 5A and 6A, respectively; and on February 1, 2017, OFAC issued GLs 5C and 6C, which superseded GLs 5B and 6B, respectively. On June 14, 2016, OFAC issued GL 7.

Each of these GLs is now expired. Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 5

Authorizing Certain Transactions and Activities Related to the Panamanian Government Seizure of Balboa Bank & Trust

(a) Except as provided in paragraph (b), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are necessary for analysis of, and recommendations regarding, the financial viability of Balboa Bank & Trust by the administrator appointed by the Superintendency of Banking of Panama (Superintendencia de Bancos de Panama) pursuant to applicable Panamanian law following the seizure of the Panamanian bank, Balboa Bank & Trust, are authorized, including the exportation, reexportation, or provision, directly or indirectly, of the following:

(1) Software, hardware, and related services, including information technology management services;

(2) Goods and services related to bank administration, building maintenance, and building operations; and

(3) Auditing, consulting, legal, and other professional services.

(b) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity other than Balboa Bank & Trust that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

(c) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the transactions, to file a report on the transactions, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Reports may also be filed via email to *OFACReport@treasury.gov.*

(d) Unless extended or revoked, this authorization expires at 12:01 a.m. eastern daylight time, June 14, 2016.

Note to paragraph (d): Grounds for revocation include: (1) suspension or

termination of the Panamanian government's seizure of administrative and operating control of Balboa Bank & Trust; (2) return of control, directly or indirectly, to any Specially Designated National (SDN); or (3) return of assets to any SDN.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: May 13, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 5A

Authorizing Certain Transactions and Activities Related to the Panamanian Government Seizure of Balboa Bank & Trust

(a) General License No. 5, dated May 13, 2016, is replaced and superseded in its entirety by this General License No. 5A.

(b) Except as provided in paragraph (c), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are necessary for analysis of, and recommendations regarding, the financial viability of Balboa Bank & Trust by the administrator appointed by the Superintendency of Banking of Panama (Superintendencia de Bancos de Panama) pursuant to applicable Panamanian law following the seizure of the Panamanian bank, Balboa Bank & Trust, are authorized, including the exportation, reexportation, or provision, directly or indirectly, of the following:

(1) Software, hardware, and related services, including information technology management services;

(2) Goods and services related to bank administration, building maintenance, and building operations; and

(3) Auditing, consulting, legal, and other professional services.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity other than Balboa Bank & Trust that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the transactions, to file a report on the transactions, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Reports may also be filed via email to *OFACReport@treasury.gov.*

(e) Unless extended or revoked, this authorization expires at 12:01 a.m. eastern daylight time, July 22, 2016.

Note to paragraph (e): Grounds for revocation include: (1) suspension or termination of the Panamanian government's seizure of administrative and operating control of Balboa Bank & Trust; (2) return of control, directly or indirectly, to any Specially Designated National (SDN); or (3) return of assets to any SDN.

Gregory T. Gatjanis,

Acting Director, Office of Foreign Assets Control.

Dated: June 10, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 5B

Authorizing Certain Transactions and Activities Related to the Panamanian Government Seizure of Balboa Bank & Trust

(a) General License No. 5A, dated June 10, 2016, is replaced and superseded in its entirety by this General License No. 5B.

(b) Except as provided in paragraph (c), the following transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, are authorized:

(1) Transactions and activities that are necessary during the reorganization of Balboa Bank & Trust (Balboa Bank) by the Superintendency of Banking of Panama (Superintendencia de Bancos de Panama) (Superintendency) and the reorganizer appointed by the Superintendency pursuant to applicable Panamanian law following Balboa Bank's seizure by the Superintendency, for the analysis of, and recommendations regarding, financial viability and reorganization, or to facilitate, negotiate, or agree to Balboa Bank's reorganization and any related sale, disposition, or transfer, including the exportation, re-exportation, or provision, directly or indirectly, of the following:

(i) Software, hardware, and related services, including information technology management services;

(ii) Goods and services related to bank employment and administration, as well as building maintenance and building operations; and

(iii) Auditing, consulting, legal, investment banking, and other professional services.

(2) Transactions and activities related to payments on loans and other obligations, in effect prior to May 5, 2016, by any non-designated Balboa Bank customers to Balboa Bank, provided such payments are remitted to the account established at Banco Nacional de Panama by the Superintendency.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598;

(2) Any transactions or activities otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or activities with any individual or entity other than Balboa Bank that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked; or

(3) Any transactions or activities to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Balboa Bank.

Note to paragraph (c)(3): In the event a transaction or activity to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Balboa Bank involves a U.S. person or is otherwise subject to U.S. jurisdiction, a separate license from the Office of Foreign Assets Control is required.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the transactions, to file a report on the transactions, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Reports may also be filed via email to *OFACReport@treasury.gov.*

(e) Unless extended or revoked, this authorization expires at 12:01 a.m. eastern daylight time, February 3, 2017.

Note to paragraph (e): Grounds for revocation include: (1) suspension or termination of the Panamanian Government's seizure of administrative and operating control of Balboa Bank; (2) return of control, directly or indirectly, to any Specially Designated National (SDN); or (3) return of assets to any SDN.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: July 21, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 5C

Authorizing Certain Transactions and Activities Related to the Panamanian Government Seizure of Balboa Bank & Trust

(a) General License No. 5B, dated July 21, 2016, is replaced and superseded in its entirety by this General License No. 5C.

(b) Except as provided in paragraph (c), the following transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, are authorized:

(1) Transactions and activities that are necessary during the reorganization of Balboa Bank & Trust (Balboa Bank) by the

Superintendency of Banking of Panama (Superintendencia de Bancos de Panama) (Superintendency) and the reorganizer appointed by the Superintendency pursuant to applicable Panamanian law following Balboa Bank's seizure by the Superintendency, for the analysis of, and recommendations regarding, financial viability and reorganization, or to facilitate, negotiate, or agree to Balboa Bank's reorganization and any related sale, disposition, or transfer, including the exportation, re-exportation, or provision, directly or indirectly, of the following:

(i) Software, hardware, and related services, including information technology management services;

(ii) Goods and services related to bank employment and administration, as well as building maintenance and building operations; and

(iii) Auditing, consulting, legal, investment banking, and other professional services.

(2) Transactions and activities related to payments on loans and other obligations, in effect prior to May 5, 2016, by any non-designated Balboa Bank customers to Balboa Bank, provided such payments are remitted to the account established at Banco Nacional de Panama by the Superintendency.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598;

(2) Any transactions or activities otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or activities with any individual or entity other than Balboa Bank that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked; or

(3) Any transactions or activities to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Balboa Bank.

Note to paragraph (c)(3): In the event a transaction or activity to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Balboa Bank involves a U.S. person or is otherwise subject to U.S. jurisdiction, a separate license from the Office of Foreign Assets Control is required.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the transactions, to file a report on the transactions, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Reports may also be filed via email to *OFACReport@treasury.gov.*

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

Dated: February 1, 2017.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 6

Authorizing Certain Transactions and Activities Related to the Intervention by the Superintendency of Securities Markets of Panama in Balboa Securities, Corp.

(a) Except as provided in paragraph (b), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are necessary for the inventory of assets and liabilities, and development of a final report, on Balboa Securities, Corp., by the administrator appointed by the Superintendency of Securities Markets of Panama (Superintendencia del Mercados de Valores de Panama) (Superintendency) pursuant to applicable Panamanian law following the intervention by the Superintendency in the Panamanian securities firm, Balboa Securities, Corp., are authorized, including the exportation, reexportation, or provision, directly or indirectly, of the following:

(1) Software, hardware, and related services, including information technology management services;

(2) Goods and services related to securities firm administration, building maintenance, and building operations; and

(3) Auditing, consulting, legal, and other professional services.

(b) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity other than Balboa Securities, Corp. that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

(c) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the transactions, to file a report on the transactions, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Reports may also be filed via email to *OFACReport@treasury.gov.*

(d) Unless extended or revoked, this authorization expires at 12:01 a.m. eastern daylight time, June 14, 2016.

Note to paragraph (d): Grounds for revocation include: (1) suspension or termination of the Panamanian government's intervention in Balboa Securities, Corp.; (2) return of control, directly or indirectly, to any Specially Designated National (SDN); or (3) return of assets to any SDN.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: May 13, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 6A

Authorizing Certain Transactions and Activities Related to the Intervention by the Superintendency of Securities Markets of Panama in Balboa Securities, Corp.

(a) General License No. 6, dated May 13, 2016, is replaced and superseded in its entirety by this General License No. 6A.

(b) Except as provided in paragraph (c), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are necessary for the inventory of assets and liabilities, and development of a final report, on Balboa Securities, Corp., by the administrator appointed by the Superintendency of Securities Markets of Panama (Superintendencia del Mercados de Valores de Panama) (Superintendency) pursuant to applicable Panamanian law following the intervention by the Superintendency in the Panamanian securities firm, Balboa Securities, Corp., are authorized, including the exportation, reexportation, or provision, directly or indirectly, of the following:

(1) Software, hardware, and related services, including information technology management services;

(2) Goods and services related to securities firm administration, building maintenance, and building operations; and

(3) Auditing, consulting, legal, and other professional services.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity other than Balboa Securities, Corp. that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the transactions, to file a report on the transactions, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500

Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Reports may also be filed via email to *OFACReport@treasury.gov.*

(e) Unless extended or revoked, this authorization expires at 12:01 a.m. eastern daylight time, July 22, 2016.

Note to paragraph (e): Grounds for revocation include: (1) suspension or termination of the Panamanian government's intervention in Balboa Securities, Corp.; (2) return of control, directly or indirectly, to any Specially Designated National (SDN); or (3) return of assets to any SDN.

Gregory T. Gatjanis,

Acting Director, Office of Foreign Assets Control.

Dated: June 10, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 6B

Authorizing Certain Transactions and Activities Related to the Intervention by the Superintendency of Securities Markets of Panama in Balboa Securities, Corp.

(a) General License No. 6A, dated June 10, 2016, is replaced and superseded in its entirety by this General License No. 6B.

(b) Except as provided in paragraph (c), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are necessary during the reorganization of Balboa Securities, Corp. (Balboa Securities) by the Superintendency of Securities Markets of Panama (Superintendencia del Mercados de Valores de Panama) (Superintendency) and the reorganizer appointed by the Superintendency pursuant to applicable Panamanian law following the intervention by the Superintendency, for the inventory of assets and liabilities of Balboa Securities or to facilitate, negotiate, or agree to Balboa Securities' reorganization and any related sale, disposition, or transfer, are authorized, including the exportation, re-exportation, or provision, directly or indirectly, of the following:

(1) Software, hardware, and related services, including information technology management services;

(2) Goods and services related to securities firm employment and administration, as well as building maintenance and building operations; and

(3) Auditing, consulting, legal, investment banking, and other professional services.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598;

(2) Any transactions or activities otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or activities with any individual or entity other than Balboa Securities that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked; or

(3) Any transactions or activities to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Balboa Securities.

Note to paragraph (c)(3): In the event a transaction or activity to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Balboa Securities involves a U.S. person or is otherwise subject to U.S. jurisdiction, a separate license from the Office of Foreign Assets Control is required.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the transactions, to file a report on the transactions, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Reports may also be filed via email to *OFACReport@treasury.gov.*

(e) Unless extended or revoked, this authorization expires at 12:01 a.m. eastern daylight time, February 3, 2017.

Note to paragraph (e): Grounds for revocation include: (1) suspension or termination of the Panamanian Government's intervention in Balboa Securities; (2) return of control, directly or indirectly, to any Specially Designated National (SDN); or (3) return of assets to any SDN.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: July 21, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 6C

Authorizing Certain Transactions and Activities Related to the Intervention by the Superintendency of Securities Markets of Panama in Balboa Securities, Corp.

(a) General License No. 6B, dated July 21, 2016, is replaced and superseded in its entirety by this General License No. 6C.

(b) Except as provided in paragraph (c), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 C.P.R. part 598, that are necessary during the reorganization of Balboa Securities, Corp. (Balboa Securities) by the Superintendency of Securities Markets of Panama (Superintendencia del Mercados de Valores de Panama) (Superintendency) and the reorganizer appointed by the Superintendency pursuant to applicable Panamanian law following the intervention by the Superintendency, for the inventory of assets and liabilities of Balboa Securities or to facilitate, negotiate, or agree to Balboa Securities' reorganization and any related sale, disposition, or transfer, are authorized, including the exportation, re-exportation, or provision, directly or indirectly, of the following:

(1) Software, hardware, and related services, including information technology management services;

(2) Goods and services related to securities firm employment and administration, as well as building maintenance and building operations; and

(3) Auditing, consulting, legal, investment banking, and other professional services.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598;

(2) Any transactions or activities otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or activities with any individual or entity other than Balboa Securities that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked; or

(3) Any transactions or activities to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Balboa Securities.

Note to paragraph (c)(3): In the event a transaction or activity to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Balboa Securities involves a U.S. person or is otherwise subject to U.S. jurisdiction, a separate license from the Office of Foreign Assets Control is required.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the transactions, to file a report on the transactions, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Reports may also be filed via email to *OFACReport@treasury.gov.*

(e) Unless extended or revoked, this authorization expires at 12:01 a.m. eastern daylight time, April 7, 2017.

Note to paragraph (e): Grounds for revocation include: (1) suspension or termination of the Panamanian Government's intervention in Balboa Securities; (2) return of control, directly or indirectly, to any Specially Designated National (SDN); or (3) return of assets to any SDN.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

Dated: February 1, 2017.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 7

Authorizing Certain Transactions and Activities Related to Importadora Maduro, S.A., Maduro Internacional, S.A., and Lindo & Maduro, S.A.

(a) Except as provided in paragraph (b), all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are necessary to (1) maintain operations or (2) facilitate, negotiate, or agree to the sale, disposition, or transfer of Importadora Maduro, S.A.; Maduro Internacional, S.A.; and Lindo & Maduro, S.A., following the actions of the Government of Panama related to the temporary removal of ownership and control by certain Specially Designated Narcotics Traffickers, are authorized.

(b) This general license does not authorize:

(1) Any transactions or activities to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of Importadora Maduro, S.A.; Maduro Internacional, S.A.; and Lindo & Maduro, S.A.;

Note to paragraph (b)(l): In the event a transaction or activity to finalize, close, or exchange assets or any other thing of value related to the sale, disposition, or transfer of lmportadora Maduro, S.A.; Maduro Internacional, S.A.; and Lindo & Maduro, S.A. involves a U.S. person or is otherwise subject to U.S. jurisdiction, a separate license from the Office of Foreign Assets Control is required.

(2) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(3) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity other than Importadora Maduro, S.A.; Maduro Internacional, S.A.; and Lindo & Maduro, S.A., that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

(c) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the activities conclude, to file a report on the transactions with the Office of Foreign Assets Control, Sanctions Compliance & Evaluation Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220. Such reports shall include the following numbered sections and information:

(1) Estimated or actual dollar value of the transaction(s), as determined by the value of the goods, services, or contract;

(2) The parties involved;

(3) The type and scope of activities conducted; and

(4) The dates and duration of the activities.

Reports may also be filed via email to *OFACReport@treasury.gov.*

(d) Unless extended or revoked, this authorization expires at 12:01 a.m. eastern daylight time, December 14, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: June 14, 2016.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–26182 Filed 11–30–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 598

Publication of Foreign Narcotics Kingpin Sanctions Regulations Web General License 1A and Subsequent Iterations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three general licenses (GLs) issued pursuant to the Foreign Narcotics Kingpin Sanctions Regulations: GLs 1A, 1B, and 1C, each of which was previously issued on OFAC's website.

DATES: GL 1A was issued on December 8, 2015. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On December 8, 2015, OFAC issued GL 1A to authorize certain transactions otherwise prohibited by the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598. Subsequently, OFAC issued further iterations of GL 1A: on June 10, 2016, OFAC issued GL 1B, which superseded GL 1A; and on December 9, 2016, OFAC issued GL 1C, which superseded GL 1B. Each of these GLs is now expired.

Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 1A

Authorizing Certain Transactions and Activities To Liquidate and Wind Down Banco Continental, S.A.

(a) General License No. 1, dated October 21, 2015, is replaced and superseded in its entirety by this General License No. 1A.

(b) Except as provided in paragraph (c) of this general license, all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are for the liquidation and wind down of the Honduran bank, Banco Continental, S.A., including transactions and activities related to the preparation and submission of bids to acquire the assets of Banco Continental, S.A., are authorized through 12:01 a.m. eastern daylight time, June 12, 2016.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR Chapter V, or any transactions or dealings with any individual or entity other than Banco Continental, S.A. that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the liquidation and wind-down activities conclude, to file a report, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Licensing Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Annex, Washington, DC 20220.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: December 8, 2015.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 1B

Authorizing Certain Transactions and Activities To Liquidate and Wind Down Banco Continental, S.A.

(a) General License No. 1A, dated December 8, 2015, is replaced and superseded in its entirety by this General License No. 1B.

(b) Except as provided in paragraph (c) of this general license, all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are for the liquidation and wind down of the Honduran bank, Banco Continental, S.A., including transactions and activities related to the preparation and submission of bids to acquire the assets of Banco Continental, S.A., are authorized through 12:01 a.m. eastern daylight time, December 12, 2016.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity other than Banco Continental, S.A. that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the liquidation and wind-down activities conclude, to file a report, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Licensing Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

Gregory T. Gatjanis,

Acting Director, Office of Foreign Assets Control.

Dated: June 10, 2016.

OFFICE OF FOREIGN ASSETS CONTROL

Foreign Narcotics Kingpin Sanctions Regulations 31 CFR Part 598

GENERAL LICENSE NO. 1C

Authorizing Certain Transactions and Activities To Liquidate and Wind Down Banco Continental, S.A.

(a) General License No. 1B, dated June 10, 2016, is replaced and superseded in its entirety by this General License No. 1C.

(b) Except as provided in paragraph (c) of this general license, all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901–1908, and the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are for the liquidation and wind down of the Honduran bank, Banco Continental, S.A., including transactions and activities related to the preparation and submission of bids to acquire the assets of Banco Continental, S.A., are authorized through 12:01 a.m. eastern daylight time, June 14, 2017.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR chapter V, or any transactions or dealings with any individual or entity other than Banco Continental, S.A. that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

(d) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the liquidation and wind-down activities conclude, to file a report, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Licensing Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

Gregory T. Gatjanis,

Acting Director, Office of Foreign Assets Control.

Dated: December 9, 2016.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–26199 Filed 11–30–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0953]

RIN 1625–AA87

Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary, 500-yard radius, moving security zone for a certain vessel carrying Certain Dangerous Cargoes (CDC) within the Corpus Christi Ship Channel and La Quinta Channel. The temporary security zone is needed to protect the vessels, the CDC cargo, and the surrounding waterway. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective December 2, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Anthony.M.Garofalo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this security zones by December 2, 2022 to ensure security of this vessel and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the security of the vessel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) METHANE JANE ELIZABETH when loaded will be a security concern within a 500-yard radius of the vessel. This rule is needed to provide for the safety and security of the vessels, their cargo, and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature while they are transiting within Corpus Christi, TX, from December 2, 2022 through December 5, 2022.

IV. Discussion of the Rule

The Coast Guard is establishing four 500-yard radius temporary moving security zones around M/V METHANE JANE ELIZABETH. The zone for the vessel will be enforced from December 2, 2022, through December 5, 2022. The duration of the zone is intended to protect the vessel and cargo and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

Entry into the security zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through each zone must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate for the enforcement times and dates for each security zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, and location of the security zone. This rule will impact a small designated area of 500-yards around the moving vessel in the Corpus Christi Ship Channel and La Quinta Channel as the vessel transit the channel over a five day period. Moreover, the rule allows vessels to seek permission to enter the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a moving security zone lasting for the duration of time that the M/V METHANE JANE ELIZABETH is within the Corpus Christi Ship Channel and La Quinta Channel while loaded with cargo. It will prohibit entry within a 500 yard radius of M/V METHANE JANE

ELIZABETH while the vessel is transiting loaded within Corpus Christi Ship Channel and La Quinta Channel. It is categorically excluded from further review under L60 in Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0953 to read as follows:

§ 165.T08–0953 Security Zone; Corpus Christi Ship Channel. Corpus Christi, TX.

(a) *Location.* The following area is a security zone: All navigable waters encompassing a 500-yard radius around the M/V METHANE JANE ELIZABETH while the vessel is in the Corpus Christi Ship Channel and La Quinta Channel.

(b) *Enforcement period.* This section will be enforced from December 2, 2022 through December 5, 2022.

(c) *Regulations.* (1) The general regulations in § 165.33 of this part apply. Entry into the zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones described in paragraph (a) of this section must request permission from the COTP Sector Corpus Christi on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for these security zones.

Dated: November 23, 2022.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2022–26179 Filed 11–30–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0954]

RIN 1625–AA00

Safety Zone; Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters directly surrounding the northern half of the I–75 Bridge over the Maumee River. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by demolition of the bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit.

DATES: This rule is effective from 1 p.m. on December 1, 2022, through 3 p.m. on December 3, 2022. This rule will be enforced from 1 p.m. through 3 p.m. daily.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0954 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Karl Dirksmeyer, Waterways Management, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6044, email *Karl.E.Dirksmeyer@USCG.MIL.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the party conducting the work notified the Coast Guard with insufficient time to accommodate a comment period. It is impracticable to publish an NPRM because we must establish this safety zone by December 1, 2022 in order to protect the public with the hazards associated with this demolition project.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed in order to protect the public with the hazards associated with this demolition project.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with the bridge demolition occurring between December 1, 2022–December 3, 2022, will be a safety concern for anyone transiting near the I–75 bridge on the Maumee River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being demolished.

IV. Discussion of the Rule

This rule establishes a safety zone from 1 p.m. through 3 p.m. on December 1, 2022 and December 2, 2022. In the case of inclement weather, this safety zone will be enforced from 1 p.m.

through 3 p.m. on December 3, 2022. The safety zone will cover all navigable waters 800 feet up and down river from surface to bottom, below the old Michael V. DiSalle Memorial (I–75) Bridge located at 41°37′36.026″ N 83°32′30.552″ W. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge is being demolished. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, location, duration, and time-of-day of the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry into the waters 800 feet up and down river of the Michael V. DiSalle Memorial (I–75) Bridge while it is demolished. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T09–0954 to read as follows:

§ 165.T09–0954 Safety Zone; Maumee River, Toledo, OH.

(a) *Location.* The following area is a safety zone: The safety zone will cover all navigable waters 800 feet up and down river from surface to bottom, underneath the old Michael V. DiSalle Memorial (I–75) Bridge located at 41°37′36.026″ N 83°32′30.552″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his or her designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated representative.

(3) The ''designated representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The designated representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so at least 30 minutes prior to transit. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative.

(c) *Enforcement periods.* This section will be enforced from December 1, 2022, through December 3, 2022, from 1 p.m. through 3 p.m. daily.

Dated: November 28, 2022.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2022–26260 Filed 11–30–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 8

RIN 2900–AR53

National Service Life Insurance—Veterans Affairs Life Insurance (VALife) Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern National Service Life Insurance (NSLI), among other things, to accomplish the following: implement provisions contained in legislation that authorized a new program of insurance; clarify which individuals are eligible to take actions on an insurance policy; explain various provisions regarding coverage and benefits under the new insurance program; and state which individuals are ineligible to benefit from the unlawful and wrongful killing of a veteran policyholder.

DATES: This final rule is effective January 3, 2023.

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Insurance Specialist, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842–2000, ext. 4263. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 14, 2022, VA published a proposed rulemaking in the **Federal Register** pertaining to the implementation of a new program of life insurance that will begin issuing policies on January 1, 2023. (87 FR 42118). VA provided the public with a 60-day comment period which closed on September 12, 2022. VA did not receive any comments from the public. Based on the rationale set forth in the **Federal Register**, VA adopts the proposed rule, without change, as a final rule.

Executive Orders 12866 and 13563

Executive Orders (E.O.) 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). E.O. 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 final rule is not a significant regulatory action under E.O. 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 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). This final rule would generally be small business neutral as it implements statutory provisions that only allow the United States to issue life insurance coverage to veterans with service-connected disabilities. 38 U.S.C. 1922B(a)(1) (''[T]he Secretary shall carry out a service-disabled veterans insurance program under which a veteran is granted insurance by the United States against the death of such individual occurring while such insurance is in force.''). Although there are statutes in 38 U.S.C. 1901–1988 that allow VA to purchase a large group life insurance policy from a private commercial insurer, those statutory authorities only apply to the Servicemembers' Group Life Insurance Program, which provides life insurance coverage to Service members and their dependents and former Service members, and they do not provide VA with the authority to purchase a group life insurance policy from a private insurer for purposes of providing VALife coverage. As such, the overall impact of this final rule would be of no benefit or detriment to small businesses, because these insurance policies would only be issued by the United States to veterans with service-connected disabilities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in 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 final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule includes provisions constituting new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval. OMB has reviewed and approved the new collections of information and assigned OMB Control Numbers 2900–0906 and 2900–0918.

When VA published the notice of proposed rulemaking in the **Federal Register**, we identified a third form that we proposed to utilize to collect information from the public to permit an individual to confirm their surrender of any current SDVI coverage at the time they apply for VALife. However, we have incorporated this collection of information into the form that will also be used by VA to reinstate a VALife policy or to complete a insured's request to surrender coverage under VALife and is assigned OMB Control Number 2900–0918.

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

Congressional Review Act

Pursuant to 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 8

Life insurance, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 16, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

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 8 as set forth below:

PART 8—NATIONAL SERVICE LIFE INSURANCE

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

Authority: 38 U.S.C. 501, 1901–1929, 1981–1988.

■ 2. Amend § 8.0 by:
■ a. Revising paragraph (e); and
■ b. Adding paragraphs (f), (g), and (h).

The revision and additions read as follows:

§ 8.0 Definitions of terms used in connection with title 38 CFR, part 8, National Service Life Insurance.

* * * * *

(e) *What does the term ''guardian'' mean?* The term *guardian* means any state-appointed guardian or conservator, attorney-in-fact, or VA-appointed fiduciary, as defined in § 13.20, who is responsible for receiving VA benefits in a fiduciary capacity on behalf of the insured or the beneficiary, or to take the actions listed in § 8.32.

Note 1 to paragraph (e): If a VA-appointed fiduciary and either a state-appointed guardian/conservator or attorney-in-fact are not the same individual and both attempt to take conflicting actions on an incompetent insured's policy, the VA-appointed fiduciary shall have the exclusive authority to take actions on the policy.

(f) *What does the term ''Veterans' Affairs Life Insurance (VALife)'' mean?* The term *Veterans' Affairs Life Insurance,* or *VALife* in its abbreviated form, means a policy of insurance that is issued under section 1922B of title 38 U.S.C.

(g) *What does the term ''application for VALife'' mean?* The term *application for VALife* means a properly completed application form submitted online or through another medium prescribed by the Secretary.

(h) *What does the term ''beneficiary'' mean?* The term ''beneficiary'' means a principal or contingent beneficiary designated by the insured.

■ 3. Amend § 8.1 by:
■ a. Revising the section heading and paragraph (a);
■ b. In paragraph (b), adding Note 3;
■ c. In paragraph (c) introductory text, removing the word ''Yes,'' and adding in its place ''For insurance other than VALife,''.

The revision and addition read as follows:

§ 8.1 Effective date for an insurance policy issued under section 1922(a) or 1922B of title 38 U.S.C.

(a) *What is the effective date of the policy?* The effective date is the date policy coverage begins. Benefits due under a policy issued under section 1922(a) are payable any time after the effective date. Benefits due under a policy issued under section 1922B are payable any time two years after the effective date.

(b) * * *

Note 3 to paragraph (b): If you apply for insurance coverage through an electronic medium, the date of delivery of the premium payment will be the date you authorize payment of the initial premium. In cases where the authorization does not result in the required premium payment because there were insufficient funds to cover the full initial premium, the delivery date of the premium payment will be the date your full initial premium is received by VA.

* * * * *

■ 4. Amend § 8.2 by adding paragraph (e) to read as follows:

§ 8.2 Payment of premiums.

* * * * *

(e) *What happens if a policyholder enrolled in VALife dies, surrenders or cancels coverage during the two-year enrollment period?* If a policyholder enrolls in VALife for an amount less than the statutory maximum and elects to apply for additional coverage at a later date and dies before completing the two-year waiting period for the additional VALife coverage amount, the beneficiary shall be refunded premiums that were paid for the additional VALife coverage, plus interest, in accordance with 38 U.S.C. 1922B(c)(3)(A). If a policyholder surrenders or cancels a VALife policy during the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before coverage is in force, the United States shall not return to the policyholder the premiums that were paid to purchase the coverage.

■ 5. Revise § 8.6 to read as follows:

§ 8.6 Calculation of Time Period; Veteran's Age.

(a) If the last day of a time period specified in § 8.2 or § 8.3, or the last day allowed for filing an application for National Service Life Insurance or for applying for reinstatement thereof, or paying premiums due thereon, falls on a Saturday, Sunday, or legal holiday, the time period will be extended to include the following workday.

(b) For VALife, the premium will be determined using the age of the veteran at his or her nearest birthday on the effective date of the policy.

(c) For purposes of determining a veteran's eligibility for VALife under 38 U.S.C. 1922B(a)(3)(A), the age of the veteran at his or her last birthday prior to the date of application will be used.

(d) For purposes of determining a veteran's eligibility for VALife under 38 U.S.C. 1922B(a)(3)(B), with respect to a veteran who has attained 81 years of age, an initial grant of service connection for a new or secondary condition for which the veteran applied for disability compensation before attaining 81 years of age will satisfy the eligibility criteria; however, VA will not grant insurance to such a veteran based on an increase in an existing disability rating, a grant of individual unemployability under 38 CFR 4.18, or a finding of incompetency under 38 CFR 3.353. VA will not issue a VALife policy to a veteran over age 95.

■ 6. Amend § 8.7 by:

■ a. Revising the section heading;
■ b. In paragraph (a), in the first sentence, removing the phrase ''Any policy'' and adding, in its place, the phrase ''Subject to paragraph (e), any policy''; and
■ c. Adding paragraph (e).

The revision and addition read as follows:

§ 8.7 Reinstatement.

* * * * *

(e) Coverage issued under VALife that lapses for non-payment of premiums may only be reinstated if the former policyholder submits all premiums in arrears from their respective due dates, plus interest, to reinstate the coverage within two years of the date of the lapse and has not yet reached age 81.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0918.)

■ 7. Amend § 8.10 by revising paragraph (a)(3) to read as follows:

§ 8.10 How paid.

(a) * * *

(3) Issued under sections 1904(c), 1922(a), and 1922B of title 38 U.S.C.

* * * * *

■ 8. Amend § 8.11 by:
■ a. Revising the section heading;
■ b. In paragraph (a), adding a sentence at the end of the paragraph:
■ c. In paragraph (b), removing ''Upon'' and adding, in its place, ''For insurance other than VALife, upon''; and
■ d. Adding paragraphs (j) and (k).

The revision and additions read as follows:

§ 8.11 Cash value.

(a) * * * This paragraph shall not apply to VALife.

* * * * *

(j) Cash values that accrue for VALife will be developed using a multiple of the 1941 Commissioners Standard Ordinary Mortality Table and an interest rate of 3.5 percent per annum. Cash values will not accrue and will not be payable until the completion of the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2). If a VALife policy lapses or is surrendered before completion of the two-year waiting period, then any amounts that VA has collected, such as premium payments, shall be returned to the credit of the VALife revolving fund that is established under 38 U.S.C. 1922B(a)(5)(A)(i). If a veteran enrolls in VALife for an amount less than the statutory maximum and elects to apply for additional coverage at a later date, the cash value on the additional amount of coverage would not begin accruing until the end of the two-year waiting period for the additional coverage.

(k) The United States will pay the cash value, in full or in part, of any VALife policy, subject to the limitations in § 8.11(j), to insureds upon request through electronic medium or other method prescribed by the Secretary. Unless otherwise requested by the insured, a surrender will be deemed effective as of the end of the premium month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of payment for the cash value, whichever is later.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0918.)

* * * * *

■ 9. Amend § 8.13 by adding paragraph (e) to read as follows:

§ 8.13 Policy loans.

* * * * *

(e) For VALife, the United States shall only issue policy loans if the Secretary determines that offering loans is administratively and actuarially sound.

■ 10. Amend § 8.14 by adding paragraph (d) to read as follows:

§ 8.14 Provision for extended term insurance—other than 5-year level premium term or limited convertible 5-year level premium term policies.

* * * * *

(d) VALife shall not be extended automatically as term insurance until the insured has paid the required premiums during the two-year waiting period that is imposed by 38 U.S.C. 1922B(c)(2) before VALife coverage is in force.

■ 11. Amend § 8.15 by designating the text as paragraph (a) and adding paragraph (b) to read as follows:

§ 8.15 Provision for paid-up insurance; other than 5-year level premium term or limited convertible 5-year level premium term policies.

* * * * *

(b) The United States shall not issue paid-up insurance under VALife until the insured has paid premiums during the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before VALife coverage is in force.

■ 12. Amend § 8.19 by designating the text as paragraph (a) and adding paragraph (b) to read as follows:

§ 8.19 Beneficiary and optional settlement changes.

* * * * *

(b) If a beneficiary has been determined to have intentionally and wrongfully killed the insured, the provisions found in 38 CFR 9.5(e) shall be followed.

■ 13. Add § 8.35 to read as follows:

§ 8.35 Eligibility for those insured under 38 U.S.C. 1922(a) to purchase insurance under 38 U.S.C. 1922B after December 31, 2025.

An insured under a Legacy Service Disabled Veterans' Insurance policy shall be eligible to purchase VALife coverage after December 31, 2025, upon cancellation of his or her Legacy Service Disabled Veterans' Insurance policy and surrender of any cash value that his or her coverage has accrued in accordance with 38 CFR 8.11. The policyholder must also submit a statement in a form that is prescribed by the Secretary, which clearly indicates that the policyholder desires to terminate his or her existing life insurance coverage in order to apply for VALife and initiate the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before such VALife coverage is in force.

(Authority: 38 U.S.C. 501, 1901–1929, 1981–1988)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0906.)

■ 14. Add § 8.36 to read as follows:

§ 8.36 Issuance of coverage under section 1922B of title 38 U.S.C. following additional elections.

An insured who elects less than the maximum amount of VALife coverage under 38 U.S.C. 1922B(a)(4)(A) shall remain eligible to purchase additional VALife coverage up to the VALife statutory maximum. Any insured who elects to apply for additional VALife coverage shall be subject to the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before such additional VALife coverage is in force.

(Authority: 38 U.S.C. 501, 1901–1929, 1981–1988)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0906.)

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2020–0083; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BE16

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Puerto Rican Harlequin Butterfly and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), list the Puerto Rican harlequin butterfly (*Atlantea tulita*), a species from Puerto Rico, as a threatened species with a rule issued under section 4(d) of the Endangered Species Act of 1973 (Act), as amended. We also designate critical habitat for this species under the Act. In total, approximately 41,266 acres (16,699.8 hectares) in six units in the municipalities of Isabela, Quebradillas, Camuy, Arecibo, Utuado, Florida, Ciales, Maricao, San Germán, Sabana Grande, and Yauco are within the boundaries of the critical habitat designation. This rule extends the Act's protections to the species and its designated critical habitat.

DATES: This rule is effective January 3, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov.*

The coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2020–0083, or from the Caribbean Ecological Services Field Office *https://www.fws.gov/office/caribbean-ecological-services*) (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information developed will also be available at the Fish and Wildlife Service website and Field Office identified below and at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Edwin Muñiz, Field Supervisor, Caribbean Ecological Services Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, PR 00622; email *caribbean_es@fws.gov;* telephone 787–405–3641. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Puerto Rican harlequin butterfly meets the definition of a threatened species; therefore, we are listing it as such and finalizing a designation of its critical habitat. Both listing a species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that habitat modification and fragmentation (Factor A) caused by urban development and agriculture, human-induced fires, pesticides (insecticides and herbicides), small population size, and climate change (Factor E) are the primary threats affecting the current and future viability of the Puerto Rican harlequin butterfly.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Economic analysis. In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat for the Puerto Rican harlequin butterfly. On October 13, 2020, we made available, and solicited public comments on, the draft economic analysis in our proposed critical habitat rule (85 FR 64908). We received no comments or new information on the draft economic analysis, and we have adopted the draft economic analysis as final.

Peer review and public comments. During the proposed rule stage, we sought the expert opinions of six appropriate specialists regarding the species status assessment report. We received responses from one specialist, which helped inform our SSA report and are incorporated in the proposed rule and this final rule. We also considered all comments and information we received from the public during the comment period on the proposed rule (see 85 FR 64908; October 13, 2020).

Previous Federal Actions

Please refer to the October 13, 2020, proposed rule (85 FR 64908) for a detailed description of previous Federal actions concerning this species.

Supporting Documents

As part of the process of listing the Puerto Rican harlequin butterfly, a species status assessment (SSA) team prepared an SSA report for the species. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The SSA report underwent independent

peer review by a scientist with expertise in insect biology, habitat management, and stressors (factors negatively affecting the species) to the species. Along with other information submitted during the process of listing the species, the SSA report is the primary source of information for this final designation. The SSA report and other materials relating to this rule can be found on the Service's Southeast Region website at *https://www.fws.gov/about/region/southeast* and at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0083.

Summary of Changes From the Proposed Rule

After full consideration of the comments we received and that are summarized below under Summary of Comments and Recommendations, this final rule makes one substantive change to our October 13, 2020, proposed rule (85 FR 64908): We have revised the incidental take exception for normal agricultural practices. In this 4(d) rule, we clarify that the incidental take exception does not apply to take resulting from pesticide application in or contiguous to habitat known to be occupied by the Puerto Rican harlequin butterfly. For this exception, we replace the word ''adjacent'' from our proposed rule with the word ''contiguous'' in this final rule to clarify that we mean areas that share a common border, and to avoid the interpretation that ''adjacent'' may mean areas that are near each other but not touching.

Summary of Comments and Recommendations

On October 13, 2020, we proposed to list the Puerto Rican harlequin butterfly as a threatened species with a section 4(d) rule and designate critical habitat for the species (85 FR 64908), and made available the associated draft economic analysis (DEA). The public comment period for that proposed rule was open for 60 days, ending December 14, 2020. During the open comment period, we received 11 public comments on the proposed rule; the majority of comments supported the proposed rule, none opposed the proposed rule, and some included suggestions on how we could refine or improve the critical habitat designation and 4(d) rule. All substantive information provided to us during the comment period is addressed below.

(1) Comment: One commenter concurred with the Service that the Puerto Rican harlequin butterfly should be listed as a threatened species. However, they stated that, although certain land where a golf course is located has special value for wildlife in general, that area does not meet the definition of critical habitat under the Act. Thus, they requested that the Service amend the proposed critical habitat designation to remove the golf course from critical habitat for the Puerto Rican harlequin butterfly. Also, they recommended that the 89 acres of government land at Isabela that is protected habitat managed by a conservation trust be designated as critical habitat for the species.

Our Response: We proposed to designate critical habitat on adjacent public lands and on private lands within the golf course development. Within these privately held lands, only the areas that have the essential physical or biological features for the species were included in the proposed critical habitat, and those areas are included in this final designation. The proposed critical habitat did not, and this final designation does not, include the golf course proper (*e.g.,* fairways, greens, manmade structures) nor other private land that is part of the golf course development but lacks the physical or biological features essential for the species. The 89 acres managed by the conservation trust on land adjacent to the golf course was included in our proposed designation and is included in this final designation of critical habitat.

(2) Comment: A commenter contends that the proposed 4(d) rule is ineffective, fails to conserve the species because it does not adequately address pesticide use as a threat to the species, and fails to comply with section 7 of the Act (16 U.S.C. 1531 *et seq.*). The commenter states that the Service has recognized the severe threat of pesticide spraying to the Puerto Rican harlequin butterfly's survival since 2011, when the Service described this threat as significant and imminent in its finding that listing the species was warranted but precluded. For these reasons, they state that the 4(d) rule should prohibit any spraying of pesticides in or adjacent to Puerto Rican harlequin butterfly habitat and require adequate buffer setbacks.

Our Response: While the Service has characterized pesticide use as a current and ongoing threat, we have not characterized it as ''severe.'' Rather, it has been described as ''significant'' in connection with other threats to the species, including the destruction, modification, and curtailment of the species' habitat, as well as the species' limited distribution and specialized ecological requirements, which are the most significant threats to the species. Pesticide use was identified as one of several other threats acting cumulatively with other threats, particularly in regard to habitat destruction and fragmentation. Because we identified improper application of pesticides as one of the threats to the species, and in consideration of public comments we received, in this final 4(d) rule we are not providing an exception for incidental take associated with pesticide applications in or contiguous to habitat known to be occupied by the Puerto Rican harlequin butterfly (see Summary of Changes from the Proposed Rule, above). However, it is not our intent to preclude application of pesticides in all circumstances. Accordingly, we use the phrase ''known to be occupied'' to clarify that there is a geographical limit on the extent of the prohibitions. For example, the Puerto Rican harlequin butterfly would have to be exposed to particular actions for those actions to cause take, and the butterfly could only be exposed if it is known to occupy the project area. This prohibition does not apply in areas the butterfly does not occupy as there is no risk of take of butterflies in unoccupied areas. The Service can provide technical assistance to help determine whether the Puerto Rican harlequin butterfly occupies a specific area. If noxious weed control is needed where the Puerto Rican harlequin butterfly is present, the Service will work with landowners or land managers to identify techniques to control weeds that avoid take of or minimize effects to the Puerto Rican harlequin butterfly.

(3) Comment: A commenter stated that the proposed 4(d) rule unnecessarily places a substantial focus on preventing and controlling overcollection of the species, with four out of five prohibitions focused on possession and commerce of unlawfully taken specimens. The commenter explained that although collection could theoretically be a threat to this species, the Service's SSA report and other relevant research have shown no substantiated indications that collection is actually occurring, and that the proposed 4(d) rule provides little tangible protection to the Puerto Rican harlequin butterfly.

Our Response: The provisions in section 4(d) of the Act give us discretion to apply the prohibitions provided in section 9 of the Act for endangered species to threatened species. Accordingly, our 4(d) rule generally extends these same prohibitions to the Puerto Rican harlequin butterfly as a threatened species, which include a prohibition on selling or offering for sale in interstate or foreign commerce. We determined these prohibitions

concerning overcollection by private butterfly enthusiasts or collection for commercial purposes are necessary because, when listed, the Puerto Rican harlequin butterfly will likely be more appealing to private collectors. Although observations of trafficking the species are rare, it does not necessarily mean such collection is not occurring. Such collection would be incompatible with the species' recovery needs. However, the 4(d) rule allows for scientific collection, *e.g.,* for propagation, which may entail a low level of take to promote the conservation of the species. In addition to the prohibitions on take to avoid overcollection of the species and the provision for conservation via scientific collection and propagation, our 4(d) rule addresses the threats to the species and its conservation needs by providing for habitat conservation and restoration.

I. Final Listing Determination

Background

Please refer to the October 13, 2020, proposed rule (85 FR 64908) and the SSA report (Service 2019, entire) for a full summary of species information. These documents are available at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0083.

The Puerto Rican harlequin butterfly is endemic to Puerto Rico, occurring in the western portion of the island, in the Northern Karst region and in the West-central Volcanic-serpentine region. The life cycle of the Puerto Rican harlequin butterfly includes four distinct anatomical stages: egg, larva (caterpillar, with several size phases called instars), chrysalis (pupa), and imago (butterfly or adult). Completion of the species' life cycle, from egg to butterfly, likely averages 125 days, but can vary based on temperature and humidity. Relative to other butterfly species, the Puerto Rican harlequin butterfly is medium-sized. The male butterfly's abdomen is brownish-black on the dorsal side and has orange and brown bands on the ventral side, while the female's abdomen is brownish-black with white bands. Wings of both sexes are largely brownish-black with sub-marginal rows of deep orange spots and beige cells. The caterpillar is dark orange with a brownish-black to black thin line, over a thin intermittent white line along each side of the body from the head to hind end. Each body segment of the caterpillar has several evenly-spaced pairs of spines covered in hairs.

All life stages of the Puerto Rican harlequin butterfly are observed year-round, suggesting that mating and oviposition (egg-laying) may occur at any time during the year. The species has been observed to disperse up to approximately 1 kilometer (km) (0.6 mile (mi)) from one breeding site to another. Eggs and larvae are found only on *Oplonia spinosa* (prickly bush). First instars feed only on this plant. While prickly bush is essential to Puerto Rican harlequin butterfly viability, the plant occurs throughout the species' range and, unless removed for land clearing, is not a limited resource. Active during the daytime, the butterflies feed on the nectar of several tree species and also drink water. Puerto Rican harlequin butterflies have been found only within 1 km (0.6 mi) of a water source (*e.g.,* creek, river, pond, puddle).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019). At the same time the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (collectively, the 2019 regulations).

As with the proposed rule, we are applying the 2019 regulations for this final rule because the 2019 regulations are the governing law just as they were when we completed the proposed rule. Although there was a period in the interim—between July 5, 2022, and September 21, 2022—when the 2019 regulations became vacated and the pre-2019 regulations therefore governed, the 2019 regulations are now in effect and govern listing and critical habitat decisions (*see Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*) (vacating the 2019 regulations and thereby reinstating the pre-2019 regulations)); *In re: Cattlemen's Ass'n,* No. 22–70194 (9th Cir. Sept. 21, 2022) (staying the district court's order vacating the 2019 regulations until the district court resolved a pending motion to amend the order); *Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–5206–JST, Doc. Nos. 197, 198 (N.D. Cal. Nov. 16, 2022) (granting plaintiffs' motion to amend July 5, 2022 order and granting government's motion for remand without vacatur).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of

those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' likely responses to threats include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the Puerto Rican harlequin butterfly, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0083.

To assess Puerto Rican harlequin butterfly viability, we used the three conservation biology principles of resiliency, redundancy, and representation (the ''3Rs'') (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. In the final stage of the SSA, we made predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We also use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Species Needs

Puerto Rican harlequin butterflies need the tender new growth of the host plant, prickly bush, for egg laying by adults and feeding by caterpillars. Adults rely on particular types of woody plants for nectar feeding (at least 24 have been identified as plants upon which they feed), and a water source within 1 km (0.6 mi) for hydration. Suitable habitat consists of forests that may vary in stage of succession and age, with 50 to 85 percent canopy cover. The species occurs both in large blocks of undisturbed forest and in forest patches interspersed with agricultural lands, houses, and roads. In areas that are a mix of developed lands and forest, the species needs forested corridors (with prickly bush covering more than 30 percent) connecting breeding sites.

Current Condition of Puerto Rican Harlequin Butterfly

Currently, the Puerto Rican harlequin butterfly populations occur in six areas: (1) Isabela, Quebradillas, and Camuy (hereafter referred to as the IQC population); (2) Guajataca; (3) Río Abajo Commonwealth Forest; (4) Río Encantado; (5) Maricao Commonwealth Forest; and (6) Susúa Commonwealth Forest. The IQC, Guajataca, Río Abajo, and Río Encantado populations occur in the northwestern portion of Puerto Rico, in the Northern Karst physiographic region. The Maricao and Susúa populations occur in the west-central portion of the island, in the West-central Volcanic-serpentine physiographic region. A seventh population occurred in Tallaboa, in southwestern Puerto Rico, in the Sothern Karst physiographic region, but has not been observed since 1926 and is presumed extirpated.

We considered an area to have an extant population if at least two of the four life stages (egg, caterpillar, chrysalis, adult) were observed in the course of repeated surveys conducted in one year. All extant populations have been observed as recently as 2018. Each of the extant six populations likely functions as a metapopulation, a discrete population composed of local populations (subpopulations) with individuals that can move infrequently from one subpopulation to another.

Population size is an important component of resiliency. However, quantitative population size estimates (statistically derived) for the Puerto Rican harlequin butterfly are not available. There have been several surveys for the species since 2003, although survey methods and objectives

have varied. Most data consist of counts of the various life stages during single survey events. In some areas, there are valid reports of species occurrence (by species experts) but no count data. Thus, the estimated abundance of the species per population varies according to the methodology implemented during the survey and the source of information.

We did not assess resiliency of the Guajataca population, which was discovered on July 15, 2019, and thereafter verified by Service biologists, because we do not have the habitat metrics-as identified in Table 1 below-for this population at this time. After the initial discovery of three adults in July 2019, two more visits of the site were made that summer. During one of those visits, 43 caterpillars were observed, and during the other visit, 9 caterpillars and 3 chrysalides were observed. Habitat metrics that, in combination with relative population size estimates, enable estimates of resiliency have not yet been collected. Therefore, in the resiliency discussion below, where we refer to five populations instead of six, we are omitting the Guajataca population. To date, the area still has not been reviewed. This population was used to assess the redundancy and representation (see below).

Because quantitative population size estimates are lacking, we assessed the resiliency for five Puerto Rican harlequin butterfly populations using habitat quality and estimates of relative population size (see table 1, below) in our SSA report (Service 2019, entire). We weighted a single population metric (relative population size) such that it had equal influence on resiliency as four habitat metrics combined, to yield a numerical score to classify population condition as ''high,'' ''moderately high,'' ''moderate,'' ''moderately low,'' or ''low'' for five butterfly populations (see table 2, below). As such, a population with the highest level of resiliency would garner a score of 24 and a population with the lowest level of resiliency would garner a score of 8.

TABLE 1—HABITAT AND POPULATION METRICS TO SCORE PUERTO RICAN HARLEQUIN BUTTERFLY RESILIENCY

Habitat metrics				Habitat score	Population metric	Population score
Habitat protection	Connectivity	Vegetation clearing/ pesticide use	Other natural or manmade factors		Population size	
<34 percent protected.	Isolated subpopulations greater than 1 km apart; habitat between populations highly disturbed.	Areas subjected to vegetation clearing (including use of herbicides) and use of pesticides for mosquito control or agriculture.	Subpopulations located in areas more vulnerable to stochastic events (e.g., fire, severe drought, hurricanes).	1 point each; 4 points total.	0–5 adults and <100 larvae observed per hectare.	4
34–66 percent protected.	Subpopulations within 1 km of each other; habitat between subpopulations moderately disturbed.	Areas where vegetation clearing and use of herbicides and pesticides occur rarely.	Subpopulations in areas with moderate vulnerability to stochastic events.	2 points each; 8 points total.	6–20 adults and 100–500 larvae observed per hectare.	8
>66 percent protected.	Subpopulations within 1 km of each other; undisturbed habitat between subpopulations.	Areas where vegetation clearing and use of herbicides and pesticides are not expected.	Subpopulations located in areas with lower vulnerability to stochastic events.	3 points each; 12 points total.	>20 adults and >500 larvae per hectare.	12

TABLE 2—CURRENT POPULATION CONDITION AND RESILIENCY SCORES

Population condition	Resiliency score (habitat metrics + population metric)
Low: Tallaboa (presumed extirpated)	8.
Moderately Low: Susúa population	11.
Moderate: IQC; Río Abajo; Guajataca; Río Encantado populations.	18; 15; unknown; 14.
Moderately High: Maricao population	19.
High: None	>21.

Of the five Puerto Rican harlequin butterfly populations we assessed for resiliency, one is in moderately high condition, three are in moderate condition, and one is in moderately low condition. The population with moderately high resiliency (Maricao Commonwealth Forest) occurs in land managed for conservation, but in this forest the species occurs at edges of trails and roads where vegetation is frequently removed and herbicides applied. The population in IQC has moderate resiliency because, although it occurs in a region that is among the most heavily developed, it has the largest number of known subpopulations and population size. The populations in Río Abajo Commonwealth Forest and the Río Encantado area have moderate resiliency because they occur partly in habitats managed for conservation that are protected from development and other anthropogenic activities, although both populations are small in size. The Susúa population has moderately low resiliency. While the Susúa Commonwealth Forest is managed for conservation, the species occurs along, or at the edges of, trails where vegetation is frequently removed and herbicides applied, and the population size is very small. Averaging the resiliency of the five populations, we estimated that species resiliency (rangewide) of the Puerto Rican harlequin butterfly is currently moderate.

We assessed redundancy and representation based on the number and spatial arrangement of populations. Current redundancy of the Puerto Rican harlequin butterfly is low (and has likely always been). The species is narrow-ranging, with all six populations (each less than 50 individuals) likely to incur similar effects of a catastrophic event such as a hurricane or drought. In addition, with the exception of the IQC and Maricao populations, the populations range in size from small to very small (Service 2019, p. 73).

Puerto Rican harlequin butterfly representation is influenced by the breadth of adaptive diversity possessed by the species and by maintaining the evolutionary processes (for example, gene flow and natural selection) that drive adaptation. Representation improves with increased genetic and/or ecological diversity within and among populations. Presently there is substantial uncertainty regarding representation for this species, due to lack of knowledge on genetic diversity,

adaptive potential and differences among the Puerto Rican harlequin butterfly populations. Currently, representation appears to be moderate to high because the Puerto Rican harlequin butterfly occurs in two physiographic provinces and four life zones. Thus, the Puerto Rican harlequin butterfly appears to have the capacity to adapt to different landscapes as long as the fundamental needs for nesting (host plant) and foraging are met. (Service 2019, pp. 75–76).

Threats

Threats to the Puerto Rican harlequin butterfly include habitat loss and modification by development, mechanical clearing of vegetation, use of pesticides (insecticides and herbicides), human-induced fires, small population size, changing climate, and insufficient enforcement of existing regulatory mechanisms. There is evidence that the species has been collected for private entomology collections and unauthorized investigations, but there is no indication that private collecting is a widespread activity.

Habitat Modification and Fragmentation—Urban Development and Agricultural Practices

Habitat loss caused by urban development and agricultural practices is a primary factor influencing the decline of the Puerto Rican harlequin butterfly, and it poses a continuing threat to the species' viability (Service 2019, p.45). The species' small range may reflect a remnant population of a once more widely distributed forest-dwelling butterfly whose habitat was diminished as forest was converted for other land uses in Puerto Rico (Service 2019, pp. 23–38). More than 90 percent of native forest in Puerto Rico had been cleared at one point in time (Miller and Lugo 2009, p. 33). The loss or degradation of the species' habitat continues in the present time and results from conversion of native forest for agriculture or urbanization; increased construction and use of highways and roads (vehicle traffic); and land management regimes (vegetation clearance, grazing, and haying).

The IQC population faces significant threats from the existing and imminent destruction, modification, and curtailment of its habitat, especially loss of the host plant, prickly bush. Historically in the IQC area, forests were converted to farms, pastures, or cropland. Conversion of these forest areas to urban development, roads, recreational parks, and golf courses has been the most significant change in suitable habitat. Most of the suitable habitat for the species, particularly in the municipality of Quebradillas, is fragmented by residential and tourist development. In rural areas, forest clearing to increase grassland for cattle grazing is a threat to the IQC population (Service 2019, p. 45). Currently in the IQC, occupied habitat is within an area classified as a ''Zone of Tourist Interest'' (PRPB 2010, website data), which is an area identified as having the potential to be developed to promote tourism due to its natural features and historic value. In 2010, 11 residential development projects were under evaluation around the species' habitat, possibly affecting 72.6 ac (29.4 ha) in Quebradillas (PRPB 2010, website data). By 2019, three houses had been constructed, and another is under construction at Puente Blanco. While it is uncertain whether these single homes will be constructed in the near future, landowners have removed vegetation from the proposed project sites, affecting the suitability of the habitat for the butterfly (Service 2019, p. 46).

While 99.7 percent of the land where the IQC population occurs is privately owned, the other five populations occupy areas where substantial portions are managed for conservation (see table 4, below, under Final Critical Habitat Designation), ranging from 13 percent in Río Encantado to 77 percent in Río Abajo. Development adjacent to conservation lands in Puerto Rico is increasing, however. For example, from 2000 to 2010, 90 percent of protected areas showed increases in housing in surrounding lands (Service 2019, p. 47). Housing has increased in the Northern Karst region: in 1980, there were 762,485 housing units, and in 2010, the number of units had increased to 1,101,041 (PRPB 2013, p. 19). New housing and the development of rural communities requires construction of additional infrastructure (*e.g.,* access roads, power and energy service, water service, and communication, among others), compounding habitat loss and fragmentation. Communications infrastructure for cellular phone and related technologies has proliferated in Puerto Rico, including towers for cellular communication, radio, television, military, and governmental purposes. Construction and maintenance of tower facilities, which includes clearing vegetation along security fences, access roads, and under power lines, leads to habitat loss and direct plant mortality. As such, these towers are a threat to plant species, including the host plant prickly bush, that may occur on top of mogotes (limestone hills) or mountaintops where towers often are situated.

Human-Induced Fire

In addition to land development, human-induced fires are a threat to the Puerto Rican harlequin butterfly. Although fire is not a natural event in Puerto Rico's subtropical dry or moist forests (Service 2019, p. 49), which are the only forest types where the Puerto Rican harlequin butterfly occurs, wildfires resulting from natural or anthropogenic origin are growing in size and frequency across Puerto Rico. In the Maricao Commonwealth Forest on February 25, 2005, a human-induced fire (likely arson) burned more than 400 acres, with unknown effects on the Puerto Rican harlequin butterfly population. In Quebradillas, the species' habitat in the area where the largest subpopulation occurs (Puente Blanco) is affected by fires associated with illicit garbage dumps. In the Susúa Commonwealth Forest, a garbage dump fire recently burned approximately 25 square meters (82 square feet) of occupied butterfly habitat. This increase in fires destroys and further limits the availability of habitat for the butterfly. Depending on the scale of the fires and the size of the population where the fires happen, deaths of significant numbers of the butterfly population may occur. For example, if a fire damages a patch of forest such that less than 1.6 square kilometers (0.6 square miles) remains, that forest patch will no longer be large enough to sustain a viable subpopulation of the butterfly. In the Susúa fire, although only 25 square meters (269 square feet) of forest were destroyed, any killing of individuals would reduce the likelihood of sustained viability of the very small Susúa population. In other areas with a larger population, such as IQC, a similarly small fire would not have a significant impact on viability (Service 2019, p. 50).

Pesticides, Herbicides, and Other Mechanisms of Vegetation Control

Regardless of the method, efforts to clear vegetation or to eliminate pests are a significant threat to the Puerto Rican harlequin butterfly. Herbicides are used by conservation agencies, public agencies, and private organizations to control vegetation in an array of areas. The use of herbicides is a current threat to the Puerto Rican harlequin butterfly and prickly bush, which is found on the edges of roads and open areas. Herbicides are frequently used to control woody vegetation and weeds along access roads and on private properties. Mechanical removal of

vegetation also impacts the Puerto Rican harlequin butterfly. Even in areas used for recreation, prickly bush is trimmed or completely removed along trails and in picnic areas. Homeowners often clear vegetation to have unobstructed views of the landscape. In addition to eliminating host and nectar plants, vegetation removal and road construction can elevate local temperatures (see ''Recent and Current Climate'' below, for more information on the potential impacts of elevated temperatures).

Although prickly bush is a commonly occurring plant in Puerto Rico, cutting down the plant or killing the plant with herbicides will result in death of eggs or caterpillars that are on it. Additionally, clearing prickly bush reduces reproductive output because it reduces the number of viable sites for egg laying, and removing other plant species that are nectar sources likely increases stress on adult butterflies.

Pesticides, which include insecticides and herbicides, are commonly used throughout the range of the Puerto Rican harlequin butterfly, on crop fields, along public roads, and on private properties to control animal and plant pests (Service 2019, p. 52). Puerto Rico also has a long history of using pesticides, mostly insecticides, for mosquito control in and around urban areas. Fumigation programs are implemented by local government authorities to control mosquito-borne diseases, but pesticide use guidelines have not been developed for application in areas where the Puerto Rican harlequin butterfly occurs, and toxicity thresholds for the species are unknown (Service 2019, p. 51). The toxicological effects of pesticides to non-target butterfly species have been documented within the families Nymphalidae (which includes the Puerto Rican harlequin butterfly), Lycaenidae, Papilionidae, Hesperiidae, and Pieridae (Davis et al. 1991, entire; Eliazar and Emmel 1991, entire; Salvato 2001, entire; Bargar 2012, entire; Hoang et al. 2011, entire; Hoang and Rand 2015; and Mulé et al. 2017, entire).

Recent and Current Climate

The 2018 U.S. Global Change Research Program (USGCRP) reported that the impacts of climate change are already influencing the environment through more frequent and more intense extreme weather and climate-related events, as well as changes in average climate conditions. Globally, numerous long-term climate changes have been observed, including changes in arctic temperatures and ice, and widespread changes in precipitation amounts, ocean salinity, wind patterns, and aspects of extreme weather, including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones (Service 2019, p. 54).

Although we do not have information showing Puerto Rican harlequin butterflies have been harmed due to elevated high temperatures, species such as the Puerto Rican harlequin butterfly, which are dependent on specialized habitat types, are limited in distribution, or have become restricted in their range, are most susceptible to the impacts of climate change. As indicated by studies on other butterflies in the family Nymphalidae (*e.g.,* monarch butterfly (*Danaus plexippus*)), temperature likely has a significant influence on adult and larval metabolism, growth rate, and metamorphosis, and it may affect seasonal colonization and migrations (Service 2019, pp. 54–55). These same effects may occur to the Puerto Rican harlequin butterfly and the Puerto Rican monarch subspecies (*Danaus plexippus portoricensis*), which are members of this same family. Exposure to high temperature may cause dehydration, which is a threat to butterflies because of their large surface-to-volume ratio (Service 2019, p. 55). Day-fliers, such as the Puerto Rican harlequin butterfly, likely have a high need for water because they are active during the warmest time of the day, from 9 a.m. to 4 p.m. (Pacheco 2019, pers. obs.). Temperature data from the Puerto Rican harlequin butterfly's range suggest the species may be adapted to average daily maximum temperatures ranging from 28 to 32 degrees Celsius (°C) (82 to 90 degrees Fahrenheit (°F)), but maximum temperatures are predicted to increase to 89–98 degrees Fahrenheit by 2045 (Service 2019, p. 56).

Cumulative Effects

The Puerto Rican harlequin butterfly's rangewide population consists of six populations containing one or more subpopulations. Current and ongoing threats, including human-induced fires, application of pesticides (insecticides and herbicides), and land development, have acted together at the rangewide scale by diminishing habitat quality or causing habitat loss. In turn, these impacts on habitat reduce the size of populations and subpopulations as well as their connectivity, reducing population resilience because small populations are at risk of loss of genetic diversity (a measure adaptive capacity) and are more likely to become extirpated due to a single stochastic event in comparison to larger populations. All six populations are affected to varying degrees by the current threats, although those populations that have large portions managed for conservation (Río Abajo, Maricao, and Susúa) are less affected by land development threats. Future climate change is likely to combine with and exacerbate the negative effects of all ongoing threats rangewide.

Future Conditions

In our SSA, we used the same habitat and population metrics to project future resiliency of the five populations that were known at the time the SSA was completed (Service 2019, pp. 89–105). We chose 25 years as the time frame for the Puerto Rican harlequin butterfly future conditions analysis because this time frame includes at least 25 generations, thus allowing adequate time to forecast trends in threats, populations, and habitat conditions and we can reasonably determine that both the future threats and species' responses to those threats are likely. We projected the future changes in habitat based on climate projections and by extrapolating land development trends (*e.g.,* housing and urbanization) to 2045, and we estimated changes in population demographics based on the anticipated changes to the condition of the habitat. Unlike in our analysis of current condition, relative population size could not be directly assessed. The habitat metrics are the drivers that may promote changes in future population (unless the current population size is so small that extirpation risk of a single stochastic event is high). Therefore, because there was more certainty in projecting habitat changes than demographic changes, we weighted habitat to have twice as much influence as population on resiliency scores (Service 2019, pp. 89–105).

We projected population resiliency based on three plausible scenarios: worst case, best case, and most likely. We selected these scenarios to match the most recent climate change scenarios described for Puerto Rico, and we focused on temperature and precipitation projections, which are important environmental variables for Puerto Rican harlequin butterfly viability (Service 2019, pp. 76–86). The models for Puerto Rico used the mid-high (A2), mid-low (A1B), and low (B1) Intergovernmental Panel on Climate Change (IPCC) global emissions scenarios, which were precursors to the current IPCC scenarios and encompass ''representative concentration pathways'' (RCPs) 4.5 and 8.5. Based on our future climate projections, temperatures are expected to increase by 2.8 to 3.3 °C (5.04 to 5.94 °F) (best case scenario) to 4.6 to 5.5 °C (8.28 to 9.9 °F)

(worst case scenario). In the most likely scenario, temperatures would increase 3.9 to 4.6 °C (7.02 to 8.28 °F), resulting in temperatures ranging from approximately 31 °C (88 °F) to 36 °C (97 °F) for all known areas with Puerto Rican harlequin butterfly populations by 2045. This projected increase in maximum temperatures is significantly greater than the current 28 to 32 °C (82 to 90 °F) maximum temperatures to which the butterfly is adapted.

Together with temperature increases, the Caribbean is expected to get more frequent and more severe droughts from reduced precipitation and to have an increased evapotranspiration ratio. Although overall precipitation is expected to decrease, the amount of precipitation produced during hurricane events is expected to increase. Climate models consistently project that significant drying in the U.S. Caribbean region will occur by the middle of the century. The reductions in annual precipitation and increases in drying are expected to cause shifts in several life zones in Puerto Rico, with potential loss of subtropical rainforest, moist forest and wet forest, and the appearance of tropical dry forest and very dry forest during this century (Service 2019, pp. 82–86). Such shifts in life zones would likely further reduce the range of the Puerto Rican harlequin butterfly.

To forecast land development, we used the most recent trend data (2000–2010) for housing and human population growth (Castro-Prieto et al. 2017, pp. 477–479). For the region where each of the five butterfly populations occurs, we projected development trends at current rates, half of current rates, and no growth (representing the worst case, most likely, and best case scenarios, respectively).

Resiliency metric scoring for each scenario and population is presented in our SSA report (Service 2019, pp. 86–90). In summary, three populations (Río Abajo, Río Encantado, and Susúa) are projected to become extirpated in the foreseeable future under both the worst case and most likely scenarios (see table 3, below). Under the best case scenario, the condition of the Maricao population decreases slightly, from moderately high to moderate, while the condition of the other four populations is unchanged. In Susúa, declines in habitat and the small size of the population increase the likelihood of future extirpation. Given the currently very small populations in Río Abajo and Río Encantado, even small declines in habitat condition are likely to result in extirpation under the worst case and most likely scenarios.

TABLE 3—SUMMARY OF PUERTO RICAN HARLEQUIN BUTTERFLY RESILIENCY UNDER THREE FUTURE SCENARIOS

Population	Current	Worst case scenario	Most likely scenario	Best case scenario	Percentage of total population [1]
IQC	Moderate	Low	Low	Moderate	53
Río Abajo	Moderate	Extirpated	Extirpated	Moderate	< 5
Río Encantado	Moderate	Extirpated	Extirpated	Moderate	< 5
Maricao	Moderately High	Low	Moderately Low	Moderate	21
Susúa	Moderately Low	Extirpated	Extirpated	Moderately Low	16

[1] Current estimate, based on counts of adults (Barber 2019, entire).

According to our most likely and worst case scenarios, all areas and life zones that currently harbor Puerto Rican harlequin butterfly populations are expected to become drier and warmer, with some (*i.e.,* Río Abajo and Río Encantado) progressing from tropical moist forest to tropical dry forest. Under these scenarios, and with only two remaining populations, the species would suffer a substantial decline in representation (with or without survival of the recently discovered Guajataca population, for which there is insufficient information to forecast its resiliency). Given the predicted extirpation of most (three of five) populations under our most likely and worst case scenarios, population redundancy will most likely be reduced in the future. Moreover, the only remaining populations in IQC and Maricao, which are predicted to have low and moderately low resiliency at best under these two scenarios, will most likely become smaller, more fragmented, and subject to greater environmental stress.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions is iterative and encompasses and incorporates the threats individually and cumulatively because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

Puerto Rican harlequin butterfly conservation efforts have been directed towards land acquisition and conservation easements by government and nongovernment organizations (PRPB 2013, p. 19). In recent years, protection and management of the habitat that the Puerto Rican harlequin butterfly shares with other federally and Commonwealth listed species (*e.g.,* the endangered Puerto Rican parrot (*Amazona vittata*), threatened elfin-woods warbler (*Setophaga angelae*), and several plants, among others) has become a high priority. For example, the Maricao Commonwealth Forest comprises 3,996.2 hectares (ha) (9,874.8 acres (ac)) of public land managed for conservation (Caribbean LLC 2016, website data) that harbors habitat for the Puerto Rican harlequin butterfly. Moreover, in 2000, the Puerto Rico Department of Natural and Environmental Resources (DNER) acquired, through the U.S. Forest Service (USFS) Forest Legacy Program, a parcel of land of 107 ha (264.4 ac), locally known as ''Finca Busigó,'' adjacent to the Maricao Commonwealth Forest. This parcel is located approximately 1 km (0.6 mi) from currently occupied Puerto Rican harlequin butterfly habitat and is managed for conservation (Caribbean LLC 2016, website data). In addition, over 64,683.4 ha (159,836.4 ac) of native forest along the northern karst belt are

covered by Puerto Rico Law No. 292 of August 21, 1999 (known as Act for the Protection and Preservation of Puerto Rico's Karst Region), which provides protection of that habitat.

The DNER designated the Puerto Rican harlequin butterfly as critically endangered under the New Wildlife Act of Puerto Rico (Law No. 241 of August 15, 1999) and Regulation 6766 (February 11, 2004). Article 2 of Regulation 6766 includes all prohibitions and states that the designation as ''critically endangered'' prohibits any person from taking the species; to ''take'' includes to harm, possess, transport, destroy, import, or export individuals, eggs, or juveniles without previous authorization from the Secretary of the DNER. The DNER has not designated critical habitat for the species under Regulation 6766, but Law No. 241 prohibits modification of any natural habitat without a permit from the DNER Secretary. While these laws and regulations provide some protections, the species' habitat continues to be modified, destroyed, or fragmented by urban development and vegetation clearing. Because the host plant is considered a common species associated with edges of forested lands, it is not directly protected by Law No. 241 or Regulation 6766.

Determination of Puerto Rican Harlequin Butterfly's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined that the species' distribution and abundance has been reduced across its range, as demonstrated by the extirpation of one of seven known populations (Tallaboa). In addition, the best scientific and commercial data available indicate that the species' range and abundance has been reduced because many areas that were once suitable habitat, and therefore likely to have harbored populations, have been developed and altered (deforested and host plant removed or reduced), such that they are no longer habitable by the species.

The condition of one population, discovered approximately one year ago, has not been assessed. Of the other five populations, one currently has moderately high resiliency, three have moderate resiliency, and one has moderately low resiliency. Although the species' range is naturally narrow, the six populations are distributed in two physiographic provinces and four life zones. Given the distance between the six populations and limited dispersal ability of the species, there is virtually no interpopulation connectivity. Three of the five populations are single populations, without multiple subpopulations. The other two populations have 3 subpopulations (Río Encantado) and 13 subpopulations (IQC) that are connected to their closest neighboring subpopulations.

Current and ongoing threats from habitat degradation or loss (Factor A), as well as application of pesticides (insecticides and herbicides), human-induced fires, and climate change (Factor E), contribute to the fragmentation and isolation of populations. Existing regulatory mechanisms (Factor D), provide some protections to the species, but the threats of habitat degradation or loss, the application of pesticides, and human-induced fires continue to negatively impact the viability of the Puerto Rican harlequin butterfly (Service 2019, pp. 59–60).

Neither Factor B (overutilization for commercial, recreational, scientific, or educational purposes) nor Factor C (disease or predation) appears to be a significant threat to the butterfly. Regarding Factor B, an undetermined number of Puerto Rican harlequin butterflies have been collected for scientific purposes and deposited in universities and private collections (Service 2019, p. 58). However, at present, few researchers are working with the species, and its collection is regulated by the DNER. There is also evidence that the species has been collected for private entomology collections and unauthorized investigations, but there is no indication that this is a widespread activity. Therefore, effects on the species due to collection for commercial, recreational, scientific, or educational purposes (Factor B) likely are minimal. Similarly, spiders, ants, lizards, and birds have been observed preying on the Puerto Rican harlequin butterfly, but there are no data indicating predation is a species-level threat affecting the overall viability of the butterfly (Service 2019, p. 59). Likewise, there is no information indicating impacts on the species from disease.

As noted previously, six populations occur in the presence of current threats and are dispersed across four life zones and two physiographic regions. Of the five populations assessed in the SSA report, three have moderate resiliency and one has moderately high resiliency. The resiliency, redundancy, and representation of the species are sufficient to sustain populations if stochastic or catastrophic events occur within its range. It is unlikely that all of the ''moderate'' and ''moderately high'' resiliency populations would simultaneously become extirpated under a single catastrophic event. Thus, after assessing the best available information, we conclude that the Puerto Rican harlequin butterfly is not currently in danger of extinction throughout its range. We, therefore, proceed with determining whether the Puerto Rican harlequin butterfly is a threatened species—likely to become endangered within the foreseeable future—throughout all of its range.

We determined foreseeable future for the Puerto Rican harlequin butterfly to be 25 years because this time frame includes at least 25 generations, thus allowing adequate time to forecast trends in threats, populations, and habitat conditions. We projected the future changes in habitat based on climate projections and by extrapolating land development trends (*e.g.,* housing and urbanization) to 2045, and we estimated changes in population demographics based on the anticipated changes to the condition of the habitat. Over this time frame, we find that our predictions for both the threats to this species and the species' response to these threats are sufficiently reliable.

The threats currently acting on the species include habitat loss and degradation, in addition to pesticide use and human-induced fires, all of which contribute to fragmentation and isolation of populations. The best available information indicates that current threats will continue, and the magnitude of the climate change threat will increase in the foreseeable future.

We anticipate that climate change will result in increased daily high temperatures, decreases in annual precipitation, and shifts to drier life zones, which, when coupled with the continuation of current threats, will reduce habitat, further fragment populations, and likely cause extirpations. Two of three of our plausible future scenarios project the extirpation of three of the five assessed populations and a decline in resiliency of the remaining two populations. Given the outcomes projected by these two scenarios, we expect the two remaining reduced populations would be at high risk of extirpation due to stochastic events. Thus, we conclude that the Puerto Rican harlequin butterfly is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy) (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the Puerto Rican harlequin butterfly, we choose to address the significance question first. After evaluating whether any portions of the species' range are significant, we address the status question, considering information pertaining to the geographic distribution of both the species and the threats that the species faces to determine whether the species is endangered in any of those significant portions of the range.

The Service's most recent definition of ''significant'' within agency policy guidance has been invalidated by court order (see *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018)). In undertaking this analysis for the Puerto Rican harlequin butterfly, we considered whether any portion of the species' range may be significant based on its biological importance to the overall viability of the Puerto Rican harlequin butterfly. Throughout the range of the Puerto Rican harlequin butterfly, there are two portions that may be significant: the Northern Karst Region and the West-central Volcanic-serpentine Region. The two regions may be significant because, within each one, the physiography and life zones are unique, and the populations contained in each region may harbor adaptations specific to their regional environment. We, therefore, consider information pertaining to the geographic distribution of the species and of the threats to the species in both of those potentially significant portions of its range to determine whether the species is endangered in either portion.

The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. The Puerto Rican harlequin butterfly is not in danger of extinction now in either of the potentially significant portions we identified. The threat of development and habitat degradation or loss is concentrated in the Northern Karst region, particularly in the areas of Isabela, Quebradillas, and Camuy (IQC) (see *Threats,* above). Although there is a concentration of threats in the IQC, it contains the greatest number of subpopulations and the largest population size among the six Puerto Rican harlequin butterfly populations, so it has moderate resiliency to environmental disturbance. The remainder of the Northern Karst region (portion of the range) includes the Río Abajo and Río Encantado areas, each with a moderately resilient population, and the Guajataca population, whose status is currently undetermined. Given the known current status (moderate resiliency) of the populations in three occupied areas in the Northern Karst portion of the range (IQC, Río Abajo, and Río Encantado), plus an additional area with a population of undetermined status (Guajataca), the species in this portion is not currently in danger of extinction. Current redundancy of the Puerto Rican harlequin butterfly is low because the species is narrow ranging. In addition, with the exception of the IQC and Maricao populations, the populations range in size from small to very small. Data to assess genetic diversity and the adaptive capacity it may confer are lacking. However, representation appears to be moderate to high because the butterfly occurs in two physiographic provinces and four life zones.

The species also is not currently in danger of extinction in the West-central Volcanic-serpentine region, because the condition of the population in this portion of the range is sufficient to maintain viability in the presence of ongoing threats. As a measure of redundancy, there are five subpopulations in this region, three in the Maricao population and two in the Susua population. Resiliency of the Maricao population is moderately high and is low in the Susua population. There are no genetic data to assess adaptive capacity or representation within the West-central Volcanic-serpentine region. However, based on its small size, genetic diversity in the Susua population is likely low, whereas in the large Maricao population (more than 500 larvae and 20 imagoes observed), genetic diversity is more likely sustained across generations. Additional factors reducing the current or near-term likelihood of extirpation in the West-central Volcanic-serpentine region are: (1) the occurrence of the species on lands with large portions managed for conservation, which are occupied by both populations, and (2) the absence of intense development (which would itself present a concentration of threats) like that occurring in the Northern Karst region.

Thus, there are no portions of the species' range where the species has a different status from its rangewide status, as these two portions constitute the entire range of the species. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range. Therefore, we determine that the Puerto Rican harlequin butterfly is not in danger of extinction now in any

portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This analysis is consistent with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Puerto Rican harlequin butterfly meets the Act's definition of a threatened species. Therefore, we are listing the Puerto Rican harlequin butterfly as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where—as secure, self-sustaining, and functioning components of their ecosystems—they no longer meet the definition of an endangered species or a threatened species.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public subsequent to a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/program/endangered-species*).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Commonwealths, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, Puerto Rico will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Puerto Rican harlequin butterfly. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph may include, but are not limited to, management and any other landscape-altering activities funded or authorized by the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Animal and Plant Health Inspection Service, Federal Highway Administration, and Federal Communications Commission.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of a listed species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring

any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a particular species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a rule that is designed to address the Puerto Rican harlequin butterfly's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Puerto Rican harlequin butterfly. As discussed above under Summary of Biological Status and Threats, we have concluded that the Puerto Rican harlequin butterfly is likely to become in danger of extinction within the foreseeable future primarily due to habitat modification and fragmentation caused by urban development and agriculture, human-induced fire, pesticide use (including insecticides and herbicides), and climate change. The provisions of this 4(d) rule will promote conservation of the Puerto Rican harlequin butterfly by encouraging management of the landscape in ways that meet both land management considerations and the species' conservation needs. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the Puerto Rican harlequin butterfly.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. Actions that result in a determination by a Federal agency of ''not likely to adversely affect'' continue to require the Service's written concurrence and actions that are ''likely to adversely affect'' a species require formal consultation and the formulation of a biological opinion.

Provisions of the 4(d) Rule

This 4(d) rule will provide for the conservation of the Puerto Rican harlequin butterfly by prohibiting the following activities, except as otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Threats to the species are noted above and described in detail under Summary of Biological Status and Threats. These threats are expected to affect the species in the foreseeable future by fragmenting and reducing habitat, the critical component of which is prickly bush, the sole host plant species for egg laying and larval feeding.

A range of activities has the potential to affect the Puerto Rican harlequin butterfly. In particular, activities that remove the host plant or clear forested land can harm or kill Puerto Rican harlequin butterflies, reducing population size and viability. There is evidence that the butterfly has been taken for private collections (Service 2019, p. 45), although there is no indication that this is a widespread activity or is a major threat. Therefore, regulating take associated with activities that remove host plant or forested habitat—including construction or maintenance of roads or trails, buildings, utility corridors, or communications towers—will help preserve remaining populations by slowing the butterfly's rate of decline, and decrease synergistic, negative effects from other threats.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take will help the species maintain population size and resiliency.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act.

There are also certain statutory exceptions from the prohibitions, which

are found in sections 9 and 10 of the Act, and other standard exceptions from the prohibitions, which are found in our regulations at 50 CFR part 17, subparts C and D. Below, we describe these exceptions to the prohibitions for the Puerto Rican harlequin butterfly.

Under this 4(d) rule, take of the Puerto Rican harlequin butterfly is not prohibited in the following instances:

- Take is authorized by a permit issued in accordance with 50 CFR 17.32;
- Take results from actions of an employee or agent of the Service or of a State conservation agency that is operating under a conservation program pursuant to the terms of a cooperative agreement with the Service;
- Take is in defense of human life; and
- Take results from actions taken by representatives of the Service or of a State conservation agency to aid a sick specimen or to dispose of, salvage, or remove a dead specimen that is reported to the Office of Law Enforcement.

We also allow Federal and State law enforcement officers to possess, deliver, carry, transport, or ship any Puerto Rican harlequin butterflies taken in violation of the Act as necessary in performing their official duties.

In part, these exceptions to the prohibitions recognize the special and unique relationship with our Commonwealth natural resource agency partners in contributing to conservation of listed species. Commonwealth agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. Commonwealth agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the Commonwealth in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a Commonwealth conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve the Puerto Rican harlequin butterfly that may result in otherwise prohibited take for wildlife without additional authorization.

In addition to the statutory and regulatory exceptions to the prohibitions described above, certain species-specific exceptions to the prohibitions provide for the conservation of the Puerto Rican harlequin butterfly. Under this 4(d) rule, take of the Puerto Rican harlequin butterfly that is incidental to the following otherwise lawful activities is not prohibited:

(1) Normal agricultural practices, including pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices, as long as the practices do not include: (a) clearing or disturbing forest or prickly bush to create or expand agricultural areas, or (b) applying pesticides in or contiguous to habitat known to be occupied by Puerto Rican harlequin butterfly.

(2) Normal residential and urban landscape and lawn maintenance activities, such as mowing, weeding, edging, and fertilizing.

(3) Maintenance of recreational trails in Commonwealth Forests by mechanically clearing vegetation, only when approved by or under the auspices of the DNER, or conducted on lands established by private organizations or individuals solely for conservation or recreation.

(4) Habitat management or restoration activities expected to provide a benefit to Puerto Rican harlequin butterfly or other sensitive species, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(5) Projects requiring removal of the host plant to access and remove illicit garbage dumps that are potential sources of intentionally set fires, provided such projects are conducted in coordination with and reported to the Service.

(6) Fruit fly trapping by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, provided trapping activities do not disturb the host plant.

These activities, on rare occasion, may result in a limited amount of take. For example, a branch of prickly bush with butterfly eggs may be trimmed off the plant during lawn maintenance, or a plant with caterpillars on it might get trampled during habitat restoration. While such actions would affect individuals of the species, effects to populations would be minimal. Additionally, habitat restoration activities and garbage dump removal, which may cause limited take, would contribute to conservation of Puerto Rican harlequin butterfly populations by expanding habitat suitable for the species.

Nothing in this 4(d) rule will change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Puerto Rican harlequin butterfly. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate.

III. Critical Habitat

Background

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate a species' critical habitat concurrently with listing the species. None of the situations identified at 50 CFR 424.12(a) for when designation of critical habitat would be not prudent or not determinable is present. We therefore are designating critical habitat for the Puerto Rican harlequin butterfly concurrently with listing it.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited

to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and other information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount

of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

To identify the specific physical or biological needs of the Puerto Rican harlequin butterfly, we evaluated current conditions at locations where the species exists and best information available on the species' biology. We derive the physical features required for the species from the general description of the ecological regions where the species occurs, models for climatic boundaries that characterize the areas where the species occurs, and the forest types inhabited by the species (Service 2019, entire). A crucial biological feature for the Puerto Rican harlequin butterfly is the host plant (prickly bush), which is the only species upon which it lays its eggs and then feeds on as a caterpillar (Service 2019, pp. 17–20).

As described earlier in this document (see Summary of Biological Status and Threats), the Puerto Rican harlequin butterfly is known from four populations in the Northern Karst region and two populations in the West-central Volcanic-serpentine region of Puerto Rico. These two ecological regions are delineated by their geology. Soils in the Northern Karst region are derived from limestone, and soils in the West-central Volcanic serpentine region are derived from serpentine rock (Service 2019, p. 54). Physical properties specific to each substrate foster the development of unique natural areas that harbor distinctive forest types and wildlife habitat, which, in turn, promote high levels of biological diversity (Service 2019, pp. 25–31).

Across these two regions, the Puerto Rican harlequin butterfly inhabits four life zones: (1) Subtropical moist forest on limestone-derived soil; (2) subtropical wet forest on limestone-derived soil; (3) subtropical wet forest on serpentine-derived soil; and (4) subtropical moist forest on serpentine-derived soil. These life zones are distinguished by mean annual precipitation and mean annual temperature (Service 2019, pp. 86–87). Regardless of life zone and forest type, the patches of native forest that the Puerto Rican harlequin butterfly occupies are characterized by canopy cover ranging from 50 to 85 percent, an average canopy height of 6 meters (m) (20 feet (ft)), and the host plant covering more than 30 percent of the understory (Service 2019, p. 119).

Adults of the Puerto Rican harlequin butterfly have been observed feeding on flowers of several native trees (see Summary of Biological Status and Threats, above, and 76 FR 31282, May 31, 2011). All the sites where the Puerto Rican harlequin butterfly occurs have a close (within a 1-km (0.6-mi) radius) water source (*e.g.,* creek, river, pond, puddle, etc.). Suitable sites must contain the right temperature range that supports the biological needs of the Puerto Rican harlequin butterfly. Average daily maximum temperatures where the species occurs range from 28 to 32 °C (82 to 90 °F), suggesting that the species' ecological niche has evolved within this range of upper thermal tolerance (Service 2019, p. 80). Moreover, exposure to high temperature may cause dehydration in adults, which is a threat due to their large surface-to-volume ratio. As a day-flier, the Puerto Rican harlequin butterfly likely has a high need for water because the species is active during the warmest time of the day, from 9 a.m. to 4 p.m. (Service 2019, p. 55).

The capacity for Puerto Rican harlequin butterfly populations to grow and expand is limited by the quantity and quality of the habitat and the connectivity among habitat patches. Healthy Puerto Rican harlequin butterfly populations rely on discrete high-quality habitat patches as small as 0.4 ha (1 ac), separated by less than 1 km (0.6 mi) and embedded in a landscape with few barriers for dispersal of the species. Populations in patches this small likely rely on the existence of populations in nearby patches to ensure their long-term persistence (Service 2019, pp. 36–37).

Connectivity must be adequate not only for an individual's foraging needs, but to connect individual butterflies to a larger interbreeding population, enhancing subpopulation resilience through both the rescue effect and maintenance of genetic diversity. Moreover, forest connectivity among suitable patches and water sources is essential for dispersal. Three factors are likely essential to ensure a healthy interaction among populations: short distances between patches, high-quality habitat, and few or no dispersal barriers. The Puerto Rican harlequin butterfly may not typically move greater than 1 km (0.6 mi) between habitat patches separated by structurally similar natural habitats, or through a mosaic of disturbed habitat including houses, roads, and grass-dominated fields or pasture. Hence, habitat quality—indicated by factors including density of prickly bush, amount and quality of adult food sources, and water sources—plays an important role in Puerto Rican harlequin butterfly colonization success.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Puerto Rican harlequin butterfly from studies of the species' habitat, ecology, and life history as described in this document. Additional information can be found in the SSA report (Service 2019, entire; available on *https://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0083). We have determined that the following physical or biological features are essential to the conservation of the Puerto Rican harlequin butterfly:

1. *Forest habitat types in the Northern Karst region in Puerto Rico:* Mature secondary moist limestone evergreen and semi-deciduous forest, or young secondary moist limestone evergreen and semi-deciduous forest, or both forest types, in subtropical moist forest or subtropical wet forest life zones.

2. *Forest habitat types in the West-central Volcanic-serpentine region in Puerto Rico:* Mature secondary dry and moist serpentine semi-deciduous forest, or young secondary dry and moist serpentine semi-deciduous forest, or both forest types, in subtropical moist forest or subtropical wet forest life zones.

3. *Components of the forest habitat types.* The forest habitat types described in 1. and 2., above, contain:

(i) Forest area greater than 0.4 ha (1 ac) that is within 1 km (0.6 mi) of a water source (stream, pond, puddle, etc.) and other forested area.

(ii) Canopy cover between 50 to 85 percent and canopy height ranging from 4 to 8 m (13.1 to 26.2 ft).

(iii) Prickly bush covering more than 30 percent of the understory.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the

conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of the Puerto Rican harlequin butterfly may require special management considerations or protections to reduce or mitigate the following threats: Land conversion for urban and commercial use, road construction and maintenance, utility and communications structures and corridors, and agriculture; fires and garbage dumps (which are often the source of fires); and climate change and drought. In particular, habitat that has at any time supported a subpopulation may require protection from land use change that would permanently remove host plant patches and nectar sources, or that would destroy habitat containing adult nectar sources that connects such host plant patches through which adults are likely to move. Some examples of beneficial management activities would include the following: establishing a reforestation program incorporating the host plant and other native plants to provide sufficient nectar sources; installing fencing enclosures in areas containing hostplants in order to provide protection from maintenance activities; develop an effective educational outreach program to help protect identified Puerto Rican harlequin butterfly habitat. These management activities will protect from losses of habitat large enough to preclude conservation of the species.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

Areas Occupied at the Time of Listing

As discussed above in Summary of Biological Status and Threats, an area is considered to be occupied by the species if it was detected in surveys no earlier than 2018. The areas designated as critical habitat provide sufficient habitat for breeding, nonbreeding, and dispersing adults of the Puerto Rican harlequin butterfly, as well as the habitat needs for all larval stages of this butterfly. These areas contain all the physical or biological features defined for the species. We are not designating any areas outside the geographical area occupied by the species because the occupied areas are sufficient to promote conservation of the species, and because we have not identified any unoccupied areas that meet the definition of critical habitat.

In summary, within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

1. Forested habitat that is currently occupied and contains some or all of the physical or biological features.

2. Forested habitat that is located between the breeding sites, and within a 1 km (0.6 mi) radius around each subpopulation. These additional areas serve as an extension of the habitat within the geographic area of an occupied unit and promote connectivity among the breeding sites in an occupied unit, fostering genetic exchange between subpopulations.

We evaluated those occupied forested habitats in criterion 1 and refined the boundaries of the critical habitat area by evaluating the presence or absence of appropriate physical or biological features in criterion 2. We selected the forested habitat boundary cutoff points (the edges or endpoints of the habitat with the physical or biological features) to exclude areas that are highly degraded, already developed, or not likely restorable; for example, areas permanently deforested by urban development or frequently deforested for agricultural practices (*e.g.,* cattle rearing). Additionally, we used the forested habitat cutoff points at the 2-km (1.2-mi) buffer zone around the species' breeding sites to mark the boundary of a patch of land for designation because 1 km (0.6 mi) is the maximum distance the butterfly has been observed to disperse to a mating site (Monzón-Carmona 2007, p. 42).

Critical Habitat Maps

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Puerto Rican harlequin butterfly. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. There are developed areas (single houses and access roads) within the designation, which could affect the suitability of habitat for the species. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are designating critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied), and that contain all of the physical or biological features that are essential to support life-history processes of the species and that may require special management considerations.

We are designating six units as critical habitat based on the physical or biological features being present to support the Puerto Rican harlequin butterfly's life-history processes. All units contain the identified region-specific forest habitat types and components of the forest habitat types that are the physical or biological features essential to the conservation of the Puerto Rican harlequin butterfly and support multiple life-history processes.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units below. For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for the critical habitat designation and are available at the Caribbean Ecological Services Field Office's website. We will make the coordinates or plot points or both on which each map is based available to the public at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2020–0083 and our internet site at *https://www.fws.gov/southeast/caribbean.*

Final Critical Habitat Designation

We are designating six units as critical habitat for the Puerto Rican harlequin butterfly. The critical habitat areas we describe below constitute our best assessment of areas that meet the definition of critical habitat for the Puerto Rican harlequin butterfly. The six areas we propose as critical habitat are: (1) Isabela, Quebradillas and Camuy (IQC), (2) Guajataca, (3) Río Abajo, (4) Río Encantado, (5) Maricao, and (6)

Susúa. Table 4 shows the critical habitat units and the approximate area of each unit. All six units of critical habitat are considered occupied by the species.

TABLE 4—CRITICAL HABITAT UNITS FOR THE PUERTO RICAN HARLEQUIN BUTTERFLY

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	Occupied?
1. IQC	Public	5.0 (2.0)	Yes.
	Private	1,670.7 (676.1)	
	Total	1,675.7 (678.1)	
2. Guajataca	Public	583.5 (236.1)	Yes.
	Private	3,255.5 (1,317.5)	
	Total	3,839.0 (1,553.6)	
3. Río Abajo	Public	4,544.4 (1,839.1)	Yes.
	Private	1,394.8 (564.5)	
	Total	5,939.2 (2,403.6)	
4. Río Encantado	Public	204.8 (82.9)	Yes.
	Private *	12,570.8 (5,087.2)	
	Total	12,775.6 (5,170.1)	
5. Maricao	Public	7,883.1 (3,190.2)	Yes.
	Private	2,971.5 (1,202.5)	
	Total	10,854.6 (4,392.7)	
6. Susúa	Public	3,171.5 (1,283.5)	Yes.
	Private	3,010.4 (1,218.3)	
	Total	6,181.9 (2,501.8)	
Totals	Public	16,392.3 (6,633.8)	
	Private	24,873.7 (10,066.0)	
	Total	41,266.0 (16,699.8)	

* 1,442.6 private ac owned by Para La Naturaleza (PLN) and managed for conservation.
Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Puerto Rican harlequin butterfly, below.

Unit 1: IQC

Unit 1 consists of 1,675.7 ac (678.1 ha) located along the northern coastal cliff among the municipalities of Isabela, Quebradillas, and Camuy (IQC), 23 km (15 mi) west of Arecibo. The critical habitat being designated is bound on the east by the community La Yeguada and Membrillo in Camuy, on the west by the community Villa Pesquera and Pueblo in Isabela, on the north by the Atlantic Ocean, and on the south by urban developments, State road PR–2, the Royal Isabela Golf Course, and some deforested areas used for agricultural practices such as cattle grazing. In this unit, all life stages of the species (*i.e.,* imago, egg, larva, chrysalis, and adults) and the species' host plant have been found in 115 sites.

Unit 1 is in the subtropical moist forest life zone. The forested habitat is composed of young secondary lowland moist limestone evergreen and semideciduous forest and mature secondary lowland moist limestone evergreen and semideciduous forest (Gould et al. 2008, p. 14). Plant species in this unit include prickly bush and several others that are sources of nectar for adult Puerto Rican harlequin butterflies. The presence of rare plant taxa in this unit suggests it contains relict and mature forest that survived the massive deforestation of the 19th century (Morales and Estremera 2018, p. 1) and has persisted as a refuge for the Puerto Rican harlequin butterfly. Unit 1 contains all the Northern Karst region forest habitat types and components of those habitat types that are the essential physical or biological features for the species.

A combination of habitat fragmentation and high road density is a current and future threat to the Puerto Rican harlequin butterfly in Unit 1. Habitat in Unit 1 has been lost to single land parcels segregated for houses, and large-scale residential and tourist projects, which are planned within and around northern Puerto Rico. Special management considerations or protections in Unit 1 may be required to address land conversion for urban and commercial use, road construction and maintenance, utility and communications structures and corridors, and agriculture; fires and garbage dumps (which are often the source of fires); and climate change and drought.

Unit 2: Guajataca

Unit 2 consists of 1,553.6 ha (3,839 ac) south of PR 2, between the municipalities Isabela and Quebradillas, 25 km (15.6 mi) southwest of Arecibo. The critical habitat being designated is bounded on the east by the San Antonio ward in Quebradillas, on the west by PR 446 at Galateo ward in Isabela, on the north by Llanadas ward in Isabela and Cacao ward in Quebradillas, and on the south by Montañas de Guarionex, between the Planas ward in Isabela and Charcas ward in Quebradillas.

The Puerto Rican harlequin butterfly was first found in Unit 2 in July 2019. All life stages of the species and its host plant have been found at six sites. Unit 2 is in the subtropical moist/wet-northern limestone forest life zone (Helmer et al. 2002, p. 169). Habitat in Unit 2 is composed of mature secondary moist limestone evergreen and semideciduous forest (Gould et al. 2008, p. 14). Fifteen percent of the critical habitat being designated in this unit overlaps Guajataca Commonwealth Forest, an area managed by the DNER for conservation. The other 85 percent is private land subjected to agriculture or rural development. Unit 2 contains all the Northern Karst region forest habitat types and components of those habitat types that are the essential physical or biological features for the species. Special management considerations or protections in Unit 2 may be required to address land conversion for rural development, road construction and maintenance, utility and

communications structures and corridors, and agriculture, as well as climate change and drought.

Unit 3: Río Abajo

Unit 3 consists of 5,939.2 ac (2,403.6 ha) located 14.5 km (9 mi) south of Arecibo. The critical habitat being designated is bound on the east by the Río Grande de Arecibo, on the west by Santa Rosa Ward in Utuado, on the north by Hato Viejo Ward in Arecibo, and on the south by Caguana and Sabana Grande Wards in Utuado. In this unit, all life stages of the species and the host plant have been found at four sites. Unit 3 is in the subtropical moist/wet-northern limestone forest life zone (Helmer et al. 2002, p. 169). The species' habitat in Unit 3 is composed of mature secondary moist limestone evergreen and semideciduous forest (Gould et al. 2008, p. 14). The Río Abajo Commonwealth Forest, managed for conservation, occupies 77 percent of the unit. The other 23 percent is a mosaic of highways, roads, and private lands subject to agriculture or rural development. Unit 3 contains all the Northern Karst region forest habitat types and components of those habitat types that are the essential physical or biological features for the species. Special management considerations or protections in Unit 3 may be required to address land conversion for rural development, road construction and maintenance, utility and communications structures and corridors, and agriculture, as well as climate change and drought.

Unit 4: Río Encantado

Unit 4 consists of 12,775.6 ac (5,170.1 ha) located among the municipalities of Arecibo, Florida, and Ciales, 17 km (10.5 mi) southeast of Arecibo. The critical habitat being designated is bound on the east by Hato Viejo Ward in Ciales, on the west by the Río Grande de Arecibo, on the north by Arrozales Ward in Arecibo and Pueblo Ward in Florida, and on the south by the PR 146 along of the Limón Ward in Utuado and Frontón Ward in Ciales. All life stages of the species and the host plant have been found in nine sites. The unit is in the subtropical moist/wet-northern limestone forest life zone (Helmer et al. 2002, p. 169). The species' habitat in Unit 4 is composed of mature secondary moist limestone evergreen and semideciduous forest (Gould et al. 2008, p. 14). Thirteen percent of the critical habitat being designated is in areas managed by Para La Naturaleza (PLN), a private organization, or by the DNER for conservation. The other 87 percent consists of private lands subject to agriculture or rural developments. Unit 4 contains all the Northern Karst region forest habitat types and components of those habitat types that are the essential physical or biological features for the species. Special management considerations or protections in Unit 4 may be required to address land conversion for rural developments, road construction and maintenance, utility and communications structures and corridors, and agriculture, as well as climate change and drought.

Unit 5: Maricao

Unit 5 consists of 10,854.6 ac (4,392.7 ha) on the west end of the Cordillerra Central, among the municipalities of Maricao, San Germán, and Sabana Grande, 16.1 km (10 mi) southeast of Mayagüez. The critical habitat being designated is bound on the east by Tabonuco Ward in Sabana Grande, on the west by Rosario Ward in San Germán, on the north by Pueblo Ward of Maricao, and on the south by the Guamá and Santana Ward of San Germán. All life stages of the species and its host plant have been found at seven sites in the unit. Unit 5 is in the subtropical wet forest life zone on serpentine-derived soil and contains three types of forest: (1) Mature secondary montane wet serpentine evergreen forest, (2) wet serpentine shrub and woodland forest, and (3) mature secondary montane wet non-calcareous evergreen forest (Gould et al. 2008, p. 14). The Maricao Commonwealth Forest, managed for conservation by DNER, occupies 72 percent of the unit. The other 28 percent is private land consisting of a mosaic of agriculture, rural developments, and forest. Unit 5 contains all the West-central Volcanic-serpentine region forest habitat types and components of those habitat types that are the essential physical or biological features for the species. Special management considerations or protections in Unit 5 may be required to address land conversion for rural developments, road construction and maintenance, utility and communications structures and corridors, and agriculture; fires and garbage dumps (which are often the source of fires); and climate change and drought.

Unit 6: Susúa

Unit 6 consists of 6,181.9 ac (2,501.8 ha) between the municipalities of Sabana Grande and Yauco, 33.6 km (21 mi) northwest of Ponce. The critical habitat being designated is bound on the east by the PR 371 in Almacigo Alto and Collores Wards in Yauco, on the west by Pueblo Ward in Sabana Grande, on the north by Frailes Ward in Yauco, and on the south by PR 368 in Susúa Ward in Sabana Grande. All life stages of the species and its host plant have been found at three sites in this unit. Unit 6 is in the subtropical moist and subtropical wet forest life zones and contains mature secondary dry and moist serpentine semi-deciduous forest and young secondary moist serpentine evergreen and semi-deciduous forest. The Susúa Commonwealth Forest, managed by DNER for conservation, occupies 51 percent of the critical habitat being designated in this unit. The other 49 percent is on private lands subjected to agriculture or rural developments. Unit 6 contains all the West-central Volcanic-serpentine region forest habitat types and components of those habitat types that are the essential physical or biological features for the species. Special management considerations or protections in Unit 6 may be required to address land conversion for rural developments, road construction and maintenance, utility and communications structures and corridors, and agriculture; fires and garbage dumps (which are often the source of fires); and climate change and drought.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final rule adopting a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal

Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal agency actions within the species' habitat that may require conference or consultation or both include management and any other landscape-altering activities on Federal lands administered by the Service, Army National Guard, U.S. Forest Service, and National Park Service; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency, do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2), is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation, new information reveals effects of the action that may affect the species or critical habitat in a manner not previously considered, or the amount of take in the incidental take statement is exceeded. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that the Service may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Removal of prickly bush host plants harboring eggs, caterpillars, or chrysalises;

(2) Removal of a significant amount of prickly bush or nectar source plants, such that the value of the critical habitat as a whole for the conservation of the Puerto Rican harlequin butterfly is appreciably diminished; or

(3) Removal of native forest resulting in fragmentation such that remaining forest patches are greater than 1 km (0.6 mi) apart or less than 1 ac (0.4 ha) in size.

Such activities could include, but are not limited to, residential and commercial development, and conversion to agricultural fields or pasture. Any of these activities could permanently eliminate or reduce the habitat necessary for the growth and reproduction of the Puerto Rican harlequin butterfly.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is being designated. There are no DoD lands with a completed INRMP within this critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas for designation. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are not expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Puerto Rican harlequin butterfly (IEc 2020, entire). We began by conducting a screening analysis of the critical habitat designation in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. If the critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units are unoccupied because they require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our economic analysis of the critical habitat designation for the Puerto Rican harlequin butterfly; our economic analysis is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the critical habitat designation for the Puerto Rican harlequin butterfly, first we identified, in the IEM dated April 7, 2020, probable incremental economic impacts associated with following categories of activities: (1) Highways and roads; (2) power lines; (3) communication towers; (4) commercial or residential development; (5) monitoring of agricultural pests by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service; and (6) and Federal agency conservation projects (Natural Resources Conservation Service and the U.S. Fish and Wildlife Service). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Puerto Rican harlequin butterfly is present, Federal agencies will be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. Our consultation will include an evaluation of measures to avoid the destruction or adverse modification of the species' designated critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Puerto Rican harlequin butterfly. Because critical habitat is being designated concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Puerto Rican harlequin butterfly would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable

incremental economic impacts of this designation of critical habitat.

The final critical habitat designation for Puerto Rican harlequin butterfly includes 41,266 ac (16,699.8 ha) in six units, all which are occupied by the species. All public ownership consists of Commonwealth Forests managed by the DNER for conservation, except 5 ac (2 ha) managed for recreation in Unit 1. Since all areas are occupied, it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Puerto Rican harlequin butterfly. Therefore, while analysis of the impacts of the action of on critical habitat is necessary, and this additional analysis will require costs in time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs will predominantly be administrative in nature and will not be significant.

The probable incremental economic impacts of this critical habitat designation for the Puerto Rican harlequin butterfly are expected to be limited to additional administrative effort, as well as minor costs of conservation efforts resulting from a small number of future section 7 consultations. From 2015 to 2019, there were 4 technical assistance efforts, 14 informal consultations, and 1 formal consultation for three listed species that overlap the range of the Puerto Rican harlequin butterfly (IEc 2020, p. 11). The cost for each of these three actions related to section 7 was approximately $420, $2,500, and $5,300, respectively. We do not expect this critical habitat designation to result in an increase in the number technical assistance requests, informal, and formal consultations under section 7 because all of the units are occupied and overlap with other listed species. However, the cost of each action under section 7 may increase because of the additional time and resources needed to consider the potential for adverse modification of critical habitat and not just the likelihood of jeopardy. We anticipate that the additional cost per year to consider impacts on critical habitat for the Puerto Rican harlequin butterfly (the incremental economic impact of designating critical habitat) will be $42,300 (IEc 2020, p. 12). Thus, the annual administrative burden will not reach $100 million, which is the threshold of ''significant'' under E.O. 12866.

Exclusions Based on Economic Impacts

As discussed above, we considered the economic impacts of the critical habitat designation, and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Puerto Rican harlequin butterfly based on economic impacts. A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Caribbean Ecological Services Field Office (see **ADDRESSES**) or by downloading from the internet at *https://www.regulations.gov.*

Exclusions Based on Impacts on National Security and Homeland Security

Section 4(a)(3)(B)(i) of the Act (see Exemptions, above) may not cover all Department of Defense (DoD) lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns. We have determined that the lands within the designation of critical habitat for Puerto Rican harlequin butterfly are not owned or managed by DoD or DHS, and, therefore, we anticipate no impact on national security. Consequently, we did not exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are nonpermitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of Tribal conservation plans and partnerships, and consider the government-to-government relationship of the United States with Tribal entities.

In preparing this final rule, we determined that there are currently no permitted conservation plans or other nonpermitted conservation agreements or partnerships for the Puerto Rican harlequin butterfly, and the final critical habitat designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or permitted or nonpermitted plans or agreements from this critical habitat designation. Accordingly, we did not exclude any areas from the final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment

a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate only the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this critical habitat designation will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this critical habitat designation will significantly affect energy supplies, distribution, or use. There are currently no new planned power line or pipeline corridors in the critical habitat units. If there is a Federal nexus for maintenance of existing power supply structures and rights-of-way under section 7 of the Act, any section 7 consultation for potential effects to critical habitat will also be undertaken due to the presence of the Puerto Rican harlequin butterfly as a threatened species and several other federally listed species that occupy the critical habitat. Therefore, any activities to preclude destruction of adverse modification of critical habitat—such as larval host plant and adult nectar source plant surveys, avoidance of host plants that may have eggs or larvae of the Puerto Rican harlequin butterfly, and avoidance of insecticide and pesticide applications at project sites—would also be needed to avoid jeopardy. Thus, costs of considering critical habitat alone for a section 7 consultation will be entirely administrative and less than $10,000 (IEc 2020, entire), with the burden solely on the Service and Federal action agency. As such, energy supply, distribution, or use should not be affected significantly. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly affected because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would

not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Puerto Rican harlequin butterfly in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the designation of critical habitat for the Puerto Rican harlequin butterfly, and it concludes that this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly affected by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the critical habitat for the Puerto Rican harlequin butterfly, so no Tribal lands will be affected by the designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment

Team and the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, in paragraph (h), amend the table ''List of Endangered and Threatened Wildlife'' by adding an entry for ''Butterfly, Puerto Rican harlequin'' in alphabetical order under INSECTS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
INSECTS				
*	*	*	*	*
Butterfly, Puerto Rican harlequin.	*Atlantea tulita*	Wherever found	T	87 FR [Insert **Federal Register** page where the document begins], 12/1/22; 50 CFR 17.47(g);[4d] 50 CFR 17.95(i).[CH]
*	*	*	*	*

■ 3. Amend § 17.47 by adding paragraphs (f) and (g) to read as follows:

§ 17.47 Special rules—insects.

* * * * *

(f) [Reserved]

(g) Puerto Rican harlequin butterfly (*Atlantea tulita*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the Puerto Rican harlequin butterfly. Except as provided under paragraph (g)(2) of this section and § 17.4, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b).

(ii) Take, as set forth at § 17.21(c)(1).

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e).

(v) Sale or offer for sale, as set forth at § 17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Normal agricultural practices, including pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices, as long as the practices do not include:

(*1*) Clearing or disturbing forest or prickly bush (*Oplonia spinosa*) to create or expand agricultural areas; or

(*2*) Applying pesticides in or contiguous to habitat known to be occupied by the Puerto Rican harlequin butterfly.

(B) Normal residential and urban activities, such as mowing, weeding, edging, and fertilizing.

(C) Maintenance of recreational trails in Commonwealth Forests by mechanically clearing vegetation, only when approved by or under the auspices of the Puerto Rico Department of Natural and Environmental Resources, or conducted on lands established by private organizations or individuals solely for conservation or recreation.

(D) Habitat management or restoration activities expected to provide a benefit to Puerto Rican harlequin butterfly or other sensitive species, including removal of nonnative, invasive plants. These activities must be coordinated with and reported to the Service in writing and approved the first time an individual or agency undertakes them.

(E) Projects requiring removal of the host plant to access and remove illicit garbage dumps that are potential sources of intentionally set fires, provided such projects are conducted in coordination with and reported to the Service.

(F) Fruit fly trapping by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, provided trapping activities do not disturb the host plant.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

■ 4. Amend § 17.95, in paragraph (i), by adding an entry for ''Puerto Rican Harlequin Butterfly (*Atlantea tulita*)'' immediately following the entry for ''Palos Verdes Blue Butterfly (*Glaucopsyche lygdamus palosverdesensis*)'', to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Puerto Rican Harlequin Butterfly (*Atlantea tulita*)

(1) Critical habitat units are depicted for Isabela, Quebradillas, Camuy, Arecibo, Florida, Ciales, Utuado, Maricao, Yauco, Sabana Grande, and San Germán municipalities, Puerto Rico, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Puerto Rican harlequin butterfly consist of the following components:

(i) *Forest habitat types in the Northern Karst region in Puerto Rico:* Mature secondary moist limestone evergreen and semi-deciduous forest, or young secondary moist limestone evergreen and semi-deciduous forest, or both

forest types, in subtropical moist forest or subtropical wet forest life zones.

(ii) *Forest habitat types in the West-central Volcanic-serpentine region in Puerto Rico:* Mature secondary dry and moist serpentine semi-deciduous forest, or young secondary dry and moist serpentine semi-deciduous forest, or both forest types, in subtropical moist forest or subtropical wet forest life zones.

(iii) *Components of forest habitat types:* The forest habitat types described in paragraphs (2)(i) and (ii) of this entry contain:

(A) Forest area greater than 1 acre that is within 1 kilometer of a water source (stream, pond, puddle, etc.) and other forested area;

(B) Canopy cover between 50 to 85 percent and average canopy height ranging from 4 to 8 meters (13.1 to 26.2 feet); and

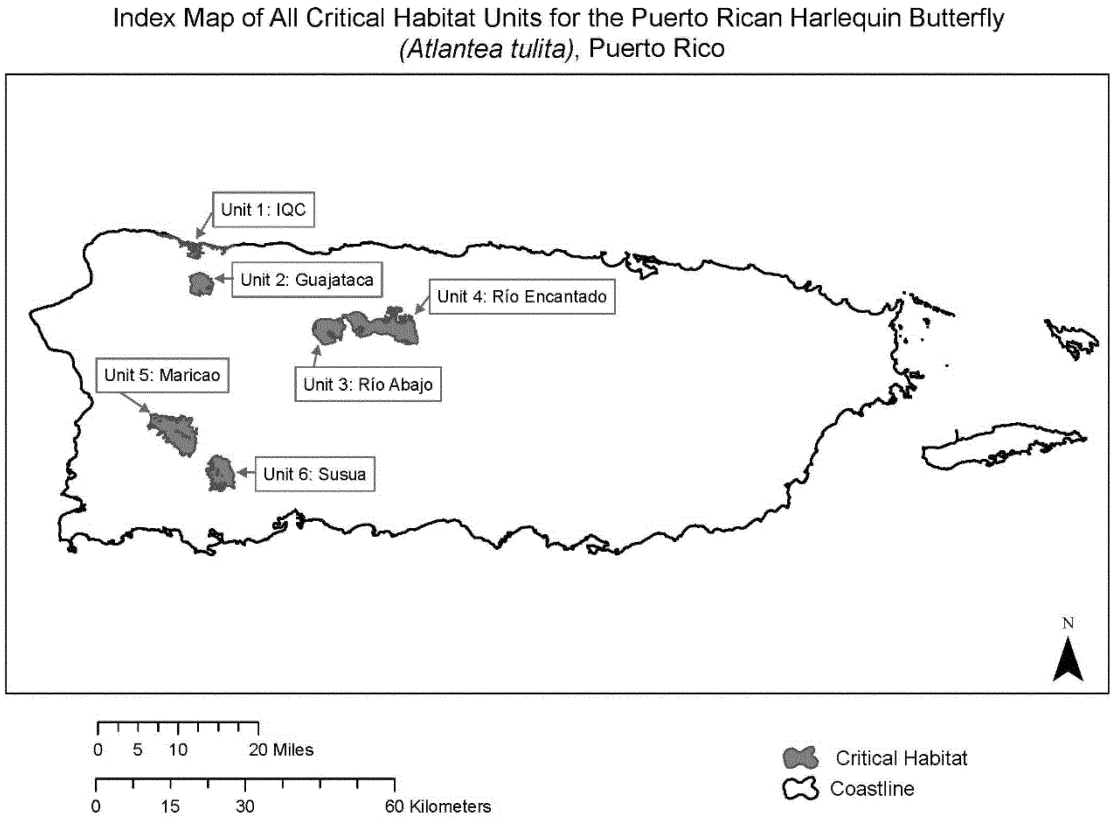
(C) Prickly bush (*Oplonia spinosa*) covering more than 30 percent of the understory.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on January 3, 2023.

(4) Data layers defining map units were created by delineating habitats that contain at least one or more of the physical or biological features defined in paragraph (2) of this entry. We used the digital landcover layer created by the Puerto Rico GAP Analysis Project over a U.S. Department of Agriculture 2007 digital orthophoto mosaic. The resulting critical habitat unit was then mapped using State Plane North American Datum 83 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/caribbean-ecological-services* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2020–0083, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Note: Index map follows:

Figure 1 to Puerto Rican Harlequin Butterfly (*Atlantea tulita*) paragraph (5)



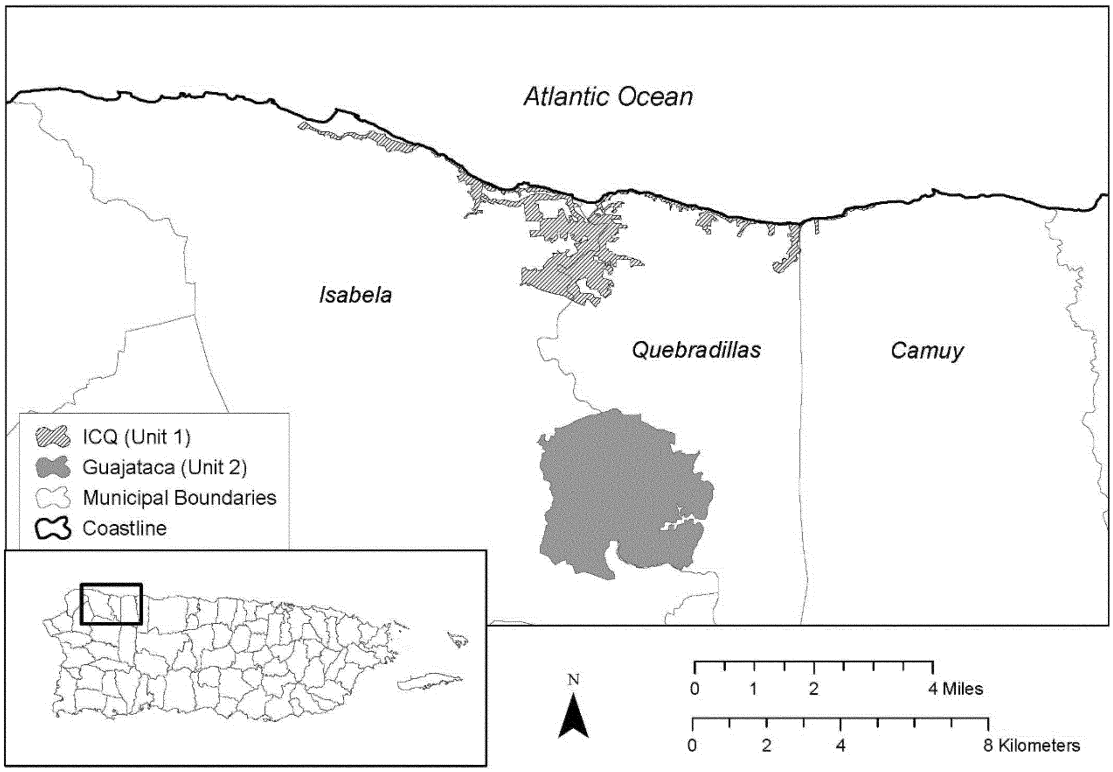
(6) Unit 1: IQC; Isabela, Quebradillas, and Camuy Municipalities, Puerto Rico.

(i) Unit 1 consists of 1,675.7 acres (678.1 hectares) located along the northern coastal cliff among the municipalities of Isabela, Quebradillas, and Camuy (IQC), 23 kilometers (15 miles) west of Arecibo. The critical habitat is bounded on the east by the community La Yeguada and Membrillo in Camuy, on the west by the community Villa Pesquera and Pueblo in Isabela, on the north by the Atlantic Ocean, and on the south by urban developments, State road PR–2, the Royal Isabela Golf Course, and some deforested areas utilized for agricultural practices such as cattle grazing. All but 5 acres (2 hectares) of Unit 1 are in private ownership.

(ii) Map of Units 1 and 2 follows:

Figure 2 to Puerto Rican Harlequin Butterfly (*Atlantea tulita*) paragraph (6)(ii)

Critical Habitat Map for Unit 1: IQC and Unit 2: Guajataca for the Puerto Rican Harlequin Butterfly *(Atlantea tulita)*, Puerto Rico



(7) Unit 2: Guajataca; Isabela and Quebradillas Municipalities, Puerto Rico.

(i) Unit 2 consists of 3,839 acres (1,553.6 hectares) south of PR 2, between the municipalities Isabela and Quebradillas, 25 kilometers (15.6 miles) southwest of Arecibo. The critical habitat is bounded on the east by the San Antonio ward in Quebradillas, on the west by PR 446 at Galateo Ward in Isabela, on the north by Llanadas Ward in Isabela and Cacao Ward in Quebradillas, and on the south by Montañas de Guarionex, between Planas Ward in Isabela and Charcas Ward in Quebradillas. In Unit 2, 583.5 acres (236.1 hectares) are public land, the Guajataca Commonwealth Forest, managed by the Puerto Rico Department of Natural and Environmental Resources for conservation. Private land in Unit 2 is 3,255.5 acres (1,317.5 hectares) that is a mosaic of agricultural land, roads, rural developments, and forest.

(ii) Map of Unit 2 is set forth at paragraph (6)(ii) of this entry.

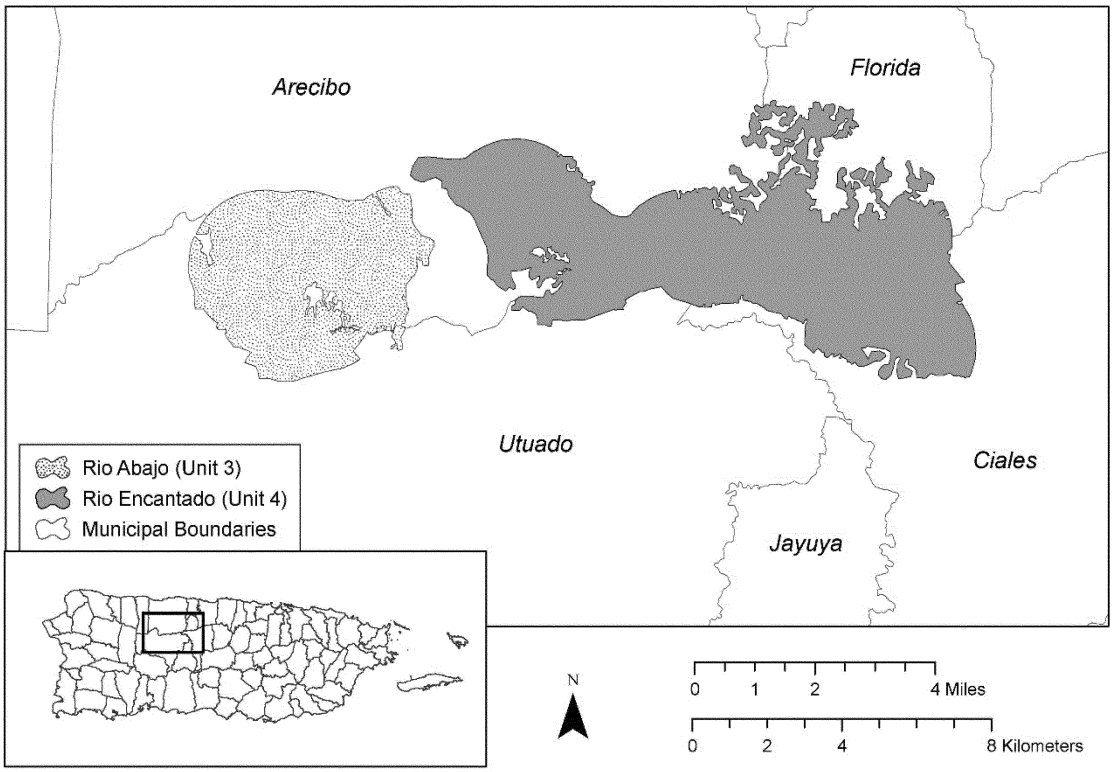
(8) Unit 3: Río Abajo; Arecibo and Utuado Municipalities, Puerto Rico.

(i) Unit 3 consists of 5,939.2 acres (2,403.6 hectares) located 14.5 kilometers (9 miles) south of Arecibo. The critical habitat is bound on the east by the Río Grande de Arecibo, on the west by Santa Rosa Ward in Utuado, on the north by Hato Viejo Ward in Arecibo, and on the south by Caguana and Sabana Grande Wards in Utuado. The Río Abajo Commonwealth Forest, managed for conservation by the Puerto Rico Department of Natural and Environmental Resources, occupies 77 percent (4,544.4 acres (1,839.1 hectares)) of the unit. The other 23 percent (1,394.8 acres (564.5 hectares)) is privately owned and is a mosaic of highways, roads, agriculture, and rural development.

(ii) Map of Units 3 and 4 follows:

Figure 3 to Puerto Rican Harlequin Butterfly (*Atlantea tulita*) paragraph (8)(ii)

Critical Habitat Map for Unit 3: Río Abajo and Unit 4: Río Encantado for the Puerto Rican Harlequin Butterfly *(Atlantea tulita)*, Puerto Rico



(9) Unit 4: Río Encantado; Arecibo, Florida, Ciales, and Utuado Municipalities, Puerto Rico.

(i) Unit 4 consists of 12,775.6 acres (5,170.1 hectares) located among the municipalities of Arecibo, Florida, Ciales, and Utuado, 17 kilometers (10.5 miles) southeast of Arecibo. The critical habitat is bound on the east by Hato Viejo Ward in Ciales, on the west by the Río Grande de Arecibo, on the north by Arrozales Ward in Arecibo and Pueblo Ward in Florida, and on the south by PR 146 along Limón Ward in Utuado and Frontón Ward in Ciales. Thirteen percent of the critical habitat (204.8 acres (82.9 hectares)) is managed by Para La Naturaleza or by the Puerto Rico Department of Natural and Environmental Resources for conservation. The other 87 percent (12,570.8 acres (5,087.2 hectares)) consists of private lands, some of which are agricultural fields, roads, and rural developments, but a majority of which is mature native forest.

(ii) Map of Unit 4 is set forth at paragraph (8)(ii) of this entry.

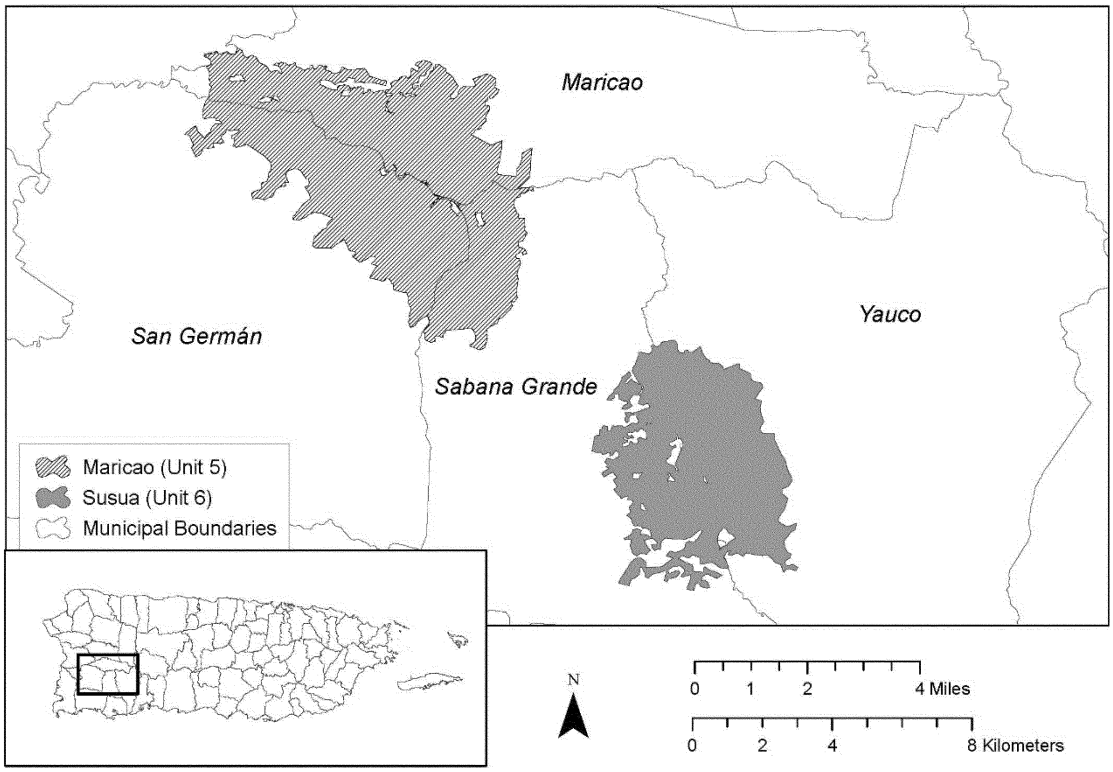
(10) Unit 5: Maricao; Maricao, Sabana Grande, and San Germán Municipalities, Puerto Rico.

(i) Unit 5 consists of 10,854.6 acres (4,392.7 hectares) on the west end of the Cordillerra Central, among the municipalities of Maricao, San Germán, and Sabana Grande, 16.1 kilometers (10 miles) southeast of Mayagüez. The critical habitat is bound on the east by Tabonuco Ward in Sabana Grande, on the west by Rosario Ward in San Germán, on the north by Pueblo Ward in Maricao, and on the south by Guamá and Santana Wards in San Germán. The Maricao Commonwealth Forest, managed for conservation by the Puerto Rico Department of Natural and Environmental Resources, occupies 72 percent (7,883.1 acres (3,190.2 hectares)) of the unit. The other 28 percent (2,971.5 acres (1,202.5 hectares)) is private land consisting of a mosaic of agriculture, rural developments, and forest.

(ii) Map of Units 5 and 6 follows:

Figure 4 to Puerto Rican Harlequin Butterfly (*Atlantea tulita*) paragraph (10)(ii)

Critical Habitat Map for Unit 5: Maricao and Unit 6: Susua for the Puerto Rican Harlequin Butterfly *(Atlantea tulita)*, Puerto Rico



(11) Unit 6: Susúa; Sabana Grande and Yauco Municipalities, Puerto Rico.

(i) Unit 6 consists of 6,181.9 acres (2,501.8 hectares) between the municipalities of Sabana Grande and Yauco, 33.6 kilometers (21 miles) northwest of Ponce. The critical habitat is bound on the east by the PR 371 in Almacigo Alto and Collores Wards in Yauco, on the west by Pueblo Ward in Sabana Grande, on the north by Frailes Ward in Yauco, and on the south by PR 368 in Susúa Ward in Sabana Grande. The Susúa Commonwealth Forest, managed by the Puerto Rico Department of Natural and Environmental Resources for conservation, occupies 51 percent (3,171.5 acres (1,283.5 hectares)) of the critical habitat in this unit. The other 49 percent (3,010.4 acres (1,218.3 hectares)) is on private lands that are a mosaic of agriculture, rural developments, and forest.

(ii) Map of Unit 6 is set forth at paragraph (10)(ii) of this entry.

* * * * *

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–25805 Filed 11–30–22; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 87, No. 230
Thursday, December 1, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1405; Project Identifier AD–2022–01070–E]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–10–09, which applies to all CFM International, S.A. (CFM) CFM56–5B and CFM56–7B model turbofan engines with a certain high-pressure turbine (HPT) inner stationary seal installed. AD 2021–10–09 requires removal, inspection, and replacement of the affected HPT inner stationary seal and, depending on the findings, replacement of the rotating air HPT front seal, HPT rotor blades, and No. 3 ball bearing. Since the FAA issued AD 2021–10–09, the manufacturer notified the FAA that the service information incorrectly lists the year of certain honeycomb repairs. Additionally, the manufacturer notified the FAA that affected HPT inner stationary seals could potentially be installed on CFM CFM56–5C model turbofan engines. This proposed AD would require removal, inspection, and replacement of the affected HPT inner stationary seal and, depending on the findings, replacement of the rotating air HPT front seal, HPT rotor blades, and No. 3 ball bearing. This proposed AD would also revise the applicability to add CFM CFM56–5C model turbofan engines. 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 January 17, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1405; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For CFM service information identified in this NPRM, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *aviation.fleetsupport@ge.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; email: *kevin.m.clark@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–2022–1405; Project Identifier AD–2022–01070–E'' 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 *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 Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–10–09, Amendment 39–21542 (86 FR 27264, May 20, 2021) (AD 2021–10–09), for all CFM CFM56–5B and CFM56–7B model turbofan engines with an HPT inner stationary seal, part number (P/N) 1808M56G01, installed. AD 2021–10–09 was prompted by cracks found in the rotating air HPT front seal. After investigation, CFM determined that the HPT inner stationary seal, P/N 1808M56G01, may not have received the correct braze heat treat cycle at the time of the honeycomb replacement. As a result, the affected HPT inner stationary seal may have a condition that could lead to a localized separation

of the replaced honeycomb, which may reduce the life of the rotating air HPT front seal. AD 2021–10–09 requires removal, inspection, and replacement of the affected HPT inner stationary seal and, depending on the findings, replacement of the rotating air HPT front seal, HPT rotor blades, and No. 3 ball bearing. The agency issued AD 2021–10–09 to prevent failure of the HPT inner stationary seal and the rotating air HPT front seal, which could result in uncontained release of the rotating air HPT front seal, damage to the engine, and damage to the airplane.

Actions Since AD 2021–10–09 Was Issued

Since the FAA issued AD 2021–10–09, the manufacturer notified the FAA that the service information, which is incorporated by reference, incorrectly lists the year of certain honeycomb repairs. The manufacturer subsequently published revised service information that establishes a single date for the honeycomb repairs. Additionally, the manufacturer notified the FAA that affected HPT inner stationary seals could be installed on CFM CFM56–5C model turbofan engines. The FAA, therefore, determined that the unsafe condition is likely to exist or develop on CFM CFM56–5C model turbofan engines with an affected HPT inner stationary seal installed.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information:

- CFM Service Bulletin (SB) CFM56–5C S/B 72–0796, Revision 02, dated August 10, 2022.
- CFM SB CFM56–5B S/B 72–0952, Revision 02, dated August 10, 2022.
- CFM SB CFM56–7B S/B 72–1054, Revision 02, dated August 10, 2022.

This service information, differentiated by engine model, specifies procedures for inspecting the HPT inner stationary seal honeycomb. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2021–10–09. This proposed AD would require removal, inspection, and replacement of the affected HPT inner stationary seal and, depending on the findings, replacement of the rotating air HPT front seal, HPT rotor blades, and No. 3 ball bearing. This proposed AD would also revise the applicability to add CFM CFM56–5C model turbofan engines.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 210 engines installed on airplanes of U.S. registry. Operators have the option to replace or repair the affected HPT inner stationary seal. The parts cost includes the estimated costs for replacement with a repaired HPT inner stationary seal.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace HPT inner stationary seal	1 work-hour × $85 per hour = $85	$7,910	$7,995	$1,678,950
Inspect HPT inner stationary seal	1 work-hour × $85 per hour = $85	0	85	17,850

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace rotating air HPT front seal	1 work-hour × $85 per hour = $85	$344,600	$344,685
Replace HPT rotor blades (pair)	1 work-hour × $85 per hour = $85	31,000	31,085
Replace No. 3 ball bearing	1 work-hour × $85 per hour = $85	30,000	30,085

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 that the proposed regulation:

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

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

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–10–09, Amendment 39–21542 (86 FR 27264, May 20, 2021); and

■ b. Adding the following new airworthiness directive:

CFM International, S.A.: Docket No. FAA–2022–1405; Project Identifier AD–2022–01070–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by January 17, 2023.

(b) Affected ADs

This AD replaces AD 2021–10–09, Amendment 39–21542 (86 FR 27264, May 20, 2021) (AD 2021–10–09).

(c) Applicability

This AD applies to CFM International, S.A. (CFM) model turbofan engines identified in Table 1 to paragraph (c) of this AD with an installed high-pressure turbine (HPT) inner stationary seal, part number (P/N) 1808M56G01, that has a serial number (S/N) listed in Table 1 of CFM Service Bulletin (SB) CFM56–5B S/B 72–0952, Revision 02, dated August 10, 2022 (CFM SB CFM56–5B S/B 72–0952); Table 1 of CFM SB CFM56–5C S/B 72–0796, Revision 02, dated August 10, 2022 (CFM SB CFM56–5C S/B 72–0796); or Table 1 of CFM SB CFM56–7B S/B 72–1054, Revision 02, dated August 10, 2022 (CFM SB CFM56–7B S/B 72–1054).

TABLE 1 TO PARAGRAPH (C)—CFM MODEL TURBOFAN ENGINES

Make	Model
CFM	CFM56–5B1, CFM56–5B1/2P, CFM56–5B1/3, CFM56–5B1/P, CFM56–5B2, CFM56–5B2/2P, CFM56–5B2/3, CFM56–5B2/P, CFM56-5B3/2P, CFM56-5B3/2P1, CFM56–5B3/3, CFM56–5B3/3B1, CFM56–5B3/P, CFM56-5B3/P1, CFM56-5B4, CFM56–5B4/2P, CFM56-5B4/2P1, CFM56-5B4/3, CFM56-5B4/3B1, CFM56–5B4/P, CFM56–5B4/P1, CFM56-5B5, CFM56–5B5/3, CFM56–5B5/P, CFM56-5B6, CFM56–5B6/2P, CFM56–5B6/3, CFM56–5B6/P, CFM56–5B7, CFM56–5B7/3, CFM56-5B7/P, CFM56–5B8/3, CFM56–5B8/P, CFM56–5B9/2P, CFM56-5B9/3, CFM56-5B9/P.
CFM	CFM56–5C2, CFM56–5C2/4, CFM56–5C2/F, CFM56–5C2/F4, CFM56-5C2/G, CFM56–5C2/G4, CFM56–5C2/P, CFM56–5C3/F, CFM56-5C3/F4, CFM56–5C3/G, CFM56–5C3/G4, CFM56–5C3/P, CFM56-5C4, CFM56–5C4/1, CFM56–5C4/1P, CFM56–5C4/P.
CFM	CFM56–7B20, CFM56–7B20/2, CFM56–7B20/3, CFM56-7B20E, CFM56-7B22, CFM56–7B22/2, CFM56–7B22/3, CFM56–7B22/3B1, CFM56-7B22/B1, CFM56–7B22E, CFM56–7B22E/B1, CFM56-7B24, CFM56-7B24/2, CFM56–7B24/3, CFM56–7B24/3B1, CFM56–7B24/B1, CFM56–7B24E, CFM56–7B24E/B1, CFM56-7B26, CFM56–7B26/2, CFM56-7B26/3, CFM56–7B26/3B1, CFM56–7B26/3B2, CFM56-7B26/3B2F, CFM56-7B26/3F, CFM56-7B26/B1, CFM56–7B26/B2, CFM56–7B26E, CFM56-7B26E/B1, CFM56–7B26E/B2, CFM56-7B26E/B2F, CFM56-7B26E/F, CFM56–7B27, CFM56–7B27/2, CFM56–7B27/3, CFM56-7B27/3B1, CFM56–7B27/3B1F, CFM56-7B27/3B3, CFM56-7B27/3F, CFM56–7B27/B1, CFM56–B27/B3, CFM56–7B27A, CFM56–7B27A/3, CFM56–7B27AE, CFM56–7B27E, CFM56–7B27E/B1, CFM56–7B27E/B1F, CFM56–7B27E/B3, CFM56-7B27E/F.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by cracks found in the rotating air HPT front seal. The FAA is issuing this AD to prevent failure of the HPT inner stationary seal and the rotating air HPT front seal. The unsafe condition, if not addressed, could result in uncontained release of the rotating air HPT front seal, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) At the next engine shop visit after the effective date of this AD, remove the affected HPT inner stationary seal and replace with an HPT inner stationary seal that is eligible for installation.

(2) After removing the affected HPT inner stationary seal required by paragraph (g)(1) of this AD, inspect the removed HPT inner stationary seal for honeycomb separation in accordance with the Accomplishment Instructions, paragraph 3.C.(1), of CFM SB CFM56–5B S/B 72–0952; CFM SB CFM56–5C S/B 72–0796; or CFM SB CFM56–7B S/B 72–1054, as applicable by engine model.

(3) If honeycomb separation is found during the inspection required by paragraph (g)(2) of this AD, before further flight:

(i) Remove the rotating air HPT front seal from service and replace with a rotating air HPT front seal that is eligible for installation.

(ii) Remove the HPT rotor blades and replace with HPT rotor blades eligible for installation.

(iii) Remove the No. 3 ball bearing from service and replace with a No. 3 ball bearing eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except for the following situations, which do not constitute an engine shop visit.

(i) Separation of engine flanges solely for the purpose of transportation of the engine without subsequent maintenance.

(ii) Separation of engine flanges solely for the purpose of replacing the fan or propulsor without subsequent maintenance.

(2) For the purpose of this AD, an ''HPT inner stationary seal that is eligible for installation'' is an HPT inner stationary seal:

(i) That is not listed in Table 1 of CFM SB CFM56–5B S/B 72–0952; Table 1 of CFM SB CFM56–5C S/B 72–0796; or Table 1 CFM SB CFM56–7B S/B 72–1054; or

(ii) With a P/N 1808M56G01 and an S/N listed in Table 1 of CFM SB CFM56–5B S/B 72–0952; Table 1 of CFM SB CFM56–5C S/B 72–0796; or Table 1 of CFM SB CFM56–7B S/B 72–1054, that has been repaired as specified in CFM56–5B ESM, 72–41–03, REPAIR 003; CFM56–5C ESM, 72–41–03, REPAIR 003; or CFM56–7B ESM, 72–41–03, REPAIR 003, as applicable by engine model, after December 31, 2012.

(3) For the purpose of this AD, a ''rotating air HPT front seal that is eligible for installation'' is any rotating air HPT front seal that was not removed from service as a result of the inspection of the HPT inner stationary seal required by paragraph (g)(2) of this AD in which there was a finding of honeycomb separation.

(4) For the purpose of this AD, ''HPT rotor blades eligible for installation'' are new HPT rotor blades with zero flight hours since new or HPT rotor blades that have been inspected and returned to a serviceable condition using FAA-approved maintenance procedures.

(5) For the purpose of this AD, a ''No. 3 ball bearing eligible for installation'' is any No. 3 ball bearing that was not removed from service as a result of the inspection of the HPT inner stationary seal required by paragraph (g)(2) of this AD in which there was a finding of honeycomb separation.

(i) Credit for Previous Actions

You may take credit for the actions specified in paragraphs (g)(1) through (3) of this AD, if you performed those actions before the effective date of this AD using CFM SB CFM56–5B S/B 72–0952, Revision 01, dated January 15, 2020, CFM SB CFM56–7B S/B 72–1054, Revision 01, dated January 15, 2020, or CFM SB CFM56–5C S/B 72–0796 Revision 01, dated January 15, 2020.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD and email 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 for AD 2021–10–09 (86 FR 27264, May 20, 2021) are approved as AMOCs for the corresponding provisions of this AD.

(k) Related Information

(1) For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (1)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) CFM Service Bulletin (SB) CFM56–5C S/B 72–0796, Revision 02, dated August 10, 2022.

(ii) CFM SB CFM56–5B S/B 72–0952, Revision 02, dated August 10, 2022.

(iii) CFM SB CFM56–7B S/B 72–1054, Revision 02, dated August 10, 2022.

(3) For CFM service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *aviation.fleetsupport@ge.com.*

(4) You may view this service information at 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.

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

Issued on October 27, 2022.

Christina Underwood,

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

[FR Doc. 2022–26126 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1422; Project Identifier AD–2022–01208–E]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain CFM International, S.A. (CFM) LEAP–1B turbofan engines. This proposed AD was prompted by a report of multiple aborted takeoffs and air turn-backs (ATBs) caused by high-pressure compressor (HPC) stall, which was induced by high levels of non-synchronous vibration (NSV). A subsequent investigation by the manufacturer revealed that wear on the No. 3 bearing spring finger housing can lead to high levels of NSV. This proposed AD would require repetitive calculations of the oil filter delta pressure (OFDP) data and, depending on the results of the calculation, replacement of the No. 3 bearing spring finger housing. This proposed AD would also prohibit installation of an engine with an affected No. 3 bearing spring finger housing onto an airplane that already has one engine with an affected No. 3 bearing spring finger housing installed. 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 January 17, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1422; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For CFM service information identified in this NPRM, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *aviation.fleetsupport@ge.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; email: *Mehdi.Lamnyi@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–2022–1422; Project Identifier AD–2022–01208–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA was notified by the engine manufacturer of three aborted takeoffs and two ATBs caused by HPC stall. A subsequent investigation by the manufacturer revealed that wear on the No. 3 bearing spring finger housing can lead to high levels of NSV, which could induce HPC stall. This wear manifests itself early on as higher than typical OFDP loading. As a result of its investigation, the manufacturer published service information that specifies procedures for calculating the OFDP data and replacing the affected No. 3 bearing spring finger housing. This condition, if not addressed, could result in engine power loss at a critical phase of flight such as takeoff or climb, loss of thrust control, reduced controllability of the airplane, and loss of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed CFM Service Bulletin LEAP–1B–72–00–0369–01A–930A–D, Issue 001–00, dated August 22, 2022. This service information specifies procedures for calculating the OFDP data and replacing the affected No. 3 bearing spring finger housing. This service information also identifies the serial numbers of the affected No. 3 bearing spring finger housings installed on LEAP–1B turbofan engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require a calculation of the OFDP data and, depending on the results of the calculation, replacement of the No. 3 bearing spring finger housing. This proposed AD would also prohibit the installation of an engine with an affected No. 3 bearing spring finger housing onto an airplane that already has one engine with an affected No. 3 bearing spring finger housing installed.

Interim Action

The FAA considers that this proposed AD would be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 8 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Calculate OFDP data	1 work-hour × $85 per hour = $85	$0	$85	$680
Replace No. 3 bearing spring finger housing	17 work-hours × $85 per hour = $1,445	64,590	66,035	528,280

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:

CFM International, S.A.: Docket No. FAA–2022–1422; Project Identifier AD–2022–01208–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 17, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. (CFM) LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 model turbofan engines with an installed No. 3 bearing spring finger housing, part number (P/N) 2542M54G01, and serial number (S/N) identified in Table 1 of CFM Service Bulletin (SB) LEAP–1B–72–00–0369–01A–930A–D, Issue 001–00, dated August 22, 2022 (CFM LEAP–1B–72–00–0369–01A–930A–D).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of multiple aborted takeoffs and air turn-backs (ATBs) caused by high-pressure compressor (HPC) stall, which was induced by high levels of non-synchronous vibration (NSV), and a subsequent investigation by the manufacturer that revealed wear on the No. 3 bearing spring finger housing. The FAA is issuing this AD to prevent HPC stall. The unsafe condition, if not addressed, could result in engine power loss at a critical phase of flight such as takeoff or climb, loss of thrust control, reduced controllability of the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Before the affected No. 3 bearing spring finger housing accumulates 125 flight cycles (FCs) since new, but not before accumulating 75 FCs since new, or within 50 FCs after the effective date of this AD, whichever occurs later, calculate the oil filter delta pressure (OFDP) data in accordance with the Accomplishment Instructions, paragraphs 5.A.(1) through 5.A.(2) or 5.B.(1) through 5.B.(2), of CFM LEAP–1B–72–00–0369–01A–930A–D.

(2) Thereafter, at intervals not to exceed 100 FCs from the last calculation of the OFDP data, and until the affected No. 3 bearing spring finger housing accumulates 1,000 FCs since new, repeat the calculation required by paragraph (g)(1) of this AD.

(3) If, during the calculation required by paragraph (g)(1) or (2) of this AD, the OFDP data exceed the limits specified in the Accomplishment Instructions, paragraph 5.A.(3) or 5.B.(3), of CFM LEAP–1B–72–00–0369–01A–930A–D, as applicable, within 25 FCs of performing the calculation, replace the affected No. 3 bearing spring finger housing with a part eligible for installation.

(4) During the next engine shop visit after the effective date of this AD, replace the affected No. 3 bearing spring finger housing with a part eligible for installation.

(h) Terminating Action

Replacement of the affected No. 3 bearing spring finger housing with a part eligible for installation, as specified in paragraphs (g)(3) and (g)(4) of this AD, constitutes terminating action for the calculations required by paragraphs (g)(1) and (2) of this AD.

(i) Installation Prohibition

After the effective date of this AD, do not install an engine with an affected No. 3 bearing spring finger housing onto an airplane that already has one engine with an affected No. 3 bearing spring finger housing installed.

(j) Definition

For the purpose of this AD, a ''part eligible for installation'' is a No. 3 bearing spring finger housing that is not identified in Table 1 of CFM LEAP–1B–72–00–0369–01A–930A–D.

(k) Alternative Methods of Compliance (AMOCs)

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

(l) Related Information

For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; email: *Mehdi.Lamnyi@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) CFM Service Bulletin LEAP–1B–72–00–0369–01A–930A–D, Issue 001–00, dated August 22, 2022.

(ii) [Reserved]

(3) For CFM service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *aviation.fleetsupport@ge.com.*

(4) You may view this service information at 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.

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

Issued on November 9, 2022.

Christina Underwood,

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

[FR Doc. 2022–26121 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 2

[2231A2100DD/AAKC001030/A0A501010.999900]

RIN 1076–AF64

Appeals From Administrative Actions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior (Department) proposes to revise regulations governing the process for pursuing administrative review of actions by Indian Affairs officials. These changes are being proposed to reflect changes in the structure and nomenclature within Indian Affairs, and to provide greater specificity and clarity to the appeals process.

DATES: Interested persons are invited to submit comments on or before March 1, 2023.

ADDRESSES: You may submit comments by any one of the following methods.

• *Federal eRulemaking Portal:* The Federal eRulemaking Portal is the preferred method. Please upload comments to *https://www.regulations.gov* by using the ''search'' field to find the rulemaking and then following the instructions for submitting comments.

• *Email:* Please send comments to *comments@bia.gov* and include ''RIN 1076–AF64, 25 CFR part 2'' in the subject line of your email.

• *Mail:* Please mail comments to Indian Affairs, RACA, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104.

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action (RACA), Office of the Assistant Secretary—Indian Affairs; Department of the Interior, telephone (202) 738–6065, *RACA@bia.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary; AS–IA) by 209 Departmental Manual (DM) 8.

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I. Background

The regulations governing administrative appeals of actions by Indian Affairs officials are in title 25, chapter I of the Code of Federal Regulations (25 CFR part 2). The last major revision of the part 2 regulations was in 1989. See 54 FR 6478 (Feb. 10, 1989).

II. Description of Proposed Changes

The Department proposes to revise the appeals regulations in a number of ways, as explained below:

A. To Provide Mechanisms for Appealing Decisions by Indian Affairs Officials That Did Not Exist in 1989

A number of significant changes have been made to the organization of Indian Affairs since publication of the current part 2 regulations in 1989. In 2003, the office of the Director of the Bureau of Indian Affairs was created and charged with some of the responsibilities previously carried out by the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs. 130 DM 3 (Apr. 21, 2003). The Bureau of Indian Education, formerly an agency within the Bureau of Indian Affairs (BIA), was established as a separate Bureau. More recently, the Secretary created the Bureau of Trust Funds Administration within the Office of the Assistant Secretary—Indian Affairs. Several other offices are not within any Bureau, reporting directly to the Assistant Secretary: the Office of Indian Gaming, the Office of Indian Economic Development, and the Office of Self-Government. Furthermore, today more decisions are being made in the Central Office of BIA, rather than the Agency and Regional Offices. The current part 2 regulations do not provide for such changes within the organization or allow for certain types of decisions to have administrative appeals.

Prior to the publication of the current part 2 regulations, the Secretary terminated the position of Deputy Assistant Secretary, reporting directly to the Assistant Secretary, and established the position of Deputy to the Assistant Secretary, within the BIA and reporting to the Commissioner of Indian Affairs. Sec. Order 3112. The current part 2 regulations include the Deputies to the Assistant Secretary among the BIA officials whose decisions are subject to appeal to the IBIA (with the exception of the Deputy to the Assistant Secretary (Indian Education Programs)). Shortly after publication of the current part 2 regulations, the Department re-instated Deputy Assistant Secretaries within the office of the Assistant Secretary, and retitled the Deputies to the Assistant Secretary as Office Directors within the BIA. The proposed revisions bring the regulatory language in line with the structure of Indian Affairs, and clarify that the Assistant Secretary has jurisdiction over appeals of actions by Deputy Assistant Secretaries.

B. To Present the Regulations in Plain English

Subsequent to the 1989 promulgations of the current part 2 regulations, Congress and the President directed Federal agencies to use plain and direct language in agencies' regulations. See the Plain Writing Act of 2010 (124 Stat. 2861), E.O. 12866 (1993), and E.O. 13565 (2011). This draft revision complies with those directives.

C. To Authorize, Where Possible, the Filing of Appeal Documents in Portable Document Format (pdf) via Email

The shift from paper documents sent via United States mail, to electronic documents sent via the internet, is one of the defining transformations of our era. But the greater convenience, speed, and economy that make a modern paperless case-filing system so superior cannot be enjoyed until necessary infrastructure is in place. For the BIA, as well as for stakeholders across Indian country, it will be some time before such infrastructure is fully enabled.

Proposed subpart B, at § 2.214(i), authorizes BIA officials to permit electronic filings, but preserves the default of reliance on hard copies.

The Assistant Secretary is particularly interested in public comments on the proposed regulations' treatment of electronic filing.

D. To Clarify the Process by Which the Assistant Secretary-Indian Affairs Takes Jurisdiction of an Appeal to the Interior Board of Indian Appeals (IBIA); and the Process Employed Whenever the Assistant Secretary-Indian Affairs Exercises Appellate Authority

Proposed subpart E, at §§ 2.508, 2.509, and 2.510, addresses the Assistant Secretary's authority to take jurisdiction over an appeal to the IBIA, and clarifies the processes applicable to any appeals to the Assistant Secretary. In order to ensure that the Assistant Secretary has sufficient time to scrutinize a notice of appeal to the IBIA, and decide whether to assume jurisdiction over it, the deadline by which the Assistant Secretary must notify the IBIA of a decision to take jurisdiction has been extended, from 20 days after IBIA's receipt of the Notice of Appeal under the current regulations, to 40 days after IBIA's receipt of the Notice of Appeal.

The Assistant Secretary is particularly interested in public comments on the proposed regulations' treatment of appeals to the Assistant Secretary.

E. To Make Certain Changes to the Process for Appealing Inaction of an Official

Proposed subpart F sets out the process by which a person may try to compel a BIA official to take action on a request or appeal. In the current part 2, comparable provisions are at 25 CFR 2.8. The current regulations direct such appeals to the next official or entity in the appeals process. For example, an appeal from the inaction of a BIA Regional Director would go to the IBIA, which has no supervisory authority over the Regional Director. The proposed revisions, on the other hand, direct all such appeals of inaction up the chain of command of the official whose alleged inaction gave rise to the appeal. Under the proposed revisions, the only action to be taken by the superior official is to direct the subordinate official to take action.

F. To Establish a New Subpart To Expedite the Effectiveness of a BIA Decision Regarding Recognition of a Tribal Representative

Congress exercises plenary authority over the relationship between Tribes and non-Tribal governments in the United States. Congress has delegated the responsibility for ''the management of public business relating to Indians'' to the Secretary of the Interior. 43 U.S.C. 1457; see also 25 U.S.C. 2. A vital component of such management is the ''responsibility for carrying on government relations with [Tribes].'' *Goodface* v. *Grassrope,* 708 F.2d 335, 339 (8th Cir. 1983).

Proposed subpart G sets out an appeals process intended to minimize the time during which a BIA tribal representative recognition decision does not go into effect due to being appealed. The proposed regulations make the decision of the first-level reviewing official (typically, the Regional Director) immediately effective. Interested parties may appeal the reviewing official's decision as provided in part 2, or initiate Federal litigation pursuant to the Administrative Procedures Act (APA).

The AS–IA is particularly interested in public comments on proposed subpart G.

G. To Establish a New Subpart Providing Holders of Trust Accounts a Mechanism for Disputing the Accuracy of Statements of Performance Issued by the Bureau of Trust Funds Administration

There is currently no administrative appeal procedure by which the recipient of a statement of performance may dispute the information presented on the statement. Proposed subpart H sets out such an administrative appeals procedure. Like all administrative appeal provisions, those in proposed subpart H serve two important purposes—to provide an opportunity for the agency to correct its own errors, and to ensure development of a complete administrative record for a court to review in the event of an APA challenge to the final agency action.

The AS–IA is particularly interested in public comments on proposed subpart H.

H. To Establish a New Subpart Setting Out the Process for Resolving Challenges to Administrative Actions by Alternative Dispute Resolution Instead of by Formal Appeals

In 2001, the Secretary established the Department's Office of Collaborative Action and Dispute Resolution (CADR). CADR manages the Department's dispute resolution program, providing employees and outside stakeholders an alternative mechanism for resolving disputes. Proposed subpart I identifies the process by which a person seeking to challenge an agency action can make use of the CADR's dispute resolution program.

III. Tribal Consultation

On November 15, 2019, the AS–IA sent out a Dear Tribal Leader Letter, with a draft of the proposed revised part 2 regulations, inviting the Tribes to participate in consultation sessions, held January 22 and February 10, 2020. The letter also invited written comments on the proposed regulations. The AS–IA sent another Dear Tribal Leader Letter on January 14, 2022, requesting comments on a new draft, with consultation sessions on February 17 and 22, 2022. Several Tribes submitted written comments.

A. Land Into Trust

Several commenters urged that fee-to-trust decisions be made final more quickly. One recommendation was that the Regional Director's decision on a mandatory land acquisition be final for the Department, or that appeals go to AS–IA instead of to IBIA.

The Assistant Secretary agrees that some challenges to land-into-trust decisions are plainly without merit and are filed for no other reason than delay. Recognizing that other such challenges raise important questions deserving substantive scrutiny through the administrative appeals process, the proposed part 2 regulations do not set out a specific process for land-into-trust decisions. The drafters of the proposed part 2 regulations anticipate that, by elaborating and clarifying the process by which the Assistant Secretary may exercise jurisdiction over appeals, frivolous challenges to land-into-trust decisions may be disposed of expeditiously.

B. Administrative Appeals of BTFA Statements of Performance

One commenter noted its support for proposed subpart H, establishing an administrative appeals process for challenging BTFA statements of performance. In contrast, another commenter expressed strong opposition to proposed subpart H, asserting that it ''improperly disregards the statutory fiduciary relationship between Indians and the United States [and] improperly impairs the ability of Indian trust beneficiaries to ensure that the United States fulfill its trust duties for trust funds administration.'' In addition to opposing subpart H in its entirety, the commenter objects to requiring account holders to submit a fully-documented ''basis of objection'' within 60 days of the date of the statement of performance.

The drafters are not persuaded that subpart H should be deleted. Over the past 20 plus years, the Department has improved its accounting practices to address shortcomings identified by the courts and the auditor. An administrative appeals process allows account holders to present a challenge without the cost of filing a Federal lawsuit. The purposes for requiring exhaustion of administrative appeals—giving an agency the opportunity to correct its own mistakes, and fostering development of a complete administrative record for purposes of judicial review—apply in this context, and justify the addition of subpart H to the Department's appeals regulations. Furthermore, the addition of subpart H does not prohibit an account holder from filing a lawsuit under the APA after completing the administrative process.

The Assistant Secretary welcomes public comments on subpart H.

C. Other Comments

One commenter suggested several additions to emphasize that a person must exhaust administrative remedies in order to bring a lawsuit under the APA. While completely agreeing with the premise, the drafters believe that the principle is well and unambiguously set out in the language of the proposed rule.

One commenter opposes allowing the Assistant Secretary to exercise jurisdiction over appeals, asserting that the exercise of that authority has ''thwart[ed] the administrative appeal process and is an inefficient use of resources,'' and ''has led to abuses of authority.'' The drafters believe that the appellate authority vested in the Assistant Secretary by the proposed part 2 is appropriate, and note the key role played by Federal courts in checking improper uses of agency authority.

The commenter further recommended that the proposed rule be modified to clarify that the test for whether a person has standing to pursue an administrative appeal, including a person seeking to participate in an appeal as an interested party, is the test articulated in *Lujan* v. *Defenders of Wildlife,* 504 U.S. 555 (1992). The drafters have not adopted the specific language suggested by the commenter, nor added a definition of ''legally protected interest.'' But a definition of ''adversely affected'' has been added, explaining that it means ''the decision on appeal has caused or is likely to cause injury to a legally protected interest.'' In addition, the definition of ''Interested party'' has been revised to say that it means ''a person or entity whose legally protected interests are adversely affected by the decision on appeal or may be adversely affected by the decision of the reviewing official.

IV. Subpart by Subpart Description of Proposed Revised Part 2

A. Subpart A—Purpose, Definitions, and Scope of this Part

This proposed subpart expands the definitions that will be used throughout the rule, including definitions for the current structure of Indian Affairs. The current regulations provide minimal definitions, and a considered effort was made to include appropriate definitions to provide clarity for the parties. Presently there exists confusion about what constitutes an administrative record. The proposed rule seeks to rectify that confusion. The proposed rule also provides definitions to distinguish between a deciding official and a reviewing official, as well as defining who has standing to make an appeal.

The current regulations clearly state that part 2 only applies to appeals from decisions made by BIA officials. Since the part 2 regulations were promulgated in 1989, the current structure of Indian Affairs has changed. Now, in addition to decisions made by officials in the BIA, decisions are made by officials in the Bureau of Indian Education, the Bureau of Trust Funds Administration, the Office of Indian Gaming, the Office of Indian Economic Development, and the Office of Self-Governance. The current regulations do not provide a process for the administrative appeal of actions by the officials of any of those offices.

The proposed rule provides an avenue for decisions made by the various offices within Indian Affairs to be appealed. Subject to any exceptions to this part and other applicable law or regulation, an individual may appeal any discrete written decision made by a decision-maker that adversely affects his or her legally protected interests, including a determination by the decision-maker that he or she lacks the authority to take the action that was requested. The proposed rule also contains a chart identifying actions that are not appealable under this part because those actions are appealable under some other part in title 25 of the CFR, or under provisions in title 5, 41, 42, or 48 of the CFR.

Under the IBIA's current regulations, the IBIA's general appellate authority is limited to decisions by BIA officials. 43 CFR 4.1(b)(2); 4.330. Therefore, the proposed part 2 regulations vest AS–IA with appellate authority over decisions by Indian Affairs officials who are not within the BIA. If IBIA's jurisdictional scope is expanded in the future, the Assistant Secretary may consider revising part 2 to vest in the IBIA jurisdiction over appeals from decisions by Indian Affairs officials who are not within the BIA.

In an effort to provide further clarity for the public, the regulations provide the precise language for the notice of appeal rights that must be included in decisions that are appealable under this part. The proposed rule states that a copy of an appealable decision will be mailed to all known interested parties at their address of record.

B. Subpart B—Appealing Administrative Decisions

This proposed subpart aims to provide clarity regarding whether you have standing to appeal a decision, whether you are required to have a lawyer represent you to file an appeal, and timeframes for filing appeals. The subpart provides a chart at § 2.202 that clarifies who a decision-maker is and who would be the reviewing official responsible for reviewing an appeal of the decision. Deadlines are discussed in detail with explanations about how those deadlines are calculated and how appeals are to be filed.

The proposed rule also provides detailed information on how to submit a notice of appeal and includes a list of what information must be included in a notice of appeal. There is an explanation of who must receive copies of the notice of appeal, the deadlines for interested parties to file responses, and the information that a response must contain. The proposed rule details the role of the decision-maker in the appeals process, which is to compile the administrative record and provide it to the reviewing official.

C. Subpart C—Effectiveness and Finality of Decisions

This proposed subpart clarifies when an agency action is effective and when it becomes a final agency action (with definitions for both of those terms). The proposed rule aims to reflect IBIA case law interpreting the current regulations.

D. Subpart D—Appeal Bonds

This proposed subpart provides that an interested party (as defined in the proposed regulations) may request an appeal bond where the delay caused by an appeal may result in a measurable and substantial financial loss or damage to a trust asset that is the subject of the appeal. The subpart also states that the reviewing official may on his or her own initiative require an appeal bond be posted. Currently the regulations permit appeal bonds, but do not specify what

is an acceptable appeal bond. The proposed rule details acceptable forms of appeal bonds and states that the bond must have a market value at least equal to the total amount of the bond. The proposed rule makes clear that a decision on an appeal bond cannot itself be appealed.

E. Subpart E—Deciding Appeals

This proposed subpart provides information concerning consolidation of appeals, partial implementation of appealed decisions, withdrawal of appeals, dismissal of appeals, and applicable deadlines.

When assessing an appeal, the reviewing official will consider all relevant documents submitted by the decision-maker and the participants that were filed within the applicable deadlines, the applicable laws, regulations, Secretarial Orders, Solicitor's Opinions, policies, implementing guidance, and prior judicial and administrative decisions that are relevant to the appeal.

The proposed subpart includes a chart at § 2.507 that provides details concerning who is a reviewing official and who will be the official responsible for considering an appeal of the reviewing official's decision. There is specific language stating that AS–IA may assume jurisdiction over an appeal to the IBIA within 40 days from the date that the IBIA received the appeal. The proposed rule provides clear language stating that interested parties may not petition AS–IA to take jurisdiction over an appeal. The rule sets forth the process for AS–IA to decide an appeal when jurisdiction is assumed from the IBIA.

These regulations do not impact the power of the Secretary or the Director of the Office of Hearings and Appeals to take jurisdiction over an appeal pursuant to 43 CFR 4.5.

F. Subpart F—Appealing Inaction of an Agency Official

This proposed subpart sets out a process by which a person can attempt to compel an agency official's action where there has been inaction. The current regulations require an individual to notify the official of their inaction, require the individual to submit certain documentation, and require the official to provide a decision within 10 day of receipt or provide a reasonable time period to issue a decision not to exceed 60 days. The proposed rule expands the time period for the official to issue a response from 10 days to 15 days. The 60-day deadline for the reviewing official's decision does not change.

The proposed rule then provides the appropriate chain of command for the Indian Affairs official so that individuals know to whom to submit their appeal of inaction. The rule also states that continued inaction is grounds for an appeal. The proposed rule establishes deadlines for each level of appeal. The rule states that if you exhaust the provisions of this subpart without obtaining a decision, the inaction is considered a final agency action. The rule clearly states that inaction by the IBIA and AS–IA is not appealable under this part.

G. Subpart G—Special Rules Regarding Recognition of Tribal Representatives

This proposed subpart sets out an appeals process differing in some ways from the process in the rest of proposed part 2, to shorten the time frames for appeals of BIA tribal representative recognition decisions. Pursuant to the proposed subpart, a reviewing official's decision is immediately effective, but not final for the Department. The proposed subpart provides that an interested party may elect to pursue further administrative review, or file an APA challenge in Federal court.

H. Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance

This proposed subpart sets out a process by which Tribal or Individual Indian Money (IIM) account holders may dispute the accuracy of account balances contained within a Statement of Performance. Presently there is no opportunity for account holders to question their account balance administratively.

Currently, account holders receive a Statement of Performance at least each quarter. In limited circumstances, account holders may only receive a Statement of Performance annually based upon limited activity. The Statement of Performance contains specific information: (1) the source, type, and status of the funds; (2) the beginning balance; (3) the gains and losses; (4) receipts and disbursements; and (5) the ending balance. If an account holder believes that the balance contained within the Statement of Performance is not accurate, this subpart will provide them with an opportunity to dispute the accuracy. The appeal process must be initiated within 60 calendar days of the statement date located on the Statement of Performance.

This subpart is designed to provide an account holder with an opportunity to submit to the deciding official an objection to the Statement of Performance. The deciding official is required to acknowledge receipt of the account holder's objection within 10 calendar days. The deciding official will review the information contained within the objection, make a determination about the accuracy of the account balance, and issue a decision on the objection within 30 calendar days from the date of receipt of your objection. The account holder then has an opportunity to submit an appeal of that decision to the Director, Bureau of Trust Funds Administration. This appeal must be filed within 30 calendar days of the issuance of the decision being appealed. The Director, Bureau of Trust Funds Administration will issue a ruling within 30 calendar days of the receipt of the account holder's appeal. The account holder may then appeal the Director, Bureau of Trust Funds Administration ruling to the AS–IA. AS–IA will make a final decision on the account holder's appeal.

Statements of Performance and decisions rendered pursuant to this subpart are deemed accurate and complete when the deadline for submitting an objection to the Statement of Performance or an appeal to the decision on an objection has expired and the account holder has not submitted an objection or an appeal.

The proposed rule also notes that, if a Tribe has entered into a settlement with the United States and that settlement contains language concerning the challenge of a Statement of Performance, the language in the settlement agreement will control over these regulations.

This proposed subpart applies only to the data on the Statement of Performance itself. If an account holder wants to challenge the underlying lease that generated the proceeds deposited into their trust account, that challenge must be made (using the process in subpart A at § 2.103 and subpart B) to the individual BIA Agency or Region that approved the lease.

I. Subpart I—Alternative Dispute Resolution

The Secretary established the Office of Collaborative Action and Dispute Resolution (CADR) in 2001. The Department has embraced alternative dispute resolution as an option in certain circumstances where the parties agree to participate. Adding this subpart to the part 2 regulations reaffirms the Department's commitment to providing another avenue to resolve disputes between the Department and parties.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant. Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would only affect internal agency processes.

C. Congressional Review Act (CRA)

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act of 1995

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

E. Takings (E.O. 12630)

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rulemaking, if adopted, does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required because this proposed rule only affects internal agency processes for appeals of actions taken by officials subordinate to the Assistant Secretary—Indian Affairs.

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

This rule complies with the requirements of Executive Order 12988. This rule:

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

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

H. Consultation With Indian Tribes (E.O. 13175)

The Department strives to strengthen its nation-to-nation relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally-recognized Indian Tribes that will result from this rule.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

J. National Environmental Policy Act (NEPA)

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(l)(B)), and 13563 (section l(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 2

Administrative practice and procedure, Indians-tribal government.

■ For the reasons stated in the preamble, the Bureau of Indian Affairs, Department of the Interior, proposes to revise 25 CFR part 2 to read as follows:

PART 2—APPEALS FROM ADMINISTRATIVE DECISIONS

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2.102 What may I appeal under this part?
2.103 Are all appeals subject to this part?
2.104 How will I know what decisions are appealable under this part?
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Subpart F—Appealing Inaction of an Agency Official

2.600 May I compel an agency official to take action?
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2.603 How do I submit an appeal of inaction?
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2.606 May I appeal inaction by a reviewing official on an appeal from a decision?
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Subpart G—Special Rules Regarding Recognition of Tribal Representatives

2.700 What is the purpose of this subpart?
2.701 May a Local Bureau Official's decision to recognize, or decline to recognize, a Tribal representative be appealed?
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Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance

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Subpart I—Alternative Dispute Resolution

2.900 Is there a procedure other than a formal appeal for resolving disputes?
2.901 How do I request alternative dispute resolution?
2.902 When do I initiate alternative dispute resolution?
2.903 What will Indian Affairs do if I request alternative dispute resolution?

Authority: 43 U.S.C. 1457; 25 U.S.C. 9; 5 U.S.C. 301.

Subpart A—Purpose, Definitions, and Scope of This Part

§ 2.100 What is the purpose of this part?

If you are adversely affected by certain decisions of a Bureau of Indian Affairs (Bureau) official, you can challenge (appeal) that decision to a higher authority within the Department of the Interior (Department) by following the procedures in this part. Except as otherwise provided in this part or in other applicable laws and regulations, you must exhaust the appeal mechanisms available under this part before you can seek review in a Federal district court under the Administrative Procedure Act (5 U.S.C. 704).

§ 2.101 What terms do I need to know?

Administrative record means all documents and materials that were considered directly or indirectly, or were presented for consideration, in the course of making the decision that is the subject of the appeal.

Adversely affected means the decision on appeal has caused or is likely to cause injury to a legally protected interest.

Agency means the Department of the Interior, inclusive of all its offices and bureaus.

Appeal means:

(1) A written request for administrative review of a decision-maker's decision or inaction that is claimed to adversely affect the interested party making the request; or

(2) The process you must follow when you seek administrative review of a decision-maker's decision or inaction.

Appellant means the person or entity who files an appeal.

AS–IA means the Assistant Secretary—Indian Affairs, Department of the Interior. AS–IA also means the Principal Deputy Assistant Secretary—Indian Affairs or other official delegated the authority of the AS–IA when the office of the AS–IA is vacant, when the AS–IA is unable to perform the functions of the office, or when the AS–IA is recused from the matter.

BIA means the Bureau of Indian Affairs.

BIE means the Bureau of Indian Education.

BTFA means the Bureau of Trust Funds Administration.

Days mean calendar days, unless otherwise provided. Days during which the agency is closed because of a lapse in appropriations do not count as days for purposes of calculating deadlines for actions by Federal officials under this part.

Decision means an agency action that permits, approves, or grants permission, requires compliance, or grants or denies requested relief.

Decision-maker means the Indian Affairs official whose decision or inaction is being appealed.

Effective means that the decision will be implemented by the Department.

Final agency action means a decision that represents the consummation of the agency's decision-making process and is subject to judicial review under 5 U.S.C. 704. Final agency actions are immediately effective unless the decision provides otherwise.

IBIA means the Interior Board of Indian Appeals within the Office of Hearings and Appeals.

IED means the Office of Indian Economic Development

Indian Affairs means all offices and personnel subject to the authority of the AS–IA.

Interested party means a person or entity whose legally protected interests are adversely affected by the decision on appeal or may be adversely affected by the decision of the reviewing official.

Local Bureau Official (''LBO'') means the Superintendent, Field Representative, or other BIA official who serves as the primary point of contact between BIA and a Tribe or individual Indian.

Notice of Appeal (''NOA'') means a written document that an appellant files with the reviewing official and serves on the decision-maker and interested parties.

OIG means the Office of Indian Gaming.

OJS means the Office of Justice Services.

OSG means the Office of Self Governance.

Participant means the appellant, any interested party who files a response as provided for in § 2.209, and any Tribe that is an interested party.

Person means an individual human being or other entity.

Reviewing official means an Indian Affairs official who is authorized to review and issue decisions on appeals filed under this part, and the IBIA, unless otherwise provided in this part.

Trust Asset means trust lands, natural resources, trust funds, or other assets held by the Federal Government in trust for Indian Tribes and individual Indians.

We, us, and *our,* mean the officers and employees of Indian Affairs.

You (in the text of each section) and *I* (in the section headings) mean an interested party who is considering, pursuing, or participating in an administrative appeal as provided for in this part.

§ 2.102 What may I appeal under this part?

(a) Subject to the exceptions in this part and other applicable law or regulation, you may appeal:

(1) Any discrete, written decision made by a decision-maker that adversely affects you, including a determination by the decision-maker that she or he lacks either the duty or authority to take the action that you have requested; and

(2) Inaction by Indian Affairs officials by following the procedures in subpart F of this part.

(b) You may not appeal in the following circumstances.

(1) You may not separately appeal the issuance of component documents of the administrative record, including, but not limited to, appraisals or market studies, reports, studies, investigations, notices of impoundment or public sale, recommendations, or National Environmental Policy Act documents. The adequacy of these types of documents cannot be challenged unless and until an appealable decision is made in reliance upon these documents.

(2) You may not appeal an agency's notification to you that it is pursuing or is considering pursuing action against you in Federal district court, unless separate regulations in this title require you to follow administrative appeal procedures in accordance with this part or other regulations such as those listed in § 2.103 to appeal the notification. Such notifications include, but are not limited to, notices that could lead the agency to pursue actions for money damages against you, such as actions for trespass, ejectment, eviction, nuisance, conversion, or waste to Indian land under the Federal common law or statute.

(3) You may not appeal final agency actions (though you may be able to seek review in Federal district court).

(c) Any challenge to preliminary, procedural, or intermediate actions by a reviewing official must be submitted to the reviewing official prior to that official's issuing the decision. The reviewing official will address such

challenges in the final decision. Such a challenge is not a separate appeal.

§ 2.103 Are all appeals subject to this part?

Not all appeals are subject to this part. Decisions by some Indian Affairs officials may be appealed to the Interior Board of Indian Appeals, subject to the regulations at 43 CFR part 4. Other regulations govern appeals of administrative decisions regarding certain topics. Table 1 to this section lists some decision topics that are subject to different appeals regulations, in whole or in part, and where to find those regulations.

TABLE 1 TO § 2.103

For appeal rights related to . . .	Refer to . . .
Access to student records	25 CFR part 43.
Acknowledgment as a federally recognized Indian Tribe	25 CFR part 83.
Adverse employment decisions against Bureau of Indian Affairs employees	43 CFR part 20.
Any decision by a Court of Indian Offenses	25 CFR part 11.
Appointment or termination of contract educators	25 CFR part 38.
Debts owed by Federal employees	5 CFR part 550.
Determination of heirs, approval of wills, and probate proceedings	43 CFR part 4, 43 CFR part 30, 25 CFR part 16, 25 CFR part 17.
Indian School Equalization Program student count	25 CFR part 39.
Eligibility determinations for adult care assistance, burial assistance, child assistance, disaster, emergency and general assistance, and the Tribal work experience program.	25 CFR part 20.
Certain adverse enrollment decisions	25 CFR part 62.
Freedom of Information Act requests	43 CFR part 2.
Grazing permits for trust or restricted lands	25 CFR part 166.
Indian Reservation Roads Program funding	25 CFR part 170.
Leasing of trust or restricted lands	25 CFR part 162.
Matters subject to the Contract Disputes Act	48 CFR part 33, 48 CFR part 6101.
Privacy Act requests	43 CFR part 2.
Restricting an Individual Indian Money account	25 CFR part 115.
Rights-of-way over or across trust or restricted lands	25 CFR part 169.
Secretarial elections	25 CFR part 81
Self-Determination contracts	25 CFR part 900.
Self-Governance compacts	25 CFR part 1000.
Student rights and due process	25 CFR part 42.
Tribally controlled colleges and universities	25 CFR part 41.
Departmental quarters	41 CFR part 114.

§ 2.104 How will I know what decisions are appealable under this part?

(a) When an Indian Affairs official makes a decision that is subject to an appeal under this part, she or he will transmit the decision to interested parties by U.S. Mail or, upon request, by electronic mail. Unless the decision is immediately effective, and except for decisions that are subject to appeal to IBIA, the official will include the following notice of appeal rights at the end of the decision document:

This decision may be appealed by any person or entity who is adversely affected by the decision. Appeals must be submitted to the—[appropriate reviewing official]—at—[address, including email address]. The appeals process begins when you file with the reviewing official a notice of appeal, complying with the provisions of 25 CFR 2.205—2.207.

Deadline for Appeal. Your notice of appeal must be submitted in accordance with the provisions of 25 CFR 2.214 within 30 days of the date you receive notice of this decision pursuant to 25 CFR 2.203. If you do not file a timely appeal, you will have failed to exhaust administrative remedies as required by 25 CFR part 2. If no appeal is timely filed, this decision will become effective at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Appeal Contents and Packaging. Your notice of appeal must comply with the requirements in 25 CFR 2.214. It must clearly identify the decision being appealed. If possible, attach a copy of this decision letter. The notice and the envelope in which it is mailed should be clearly labeled, ''Notice of Appeal.'' If electronic filing is available, ''Notice of Appeal'' must appear in the subject line of the email submission. Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them and this office copies of the notice by any of the mechanisms permitted for transmitting the NOA to the BIA.

Where to Send Copies of Your Appeal.

[*For appeals to IA officials, not IBIA*]: In addition to sending your appeal to—[the reviewing official],— you must send a copy of your appeal to this office at the address on the letterhead—[if an email address is included in the letterhead, you may submit your appeals documents via email, with ''Notice of Appeal'' in the subject line of the email submission].

[*For appeals to the IBIA*]: If the reviewing official is the IBIA, you must also send a copy of your appeal to the AS–IA and to the Associate Solicitor, Division of Indian Affairs. If the reviewing official is the IBIA, your appeal will be governed by the IBIA's regulations, at 43 CFR part 4.

Assistance. If you can establish that you are an enrolled member of a federally recognized Tribe and you are not represented by an attorney, you may, within 10 days of receipt of this decision, request assistance from this office in the preparation of your appeal. Our assistance is limited to serving your filings on the interested parties and allowing limited access to government records and other documents in the

possession of this office. We cannot obtain an attorney for you or act as your attorney on the merits of the appeal.

(b) If a decision-maker issues a decision that does not include notice of appeal rights, the decision-maker will provide written notice of appeal rights and the decision may be appealed as follows:

(1) If the decision-maker discovers within 30 days of issuing the decision that the decision did not include notice of appeal rights, then the decision-maker will provide written notice of appeal rights to interested parties, and inform them that they may appeal the decision within 30 days from the date of receipt of the notice. If no appeal is filed by the new deadline, the interested parties will have failed to exhaust administrative remedies as required by this part and the decision will become effective.

(2) If the decision-maker does not discover within 30 days of issuing the decision that the decision did not include notice of appeal rights and no administrative appeal is filed within 30 days of the issuance of the decision, then the decision becomes effective 31 days after it was issued.

(3) If the decision-maker discovers, more than 30 days but less than 365 days, after the date of the decision that the decision did not include notice of appeal rights, then the decision-maker will immediately notify the interested parties that the decision was issued without the requisite notice of appeal rights. If the decision has not actually been implemented, the decision-maker shall stay the implementation of the decision and reissue the decision with the appeal rights notice as provided in this section. If the decision has been implemented, the decision maker shall notify the interested parties of that fact, and notify them that they may file a challenge to the decision in Federal court, or pursue the administrative appeal process set out in this section.

§ 2.105 Who will receive notice of decisions that are appealable under this part?

Except as provided in other regulations governing specific types of decisions (see § 2.103), the decision-maker will transmit a copy of all appealable decisions to all known interested parties at the addresses the decision-maker has on file for them.

§ 2.106 How does this part comply with the Paperwork Reduction Act?

The information collected from the public under this part is cleared and covered by Office of Management and Budget (OMB) Control Number 1076–NEW. Please note that a Federal Agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Subpart B—Appealing Administrative Decisions

§ 2.200 Who may appeal a decision?

You have a right to appeal a decision made by an Indian Affairs official if you can show, through credible statements, that you are adversely affected by the decision.

§ 2.201 Do I need a lawyer in order to file a document in an appeal?

No. You may represent yourself. If you are represented by someone else, your representative must meet the standards established in 43 CFR part 1 and must provide documentation of his or her authority to act on your behalf.

§ 2.202 Who decides administrative appeals?

Except where a specific section of this part sets out a different appellate hierarchy, table 1 to this section identifies the reviewing officials for appeals under this part:

TABLE 1 TO § 2.202

Official issuing the decision	Reviewing official or IBIA
Agency Superintendent or Field Representative, BIA	Regional Director, BIA
Regional Director, BIA	IBIA.
District Commander, OLES	Deputy Director BIA, Office of Justice Services (OJS).
Deputy Director, BIA	Director, BIA.
Director, BIA	IBIA.
Principal of a Bureau operated School	Education Program Administrator.
Education Program Administrator	Associate Deputy Director, BIE.
Associate Deputy Director, BIE	Director, BIE.
President of a Bureau operated Post-Secondary School	Director, BIE.
Director, BIE	AS–IA.
BTFA decision-maker	Director, BTFA.
Director of: OIG; IED; OSG	Appropriate Deputy Assistant Secretary—Indian Affairs.
Deputy Assistant Secretary—Indian Affairs; Director, BTFA	AS–IA.

§ 2.203 How long do I have to file an appeal?

(a) You have 30 days after you receive a copy of the decision you are appealing to file a Notice of Appeal, except as provided in § 2.104(b).

(b) We will presume that you have received notice of the decision 10 days after the date that the decision was mailed to you, if the decision-maker mailed the document to the last address the decision-maker has on file for you.

(c) If the reviewing official receives proof that the document was delivered before the expiration of the 10-day period, you are presumed to have received notice on the date of delivery, and you have 30 days from that date to file an appeal.

§ 2.204 Will the reviewing official grant a request for an extension of time to file a Notice of Appeal?

No. No extensions of time to file a Notice of Appeal will be granted.

§ 2.205 How do I file a Notice of Appeal?

(a) To file a Notice of Appeal to an Indian Affairs official, you must submit the Notice of Appeal to the reviewing official identified in the decision document's notice of appeal rights, as prescribed in § 2.104. Your submission must comply with § 2.214.

(b) If you are appealing to the IBIA, you must comply with IBIA's regulations, set out at 43 CFR part 4.

§ 2.206 What must I include in my Notice of Appeal?

In addition to meeting the requirements of § 2.214, your Notice of Appeal must include an explanation of how you satisfy the requirements of standing set out in § 2.200 and a copy of the decision being appealed, if possible.

§ 2.207 Do I have to send the Notice of Appeal to anyone other than the reviewing official?

(a) Yes. You must provide copies of your Notice of Appeal to the decision-maker and all interested parties known to you. If you are an individual Indian and are not represented by an attorney, you may request that we make the copies for you and mail your appeal documents to all interested parties.

(b) If you are appealing to the IBIA, you must also send a copy of your Notice of Appeal to the AS–IA and to the Associate Solicitor for Indian Affairs at the same time you send the appeal to the IBIA.

§ 2.208 What must I file in addition to the Notice of Appeal?

No later than 10 days after filing your Notice of Appeal, you must submit to the reviewing official, the decision-maker, and interested parties a statement of reasons that:

(1) Explains why you believe the decision was wrong;

(2) Identifies relevant information or evidence you believe the decision-maker failed to consider;

(3) Describes the relief you seek;

(4) Provides all documentation you believe supports your arguments; and

(5) Complies with the requirements of § 2.214.

§ 2.209 Who may file a response to the statement of reasons?

Any interested party may file a response to the statement of reasons, thereby becoming a participant. The decision-maker may also file a response to the statement of reasons.

§ 2.210 How long does the decision-maker or an interested party have to file a response?

The decision-maker or an interested party has 30 days after receiving a copy of the statement of reasons to file a response.

§ 2.211 What must a response to the statement of reasons include?

(a) A response to a statement of reasons must comply with § 2.214. In addition, the response must:

(1) State when the interested party or decision-maker submitting the response received the statement of reasons;

(2) Explain how the interested party submitting the response is adversely affected by the decision being appealed or may be adversely affected by the reviewing official's decision; and

(3) Explain why the interested party or decision maker submitting the response believes the arguments made in the appellant's Notice of Appeal and statement of reasons are right or wrong.

(b) The response may also include statements and documents supporting the position of the interested party or decision-maker submitting.

§ 2.212 Will the reviewing official accept additional briefings?

(a) Yes. The appellant may file a reply with the reviewing official within 21 days of receiving a copy of any response brief.

(b) Any interested party may, within 10 days after receiving the table of contents of the administrative record (AR), request copies of some or all of the AR. Such party may submit a supplemental brief within 10 days after receiving the requested documents.

(c) Any interested party may ask the reviewing official for permission to file additional briefing. The reviewing official's decision on whether to grant the request is not appealable.

(d) No documents other than those specified in this part and those permitted by the reviewing official under paragraph (c) of this section may be filed.

(e) The reviewing official will not consider documents not timely filed.

§ 2.213 What role does the decision-maker have in the appeal process?

(a) The decision-maker is responsible for:

(1) Compiling the administrative record;

(2) Sending the administrative record to the reviewing official within 20 days of the decision-maker's receipt of the Notice of Appeal; and

(3) Making available a copy of the administrative record for review by interested parties. When the decision-maker transmits the administrative record to the reviewing official, the decision-maker shall transmit to the interested parties a copy of the table of contents of the administrative record. Interested parties may view the administrative record at the office of the decision-maker. Interested parties may request copies of all or part of the administrative record. Where reproduction and transmission of the administrative record imposes costs on BIA exceeding $50, BIA may charge the requestor for those costs. BIA shall not incur such costs without the requestor's approval. The decision-maker shall respond to requests for documents in the administrative record within 30 days of receipt of the request, either by providing the requested documents or identifying a date by which the documents shall be provided. The decision-maker shall redact the documents provided to the requester as required by law (*e.g.,* the Privacy Act). The decision-maker may withhold information in the administrative record, invoking privileges available in civil litigation; such withholding being subject to judicial review. Provision of documents in the administrative record to an interested party under this part is not governed by the Freedom of Information Act. Failure of a decision-maker to respond to a request for documents under this section may be appealed as provided in subpart F of this part.

(b) If a decision-maker believes that a compacting or contracting Tribe possesses Federal records that are relevant to the analysis of the appeal, the decision-maker may request that the Tribe produce the documents. Within two weeks of receiving the decision-maker's request, the Tribe shall either provide the requested documents to the decision-maker or explain why it is not providing the documents. This section does not apply to Tribal records. See 25 U.S.C. 5329(b).

(c) The decision-maker may file a response to the statement of reasons.

§ 2.214 What requirements apply to my submission of documents?

Except where a section in this part (or 43 CFR part 4 with respect to submissions to the IBIA) sets out other requirements, you must comply with the following provisions:

(a) *Information required in every submission.* (1) The submitter's contact information, consisting of name, mailing address, telephone number, and email address if any; or the name, mailing address, telephone number, and email address of the submitter's representative;

(2) A certificate of service by the submitter that the submission was served on all interested parties known to the submitter, a list of parties served, and the date and method of service; and

(3) The signature of the interested party or his or her representative.

(b) *Filing documents.* A document is properly filed with an agency official by:

(1) Personal delivery, either hand delivery by an interested party or via private mail carrier, during regular business hours to the person designated to receive mail in the immediate office of the official;

(2) United States mail to the facility officially designated for receipt of mail addressed to the official. The document is considered filed by mail on the date that it is postmarked; and

(3) Electronic mail (email) is permissible only in accordance with the provisions in paragraph (i) of this section.

(c) *Service generally.* A copy of each document filed in a proceeding under this part must be served by the filing party on the relevant agency official(s) and all other known interested parties. If an interested party is represented by an attorney, service of any document shall be made upon such attorney. Where an interested party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(d) *Record address.* Every person who files a document in an appeal shall, at the time of the initial filing in the matter, provide his or her contact information. Such person must promptly inform the decision-maker or reviewing official of any change in address. Any successors in interest of such person shall promptly inform the decision-maker or reviewing official of his or her interest in the matter and provide contact information. agency officials and other parties to an appeal shall have fulfilled their service requirement by transmitting documents to a party's last known address.

(e) *Computation of time for filing and service.* Documents must be filed within the deadlines established in this part (or by 43 CFR part 4 for filings submitted to the IBIA), or as established by Department officials in a particular matter. Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served, or the day of any other event after which the designated period of time begins to run, is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other day on which the office to which the document is addressed is not conducting business, in which event the period runs until the end of the next day on which the office to which the document is addressed is conducting business. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days shall be excluded in the computation.

(f) *Extensions of time.* (1) The deadline for filing and serving any document may be extended by the agency official before whom the proceeding is pending, except that the deadline for filing a Notice of Appeal may not be extended.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document.

(3) A request for extension of time must be filed with the same office as the document that is the subject of the request.

(g) *Formatting.* All submissions, except exhibits, must be typed in 12-point font, (double-spaced) using a standard 8½- by 11-inch word processing format, except that a document submitted by an interested party who is not represented by an attorney may be hand-written. An agency official may decline to consider an illegible hand-written submission. An agency official who declines to consider a hand-written submission shall promptly notify the submitter of the decision not to consider the submission.

(h) *Page limits for particular filings are set out in the sections addressing those filings.* Attachments and exhibits not drafted by or for the submitter do not count toward the page limit.

(i) *Submitting and serving documents by email.* Submitting documents by email to an agency official is only permitted when the receiving official has notified the known interested parties that email submissions are acceptable. Documents may only be served via email on interested parties who have stated, in writing, their willingness to accept service by email. No single email submission may exceed 10 megabytes (MB). Submissions may be divided into separate emails for purposes of complying with this requirement. Filings submitted by email shall be in PDF format. Email submissions that arrive at the agency official's office after 5:00 p.m. shall be deemed to have arrived on the next work day.

(j) *Non-compliant submissions.* An agency official may decline to consider a submission that does not comply with the requirements in this section, or take other action she/he deems appropriate. A non-compliant submission is nonetheless a Federal record, and must be preserved as other Federal records.

Subpart C—Effectiveness and Finality of Decisions

§ 2.300 When is a decision effective?

(a) Agency decisions that are subject to further administrative appeal become effective when the appeal period expires without an appeal being filed, except as provided elsewhere in this chapter.

(b) When an agency decision is effective pursuant to paragraph (c) of this section or § 2.714, the administrative appeal will proceed unless an interested party challenges the agency decision in Federal court.

(c) Agency decisions that are subject to further administrative appeal and for which an appeal is timely filed may be made immediately effective by the reviewing official based on public safety, Indian education safety, protection of trust resources, or other public exigency.

(1) A decision-maker whose decision has been appealed may ask the reviewing official to make the appealed decision immediately effective or the reviewing official may make the appealed decision immediately effective on his or her own initiative.

(2) A reviewing official's decision to make an appealed decision immediately effective must explain why public safety, Indian education safety, protection of trust resources, or other public exigency justifies making the decision immediately effective. Any challenge to the decision to put an appealed decision into immediate effect shall be incorporated into the ongoing appeal.

(3) A decision by a reviewing official (other than the IBIA) to place an appealed decision into immediate effect must be in writing and include the following notice of appeal rights:

As explained above, based on concerns about public safety, Indian education safety, protection of trust resources, or other exigency, I have placed the challenged decision into immediate effect, as authorized by 25 CFR 2.300. I will continue with my review of the matter on appeal unless and until an interested party files suit in federal court challenging the agency decision.

§ 2.301 When is a decision a final agency action?

An agency decision that is not subject to administrative appeal is a final agency action and immediately effective when issued unless the decision provides otherwise.

Subpart D—Appeal Bonds

§ 2.400 When may the reviewing official require an appeal bond?

(a) Any interested party who may suffer a financial loss or damage to Indian Trust Assets as a result of an appeal may ask the reviewing official to require the appellant to post an appeal bond.

(b) The reviewing official may decide on his or her own initiative to require an appeal bond in accordance with this subpart.

§ 2.401 How will the reviewing official determine whether to require an appeal bond?

The reviewing official may require an appeal bond if the party requesting the appeal bond can demonstrate that the delay caused by the appeal may result

in a measurable and substantial financial loss or damage to Indian Trust Assets. The amount of the appeal bond will be commensurate with the estimated financial loss or damage to Indian Trust Assets.

§ 2.402 What form of appeal bond will the reviewing official accept?

The reviewing official will only accept an appeal bond that has a market value at least equal to the total bond amount in one, or a combination of, the following forms.

(a) Negotiable U.S. Treasury securities, accompanied by a statement granting the AS–IA full authority to sell the securities and direct the proceeds to the party who was harmed by the appellant's unsuccessful appeal.

(b) Certificates of deposit that indicate on their face that AS–IA approval is required prior to redemption by any party.

(c) An irrevocable letter of credit issued by a federally insured financial institution and made payable to the Office of the AS–IA. The letter of credit must have an initial expiration date of not less than two years from the date of issuance and be automatically renewable for at least one year.

(d) A surety bond issued by a company approved by the U.S. Department of the Treasury.

§ 2.403 May I appeal the decision whether to require an appeal bond?

No. The reviewing official's decision whether to require an appeal bond is not appealable.

§ 2.404 What will happen to my appeal if I fail to post a required appeal bond?

If you are required to post a bond and fail to do so within the time allowed by the reviewing official to post the bond, the reviewing official will dismiss your appeal.

§ 2.405 How will the reviewing official notify interested parties of the decision on a request for an appeals bond?

When the reviewing official decides whether to require an appeal bond, she or he will provide the interested parties with written notice of the decision.

Subpart E—Deciding Appeals

§ 2.500 May an appeal be consolidated with other appeals?

Yes. The reviewing official may, either on his or her own initiative or upon request by the decision-maker or interested party, consolidate identical or similar appeals filed by you and others or consolidate multiple appeals that you file that also contain identical or similar issues.

§ 2.501 May an appealed decision be partially implemented?

Yes. The reviewing official may identify any parts of a decision-maker's decision that have not been appealed, to allow the decision-maker to implement those parts of the decision. The reviewing official will notify interested parties of a determination to implement unchallenged components of the decision-maker's decision. An interested party who disagrees with the reviewing official's determination may seek reconsideration by the reviewing official. A request for reconsideration must be filed within 15 days of issuance of the determination.

§ 2.502 May I withdraw my appeal once it has been filed?

Yes. You may withdraw your appeal at any time before the reviewing official issues a decision. To withdraw an appeal, you must write to the reviewing official and all participants stating that you want to withdraw your appeal. If you withdraw your appeal it will be dismissed by the reviewing official. While the dismissal of a withdrawn appeal is without prejudice, the appeals time frame set out in this part will be unaffected by a withdrawn appeal. Therefore, any refiling of a withdrawn appeal must be within the original filing deadline established pursuant to § 2.104.

§ 2.503 May an appeal be dismissed without a decision on the merits?

Yes, the reviewing official may dismiss an appeal without a decision on the merits when:

(a) You are late in filing your appeal;

(b) You lack standing because you do not meet the requirements of § 2.200 for bringing an appeal;

(c) You have withdrawn the appeal;

(d) You have failed to pay a required appeal bond;

(e) The reviewing official lacks the authority to grant the requested relief;

(f) If you are represented and your representative does not meet the standards established in 43 CFR part 1 related to eligibility to practice before the Department, and you have failed to substitute yourself or an eligible representative after being given an opportunity to do so; or

(g) The reviewing official determines there are other circumstances that warrant a dismissal and explains those circumstances in the dismissal order.

§ 2.504 What information will the reviewing official consider?

(a) The reviewing official will consider:

(1) The administrative record for the decision, prepared by the decision-maker under § 2.213;

(2) All relevant documents submitted by the decision-maker and participants that were filed in accordance with applicable deadlines; and

(3) Laws, regulations, Secretarial Orders, Solicitor's Opinions, policies, implementing guidance, and prior judicial and administrative decisions that are relevant to the appeal.

(b) If the reviewing official considers documentation that was not included in the administrative record, the reviewing official will:

(1) Provide a copy of that documentation to the decision-maker and interested parties; and

(2) Establish a schedule for the decision-maker and interested parties to review and comment on the documentation.

§ 2.505 When will the reviewing official issue a decision on an appeal?

(a) The reviewing official (other than the IBIA) will issue a written decision, including the basis for the decision, within 90 days after the latest of:

(1) The filing of the statement of reasons;

(2) The filing of any responses, replies, or supplemental briefs under §§ 2.209 through 2.212; or

(3) The filing of any comments on additional material under § 2.504(b).

(b) A reviewing official (other than the IBIA) may, for good cause and with notice to the decision-maker and participants, extend the deadline for the official's decision one time by no more than 90 days.

§ 2.506 How does the reviewing official notify the appellant and other interested parties of a decision?

The reviewing official will send the decision to the decision-maker and interested parties.

§ 2.507 How do I appeal a reviewing official's decision?

(a) To appeal a reviewing official's decision that is not a final agency action, you must file your appeal in accordance with the instructions for appeal contained in the decision.

(b) The decision will include instructions that briefly describe how to appeal the decision, to whom the appeal should be directed, and the deadline for filing an appeal, and will refer interested parties to the regulations governing the appeal.

(c) If you are appealing to the IBIA, you must comply with IBIA's regulations, set out at 43 CFR part 4.

(d) Except where a specific section of this part sets out a different appellate

hierarchy, table 1 to this paragraph (d) indicates the official to whom subsequent appeals should be addressed.

TABLE 1 TO PARAGRAPH (d)

Reviewing official (or IBIA) whose decision is being appealed	Official to whom the appeal is addressed
Regional Director	IBIA.
Principal of a Bureau operated school	Education Program Administrator.
Education Program Administrator	Associate Deputy Director, Bureau of Indian Education.
Associate Deputy Director, BIE	Director, BIE.
President of a Bureau operated post-secondary school	Director, BIE.
Deputy Director BIA, Office of Justice Services (OJS)	IBIA.
Director, BIE	AS–IA.
Director, BTFA	AS–IA.
Director, BIA	IBIA.
Deputy Assistant Secretary—Indian Affairs	AS–IA.
AS–IA	(Decision is final for the Department).
IBIA	(Decision is final for the Department).

§ 2.508 May the AS–IA take jurisdiction over an appeal to the IBIA?

Yes. The AS–IA has 40 days from the date on which the IBIA received your Notice of Appeal to take jurisdiction from the IBIA. The AS–IA will notify the IBIA in writing of the assumption of jurisdiction and request the administrative record of the appeal. At any time in the 40 days, the AS–IA may notify the IBIA that she or he is not going to take jurisdiction over an appeal, at which point the IBIA will assign a docket number to the appeal under its regulations in 43 CFR part 4. If the IBIA does not receive written notice from the AS–IA within the 40 day period of the AS–IA's intent to take jurisdiction over the appeal, the IBIA will assign a docket number to your appeal.

§ 2.509 May I ask the AS–IA to take jurisdiction over my appeal?

No. The AS–IA will not consider a request from any interested party to take jurisdiction over an appeal.

§ 2.510 How will the AS–IA handle my appeal?

If the AS–IA takes jurisdiction over your appeal, or if an appeal is made to the AS–IA in accordance with table 1 to paragraph (d) in § 2.507, the following procedures shall apply:

(a) Within 10 days of receipt of an appeal, or of assumption of jurisdiction over an appeal to the IBIA, the AS–IA shall transmit to the official who issued the decision being appealed and all known interested parties a notice that will include information on when and how to file briefs, access to the administrative record, and may include instructions for filing briefs via email.

(b) Briefs shall comply with § 2.214, and be submitted as follows, unless the AS–IA specifies otherwise:

(1) Initial briefs are invited from the appellant, all interested parties, and the official whose decision is on appeal. Initial briefs may not exceed 30 pages and shall be due within 21 days of the date of the AS–IA's notice. Initial briefs must include certification of service on the reviewing official and all other interested parties identified in the AS–IA's initial notice to interested parties;

(2) Answering briefs shall be due within 35 days of the date of the AS–IA's notice. Answering briefs shall not exceed 15 pages; and

(3) For good cause shown, the AS–IA may extend deadlines, may allow handwritten briefs, may provide for different page limits, and may permit submission of reply briefs.

(c) The AS–IA shall render a decision on the appeal within 60 days of the end of briefing. The AS–IA may, for good cause and with notice to the participants, extend the deadline for issuing a decision by no more than 60 days.

(d) The AS–IA may summarily affirm the decision of the official whose decision is on appeal based on the record before the official whose decision is on appeal.

(e) The AS–IA may delegate to the Principal Deputy Assistant Secretary—Indian Affairs the authority and responsibility for rendering a final agency decision on an appeal over which the AS–IA is exercising jurisdiction.

§ 2.511 May the Secretary decide an appeal?

Yes. Nothing in this part will be construed as affecting the Secretary's authority to take jurisdiction over an appeal as set out in 43 CFR 4.5(a).

§ 2.512 May the Director of the Office of Hearings and Appeals take jurisdiction over a matter?

Yes. Nothing in this part will be construed as affecting the authority vested in the Director of the Office of Hearings and Appeals to take jurisdiction over matters in front of the IBIA, as provided in 43 CFR 4.5(b).

Subpart F—Appealing Inaction of an Agency Official

§ 2.600 May I compel an agency official to take action?

(a) Yes. If a decision-maker fails to take action on a written request for action that you believe the decision-maker is required to take, you may make the decision-maker's inaction the subject of appeal.

(b) Before filing an appeal with the next official in the decision-maker's chain of command, you must:

(1) Send a written request to the decision-maker, asking that he or she take the action originally asked of him or her;

(2) Identify the statute, regulation, or other source of law that you believe requires the decision-maker to take the action being requested;

(3) Describe the interest adversely affected by the decision-maker's inaction, including a description of the loss, impairment or impediment of such interest caused by the inaction; and

(4) State that, unless the decision-maker either takes action on the written request within 15 days of receipt of your request, or establishes a date by which a decision will be made, you will appeal the decision-maker's inaction in accordance with this subpart.

(c) You must include a copy of your original request to the decision-maker, or other documentation establishing the date and nature of the original request.

§ 2.601 When must a decision-maker respond to a request to act?

A decision-maker receiving a request as specified in § 2.600 has 15 days from receiving the request to issue a written response. The response may be a decision, a procedural order that will

further the decision-making process, or a written notice that a decision will be rendered by a date no later than 60 days from the date of the request.

§ 2.602 What may I do if the decision-maker fails to respond?

If the decision-maker does not respond as provided for in § 2.601, you may appeal the decision-maker's continued inaction to the next official in the decision-maker's chain of command. For purposes of this subpart:

(a) BIA's chain of command is as follows:

(1) Local Bureau Official;

(2) Regional Director (find addresses on the Indian Affairs website, currently at *https://www.bia.gov/regional-offices*);

(3) Director, Bureau of Indian Affairs (1849 C Street NW, MS 4606, Washington, DC 20240); and

(4) Assistant Secretary—Indian Affairs (1849 C Street NW, MS 4660, Washington, DC 20240).

(b) BIE's chain of command is as follows:

(1) Principal of Bureau-operated school;

(2) Education Program Administrator;

(3) Associate Deputy Director, BIE;

(4) Director, BIE; and

(5) AS–IA.

(c) The Office of Justice Services' chain of command is as follows:

(1) Deputy Director BIA, Office of Justice Services;

(2) Director, BIA; and

(3) AS–IA

(d) You may appeal inaction by an official within the Office of the AS–IA to the AS–IA.

§ 2.603 How do I submit an appeal of inaction?

You may appeal the inaction of a decision-maker by sending a written ''appeal from inaction of an official'' to the next official in the decision-maker's chain of command. You must enclose a copy of the original request for decision to which the decision-maker has not responded and a copy of the request for decision that you sent to the decision-maker pursuant to § 2.600. If filing by email is permitted, ''Appeal of Inaction'' must appear in the subject line of the email submission.

§ 2.604 What will the next official in the decision-maker's chain of command do in response to my appeal?

An official who receives an appeal from the inaction of a decision-maker that complies with the requirements of this subpart will, within 15 days of receiving the appeal, formally direct the decision-maker to respond within 15 days of the decision-maker's receipt of the official direction. The official will send to all interested parties a copy of his or her instructions to the decision-maker.

§ 2.605 May I appeal continued inaction by the decision-maker or the next official in the decision-maker's chain of command?

Yes. If the official fails to timely direct the decision-maker to respond to the request for decision, or if the decision-maker fails to respond within the time frame identified by the official pursuant to § 2.604, you may appeal the continued inaction by either agency official to the next highest officer in the chain of command above both agency officials. Your appeal must be submitted as provided for in §§ 2.602 and 2.603. The official will respond as provided for in § 2.604.

§ 2.606 May I appeal inaction by a reviewing official on an appeal from a decision?

(a) Yes. If a reviewing official fails to take action on the appeal within the timeframes established in § 2.505, any interested party may appeal the reviewing official's inaction as provided for in this subpart.

(b) Inaction by the IBIA or by the AS–IA is not subject to appeal under this part.

§ 2.607 What happens if no official responds to my requests under this subpart?

If you exhaust all the provisions of this subpart and the Department has still not taken action on your request, the Department's inaction may be subject to judicial review pursuant to 5 U.S.C. 706(1).

Subpart G—Special Rules Regarding Recognition of Tribal Representative

§ 2.700 What is the purpose of this subpart?

The purpose of this subpart is to expedite administrative review of a Bureau decision to recognize, or to decline to recognize, a Tribal representative. Provisions in subparts A through F of this part also apply, except that, if a provision in this subpart conflicts with a provision in subparts A through F of this part, the provision in this subpart will govern.

§ 2.701 May a Local Bureau Official's decision to recognize, or decline to recognize, a Tribal representative be appealed?

Yes. A written decision by the LBO to recognize or decline to recognize a Tribal representative is appealable.

§ 2.702 How will I know what decisions are appealable under this subpart?

When an LBO issues a Tribal representative recognition decision, the official will include the following notice of appeal rights at the end of the decision document:

YOU HAVE 10 DAYS TO APPEAL THIS DECISION.

This decision may be appealed to the—[appropriate reviewing official. If the LBO is a Regional Director, the reviewing official is the Director of the BIA]—at—[address, including email address if filing by email is permitted].

Deadline for Appeal. Your notice of appeal must be submitted as provided for in 25 CFR 2.214 within *10 (ten)* days of the date you receive notice of this decision. Your notice of appeal must explain how you satisfy the standing requirements in 25 CFR 2.200. If you do not file a timely appeal, you will have failed to exhaust administrative remedies required by these regulations. If no appeal is timely filed, this decision will become effective at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

§ 2.703 How do I file a Notice of Appeal of a Tribal representative recognition decision?

To file a Notice of Appeal, you must submit, as provided in § 2.214, the Notice of Appeal to the reviewing official identified in the decision document's notice of appeal rights, as prescribed in § 2.702.

§ 2.704 How long do I have to file an appeal of a Tribal representative recognition decision?

You have 10 days after you receive the Tribal representative recognition decision to file a Notice of Appeal.

§ 2.705 Is there anything else I must file?

Yes. You must file a statement of reasons setting out your arguments in support of your appeal, and include any supporting documentation you wish to present to the reviewing official. Your statement of reasons must comply with the requirements set out in § 2.214.

§ 2.706 When must I file my statement of reasons?

You must submit your statement of reasons to the reviewing official and interested parties no later than 10 days after filing your Notice of Appeal.

§ 2.707 May the LBO and interested parties file a response to the statement of reasons?

Yes. Any interested party, as well as the LBO, may file a response to the statement of reasons, thereby becoming a participant.

§ 2.708 How long do interested parties have to file a response?

(a) The LBO and any interested party have 10 days after receiving a copy of the statement of reasons to file a response, which must be served on the appellant, the LBO and other interested parties.

(b) For good cause shown, the reviewing official may allow the appellant to file a reply brief.

§ 2.709 What will the LBO do in response to my appeal?

Upon receipt of your Notice of Appeal, the LBO must transmit, within 15 days, the administrative record to the reviewing official and transmit your Notice of Appeal to the AS–IA.

§ 2.710 When will the reviewing official decide a Tribal representative recognition appeal?

The reviewing official will issue a written decision, including the basis for the decision, within 30 days after the latest of the filing of your statement of reasons or interested parties' response.

§ 2.711 May the decision deadline be extended?

Yes. A reviewing official may, for good cause and with notice to the interested parties and the LBO, extend the deadline for the reviewing official's decision one time, for no more than an additional 30 days.

§ 2.712 May the AS–IA take jurisdiction over the appeal?

Yes. The AS–IA may take jurisdiction over the appeal at any time before the reviewing official issues a final decision.

§ 2.713 May I ask the AS–IA to take jurisdiction over the appeal?

No. The AS–IA will not consider a request from any interested party to take jurisdiction over the appeal.

§ 2.714 May the reviewing official's decision on Tribal representative recognition be appealed?

Yes. The reviewing official's decision is immediately effective, but not final for the Department. Therefore, any participant may appeal the reviewing official's decision as provided for in this part, or pursue judicial review in Federal court. Notwithstanding any other regulation, the reviewing official's Tribal representative recognition decision shall remain in effect and binding on the Department unless and until the reviewing official's decision is reversed by superior agency authority or reversed or stayed by order of a Federal court.

Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance

§ 2.800 What is the purpose of this subpart?

(a) The purpose of this subpart is to allow an account holder to dispute the accuracy of the activity contained within a Statement of Performance.

(b) The appeals process in this subpart is summarized as follows:

(1) Account holders receive a Statement of Performance at least each quarter. In limited circumstances, account holders may only receive a Statement of Performance annually based upon activity.

(2) An account holder may submit an Objection to the Statement of Performance (''Objection'') to the decision-maker.

(3) The decision-maker will render a Decision on the Objection to the Statement of Performance (''Decision'').

(4) An account holder may submit an Appeal of the Decision on the Objection to the Statement of Performance (''Appeal'') to the Director, BTFA.

(5) The Director, BTFA will render the BTFA's ruling on the account holder's appeal.

(6) An account holder may appeal the BTFA's ruling to the AS–IA.

(7) The AS–IA's decision on the account holder's appeal is a final agency action.

§ 2.801 What terms do I need to know for this subpart?

Account holder means a Tribe or a person who owns the funds in a Tribal or Individual Indian Money (IIM) account that is maintained by the Secretary.

Appeal of the Decision on the Objection to the Statement of Performance (''Appeal'') means your appeal of the decision-maker's decision.

Basis of Objection to the Statement of Performance (''Basis of Objection'') means the documentation you submit supporting your Objection to the Statement of Performance.

BTFA means the Bureau of Trust Funds Administration.

BTFA's Ruling means the ruling issued by Director, BTFA on your Appeal of the decision-maker's decision.

Decision on the Objection to the Statement of Performance (''Decision'') means the decision-maker's decision on your Objection to the Statement of Performance.

Decision-maker means the Director, Office of Trust Analysis and Research within the Bureau of Trust Funds Administration who reviews your Objection to the Statement of Performance.

Objection to the Statement of Performance (''Objection'') means the document you submit to the decision-maker, alleging errors in your Statement of Performance.

Reviewing official means the Director, BTFA.

Statement of Performance (SOP) means the document that is issued to each account holder that identifies:

(1) The source, type, and status of the funds;

(2) The beginning balance;

(3) The gains and losses;

(4) Receipts and disbursements; and

(5) The ending balance.

§ 2.802 What must I do if I want to challenge the accuracy of activity within a Statement of Performance?

If you want to challenge the accuracy of activity within a Statement of Performance, you must submit an Objection to the Statement of Performance within 60 calendar days of the statement date.

§ 2.803 Is every account holder allowed to challenge the accuracy of activity within a Statement of Performance?

Yes. Unless your ability to challenge the accuracy of activity within a Statement of Performance is limited pursuant to a court order or settlement, you may challenge an SOP as provided for in this subpart.

§ 2.804 May I challenge the underlying action that generated the proceeds deposited into my account under this subpart?

No. This subpart is solely for the purpose of challenging the accuracy of the activity within the SOP. If you want to challenge the underlying action that generated the proceeds deposited into your trust account, you must contact the BIA agency responsible for the action.

§ 2.805 May I challenge anything other than the activity in the account under this subpart?

No. The purpose of this subpart is to provide a method for account holders to dispute the activity in the account.

§ 2.806 What must my Objection to the Statement of Performance contain?

Your Objection to the Statement of Performance must be in writing and contain all of the following:

(a) Your name, address, and telephone number;

(b) The statement date of the specific Statement of Performance that you are challenging;

(c) A copy of the Statement of Performance being challenged; and

(d) The Basis of Objection.

§ 2.807 What must my Basis of Objection contain?

Your Basis of Objection must be in writing and contain:

(a) A statement that details all of the errors or omissions that you believe exist in the Statement of Performance, with as much explanatory detail as possible;

(b) A statement describing the corrective action that you believe BTFA should take; and

(c) All information that you believe relates to the error(s) or omission(s) in the specific Statement of Performance.

§ 2.808 To whom must I submit my Objection to the Statement of Performance?

(a) You must submit your Objection to the Statement of Performance to the decision-maker at: U.S. Department of the Interior, Bureau of Trust Funds Administration, Attn: Director, Office of Trust Analysis and Research, 1849 C Street NW, Washington, DC 20240.

(b) Your submission must comply with the provisions of § 2.214.

§ 2.809 When must I submit my Objection to the Statement of Performance?

You must submit your Objection to the Statement of Performance within 60 calendar days of the statement date on the Statement of Performance you are challenging.

§ 2.810 Will the decision-maker acknowledge receipt of my Objection to the Statement of Performance?

Yes. The decision-maker will provide an acknowledgement of receipt of your Objection to the Statement of Performance within 10 calendar days of receipt in the form of a letter that will be mailed to the address you provided in your Objection.

§ 2.811 May I request an extension of time to submit my Objection to the Statement of Performance?

Yes. Within 60 calendar days of the statement date on your Statement of Performance, you may request an extension of time, submitted in compliance with the provisions of § 2.214, from the decision-maker to submit your Objection to the Statement of Performance. The decision-maker may grant one 30-day extension of time in which to submit your Objection to the Statement of Performance.

§ 2.812 May I appeal the denial of my request for an extension of time?

No. The denial of an extension of time to submit the Objection to the Statement of Performance is not appealable.

§ 2.813 If I fail to submit either an Objection to the Statement of Performance or the Basis of Objection within the applicable deadlines, what is the consequence?

If you fail to submit either the Objection to the Statement of Performance or the Basis of Objection within the applicable deadlines:

(a) The Statement of Performance at issue will be deemed accurate and complete for all purposes;

(b) You will have waived your right to invoke the remainder of the review and appeals process as to that Statement of Performance; and

(c) You will have failed to exhaust the administrative remedies available within the Department.

§ 2.814 How long will the decision-maker have to issue a Decision on my Objection to the Statement of Performance?

The decision-maker will have 30 calendar days from the date of receipt of your Basis of Objection to the Statement of Performance to issue a Decision on your Objection to the Statement of Performance. If your Basis of Objection is not received when you submit your Objection to the Statement of Performance and an extension of time was not asked for and granted, the decision-maker will dismiss your Objection to the Statement of Performance.

§ 2.815 What information will the Decision on my Objection to the Statement of Performance contain?

The Decision on your Objection to the Statement of Performance will contain an explanation as to whether the decision-maker agrees or disagrees with your Objection to the Statement of Performance. If the decision-maker agrees with your Objection to the Statement of Performance, a correction will be made and reflected on your Statement of Performance. If the decision-maker disagrees with your Objection to the Statement of Performance, the Decision will provide information about your right to appeal the Decision.

§ 2.816 May I appeal the Decision on my Objection to the Statement of Performance?

Yes. The Decision issued by the decision-maker is appealable to the reviewing official, who is the Director, BTFA.

§ 2.817 What must my Appeal of the Decision on the Objection to the Statement of Performance contain?

Your Appeal must comply with the instructions in § 2.214 and must include the statement date of the specific Statement of Performance that you are appealing.

§ 2.818 To whom must I submit my Appeal of a Decision on my Objection to the Statement of Performance?

You must submit your Appeal, as provided in § 2.214, to the reviewing official, at: U.S. Department of the Interior, Bureau of Trust Funds Administration, Attn: Director, BTFA, 1849 C Street NW, Washington, DC 20240.

§ 2.819 When must my Appeal be filed?

You must file your Appeal within 30 calendar days of the date that the decision-maker issued the Decision.

§ 2.820 May I submit any other documents in support of my Appeal?

No. You may not submit any other documents in support of your Appeal. The reviewing official may only consider the documents that were reviewed by the decision-maker.

§ 2.821 May I request an extension of time to submit my Appeal?

No. You must submit the Appeal within 30 calendar days of the issuance of the Decision. The reviewing official will not grant an extension of time to submit your appeal of a Decision.

§ 2.822 What happens if I do not submit my Appeal within the 30-day deadline?

If you fail to submit your Appeal within the 30-day deadline:

(a) The decision-maker's decision will be effective;

(b) The Statement of Performance at issue will be deemed accurate and complete;

(c) You will have waived your right to invoke the remainder of the review and appeals process as to that same Statement of Performance; and

(d) You will have failed to exhaust the administrative remedies available within the Department.

§ 2.823 When will the reviewing official issue the BTFA's ruling?

The reviewing official will issue the BTFA's ruling within 30 calendar days of receipt of your Appeal of a Decision on your Objection to the Statement of Performance. The ruling will provide information about your right to further appeal.

§ 2.824 May I appeal the BTFA's ruling?

Yes. The BTFA's ruling may be appealed to the AS–IA. The procedures, requirements, and deadlines set out in §§ 2.816, 2.817, and 2.819 through 2.821 apply to appeals to the AS–IA under this subpart. Submit your Appeal to: U.S. Department of the Interior, Office of the Assistant Secretary—Indian Affairs, MS 4660, 1849 C Street NW, Washington, DC 20240, as provided in § 2.214.

§ 2.825 When does the Statement of Performance or a Decision become final?

(a) Statements of Performance, and decisions rendered by Department officials under this subpart, are final when the deadline for submitting an Objection to the Statement of Performance or an Appeal has expired and the account holder has not submitted an Objection to the Statement of Performance or an Appeal.

(b) A decision rendered by the AS–IA is a final agency action.

Subpart I—Alternative Dispute Resolution

§ 2.900 Is there a procedure other than a formal appeal for resolving disputes?

Yes. We strongly encourage parties to work together to reach a consensual resolution of disputes whenever possible. Use of an alternative approach to dispute resolution can save time and money, produce more durable and creative solutions, and foster improved relationships. It may be appropriate and beneficial to consider the use of alternative dispute resolution (ADR) processes and techniques at any stage in a dispute. The parties may request information from the decision-maker on the use of an ADR process.

§ 2.901 How do I request alternative dispute resolution?

If you are interested in pursuing alternative dispute resolution, you may contact the reviewing official to make a request to use ADR for a particular issue or dispute.

§ 2.902 When do I initiate alternative dispute resolution?

We will consider a request to use alternative dispute resolution at any time. If you file a Notice of Appeal, you may request the opportunity to use a consensual form of dispute resolution.

§ 2.903 What will Indian Affairs do if I request alternative dispute resolution?

If all interested parties concur, the reviewing official may stay (discontinue consideration of) the appeal while the parties pursue ADR. Where the parties agree to use ADR, Indian Affairs and other interested parties may seek assistance from the Department of the Interior's Office of Collaborative Action and Dispute Resolution (CADR). CADR can assist in planning and facilitating an effective collaboration or dispute resolution process. Parties are encouraged to consider best practices for engagement, including but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–25627 Filed 11–30–22; 8:45 am]

BILLING CODE 4337–15–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA22

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

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking; extension of comment periods.

SUMMARY: The National Labor Relations Board (the Board) published a Notice of Proposed Rulemaking in the **Federal Register** on November 4, 2022, seeking comments from the public regarding its proposed rule concerning the Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships. The date to submit comments to the Notice is now extended 30 days.

DATES: Comments to the Notice of Proposed Rulemaking must be received by the Board on or before February 2, 2023. Comments replying to the comments submitted during the initial comment period must be received by the Board on or before February 16, 2023.

ADDRESSES:

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

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

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

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

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

Dated: November 28, 2022.

Roxanne L. Rothschild,

Executive Secretary.

[FR Doc. 2022–26131 Filed 11–30–22; 8:45 am]

BILLING CODE 7545–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0784; FRL–9965–01–R5]

Air Plan Approval; Wisconsin; Definition of Chemical Process Plants Under State PSD Regulations and Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for Wisconsin and revisions to the title V Operating Permit Program for Wisconsin. The proposed revisions incorporate changes to the definition of ''chemical process plants'' under Wisconsin's Prevention of Significant Deterioration (PSD) and title V Operating Permit Programs. The changes to the state rules described below are approvable because they are consistent with EPA regulations governing state PSD and title V programs and will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the Clean Air Act (CAA)), or any other applicable requirement of the CAA.

DATES: Comments must be received on or before January 3, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0784 at *https://www.regulations.gov,* or via email to *damico.genevieve@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Permit Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017, *rineheart.rachel@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

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

I. What is being addressed in this document?

EPA is proposing to approve revisions to the Wisconsin SIP received on September 30, 2008. EPA is also proposing to approve revisions to the Wisconsin title V Operating Permit Program. These revisions address changes made to EPA regulations that are reflected in EPA's final rule entitled ''Prevention of Significant Deterioration, Nonattainment New Source Review (NA NSR), and Title V: Treatment of Certain Ethanol Production Facilities Under the 'Major Emitting Facility' Definition'' (hereinafter referred to as the ''2007 Ethanol Rule'') as published in the **Federal Register** on May 1, 2007 (72 FR 24059). The 2007 Ethanol Rule amended the PSD definition of ''major stationary source'' in the Federal PSD regulations (40 CFR 51.166 paragraphs (b)(1)(i)(a), (b)(1)(iii)(t) and (i)(1)(ii)(t)) to exclude certain ethanol facilities from the ''chemical process plant'' source category. In doing so, it established the PSD major source threshold for ethanol production facilities at 250 tons per year (tpy) rather than 100 tpy. The 2007 Ethanol Rule also removes the requirement to include fugitive emissions when determining if an ethanol production facility is major for PSD and title V permitting.

On October 21, 2019, EPA responded to a petition for reconsideration of the 2007 Ethanol Rule, denying the petition with respect to the revisions of the PSD regulations reflected in that rule (as described in more detail below). EPA is now proposing to approve revisions to Wisconsin's SIP and operating permit program that are based on a part of the 2007 Ethanol Rule.

II. Background

A. PSD Permitting Thresholds for Chemical Process Plants Prior to the 2007 Ethanol Rule

Under the CAA, there are two potential thresholds for determining whether a source is a major emitting facility that is potentially subject to the construction permitting requirements under the PSD program. One threshold is 100 tpy per pollutant, and the other is 250 tpy per pollutant. Section 169(1) of the CAA lists 28 source categories that qualify as major emitting facilities if their emissions exceed the 100 tpy threshold. If the source does not fall within one of the 28 source categories listed in section 169, then the 250 tpy threshold is applicable.

One of the source categories in the list of 28 source categories to which the 100 tpy threshold applies is chemical process plants. Since the Standard Industrial Classification code for chemical process plants includes facilities primarily engaged in manufacturing ethanol fuel, the EPA and states had previously considered such facilities to be subject to the 100 tpy threshold.

As a result of this classification, pursuant to the EPA regulations adopted under section 302(j) of the CAA, which address the treatment of fugitive emissions in applicability of PSD, chemical process plants were also required to include fugitive emissions for determining the potential emissions of such sources. See, *e.g.,* 40 CFR 51.165(a)(1)(iv)(C). Thus, prior to promulgation of the 2007 Ethanol Rule, the classification of fuel and industrial ethanol facilities as chemical process plants had the effect of requiring these plants to include fugitive emissions of criteria pollutants when determining whether their emissions exceed the applicability thresholds for the PSD and NA NSR permit programs.

B. Title V Permitting Thresholds for Chemical Process Plants Prior to the 2007 Ethanol Rule

The CAA also established requirements for determining applicability for the title V operating permit program. All title V major sources must obtain a title V permit. Section 501(2) of the CAA defines ''major source'' for the purpose of the title V program as either a ''major source'' as defined by section 112 of the CAA or a ''major stationary source'' as defined in section 302 or part D of title I of the CAA. Under the general definition of ''major stationary source'' in section 302(j) of the CAA, the major source threshold for any air pollutant is

100 tons per year. Under the NA NSR requirements of Part D of title I of the CAA, the applicability of the lower thresholds for major sources is dependent upon the pollutant and the severity of the nonattainment classification. Major source thresholds for hazardous air pollutants (HAP) under section 112 of the CAA are 10 tpy for a single HAP and 25 tpy for any combination of HAPs. A source with emissions that exceed either of these thresholds is required to obtain a title V operating permit.

Section 502 of the CAA and EPA regulations provide that sources that belong to one of 28 source categories listed in 40 CFR 70.2 must include fugitive emissions in determining applicability. The list of 28 source categories may also be included in approved state operating permit regulations.

C. Ethanol Rule

On May 1, 2007, EPA published the 2007 Ethanol Rule in the **Federal Register** (72 FR 24060). This final rule amended the PSD and NA NSR regulations to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes from the ''chemical process plant'' category under the regulatory definition of ''major stationary source.''

This change to the PSD regulations affected the threshold used to determine PSD applicability for these ethanol production facilities, clarifying that such facilities were subject to the 250 tpy major source threshold. The 2007 Ethanol Rule also changed how fugitive emissions are considered for affected ethanol production facilities. Because they would no longer be considered as part of the ''chemical process plants'' category, ethanol facilities would no longer be required to include fugitive emissions when determining major source status under PSD, NA NSR, and title V.

D. Petitions for Review and Reconsideration of the 2007 Ethanol Rule

On July 2, 2007, the National Resources Defense Council (NRDC) petitioned the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) to review the 2007 Ethanol Rule. On that same day, EPA received a petition for administrative reconsideration and request for stay of the 2007 Ethanol Rule from NRDC. On March 27, 2008, EPA denied NRDC's 2007 administrative petition for reconsideration.

On March 2, 2009, EPA received a second petition for reconsideration and a request for stay from NRDC. In 2009, NRDC also filed a petition for judicial review challenging EPA's March 27, 2008, denial of NRDC's 2007 administrative petition in the D.C. Circuit. This challenge was consolidated with NRDC's challenge to the 2007 Ethanol Rule. In August of 2009, the D.C. Circuit granted a joint motion to hold the case in abeyance, and the case has remained in abeyance.

On October 21, 2019, EPA partially granted and partially denied NRDC's 2009 administrative petition for reconsideration. Specifically, EPA granted the request for reconsideration with regard to NRDC's claim that the 2007 Ethanol Rule did not appropriately address the CAA section 193 antibacksliding requirements for nonattainment areas.

III. What revisions to the Wisconsin rules is EPA proposing to approve?

On September 30, 2008, EPA received a request from the Wisconsin Department of Natural Resources to revise the Wisconsin SIP. This submittal included changes to the definition of ''major stationary source'' under Wisconsin Administrative Code chapters NR 405, NR 407, and NR 408, which incorporate into the Wisconsin regulations the changes EPA made to Federal PSD and title V regulations in the 2007 Ethanol Rule. In addition to the changes related to the 2007 Ethanol Rule, this submittal contained revisions to NR 405 and 408 with respect to the definition of ''replacement unit'' and how calculations are to be performed under a Plantwide Applicability Limit (PAL). EPA approved the changes to replacement unit and PAL calculations in a separate action on May 6, 2021 (86 FR 24499).

In this action EPA is proposing to approve the PSD and title V changes in NR 405 and 407 relating to the 2007 Ethanol Rule. EPA is taking no action at this time with respect to the NA NSR changes in NR 408 related to the 2007 Ethanol Rule.

The regulations that EPA is proposing to approve adopt language that is the same as or consistent with the language of EPA's 2007 Ethanol Rule. The state regulations that EPA is proposing to approve exclude production facilities that produce ethanol by natural fermentation from the ''chemical process plants'' category. These revisions clarify that an ethanol facility is subject to the PSD major source threshold of 250 tons per year and that such sources need not include fugitive emissions when determining major source applicability under PSD and title V.

EPA has determined that the proposed revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA as required by section 110(l) of the CAA. Our determination is based on an analysis of Wisconsin's ethanol production trends, existing ethanol production permit requirements and locations with respect to ambient air monitoring, Wisconsin's statewide emissions inventory, Wisconsin's air quality design value trends, and representative photochemical modeling results for ozone and secondary fine particulate ($PM_{2.5}$) formation. Our analysis is included in the docket for this rulemaking.

Our analysis shows that Wisconsin's existing ethanol production facilities contribute 3.2% or less of each criteria pollutant when compared to statewide facility emissions. Wisconsin's total ethanol production has increased since 2007 but the state's air quality has steadily improved in general. Photochemical modeling of hypothetical sources representative of ethanol production facilities shows that ozone formation as a result of oxides of nitrogen (NO_X) and volatile organic compounds emissions and secondary $PM_{2.5}$ formation as a result of NOx and sulfur dioxide emissions will not themselves cause or contribute to a violation of the ozone or $PM_{2.5}$ National Ambient Air Quality Standard. In addition, the applicability of Federal and state requirements to ethanol production facilities in Wisconsin, such as New Source Performance Standards at 40 CFR part 60 and National Emission Standards for Hazardous Air pollutants at 40 CFR parts 61 and 63, will remain unaffected by this action.

IV. What action is EPA taking?

EPA is proposing to approve revisions to the Wisconsin SIP in 40 CFR 52.2570. EPA is also proposing to approve revisions to the Wisconsin title V Operating Permit Program in 40 CFR part 70 appendix A. The revisions that EPA is proposing to approve change the definition of ''major stationary source.'' EPA is not taking action on similar changes related to NA NSR in this action. This action would approve changes to the state regulations that establish that the PSD applicability threshold for certain ethanol plants is 250 tpy and remove the requirement to include fugitive emissions when determining if an ethanol plant is subject to major source requirements under PSD and the title V Operating Permit Program. EPA has determined

that these revisions are consistent with EPA's PSD and title V regulations and that approval of these revisions is consistent with the requirements of CAA section 110(l) and will not adversely impact air quality.

V. Incorporation by Reference

In this rule, 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 revisions to Wisconsin Administrative Code rules NR 405.02(22)(a)1. and NR 405.07(4)(a)20., as published in the Wisconsin Register #631 on July 31, 2008, effective August 1, 2008, discussed in section IV of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: November 22, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–26017 Filed 11–30–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2022–0481; FRL–9630–01–OAR]

RIN 2060–AV78

New Source Performance Standards Review for Secondary Lead Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the Standards of Performance for secondary lead smelters per the Agency's periodic review of the new source performance standards required by the Clean Air Act (CAA). In this action, we are proposing updates to the current New Source Performance Standards (NSPS) for secondary lead smelters and proposing a new NSPS subpart that applies to affected sources constructed, reconstructed, or modified after the date of this proposed rule. For the current NSPS subpart, we are proposing to revise the definitions of blast furnace, reverberatory furnace, and pot furnace to more closely align with the equipment definitions used in the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for secondary lead smelting. We are also proposing requirements for periodic performance tests for particulate matter (PM) and incorporating revised monitoring, recordkeeping, and reporting requirements, including electronic reporting of performance tests, to be more consistent with the NESHAP. For the new subpart, we are proposing updated PM and opacity emissions limits for blast, reverberatory, and pot furnaces that reflect the performance achieved by the best system for emissions reductions (BSER). In the new subpart, we are proposing PM and opacity emissions limits that apply at all times, including during periods of startup, shutdown, and malfunction (SSM), and proposing initial and periodic PM and opacity performance testing and the same equipment definitions, recordkeeping, and reporting requirements proposed for current NSPS subpart.

DATES:

Comments. Comments must be received on or before January 17, 2023. Comments on the information collection provisions submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) are best assured of consideration by OMB if OMB receives a copy of your comments on or before January 3, 2023.

Public Hearing. If anyone contacts us requesting a public hearing on or before December 6, 2022, we will hold a virtual hearing. Please refer to the **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0481, 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–

2022–0481 in the subject line of the message.

• *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2022–0481.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2022–0481, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tonisha Dawson, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1454; fax number: (919) 541–4991; and email address: *dawson.tonisha@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing.

To request a virtual public hearing, contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* If requested, the virtual hearing will be held on December 16, 2022. The hearing will convene at 11:00 a.m. Eastern Time (ET) and will conclude at 5:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.*

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be December 13, 2022. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *dawson.tonisha@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.* While the EPA expects the hearing to go forward as described in this section, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by December 8, 2022. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2022–0481. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy.

Written Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2022–0481, 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 CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed in the *Submitting CBI* section of this document.

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

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital

storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Written Comments* section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of Air Quality Planning and Standards (OAQPS) CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2022–0481. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this document the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ABR Association of Battery Recyclers
ANSI American National Standards Institute
ASTM ASTM International
BSER best system of emission reduction
CAA Clean Air Act
CBI Confidential Business Information
CDC Centers for Disease Control and Prevention
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
DCOT digital camera opacity technique
EIA economic impact analysis
EJ environmental justice
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
ET Eastern Time
FR Federal Register
FTP file transfer protocol
gr/dscf grains per dry standard cubic feet
IBR incorporate by reference
ICR information collection request
JPEG joint photographic experts group
mg/dscm milligram per dry standard cubic meter
NAICS North American Industry Classification System
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PBI Proprietary Business Information
PDF portable document format
PM particulate matter
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RIA regulatory impact analysis
RIN Regulatory Information Number
RTR risk and technology review
SOP standard operating procedures
SSM startup, shutdown and malfunctions
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
VCS voluntary consensus standard
WESP wet electrostatic precipitator

Organization of this document. The information in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

The source category that is the subject of this proposal is comprised of the secondary lead smelters regulated under CAA section 111 New Source Performance Standards. The North American Industry Classification System (NAICS) code for the source category is 331492. The NAICS code serves as a guide for readers outlining the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to affected facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Federal, state, local and tribal government entities would not be affected by this action.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.* Following

publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A memorandum showing the edits that would be necessary to incorporate the changes to 40 CFR part 60, subparts L and La, proposed in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2022–0481). Following signature by the EPA Administrator, the EPA also will post a copy of these documents to *https://www.epa.gov/stationary-sources-air-pollution/secondary-lead-smelters-new-source-performance-standards-nsps.*

II. Background

A. What is the statutory authority for this action?

The EPA's authority for this proposed rule is CAA section 111, which governs the establishment of standards of performance for stationary sources. Section 111(b)(1)(A) of the CAA requires the EPA Administrator to list categories of stationary sources that in the Administrator's judgment cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA must then issue performance standards for new (and modified or reconstructed) sources in each source category pursuant to CAA section 111(b)(1)(B). These standards are referred to as new source performance standards, or NSPS. The EPA has the authority to define the scope of the source categories, determine the pollutants for which standards should be developed, set the emission level of the standards, and distinguish among classes, types, and sizes within categories in establishing the standards.

CAA section 111(b)(1)(B) requires the EPA to ''at least every 8 years review and, if appropriate, revise'' new source performance standards. However, the Administrator need not review any such standard if the ''Administrator determines that such review is not appropriate in light of readily available information on the efficacy'' of the standard. When conducting a review of an existing performance standard, the EPA has the discretion and authority to add emission limits for pollutants or emission sources not currently regulated for that source category.

In setting or revising a performance standard, CAA section 111(a)(1) provides that performance standards are to reflect ''the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' The term ''standard of performance'' in CAA section 111(a)(1) makes clear that the EPA is to determine both BSER for the regulated sources in the source category and the degree of emission limitation achievable through application of the BSER. The EPA must then, under CAA section 111(b)(1)(B), promulgate standards of performance for new sources that reflect that level of stringency. CAA section 111(b)(5) precludes the EPA from prescribing a particular technological system that must be used to comply with a standard of performance. Rather, sources can select any measure or combination of measures that will achieve the standard.

Pursuant to the definition of new source in CAA section 111(a)(2), standards of performance apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Under CAA section 111(a)(4), ''modification'' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do not result in an increase in emissions are not considered modifications. Under the provisions in 40 CFR 60.15, reconstruction means the replacement of components of an existing facility such that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards. Pursuant to CAA section 111(b)(1)(B), the standards of performance or revisions thereof shall become effective upon promulgation.

B. What is this source category and what are the current NSPS requirements?

Secondary lead smelters produce lead and lead alloys from lead-bearing scrap material. Lead is used to make various construction, medical, industrial, and consumer products such as batteries, glass, x-ray protection gear, and various fillers. The secondary lead smelting process consists of (1) pre-processing of lead bearing materials, (2) melting lead metal and reducing lead compounds to lead metal in the smelting furnace, and (3) refining and alloying the lead to customer specifications.

At secondary lead smelting facilities, blast and reverberatory furnaces are used in the smelting processes, and pot furnaces are used in the refining process. The processes vent PM emissions from blast and reverberatory furnaces through ductwork to control devices. Emissions of PM also occur at various points during the smelting process, such as during charging and tapping of furnaces and refining processes. Based on the NESHAP requirements, the process fugitive emissions require hooding or negative-pressure enclosures to capture PM emissions before they can be routed to control devices. Entrainment of dry materials in ambient air due to material processing, vehicle traffic, wind erosion from storage piles, and other activities can also be a source of PM emissions. Secondary lead smelting facilities use a variety of control devices (*e.g.,* baghouses, gas scrubbers), often in combination, to reduce PM and opacity emissions from process vent and process fugitive sources. Facilities use suppression techniques (*e.g.,* washing roadways, wetting storage piles) and negative-pressure enclosures to reduce PM emissions from fugitive dust sources.

The EPA proposed the original NSPS (subpart L) for the secondary lead smelting source category (40 CFR part 60, subpart L) on June 11, 1973 (38 FR 15406) and promulgated the NSPS on March 8, 1974 (39 FR 9308). The NSPS for secondary lead smelting as promulgated in 1974 regulates PM emissions from blast and reverberatory furnaces and also specifies limits for visible emissions (opacity) for blast and reverberatory furnaces and for pot (refining) furnaces. The EPA amended subpart L on October 10, 1975, to remove a provision providing that the failure to meet the NSPS emissions limits due to the presence of uncombined water in the stack gases was not considered a violation.

Subpart L specifies that owners or operators of affected facilities must limit PM emissions from blast and reverberatory furnaces to not more than 50 milligrams per dry standard cubic meter (mg/dscm) or 0.022 grains per dry standard cubic feet (gr/dscf). Subpart L also specifies that visible emissions must not exceed 20 percent opacity from blast or reverberatory furnaces and 10 percent opacity from pot furnaces.

Currently, there are 11 secondary lead smelting facilities in the United States. Each facility operates furnaces that are subject to the PM and opacity limits specified in subpart L.

C. What data and information were used to support this action?

To support this action, the EPA created the list of existing secondary lead smelting facilities by updating the facility list developed to support the 2012 NESHAP for secondary lead smelting (40 CFR part 63, subpart X) with information obtained from the National Emissions Inventory (NEI), Earthjustice, and the Association of Battery Recyclers (ABR). To determine the control measures currently used to control emissions from blast, reverberatory, and pot furnaces in the industry, the EPA obtained facility operating permits issued by state regulatory agencies which contained information regarding process equipment, control devices, and applicable regulatory emissions limits. The EPA also obtained reports of performance tests conducted to demonstrate compliance with NESHAP subpart X from the EPA's WebFIRE and from state regulatory agencies. Although the target pollutant of the test reports was lead, the pollutant regulated under NESHAP subpart X, some of the reports also provided PM emissions and opacity data for blast, reverberatory, and pot furnaces. The facility operating permits, test reports, and a memorandum summarizing the available PM emissions and opacity data are available in the public docket for this action (Docket ID No. EPA–HQ–OAR–2022–0481).

D. How does the EPA perform the NSPS review?

As noted in section II.A of this preamble, CAA section 111 requires the EPA, at least every 8 years, to review and, if appropriate revise the standards of performance applicable to new, modified, and reconstructed sources. If the EPA revises the standards of performance, they must reflect the degree of emission limitation achievable through the application of the BSER taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements. CAA section 111(a)(1).

In reviewing an NSPS to determine whether it is ''appropriate'' to revise the standards of performance, the EPA evaluates the statutory factors, which may include consideration of the following information:

- Expected growth for the source category, including how many new facilities, reconstructions, and modifications may trigger NSPS in the future.
- Pollution control measures, including advances in control technologies, process operations, design or efficiency improvements, or other systems of emission reduction, that are ''adequately demonstrated'' in the regulated industry.
- Available information from the implementation and enforcement of current requirements indicating that emission limitations and percent reductions beyond those required by the current standards are achieved in practice.
- Costs (including capital and annual costs) associated with implementation of the available pollution control measures.
- The amount of emission reductions achievable through application of such pollution control measures.
- Any non-air quality health and environmental impact and energy requirements associated with those control measures.

In evaluating whether the cost of a particular system of emission reduction is reasonable, the EPA considers various costs associated with the particular air pollution control measure or a level of control, including capital costs and operating costs, and the emission reductions that the control measure or particular level of control can achieve. The Agency considers these costs in the context of the industry's overall capital expenditures and revenues. The Agency also considers cost-effectiveness analysis as a useful metric and a means of evaluating whether a given control achieves emission reduction at a reasonable cost. A cost-effectiveness analysis allows comparisons of relative costs and outcomes (effects) of two or more options. In general, cost-effectiveness is a measure of the outcomes produced by resources spent. In the context of air pollution control options, cost-effectiveness typically refers to the annualized cost of implementing an air pollution control option divided by the amount of pollutant reductions realized annually.

After the EPA evaluates the statutory factors, the EPA compares the various systems of emission reductions and determines which system is ''best'' and therefore represents the BSER. The EPA then establishes a standard of performance that reflects the degree of emission limitation achievable through the implementation of the BSER. In doing this analysis, the EPA can determine whether subcategorization is appropriate based on classes, types, and sizes of sources and may identify a different BSER and establish different performance standards for each subcategory. The result of the analysis and BSER determination leads to standards of performance that apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Because the new source performance standards reflect the best system of emission reduction under conditions of proper operation and maintenance, in doing its review, the EPA also evaluates and determines the proper testing, monitoring, recordkeeping and reporting requirements needed to ensure compliance with the emission standards.

See section II.C of this preamble for information on the specific data sources that were reviewed as part of this action.

III. What actions are we proposing?

A. NSPS Review and Proposed Revisions

In this action, the EPA is proposing to amend existing NSPS subpart L to:

- Clarify the applicability dates.
- Update the definitions of blast, reverberatory and pot furnaces to be more consistent with the NESHAP (40 CFR part 63, subpart X).
- Require initial and periodic compliance tests for PM emissions consistent with the NESHAP (40 CFR part 63, subpart X).
- Require monitoring, recordkeeping, and reporting requirements consistent with the NESHAP (40 CFR part 63, subpart X).
- Require submission of electronic performance test reports.

We solicit comment on the amendments to the existing NSPS subpart L as described in the subsequent sections.

The EPA is also proposing to establish a new subpart (40 CFR part 60, subpart La) that applies to affected sources that begin construction, reconstruction, or modification after December 1, 2022. In subpart La, EPA is proposing that the following emission standards apply at all times, including periods of SSM:

- Limit PM emissions from blast and reverberatory furnaces to 10 mg/dscm.
- Limit PM emissions from pot furnaces to 3 mg/dscm.
- Limit opacity of blast, reverberatory, and pot furnace emissions to 0 percent.

For subpart La, the EPA is proposing the same definitions, PM testing, monitoring, recordkeeping, and reporting requirements as proposed for subpart L. In addition, we are proposing initial and periodic opacity testing for subpart La.

1. Applicability

For 40 CFR part 60, subpart L, the EPA is proposing to amend 40 CFR 60.120 (Applicability and designation of affected facility) to clarify that subpart L applies to affected sources that commence construction or modification after June 11, 1973, but before December 1, 2022. For subpart La, the EPA is proposing to add 40 CFR 60.120a (Applicability and designation of affected facility) to specify that 40 CFR part 60, subpart La, applies to affected sources that commence construction, reconstruction, or modification after December 1, 2022.

2. Definitions

In this action, the EPA is proposing to incorporate the definitions shown in Table 1 of this preamble into 40 CFR 60.121 (Definitions) of existing 40 CFR part 60, subpart L, and 40 CFR 60.121a (Definitions) of the proposed 40 CFR part 60, subpart La. These proposed definitions are intended to improve the clarity of the NSPS subparts and reduce potential confusion among industry and regulatory agencies by aligning the descriptions of the affected sources that would be regulated by 40 CFR part 60, subparts L and La, to be more consistent with the definitions within 40 CFR part 63, subpart X, but still with some slight differences (*e.g.,* minimum temperatures) that we think are appropriate, as shown in Table 1. These proposed changes do not affect the applicability of existing subpart L.

TABLE 1—PROCESS EQUIPMENT DEFINITIONS PROPOSED FOR SUBPART L AND LA

Equipment	Current	NESHAP subpart X	Proposed for subpart L and La
Blast furnace ..	Any furnace used to recover metal from slag.	A smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that uses coke as a fuel source and that is operated at such a temperature in the combustion zone (greater than 980 Celsius) that lead compounds are chemically reduced to elemental lead metal.	A smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that lead compounds are chemically reduced to elemental lead metal.
Reverberatory furnace.	Includes the following types of reverberatory furnaces: stationary, rotating, rocking, and tilting.	A refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap to such a temperature (greater than 980 Celsius) that lead compounds are chemically reduced to elemental lead metal.	A refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap such that lead compounds are chemically reduced to elemental lead metal. Reverberatory furnaces include the following types: stationary, rotating, rocking, and tilting.
Pot furnace	Not defined	Refining kettle means an open-top vessel that is constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead. Included are pot furnaces, receiving kettles, and holding kettles.	Pot furnace is a type of refining kettle, which is an open-top vessel constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead.

The EPA solicits comment on the proposed revisions to the process equipment definitions for subparts L and proposed process equipment definitions to be included in subpart La.

3. PM Standards of Performance

In developing NSPS subpart L, the EPA identified the types of controls used and the corresponding PM and opacity levels of blast, reverberatory, and pot furnace emissions at secondary lead smelting facilities (that were considered well controlled at the time) as described in the 1973 background document titled, *Group II—New Source Performance Standards,* which is available in the docket of this proposed rule. Table 2 presents the BSER the EPA identified for blast, reverberatory, and pot furnaces in 1973.

TABLE 2—BSER FOR 1975 NSPS SUBPART L

Emissions source	Control technology
Blast furnace ..	Afterburner and Venturi scrubber—or—Fabric filter.
Reverberatory furnace.	Venturi scrubber—or—Fabric filter.
Pot furnace	Venturi scrubber—or—Fabric filter.

Based on the PM emissions and opacity data available at that time, the EPA established in subpart L, the following emissions limits for blast and reverberatory furnaces:

- 50 milligrams per dry standard cubic meter, mg/dscm (0.022 grains per dry standard cubic feet, gr/dscf).
- 20 percent opacity.

When the EPA finalized subpart L, PM emissions data were not available for pot furnaces; therefore, the EPA did not establish a PM limit. However, sufficient data were available to establish an opacity limit of 10 percent for pot furnaces in subpart L.

As specified in section II.D of this preamble, CAA section 111 requires the EPA to review the BSER for the source category and determine whether it is appropriate to revise the standards of performance, including consideration of available information indicating that emission limitations and percent reductions beyond those required by the current standards are achieved in practice. In making this determination for the secondary lead smelting source category, the EPA considered the following information:

- Types of demonstrated control measures for reducing PM emissions and opacity from blast, reverberatory, and pot furnaces.
- Available test data showing the levels of PM emissions and opacity currently achieved for blast, reverberatory, and pot furnaces.
- Costs of implementing the PM and opacity controls.

We solicit comment on the BSER analysis and the proposed standards of

performance as explained in the subsequent sections.

a. PM and Opacity Control Measures

For our BSER review, to determine the types of control measures currently used in the secondary lead industry to reduce PM emissions and opacity from blast, reverberatory, and pot furnaces, the EPA obtained and reviewed operating permits issued by state regulatory agencies for each secondary lead smelting facility in the United States. The EPA's permit review identified that secondary lead smelting facilities continue to use filtration (*i.e.,* fabric filters or baghouses), scrubbers, and afterburners to reduce PM emissions and opacity from blast furnaces, and filtration and scrubbers to reduce PM emissions and opacity from reverberatory furnaces. For pot furnaces, the permit review identified the continued use of baghouses and scrubbers to reduce opacity from furnace emissions. Three facilities also use wet electrostatic precipitators (WESPs) to control furnace PM emissions and opacity (two facilities control a combined gas stream of reverberatory and pot furnace emissions using a WESP, and one facility controls pot furnace emissions using a WESP). The memorandum documenting the EPA's review of facility operating permits titled *CAA Section 111(b)(1)(B) Review Memorandum for Secondary Lead Smelters* can be found in the docket for the proposed rulemaking (Docket ID No. EPA–HQ–OAR–2022–0481). The EPA seeks comment regarding the findings of our permit review.

b. Available PM and Opacity Data

To determine the current level of PM emissions and opacity reduction achieved for blast, reverberatory, and pot furnaces, the EPA reviewed facility performance test data obtained from WebFIRE, the EPA's repository of performance test reports, and from state regulatory agencies. The memorandum documenting the available PM and opacity data titled *Particulate Matter and Opacity Emissions Test Data Memorandum for Secondary Lead Smelters* is available in the docket for the proposed rulemaking (Docket ID No. EPA–HQ–OAR–2022–0481). The EPA's review of the available PM and opacity data identified that, since promulgation of NSPS subpart L in 1974, technologies for reducing PM emissions and opacity from blast, reverberatory, and pot furnaces have improved dramatically (*e.g.,* due to improved bag materials, replacement of older baghouses). The 2011 proposal preamble for NESHAP subpart X (76 FR 29059) also noted the improved performance of particulate control devices.

For blast and reverberatory furnaces, the PM emissions data available to the EPA consist of 42 test run-level data points obtained using EPA Method 5 (the same test method specified in 40 CFR part 60, subpart L) from three facilities, with average values ranging from 0.34 to 9.53 mg PM/dscm. For pot furnaces, the PM emissions data available to the EPA consist of 27 test run-level data points obtained using EPA Method 5 from three facilities, with average values ranging from 0.46 to 1.77 mg PM/dscm. The available opacity data for blast and reverberatory furnaces consist of nine test-run level data points from one facility, and the available opacity data for pot furnaces consist of six test-run level data points from two facilities. All the available data show that opacity from blast, reverberatory, and pot furnace emissions is zero percent.

The EPA seeks comment regarding the available PM and opacity data for blast, reverberatory, and pot furnaces and the findings of our data review.

c. Costs of PM and Opacity Control Measures

As part of the EPA's BSER review, we consider the costs associated with the technologies and measures identified as potential BSER options. Based on the finding of our data review described above, the control technologies and levels of PM emissions and opacity the EPA identified in our BSER review for blast, reverberatory, and pot furnaces emissions reflect the reductions achieved by the control devices installed to comply with the standards for particulate lead specified in NESHAP subpart X. Therefore, we do not expect additional emission control costs attributable to the NSPS associated with the use of filtration (*i.e.,* fabric filters or baghouses), scrubbers, and afterburners to reduce PM emissions and opacity from blast furnaces, and filtration and scrubbers to reduce PM emissions and opacity from reverberatory furnaces, and the use of baghouses and scrubbers to reduce opacity from pot furnace emissions, as the affected sources would install these air pollution control devices to meet the lead limits specified in NESHAP subpart X regardless of the requirements in the NSPS.

In our BSER evaluation, the EPA also considered the application of a WESP on the exhaust of a fabric filter (or similarly effective PM control device). The application of a WESP would be an additional control beyond the controls needed to comply with NESHAP subpart X. The memorandum documenting the EPA's consideration of additional controls (*Evaluation of Control Costs for Secondary Lead Smelting Facilities*) can be found in the docket for the proposed rulemaking (Docket ID No. EPA–HQ–OAR–2022–0481). The EPA evaluated the capital and annual costs of installing a WESP on the exhaust of a fabric filter (or similarly effective PM control device) for a typical new, modified, or reconstructed facility using the cost algorithms developed to support NESHAP subpart X and the exhaust flow rates for blast, reverberatory, and pot furnaces contained in facility test reports. The capital cost associated with the addition of a WESP was approximately $7.4 million and would achieve an incremental PM emissions reduction of 2.7 tons per year (based on 95-percent PM reduction efficiency). The total annual cost was approximately $1.4 million, resulting in a cost-effectiveness of approximately $528,000 per ton of PM.

Based on our BSER evaluation, considering the costs and PM emissions reductions, the EPA proposes to determine that the cost-effectiveness of requiring a WESP, in addition to the controls installed to comply with NESHAP subpart X, would be well above the level of cost-effectiveness that the EPA has historically accepted for PM control options. For example, the EPA rejected a control option for PM in the 2008 Coal Preparation NSPS that had a cost-effectiveness of approximately $91,400 per ton (73 FR 22904). In the technical document titled *Draft Cost Impacts of the Revised NESHAP for the Secondary Lead Smelting Source Category,* which is associated with the 2012 Risk and Technology Review (RTR) for NESHAP subpart X, the EPA concluded that the costs for a WESP were high (cost-effectiveness of $4,000,000/ton of lead reduced) and did not propose requirements for the installation of the WESP under the ample margin of safety analysis (76 FR 29058). Based on section 12.11 (Secondary Lead Processing) of EPA's Compilation of Air Emissions Factors (AP–42), lead emissions from blast, reverberatory, and pot furnaces comprise approximately 23, 26, and 40 percent of the PM emissions, respectively. Assuming a conversion factor of 0.23 tons of lead/ton of PM, the equivalent cost-effectiveness of the WESP in terms of PM reduction would be approximately $920,000/ton of PM in this case.

We request comment on the control cost analysis and the EPA's conclusions

regarding cost effectiveness of control options.

d. Determination of the BSER and Proposed Standards of Performance

Based on the EPA's permit review and assessment of control costs, the EPA proposes to identify that the BSER for PM emissions and opacity from new, modified, or reconstructed blast furnaces is an afterburner followed by efficient particulate controls (*e.g.,* fabric filter that may be installed in series with a HEPA filter and/or a venturi scrubber). Because the proposed BSER controls are currently being used in the secondary lead industry to comply with NSPS subpart L and NESHAP subpart X emissions standards for blast furnaces, we believe that their use has been adequately demonstrated. Also, because facilities with new, modified, or reconstructed blast furnaces would install these types of controls to comply with NESHAP subpart X, we do not expect that there will be any capital or annual costs, or any non-air quality health, environmental, or energy impacts associated with the BSER proposed for blast furnaces for purposes of NSPS subpart La.

For new, modified, or reconstructed reverberatory and pot furnaces, the EPA proposes to determine that the BSER for PM and opacity is efficient particulate controls (*e.g.,* fabric filter that may be installed in series with a HEPA filter, venturi scrubber and/or a WESP). The use of these types of controls has been adequately demonstrated because they are also currently being used in the secondary lead industry to comply with NSPS subpart L and NESHAP subpart X. Also, because facilities with new, modified, or reconstructed reverberatory and pot furnaces would install these types of controls to comply with the lead standards in NESHAP subpart X, we do not expect that there will be any additional capital or annual costs, or any non-air quality health, environmental, or energy impacts associated with the BSER proposed for reverberatory and pot furnaces for purposes of subpart La.

Based on the available data above, the EPA is proposing in 40 CFR part 60, subpart La, that the standard of performance for blast and reverberatory furnaces that reflects BSER is a reduction in the current NSPS PM emissions limit of 50 mg PM/dscm or less, to 10 mg PM/dscm or less. For the standard of performance for pot furnaces, the EPA is proposing in subpart La to establish a PM emissions limit of 3 mg/dscm or less. The available data also demonstrates that the BSER for opacity results in the absence of visible emissions from the blast, reverberatory, and pot furnace exhaust. Consequently, the EPA is proposing that the standard of performance for opacity from blast, reverberatory, and pot furnaces emissions is 0 percent.

The EPA solicits comment regarding our BSER analysis and resulting conclusions regarding the proposed standards of performance for PM and opacity for subparts La.

B. Proposal of NSPS Subpart La Without Startup, Shutdown, Malfunctions Exemptions

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standard apply continuously. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. The NSPS general provisions in 40 CFR 60.11(c) currently exclude opacity requirements during periods of startup, shutdown, and malfunction and the provision in 40 CFR 60.8(c) contains an exemption from non-opacity standards. We are proposing in 40 CFR part 60, subpart La, specific requirements at section 40 CFR 60.122a(d) that override the general provisions for SSM provisions. We are proposing that all standards in 40 CFR part 60, subpart La, apply at all times.

The EPA has attempted to ensure that the general provisions we are proposing to override are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained in this section of the preamble, has not proposed alternate standards for those periods.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 60.2). The EPA interprets CAA section 111 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 111 standards. Nothing in CAA section 111 or in case law requires that the EPA consider malfunctions when determining what standards of performance reflect the degree of emission limitation achievable through ''the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated. While the EPA accounts for variability in setting emissions standards, nothing in section 111 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner,'' and no statutory language compels EPA to consider such events in setting section 111 standards of performance. The EPA's approach to malfunctions in the analogous circumstances (setting ''achievable'' standards under section 112) has been upheld as reasonable by the D.C. Circuit in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

C. Testing and Monitoring Requirements

As part of an ongoing effort to improve compliance with federal air emission regulations, the EPA reviewed the testing and monitoring requirements of subpart L to determine whether additional requirements were needed to ensure compliance with the emissions limits proposed in subpart La, which reflects the BSER under conditions of proper operation and maintenance.

Currently, subpart L (40 CFR 60.123) requires initial performance testing using EPA Method 5 (Determination of Particulate Matter Emissions from Stationary Sources) to demonstrate compliance with the PM emissions limit for blast and reverberatory furnaces, and EPA Method 9 (Visual Opacity) to demonstrate compliance with the opacity limits for blast, reverberatory, and pot furnaces. Subpart L does not specify any monitoring requirements.

In this action, the EPA is proposing that facilities subject to 40 CFR part 60, subparts L and La, conduct periodic PM testing of blast, reverberatory, and pot furnace emissions. The EPA is also proposing under 40 CFR part 60, subpart La, periodic testing of opacity from blast, reverberatory, and pot furnace emissions. We evaluated whether or not periodic opacity testing should be proposed for the legacy subpart L. Given the requirements in

NESHAP subpart X (*e.g.,* full enclosure with negative pressure and continuous differential pressure monitoring to ensure negative pressure is maintained at all times, along with stringent emissions limits for lead from all vents), we expect opacity from all existing furnaces are probably very low or zero. Therefore, any periodic opacity testing using EPA Method 9 under subpart L would result in new costs of $2,344 per facility (assuming semi-annual training and certification for facility staff and conduct of the periodic Method 9 evaluations) but yield little benefit. Therefore, the EPA is not proposing a requirement for periodic opacity testing in subpart L. However, for subpart La we are proposing periodic testing for the absence of visible emissions using EPA Method 22 (to demonstrate that opacity is zero percent), which results in an additional one-time training cost for facility personnel of $1,277 ($426 per facility). Nevertheless, the EPA solicits comment as to whether the legacy subpart L should include periodic opacity requirements and if so, why, and how frequent those readings should be.

The proposed amendments would allow facilities to request less frequent periodic PM testing from 12 months to 24 months, if the previous periodic compliance test demonstrates that PM emissions are 50 percent or less of the proposed emissions limit (*e.g.,* PM emissions from blast and reverberatory furnaces of 25 mg/dscm or less for facilities subject to 40 CFR part 60, subpart L). The EPA believes that the proposed requirements for periodic testing ensure that the PM controls are meeting the NSPS limits over time, and the proposed testing frequency would align 40 CFR part 60, subparts L and La, with the NESHAP (40 CFR part 60, subpart X), which requires initial and periodic testing for lead.

To reduce the testing burden on facilities, the EPA is also proposing alternatives to EPA Method 5 for measuring filterable PM and EPA Method 9 for determining opacity (visual emissions). In this action, the EPA is proposing to allow facilities to determine the PM emissions by gravimetric analysis of the particulate filter used in the sampling train of either EPA Method 12 (Determination of Inorganic Lead Emissions from Stationary Sources) or EPA Method 29 (Determination of Metals Emissions from Stationary Sources). Because both EPA Methods 12 and 29 capture PM on a sampling train filter that is subsequently analyzed to determine lead concentration, facilities can conduct an additional gravimetric analysis of the EPA Method 12 or EPA Method 29 filter to determine PM emissions from blast, reverberatory, and pot furnaces, rather than performing separate tests using EPA Method 5. For determining opacity, the EPA is proposing in subpart La to allow the use of ASTM International (ASTM) D7520–16 (Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere) as an alternative to EPA Method 9. Because the proposed opacity limit for blast, reverberatory, and pot furnaces is zero percent, rather than a specific percent opacity, the EPA is proposing in subpart La the use of EPA Method 22 (Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares) for determining the absence of visual emissions (*i.e.,* zero percent opacity) in addition to allowing use of Method 9 or the digital camera opacity technology (*i.e.,* ASTM D7520–16).

To estimate the costs associated with the proposed periodic PM testing requirements for subpart L, the EPA assumed that two of the 11 existing secondary lead smelting facilities would undergo reconstruction over the 3-year reporting period and thus would become subject to new subpart La. The EPA assumed that each of the remaining nine facilities currently subject to subpart L would determine the PM emissions from blast, reverberatory, and pot furnaces (one test for each type of furnace) by weighing the particulate filter of the EPA Method 12 or 29 sampling trains as part of the periodic performance tests for particulate lead required by NESHAP subpart X. The incremental cost of conducting the additional gravimetric analysis of the particulate filter prior to subsequent analysis under EPA Methods 12 or 29 is approximately $300 per test per facility. Assuming three stacks are tested at each facility, we estimate that the total costs for periodic PM testing will be $900 per facility, or a total of $8,100 for the source category (nine facilities). Therefore, the estimated total PM testing costs associated with proposed amendments to subpart L are approximately $0 for the initial year and $8,100 for each subsequent year for PM testing ($900 per year per facility).

To estimate the costs associated with the proposed testing requirements for subpart La, the EPA assumed two reconstructed sources and one new source (*i.e.,* three facilities) will become subject to proposed subpart La over the next three-year period. The incremental cost for measuring PM as part of the initial and periodic performance tests required by proposed subpart La (in conjunction with conducting the initial and periodic performance tests required under NESHAP subpart X) is approximately $300 per test per facility. Assuming 3 stacks are tested at each facility, the total estimated cost are $900 per facility per year for periodic PM tests. The approximate cost for the one-time training of facility personnel in the use of EPA Method 22 is approximately $426 per facility. Therefore, estimated total initial cost is $1,326 per facility, and the total PM and opacity testing costs associated with proposed subpart La (assuming 3 facilities are affected) are approximately $3,978 for the initial year and $2,700 for each subsequent year ($900 per year per facility). The public docket for this proposed action (Docket ID No. EPA–HQ–OAR–2022–0481) contains the OMB burden estimate, which presents the calculations and assumptions the EPA used to estimate the costs of the proposed testing requirements for subparts L and La.

In this action, the EPA is proposing to add 40 CFR 60.124 (Monitoring requirements) to subpart L and subpart La to include some of the monitoring requirements specified in 40 CFR 63.548(a) through (i) (Monitoring requirements) of the NESHAP (40 CFR part 63, subpart X), including development of a standard operating procedures (SOP) manual for control devices used to reduce PM and opacity emissions. The EPA believes that having consistent monitoring requirements between the NSPS and NESHAP will reduce the monitoring burden on affected facilities. We estimate these additions to monitoring requirements in the subparts L and La will result in very minimal additional costs, if any, because we expect all facilities already have SOPs and implement the other monitoring requirements to comply with the NESHAP. The EPA solicits comment regarding the assumptions used to estimate the proposed monitoring burden of subparts L and La.

D. Notification, Recordkeeping and Reporting Requirements

In this action, the EPA is proposing to add the notification, recordkeeping and reporting requirements found in the proposed 40 CFR 60.125 and 60.125a (Notification, recordkeeping, and reporting requirements) to NSPS subparts L and La, respectively. The proposed requirements clarify that facilities must comply with the notification and recordkeeping requirements specified in 40 CFR 60.7 and the reporting requirements specified in 40 CFR 60.19. The proposed requirements in subparts L and La incorporate the recordkeeping

requirements from NESHAP subpart X specified in 40 CFR 63.550(b); (c)(1) through (4); (c)(11) and (12); (e)(4) through (7); and (e)(13). The EPA is also proposing that owners and operators of secondary lead smelters subject to the current and new NSPS at 40 CFR part 60, subparts L and La, submit electronic copies of required performance test reports through the EPA's Central Data Exchange (CDX) and Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. The proposed rules require that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [1] at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. These circumstances are (1) Outages of the EPA's CDX or CEDRI which preclude an owner or operator from accessing the system and submitting required reports, and (2) *force majeure* events, which are defined as events that will be or have been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevent an owner or operator from complying with the requirement to submit a report electronically. Examples of *force majeure* events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

[1] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

The electronic submittal of the reports addressed in this proposed rulemaking will: increase the usefulness of the data contained in those reports; keep up with current trends in data availability and transparency; further assist in the protection of public health and the environment; improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of the EPA and delegated state, local, tribal, and territorial air agencies to assess and determine compliance; and ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [2] to implement Executive Order 13563 and is in keeping with the EPA's agency-wide policy [3] developed in response to the White House's Digital Government Strategy.[4] For more information on the benefits of electronic reporting, see the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* referenced earlier in this section.

Finally, the EPA believes that aligning the recordkeeping and reporting requirements of the NSPS and NESHAP reduces the burden on facilities.

E. Compliance Dates

Pursuant to CAA section 111(b)(1)(B), the effective date of the final rule requirements in 40 CFR part 60, subparts L and La, will be the promulgation date of this action. Affected sources that commence construction, or reconstruction, or modification after June 11, 1973, but before December 1, 2022, must comply with all requirements of 40 CFR part 60, subpart L, no later than May 30, 2023.

[2] EPA's Final Plan for Periodic Retrospective Reviews, August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[3] E-Reporting Policy Statement for EPA Regulations, September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[4] Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

Affected sources that commence construction, reconstruction, or modification after December 1, 2022 must comply with all requirements of 40 CFR part 60, subpart La, no later than the effective date of the final rule or upon startup, whichever is later.

IV. Summary of Cost, Environmental, and Economic Impacts

In determining the BSER, the CAA section 111(a)(1) requires the EPA to consider potential emission control approaches, accounting for the estimated costs as well as impacts on energy, solid waste, and other effects. The impacts in this section are expressed as incremental differences between the impacts of emission units complying with the proposed 40 CFR part 60, subparts L and La, and the baseline requirements (NSPS subpart L or NESHAP subpart X). The impacts are presented for emission units at secondary lead smelting facilities that commence construction, reconstruction, or modification over the 3-year period following proposal of the amendments of 40 CFR part 60, subparts L and La.

To determine the incremental impacts of the proposed amendments to 40 CFR part 60, subpart L, the EPA assumed that nine facilities would be subject to subpart L over the 3-year reporting period (*i.e.,* two of the 11 facilities currently subject to the existing NSPS would undergo reconstruction). To determine the incremental impacts of the proposed 40 CFR part 60, subpart La, the EPA projected the number of new, modified, or reconstructed emission units that would become subject to regulation during the 3-year period after proposal of the subpart. Based on a modest growth forecast of 2.4 percent over the next 5 years and the decrease in the number of facilities over the last decade, the EPA conservatively projects that one new affected facility will be constructed over the next 3 years. The EPA also assumes that two existing facilities will undergo reconstruction of a blast, reverberatory or pot furnace over the 3-year period covered by the burden estimate.

A. What are the air quality impacts?

The proposed amendments to 40 CFR part 60, subpart La, would:

- Reduce the PM emissions limit for blast and reverberatory furnaces from 50 to 10 mg/dscm.
- Establish PM emissions limits for pot furnaces of 3 mg/dscm.
- Lower the opacity limit for blast and reverberatory furnaces from 20 percent to 0 percent.
- Lower the opacity limit for pot furnaces from 10 percent to 0 percent.

New or reconstructed blast, reverberatory, and pot furnaces will also be subject to the NESHAP (40 CFR part 63, subpart X) requirements for new sources, while modified blast, reverberatory, and pot furnaces will also be subject to the NESHAP requirements for existing sources. NESHAP subpart X regulates particulate lead emissions from process vent, process fugitive, and fugitive dust sources. The emissions capture systems and control devices that are already required by the NESHAP to comply with the lead limits for blast, reverberatory, and pot furnaces will also control PM emissions for the NSPS. Therefore, the proposed 40 CFR part 60, subpart La, will not result in actual reductions of PM emissions. However, codifying the lower PM and opacity limits in the proposed 40 CFR part 60, subpart La, will significantly reduce the PM and opacity allowable emissions affected sources that commence construction, reconstruction, or modification after December 1, 2022.

B. What are the secondary impacts?

Indirect or secondary air emissions impacts result from the increased energy usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from electricity generating power plants). As part of our evaluation of the BSER, we considered whether the proposed standards of performance would result in any secondary air emissions impacts. The EPA does not expect that facilities will need any additional control devices or other equipment to meet the proposed NSPS requirements beyond those that would already be needed to comply with the NESHAP. Therefore, the EPA does not attribute any secondary impacts to the proposed 40 CFR part 60, subpart La.

C. What are the cost impacts?

For 40 CFR part 60, subparts L and La, the EPA is proposing that facilities conduct periodic performance tests to measure PM emissions from blast, reverberatory, and pot furnaces using EPA Method 5 (Determination of Particulate Matter Emissions from Stationary Sources). The NESHAP (40 CFR part 63, subpart X) also requires periodic tests for lead using EPA Method 12 (Determination of Inorganic Lead Emissions from Stationary Sources) or EPA Method 29 (Metal Emissions from Stationary Sources). Because both of the NESHAP test methods capture PM on a sampling train filter that is subsequently analyzed to determine lead concentration, facilities can conduct an additional gravimetric analysis of the EPA Method 12 or EPA Method 29 filter to determine PM emissions from blast, reverberatory, and pot furnaces, rather than performing separate tests using EPA Method 5. The EPA estimates that the additional gravimetric analysis of the EPA Method 12 or EPA Method 29 particulate filter costs approximately $300 per test per year. To estimate the total cost associated with the proposed periodic PM performance tests under 40 CFR part 60, subparts L and La, the EPA assumed that each respondent under the respective subparts would conduct three PM tests per year (one for each furnace type). See section IV.C for more details on cost estimates.

For 40 CFR part 60, subpart La, the EPA is also proposing that facilities periodically determine the opacity of blast, reverberatory, and pot furnace emissions. For subpart La, the EPA is proposing that facilities conduct initial and periodic tests using EPA Method 9 or EPA Method 22 (Visible Determination of Fugitive Emissions) to determine the absence of opacity in blast, reverberatory, and pot furnace emissions. To estimate the cost of the initial and periodic opacity tests for subpart La, the EPA assumed that facilities would use EPA Method 22, rather than EPA Method 9, because EPA Method 22 is sufficient for determining the absence of opacity (*i.e.,* the proposed opacity limit of zero percent). The EPA assumed that facilities would train facility personnel to implement EPA Method 22 (at a one-time cost of $426 per facility), but not incur additional capital costs.

For 40 CFR part 60, subpart L, the total incremental cost for the periodic PM testing over the 3-year period is $24,300 (*i.e.,* three tests each year at $300 per test for nine respondents). For 40 CFR part 60, subpart La, the total incremental cost for PM testing over the 3-year period is $8,100 (*i.e.,* three tests each year at $300 per test for three respondents) and the total incremental cost for opacity testing is $1,277 for EPA Method 22 training (*i.e.,* one-time cost of $426 for three respondents). The total incremental cost for emissions testing for the two reconstructed sources and one new source projected over the 3-year period is $8,526.

The EPA did not estimate cost impacts for the proposed monitoring requirements in 40 CFR part 60, subparts L and La, because this action proposes to allow subject facilities to comply with these subparts by complying with the applicable monitoring requirements for new sources specified in the NESHAP (40 CFR part 63, subpart X). Therefore, there is no additional monitoring burden.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels from complying with the rule in the primary markets are significant enough, impacts in other markets may also be examined. Both the magnitude of costs associated with the proposed requirements and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a regulatory requirement.

Based on the estimates for PM emissions and opacity testing described in sections III.C and IV.C of this preamble, and the recordkeeping and reporting requirements described in section VI.B of this preamble, we estimate that the total cost for emissions testing, reporting, and recordkeeping for subpart L for the nine existing sources projected over the 3-year period is $80,000. The average annual cost per facility is approximately $3,000. The nine facilities subject to this rule are owned by six different parent companies with an annual average revenue of $3.4 billion in 2021. The economic impact associated with this cost as an annual cost per sales, for the average parent company in the industry, is less than 0.0001 percent and is not expected to result in a significant market impact, regardless of whether it is fully passed on to the consumer or fully absorbed by the affected firms.

In addition, the cost analysis assumed that facilities subject to proposed 40 CFR part 60, subpart La, would conduct initial and periodic tests for PM emissions and opacity, but would not need to install control devices to meet the proposed PM and opacity emissions limits because the new, modified, or reconstructed facility would install the same types of controls already necessary to comply with NESHAP subpart X. The EPA also assumed that facilities subject to proposed subpart La would not incur monitoring costs attributed to the new NSPS.

The EPA views the testing costs to be upper-bound estimates on the potential compliance costs of the proposed 40 CFR part 60, subpart La. Even under the upper bound cost assumptions described above, the EPA expects the potential economic impacts of this proposed action will be small.

As required by the Regulatory Flexibility Act (RFA), we performed an analysis to determine if any small entities might be disproportionately impacted by the proposed requirements. Based on this analysis, we conclude that the estimated costs for the proposed rule

will not have a significant economic impact on a substantial number of small entities. Details of this analysis are presented in Section VI.C of this preamble and in the memorandum *Economic Impact Analysis for the Proposed New Source Performance Standards (NSPS) for Secondary Lead Smelters* available in the docket of this action.

E. What are the benefits?

The proposed revisions to 40 CFR part 60, subpart L, and the newly proposed subpart La would provide needed clarifications for regulated sources, improve the practical enforceability of the rules and enhance compliance and enforcement. The EPA expects that implementing the proposed amendments to 40 CFR part 60, subparts L and La, will help ensure that control systems used to reduce PM and opacity emissions from blast, reverberatory, and pot furnaces are properly operated and maintained over time.

Additionally, the proposed amendments to require electronic reporting of emissions test results in 40 CFR part 60, subparts L and La, will ultimately reduce the burden on regulated facilities, delegated air agencies, and the EPA, and also improve access to data, minimizes data reporting errors, and eliminate paper waste and redundancies.

F. What analysis of environmental justice did we conduct?

Consistent with the EPA's commitment to integrating environmental justice in the Agency's actions, and following the directives set forth in multiple Executive orders, the Agency has conducted an analysis of the demographic groups living near existing secondary lead smelting facilities. Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms; specifically, minority populations (*i.e.,* people of color), low-income populations, and indigenous peoples (59 FR 7629; February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal Government actions (86 FR 7009; January 20, 2021). The EPA defines environmental justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' In recognizing that people of color and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to consider ways of protecting them from adverse public health and environmental effects of air pollution.

This action proposes standards of performance for new, modified, and reconstructed sources that commence construction after the rule is proposed. The locations of the construction of new secondary lead smelters are not known. In addition, it is not known which of the existing secondary lead smelters will be modified or reconstructed in the future, if at all. Therefore, the demographic analysis was conducted for the 11 existing secondary lead smelters as a characterization of the demographics in areas where these facilities are currently located.

To examine the potential for any EJ issues that might be associated with the source category, we performed a demographic analysis. This demographic analysis is an assessment of individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the existing facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups.

The results of the demographic analysis (see Table 3) indicate that, for populations within 5 km of the 11 secondary lead smelters, the percent Hispanic or Latino population is higher than the national average (38 percent versus 19 percent). The percentages of ''other and multiracial population'' and people living in linguistic isolation within the same geographic area are higher than the national average (12 percent versus 8 percent and 8 percent versus 5 percent, respectively). The percentage of the population over 25 without a high school diploma is higher than the national average (19 percent versus 12 percent), while the percentage of the population living below the poverty line is similar to the national average.

The results of the analysis of populations within 50 km of the 11 secondary lead smelters are similar to the 5 km analysis, with the Hispanic or Latino population and ''other and multiracial population'' both above the national average.

A summary of the demographic assessment performed for the secondary lead smelters is included as Table 3. The methodology and the results of the demographic analysis are presented in a technical report, ''Analysis of Demographic Factors for Populations Living Near Secondary Lead Smelting Source Category Operations,'' available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0481).

TABLE 3—DEMOGRAPHIC ASSESSMENT FOR SECONDARY LEAD SMELTERS [3]

Demographic group	Nationwide [1]	Population within 50 km of 11 existing facilities	Population within 5 km of 11 existing facilities
Total Population	328,016,242	23,353,293	403,240
Race and Ethnicity by Percent			
White	60%	48%	37%
African American	12%	9%	14%
Native American	0.7%	0.2%	0.1%
Hispanic or Latino (includes white and nonwhite) [2]	19%	30%	38%
Other and Multiracial	8%	13%	12%
Income by Percent			
Below Poverty Level	13%	13%	14%

TABLE 3—DEMOGRAPHIC ASSESSMENT FOR SECONDARY LEAD SMELTERS [3]—Continued

Demographic group	Nationwide [1]	Population within 50 km of 11 existing facilities	Population within 5 km of 11 existing facilities
Above Poverty Level	87%	87%	86%
Education by Percent			
Over 25 and without a High School Diploma	12%	15%	19%
Over 25 and with a High School Diploma	88%	85%	81%
Linguistically Isolated by Percent			
Linguistically Isolated	5%	8%	8%

Notes:

1. The nationwide population count and all demographic percentages are based on the Census' 2015–2019 American Community Survey five-year block group averages and include Puerto Rico. Demographic percentages based on different averages may differ. The total population counts within 5 km and 50 km of all facilities are based on the 2010 Decennial Census block populations.

2. To avoid double counting, the "Hispanic or Latino" category is treated as a distinct demographic category for these analyses. A person is identified as one of five racial/ethnic categories above: White, African American, Native American, Other and Multiracial, or Hispanic/Latino. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

3. This action proposes standards of performance for new, modified, and reconstructed sources that commence construction after the rule is proposed. Therefore, the locations of the construction of new Secondary Lead Smelters are not known. In addition, it is not known which of the existing Secondary Lead Smelters will be modified or reconstructed in the future. Therefore, the demographic analysis was conducted for the 11 existing Secondary Lead Smelters as a characterization of the demographics in areas where these facilities are now located.

The EPA expects that the Standards of Performance for Secondary Lead Smelters Constructed after December 1, 2022 will ensure compliance with the PM and opacity emissions limits (which also apply during periods of startup, shutdown, and malfunctions) via initial and periodic emissions testing. Proposed subpart La will also codify the improvements in PM control technologies that have occurred in the industry since promulgation of the current NSPS subpart L. Therefore, there would be a positive, beneficial effect for populations in proximity to any future affected sources, which in this source category have tended to disproportionately include minority, low-income and indigenous communities.

V. Incorporation by Reference

The EPA proposes to amend the 40 CFR 60.17 to incorporate by reference the following voluntary consensus standards (VCS):

- ASTM D7520–16, "Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere" describes procedures to determine the opacity of a plume, using digital imagery and associated hardware and software, where opacity is caused by PM emitted from a stationary point source in the outdoor ambient environment. The opacity of emissions is determined by the application of a digital camera opacity technique (DCOT) that consists of a digital still camera, analysis software, and the output function's content to obtain and interpret digital images to determine and report plume opacity.

The ASTM D7520–16 document is available from ASTM at *https://www.astm.org* or l100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 832–9555 at *service@astm.org.*

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is 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)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The updated Information Collection Request (ICR) document that the EPA prepared for subpart L has been assigned EPA ICR number 1128.13, and the new ICR prepared for proposed subpart La has been assigned EPA ICR number 2729.01. You can find copies of the ICRs in the docket for this rule, and it is briefly summarized here.

The EPA is proposing amendments to the existing NSPS (40 CFR part 60, subpart L) that require:

- updated process equipment definitions;
- periodic testing for PM emissions;
- incorporation of monitoring, recordkeeping, and reporting requirements that are consistent with NESHAP subpart X; and
- electronic reporting of performance tests.

The EPA is also proposing a new subpart (40 CFR part 60, subpart La) for new, modified or reconstructed facilities that start up after this proposal that:

- updates definitions to be consistent with the NESHAP subpart X;
- establishes a tighter PM limit (10 mg/dscm) for blast and reverberatory furnaces;
- establishes a new PM limit (3 mg/dscm) for pot furnaces;
- establishes a tighter opacity limit (0%) for blast, reverberatory, and pot furnaces;
- removes the exemptions for periods of SSM;
- requires initial and periodic testing for PM and opacity emissions;
- incorporates monitoring, recordkeeping, and reporting requirements that are consistent with the NESHAP (40 CFR part 63, subpart X); and
- requires electronic reporting of performance tests.

Respondents/affected entities: Secondary Lead Smelting Facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts L and La)

Estimated number of respondents: Nine for subpart L (EPA ICR number

1128.13) and three for subpart La (EPA ICR number 2729.01).

Frequency of response: Annually.

Total estimated burden: 228 hours (per year) for subpart L (EPA ICR number 1128.13) and 130 hours (per year) for subpart La (EPA ICR number 2729.01). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $26,477 (per year), includes $5,400 annualized capital or operation & maintenance costs for subpart L (EPA ICR number 1128.13) and $14,728 (per year), includes $2,700 annualized capital or operation & maintenance costs for subpart La (EPA ICR number 2729.01).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *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. OMB must receive comments no later than January 3, 2023.

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. The small entities subject to the requirements of this action are small businesses classified under NAICS 331492 (Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)) with 750 or fewer employees (including its subsidiaries and affiliates). The Agency has determined that four of the 11 facilities (36 percent of the facilities) are classified as small businesses and may experience an impact of 0.18 percent of revenues based on the maximum costs-to-sales ratio and an annual revenue of $2.8 million in 2021. Details of this analysis are presented in the memorandum *Economic Impact Analysis for the Proposed New Source Performance Standards (NSPS) for Secondary Lead Smelters* available in the docket of this action. Based on this analysis, we conclude that the estimated costs for the proposed rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This proposal is not expected to impact state, local, or tribal governments and there are no nationwide annualized costs of this proposed rule for affected industrial sources. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not apply to such governments and will not impose any obligations upon them.

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 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. This proposed rule imposes requirements on owners and operators of secondary lead smelting facilities and not tribal governments. The EPA does not know of any secondary lead smelting facilities owned or operated by Indian tribal governments. However, if there are any, the effect of this proposed rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. 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 (62 FR 19885, April 22, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

The EPA interprets Executive Order 13045 as applying 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 (NTTAA)

This action involves technical standards. The EPA proposes to use EPA Method 5 (Determination of Particulate Matter emissions from Stationary Sources) to measure filterable PM and EPA Method 9 (Visual Determination of the Opacity of Emissions from Stationary Sources) to determine visible emissions from blast and reverberatory process vents and process fugitive emissions. Therefore, the EPA conducted searches for the Secondary Lead NSPS through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute (ANSI). We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases.

We conducted searches for EPA Methods 1, 1A, 2, 2A, 2B, 2C, 2D, 2F, 2G, 2H, 3, 3A, 3c, 4, 5, 9, 12, 22, and 29 of 40 CFR part 60, appendix A. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA reviewed it as a potential equivalent method. We reviewed all potential

standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for a particular VCS. No applicable VCS was identified for EPA Method 22.

In this proposed action, the EPA is incorporating by reference the VCS ASTM D7520–16, Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere, as an acceptable alternative to EPA Method 9 with the following caveats:

- During the certification procedure for the digital camera opacity technique (DCOT) outlined in Section 9.2 of ASTM D7520–16, the facility or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds or a sparse tree stand).
- The facility must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520–16.
- The facility must follow the recordkeeping procedures outlined in 40 CFR 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered joint photographic experts group (JPEG) files used for opacity and certification determination.
- The facility or the DCOT vendor must have a minimum of four independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15-percent opacity of anyone reading and the average error must not exceed 7.5-percent opacity.
- This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification or training of the DCOT camera, software, and operator in accordance with ASTM D7520–16 is on the facility, DCOT operator, and DCOT vendor. This method describes procedures to determine the opacity of a plume, using digital imagery and associated hardware and software, where opacity is caused by PM emitted from a stationary point source in the outdoor ambient environment. The opacity of emissions is determined by the application of a DCOT that consists of a digital still camera, analysis software, and the output function's content to obtain and interpret digital images to determine and report plume opacity. The ASTM D7520–16 document is available from ASTM at *https://www.astm.org* or l100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone number: (610) 832–9500, fax number: (610) 8329555 at *service@astm.org.*

The EPA is finalizing the use of the guidance document, Fabric Filter Bag Leak Detection Guidance, EPA–454/R–98–015, Office of Air Quality Planning and Standards (OAQPS), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, September 1997. This document provides guidance on the use of triboelectric monitors as fabric filter bag leak detectors. The document includes fabric filter and monitoring system descriptions; guidance on monitor selection, installation, setup, adjustment, and operation; and quality assurance procedures. The document is available at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000D5T6.PDF.*

Additional information for the VCS search and determinations can be found in the docket for this proposed action (Docket ID No. EPA–HQ–OAR–2022–0481).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in section IV.F of this preamble. All relevant documents are available in the docket for this action (Docket ID No. EPA–HQ–OAR–2022–0481).

The assessment of populations in close proximity of secondary lead smelters shows some demographic groups that are higher than the national average, however, we determined that the human health impacts are not disproportionate for these groups because this action proposes changes to the standards that will increase protection for communities. The EPA determined that the standards should be revised to reflect cost-effective developments in practices, process, or controls and BSER. The proposed changes will provide additional health protection for all populations, including communities already overburdened by pollution, which are often minority, low-income, and indigenous communities. The proposed changes will have beneficial effects on air quality and public health for populations exposed to emissions from facilities in the source category. Further, this rulemaking complements other actions already taken by the EPA to reduce emissions and improve health outcomes for overburdened and underserved communities.

Michael Regan,

Administrator.

[FR Doc. 2022–25586 Filed 11–30–22; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2022–0066; FF09E22000 FXES1113090FEDR 223]

RIN 1018–BF51

Endangered and Threatened Wildlife and Plants; Removing Island Bedstraw and Santa Cruz Island Dudleya From the List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft post-delisting monitoring plans.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove island bedstraw (*Galium buxifolium*) and Santa Cruz Island dudleya (*Dudleya nesiotica*) from the Federal List of Endangered and Threatened Plants on the basis of recovery. Both of these native plant species occur in the Channel Islands National Park off the coast of California. This proposed rule is based on our review of the best available scientific and commercial data, which indicates that the threats to island bedstraw and Santa Cruz Island dudleya have been eliminated or reduced to the point that these species have recovered and no longer meet the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). We request information and comments from the public regarding this proposed rule and the draft post-delisting monitoring plans for island bedstraw and Santa Cruz Island dudleya.

DATES: We will accept comments received or postmarked on or before

January 30, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 17, 2023.

ADDRESSES: You may submit comments on this proposed rule and the draft post-delisting monitoring plans for island bedstraw and Santa Cruz Island dudleya by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2022–0066, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2022–0066, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: This proposed rule and supporting documents, including the 5-year reviews, recovery plan, draft post-delisting monitoring plans, and the species status assessment (SSA) reports for island bedstraw and Santa Cruz Island dudleya, are available at *https://ecos.fws.gov,* or at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2022–0066 (also see **FOR FURTHER INFORMATION CONTACT**). In addition, the supporting files for this proposed rule will be available for public inspection by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road #B, Ventura, CA 93003; telephone 805–644–1766.

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; by telephone 805–644–1766. Direct all questions or requests for additional information to: island bedstraw and/or Santa Cruz Island dudleya questions, to the address above. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined no longer to be an endangered or threatened species, we may reclassify the species or remove it from the Federal Lists of Endangered and Threatened Wildlife and Plants due to recovery. Island bedstraw is listed as endangered, and Santa Cruz Island dudleya is listed as threatened. We are proposing to remove these species from the Federal List of Endangered and Threatened Plants (*i.e.,* delist these species) because we have determined that they are no longer in danger of extinction now or within the foreseeable future. Delisting a species can be completed only by issuing a rule.

What this document does. This rule proposes to remove island bedstraw and Santa Cruz Island dudleya from the Federal List of Endangered and Threatened Plants in title 50 of the Code of Federal Regulations (at 50 CFR 17.12(h)) based on their recovery.

The basis for our action. Under the Act, we may determine that a species is an endangered species or threatened species based on any of five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in removing a species from the List (delisting).

Under the Act, we must review the status of all listed species at least once every five years. We must delist a species if we determine, on the basis of the best available scientific and commercial data, that the species is neither a threatened species nor an endangered species. Our regulations at 50 CFR 424.11 identify three reasons why we might determine that a listed species is neither an endangered species nor a threatened species: (1) The species is extinct; (2) the species has recovered, or (3) the original data used at the time the species was classified were in error. Here, we have determined that island bedstraw and Santa Cruz Island dudleya have recovered, therefore we are proposing to delist them.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not remove island bedstraw and Santa Cruz Island dudleya from the List of Endangered and Threatened Plants. Please include any biological qualitative and/or quantitative data to support the reasons.

(2) Relevant data concerning any threats (or lack thereof) to island bedstraw and Santa Cruz Island dudleya, particularly any data on the possible effects of climate change.

(3) The extent of State protection and management that would be provided to these plants as delisted species.

(4) Current or planned activities within the geographic range of island bedstraw and Santa Cruz Island dudleya that may negatively impact or benefit the species.

(5) The draft post-delisting monitoring plans and the methods and approaches detailed in them.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that one or both of the species should remain listed as their current status (island bedstraw as endangered and Santa Cruz Island dudleya as threatened) or we may determine that one or both species should be reclassified.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website. The use of virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Supporting Documents

A species status assessment (SSA) team prepared SSA reports for both island bedstraw (Service 2021a, entire) and Santa Cruz Island dudleya (Service 2021b, entire). The SSA team was composed of Service biologists, in consultation with other species experts. These SSA reports represent a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting both of the species.

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994), the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the SSA reports for island bedstraw and Santa Cruz Island dudleya. We sent the island bedstraw SSA report to three independent peer reviewers and received three responses. We sent the Santa Cruz Island dudleya SSA report to three independent peer reviewers and received one response. Results of this peer review process can be found at *https://ecos.fws.gov.* The island bedstraw SSA report was also submitted to our Federal, State, and Tribal partners for scientific review. We received one partner review from the U.S. Geological Survey (USGS; Channel Islands Field Station in Ventura, California). The Santa Cruz Island dudleya SSA report was also submitted to our Federal, State, and Tribal partners for scientific review. We received two partner reviews from The Nature Conservancy (TNC) and USGS (Channel Islands Field Station in Ventura, California). In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the final SSA reports for both species, which are the foundation for this proposed rule.

Previous Federal Actions

Island Bedstraw

On July 31, 1997, we listed island bedstraw as an endangered species (62 FR 40954), based primarily on the threats of soil loss, habitat alteration, and herbivory from feral pig rooting and sheep grazing. At the time of listing, we found that designation of critical habitat was not prudent, and no further action regarding critical habitat has been taken (62 FR 40954, July 31, 1997; p. 40971). The Recovery Plan that includes island bedstraw was signed on September 26, 2000 (71 FR 54837–54838). The downlisting and delisting criteria for island bedstraw that are in the Recovery Plan (Service 2000, pp. 65–66) are listed below in *Recovery Goals and Objectives.*

By the time the Recovery Plan was signed in 2000, sheep had been removed from all of the northern Channel Islands. Additionally, TNC and National Park Service (NPS) also initiated an 18-month feral pig removal program that removed all pigs from Santa Cruz Island by the end of 2006 (Parkes et al. 2010, entire). No feral pigs occurred on San Miguel Island after 1900 (McEachern et al. 2016, p. 759). In 2009, we conducted a 5-year review pursuant to 16 U.S.C. 1533(c)(2)(A) in which we determined that island bedstraw still met the definition of an endangered species based on the following threats: (1) soil loss and erosion resulting from years of feral pig rooting and sheep grazing, (2) loss of habitat to nonnative, invasive plants, (3) random naturally occurring events due to its limited distribution and small population size, and (4) effects from climate change (Service 2009b, entire). We published a notice announcing the initiation of a new 5-year review of the status of island bedstraw on June 18, 2018 (83 FR 28251–28254). We developed the SSA that formed the basis for this action as part of our 5-year review process. This action constitutes the 5 year review for island bedstraw.

Santa Cruz Island Dudleya

On July 31, 1997, we listed Santa Cruz Island dudleya as a threatened species (62 FR 40954–40974), based primarily on the threats of soil loss, herbivory by feral pigs, disturbance by pig rooting, and vulnerability to collecting for botanical or horticultural use. At the time of listing, we found that designation of critical habitat was not prudent, and no further action regarding critical habitat has been taken (62 FR 40954, July 31, 1997; p. 40971). The Recovery Plan that covers island bedstraw also includes Santa Cruz Island dudleya. The delisting criteria for Santa Cruz Island dudleya that are in the Recovery Plan (Service 2000, p. 65) are listed below in *Recovery Goals and Objectives.*

TNC and NPS initiated an 18-month feral pig removal program that removed all pigs from Santa Cruz Island by the end of 2006 (Parkes et al. 2010, entire). In 2009, we conducted a 5-year review pursuant to 16 U.S.C. 1533(c)(2)(A) in which we determined that Santa Cruz Island dudleya still met the definition of a threatened species based on the following threats: (1) soil loss and degradation, (2) competition from invasive plant species, and (3) stochastic events on the species' single population with limited geographic range. We published a notice announcing the initiation of a new 5-year review of the status of Santa Cruz Island dudleya on July 26, 2019 (84 FR 36116–36118). We developed the SSA that formed the basis for this action as part of our 5-year review process. This action constitutes the 5 year review for Santa Cruz Island dudleya.

Proposed Delisting Determination

Background

Island Bedstraw

Island bedstraw occurs on Santa Cruz and San Miguel Islands of the Channel Islands in Santa Barbara County, California (figure 1). It is a long-lived, flowering woody shrub that can be more than 1 m (3 ft) tall and may sprawl laterally wider than it is tall. The basal stem diameter can exceed 13 millimeters (mm) (0.5 inch (in)) (McEachern et al. 2019a, p. 20). Stems can be glabrous, scabrous, or sparsely hairy. Its leaves are large for the genus and tend to turn red and be lost under summer drought stress conditions. Flowers are small (3–4 mm or 0.10–0.15 in diameter) and are greenish white, often with darker petal tips or centers. The fruit is a schizocarp (a dry fruit that splits into parts when ripe) comprising two single-seeded mericarps, typically referred to as nutlets. It is not known how long adult plants can live. They can likely live more than 20 years, if not longer (McEachern pers. comm. 2020).

Historically, island bedstraw has been characterized as restricted to coastal bluffs, steep rocky slopes, and sea cliffs in the coastal-bluff scrub vegetation (Junak et al. 1995, p. 254; Dempster 1993, p. 982; Soza 2012, p. 1211). However, the plant has also been found in other places, like in pine forest and at interior locations. For Santa Cruz Island, the number of known island bedstraw sites has increased with each successive survey effort, from 13 to 27 to 36 over the course of 20 years and 3 survey efforts. The number of sites on San Miguel Island has remained at six. Each site represents a separate population of island bedstraw for the purposes of this analysis. Where data are available, the estimated number of plants within sites has increased over time, sometimes dramatically. Plant totals have gone from about 100 to about 10,000 for Santa Cruz Island, and the most recent total does not include most of the terraces or cliffs on the coastal sites. The total number of known plants on San Miguel Island has increased from about 500 to about 5,000, again not including most cliff face plants. Most of the 42 total sites are either extant or presumed to be extant. Island bedstraw seems to be expanding on terraces and other non-cliff habitats; this expansion is demonstrated at several sites. Further information on the basic biology and ecology of island bedstraw is summarized in the SSA report (Service 2021a, entire).

Santa Cruz Island Dudleya

Santa Cruz Island dudleya is a succulent perennial, known from only one population (represented by five subpopulations) on the westernmost tip of Santa Cruz Island in Santa Barbara County, California (figure 1). In general, little is known specifically about the life history of Santa Cruz Island dudleya. The species is a perennial succulent that is known to reproduce only by seed. The seed is extremely small and may be transported only a short distance by wind or water where it may germinate quickly if conditions allow or remain viably dormant for years. Many *Dudleya* species recruit most successfully into a cryptogamic substrate, but it is unknown if this substrate is a requirement for Santa Cruz Island dudleya. Seedlings require open spaces for germination and are not reproductive in their first year. Plants are self-compatible but require pollinators, some of which may be native bees. Seed production is not pollinator limited, and a reproductive plant can produce more than 1,000 seeds per year. Plants can live for at least several years. Older plants that have previously flowered may have years when they do not flower. Santa Cruz Island dudleya is found mostly on the lowest marine terraces from about 20–30 m (66–98 ft) elevation. The soils are sandy and marine sediment derived or have a greater clay fraction derived from basaltic rock (Klinger et al. unpublished p. 6). The more coastal soils are considered to be more saline (Vivrette 2002, entire). Further information on the basic biology and ecology of Santa Cruz Island dudleya is summarized in the SSA report (Service 2021b, entire).

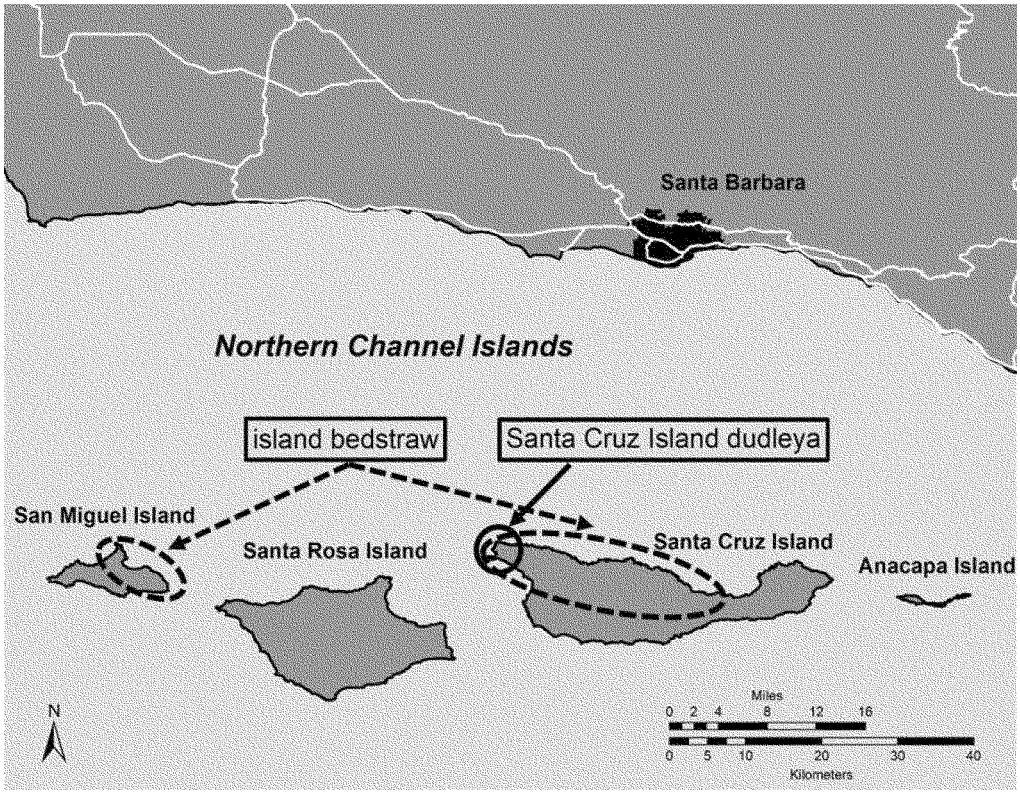

Figure 1. Locations of island bedstraw and Santa Cruz Island dudleya in the Channel Islands National Park off the coast of California.

Recovery Plan and Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii) of the Act, recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Lists of Endangered and Threatened Wildlife and Plants.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan's delisting or downlisting criteria.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently, and that the species is robust enough, that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may or may not follow all of the guidance provided in a recovery plan.

The Recovery Plan (Service 2000, p. 62) describes the recovery goals, objectives, and criteria that need to be achieved to consider removing island bedstraw and Santa Cruz Island dudleya from the Federal List of Endangered and Threatened Plants. We summarize the goals and then discuss progress toward meeting the recovery criteria in the following sections.

Recovery Goals and Objectives

In a recovery plan, the overall recovery goal is to improve the status of the species such that the protections of the Act are no longer needed. Preliminary goals and objectives include (1) stabilizing and protecting populations, (2) conducting research necessary to refine recovery criteria, and (3) reclassifying to threatened (downlisting) those species currently listed as endangered (reclassification being appropriate when a taxon is no longer in danger of extinction throughout all or a significant portion of its range). Because data upon which to base decisions about reclassification and recovery were mostly lacking when the Recovery Plan was developed, downlisting and recovery criteria in the Recovery Plan are necessarily preliminary (Service 2000, p. 62).

The following Recovery Plan criteria that generally apply to both of these species have been met: (1) provide protection and adaptive management of currently known (and in some cases historical) sites, (2) provide evidence

that the populations at these sites are stable or increasing over a number of years, which is determined by the life history of the individual species, (3) preserve the genetic diversity of the species by storing seeds in cooperating facilities, and (4) develop reliable seed germination and propagation techniques.

Determining whether a species' current status meets the overall recovery goal and associated objectives requires a broad evaluation of the trends in the observed numbers of occurrences indicated by surveys and monitoring, the abundance and distribution of suitable habitat, evaluation of the seed bank, and the effectiveness of protective measures that have been implemented to reduce threats from human activities such as soil loss and herbivory by feral pigs and ungulates, disturbance by pig rooting, collecting for botanical and horticultural use, and trampling by humans. In addition, we also examine the effectiveness of protective measures that have been implemented to reduce threats from nonnative plants, the risk associated with small population size, climate change, and fire. In order to evaluate threats to the species, we must consider potential impacts within the foreseeable future. The Recovery Plan (Service 2000, entire) used 10–15 years as the period of time to evaluate population stability because that time period reflects a typical multiyear precipitation cycle (Service 2000, p. 63). Unique recovery criteria for island bedstraw and Santa Cruz Island dudleya are covered in the Recovery Plan (Service 2000, pp. 64–68) and are discussed below.

Recovery Criteria

Island Bedstraw Downlisting Criteria

The Recovery Plan identified seven criteria for reclassifying island bedstraw to a threatened species (Service 2000, pp. 64–68):

• *Downlisting Criterion 1: Stabilize or increase populations on Santa Cruz and San Miguel Islands with evidence of natural recruitment for a period of 20 years that includes the normal precipitation cycle.*

Status of achieving recovery criterion: Since the time of listing, researchers have found 20 new sites on Santa Cruz Island, increasing the total number of sites from 19 to 39. On San Miguel Island, for three of the six historical sites that were surveyed, significant increases in numbers occurred between the time of listing and the most recent survey. Combined numbers for both islands have increased from 512–603 at time of listing to at least 15,730 individuals at the time of 2015/2017 helicopter surveys. We conclude that this criterion has been met.

• *Downlisting Criterion 2: Reintroduce plants to historical locations.*

Status of achieving recovery criterion: No introduction of island bedstraw to any of the historical locations where it is possibly extirpated and no outplantings to augment extant historical sites have occurred. However, at the historical sites, plant numbers are generally increasing without plants being added artificially. Although this criterion has not been met, we conclude it is no longer needed.

• *Downlisting Criterion 3: Seed stored in CPC cooperating facilities.*

Status of achieving recovery criterion: Currently, only a small amount of seed from a few sites on Santa Cruz Island is stored at the Santa Barbara Botanic Garden, a Center for Plant Conservation (CPC) facility. Thorough conservation seed banking requires seed in storage from a good representation of sites over the range of the species. A few sites with currently only a small amount of seed is not sufficient to cover that standard. We conclude that this criterion has not been met. While there are plans to bolster the conservation seed bank, with its substantial natural recovery of island bedstraw this criterion no longer has the urgency it did at the time of listing. Because so many new populations have been documented, and the abundance is so great, conservation seed banking is not as important as it was thought to be at the time of the recovery plan.

• *Downlisting Criterion 4: Seed germination and propagation techniques understood.*

Status of achieving recovery criterion: While seeds have been germinated and the resulting plants have grown for several years, the conditions in which the seeds were germinated were fairly general, and optimal protocols have not been developed. We conclude that this criterion has not been met. However, we do not think Downlisting Criterion 4 is needed anymore because the numbers of island bedstraw are increasing naturally.

• *Downlisting Criterion 5: Life-history research conducted.*

Status of achieving recovery criterion: Research over a 10-year period on the life history of the species, particularly flower biology and demography, has shown recruitment episodes and documented transitions through life-history stages. We conclude that this criterion has been met.

• *Downlisting Criterion 6: Surveys of historical locations conducted.*

Status of achieving recovery criterion: Most of the 13 historical sites on Santa Cruz Island have been resurveyed at least once, and plants were found at most of those sites. In addition, most of the 14 new locations found in 2004–2006 were either remapped or had plant numbers estimated in 2015 surveys. Most of the six historical sites on San Miguel Island have also been resurveyed, and plants were also found at all of those resurveyed sites. We conclude that this criterion has been met.

• *Downlisting Criterion 7: If declining, determine cause and reverse trend.*

Status of achieving recovery criterion: The species has not been declining on either Santa Cruz or San Miguel Islands. Rather, it has been dramatically increasing, and many new sites have been found since the time of listing. We conclude that this criterion has been met.

Island Bedstraw Delisting Criteria

The Recovery Plan identified three criteria for removing island bedstraw from the Federal List of Endangered and Threatened Plants (Service 2000, pp. 64–68):

• *Delisting Criterion 1: Discover or establish five additional populations per island (San Miguel and Santa Cruz).*

Status of achieving recovery criterion: Researchers have discovered 23 previously unknown sites on Santa Cruz Island. No new sites have been discovered or established on San Miguel Island. San Miguel Island lacks the extensive suitable habitat of Santa Cruz Island, and there may not be additional undiscovered populations; however, surveyed populations have increased in numbers of individuals. We conclude that this criterion has been met for Santa Cruz Island but not for San Miguel Island, but the criterion may not be possible for San Miguel Island.

• *Delisting Criterion 2: No decline after downlisting for 10 years.*

Status of achieving recovery criterion: We conclude that this criterion is not relevant since we have not downlisted the species.

• *Delisting Criterion 3: All potential habitat surveyed.*

Status of achieving recovery criterion: Currently, not every part of the north coast of Santa Cruz Island has been surveyed, nor have detailed surveys occurred everywhere on San Miguel Island or in potential habitat on the north coast of Santa Rosa Island. Additionally, historical interior sites have not been resurveyed sufficiently. We conclude that this criterion has not been met. However, this criterion may

no longer be needed because the numbers of island bedstraw plants have increased substantially on the islands from which it is known.

Santa Cruz Island Dudleya Delisting Criteria

The Recovery Plan identified six criteria for removing Santa Cruz Island dudleya from the Federal List of Endangered and Threatened Plants (Service 2000, pp. 64–68):

• *Delisting Criterion 1: Maintain the existing population as stable with evidence of natural recruitment for a period of 20 years that includes the normal precipitation cycle.*

Status of achieving recovery criterion: Data indicate that the population size is stable at between 40,000 and 200,000 plants estimated per survey over the last 25 years, with the last estimate of 120,000 in 2019. In 2019 a robust repeatable survey protocol was established, and baseline data have been collected to assess future trends. This criterion has been met.

• *Delisting Criterion 2: Seed stored in CPC cooperating facilities.*

Status of achieving recovery criterion: An abundance of recently collected seed is stored at the SBBG. This criterion has been met.

• *Delisting Criterion 3: Seed germination and propagation techniques understood.*

Status of achieving recovery criterion: While no specific work has been done with Santa Cruz Island dudleya, seed germination and plant propagation techniques are well understood for many other *Dudleya* species, including other closely related species in the same subgenus. We conclude that this criterion has been met.

• *Delisting Criterion 4: Weed competition understood and managed.*

Status of achieving recovery criterion: The vegetation of Santa Cruz Island is still changing since the complete removal of feral ungulates. Some aspects of the interactions of nonnative annual grasses and Santa Cruz Island dudleya were investigated more than 20 years ago, but little has been done recently. We conclude this criterion has not been met. However, Santa Cruz Island dudleya has not been observed to have been competitively impacted by weeds and is at least stable in population size at 40,000–200,000 individuals over the last 25 years, so while weeds may be a threat, they have not seemed to have had an impact on population stability.

• *Delisting Criterion 5: Pig damage controlled.*

Status of achieving recovery criterion: Pigs were completely removed from Santa Cruz Island by 2006, and substantial passive vegetation recovery has occurred. This criterion has been met.

• *Delisting Criterion 6: Life-history research conducted.*

Status of achieving recovery criterion: While originally planned, no additional life-history research has been conducted specifically on Santa Cruz Island dudleya since the time of listing. However, many life-history characteristics are similar throughout *Dudleya* and applicable to this species. The criterion is considered met through knowledge of the biology of similar species.

Summary of Recovery Criteria

In the Recovery Plan, the overall recovery goal is to improve the status of the species such that the protections of the Act are no longer needed. Preliminary goals and objectives include stabilizing and protecting populations, conducting research, and reclassifying species to threatened (downlisting) when appropriate. The Recovery Plan criteria that generally apply to both of these species have been met. The Recovery Plan's unique recovery criteria for island bedstraw and Santa Cruz Island dudleya (Service 2000, pp. 64–68) are discussed above and summarized below.

Research and survey efforts have clarified the distribution, abundance, and habitat characteristics of island bedstraw and Santa Cruz Island dudleya. This information has resulted in a better understanding of the species' ecology and has shown an increase in the species' range, and numbers of sites and individuals for island bedstraw, and has shown population stability and increase in distribution for Santa Cruz Island dudleya.

Overall, the intent of the recovery criteria has been met in collaboration with our partners. TNC and NPS have provided protection and adaptive management of historical and recent sites. USGS, TNC, and others have provided survey evidence that the populations at these sites are stable or increasing over a number of years. TNC and NPS have coordinated to preserve the genetic diversity of both species by conservation banking of seeds in approved facilities. Both species are considered recovered without reliable seed germination and propagation techniques being developed. Therefore, we conclude that, based on the best available information, the intent of the recovery criteria in the Recovery Plan has been achieved and the recovery goal identified in the Recovery Plan has been met for both island bedstraw and Santa Cruz Island dudleya.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. On July 5, 2022, the U.S. District Court for the Northern District of California vacated regulations that the Service (jointly with the National Marine Fisheries Service) promulgated in 2019 modifying how the Services add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (*CBD* v. *Haaland*). As a result of that vacatur, regulations that were in effect before those 2019 regulations now govern species classification and critical habitat decisions. Our analysis for this proposal applied those pre-2019 regulations. However, given that litigation remains regarding the court's vacatur of those 2019 regulations, we also undertook an analysis of whether the proposal would be different if we were to apply the 2019 regulations. We concluded that the proposal would have been the same if we had applied the 2019 regulations. The analysis based on the 2019 regulations is included in the decision file for this proposal.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive

effects. We consider these same five factors (50 CFR 424.11(c) and (e)) when considering downlisting a species from endangered to threatened and when considering delisting a species.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Because the decision in *CBD* v. *Haaland* vacated our 2019 regulations regarding the foreseeable future, we refer to a 2009 Department of the Interior Solicitor's opinion entitled ''The Meaning of 'Foreseeable Future' in Section 3(20) of the Endangered Species Act'' (M–37021). That Solicitor's opinion states that the foreseeable future ''must be rooted in the best available data that allow predictions into the future'' and extends as far as those predictions are ''sufficiently reliable to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.'' Id. at 13.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The island bedstraw and Santa Cruz Island dudleya SSA reports document the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA reports do not represent our decision on whether the species should be proposed for removal from the List of Endangered and Threatened Plants (''delisted''). However, they provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the island bedstraw and Santa Cruz Island dudleya SSA reports; the full SSA reports for both species can be found at Docket FWS–R8–ES–2022–0066 on *https://www.regulations.gov* and at *https://ecos.fws.gov.*

To assess island bedstraw and Santa Cruz Island dudleya viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is, and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we briefly review the biological condition of the species and their resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Island Bedstraw Biological Condition

Plants like the bedstraw, with functionally unisexual flowers, need flowers of opposite gender for successful seed set, requiring one or more pollinators. Seeds need to be able to survive until germination conditions are appropriate, and they need a stable location to germinate and grow. Larger plants also need stable locations for long-term survival. A sufficient amount of moisture is needed for all island bedstraw life stages, and some of this moisture may be provided by fog. Island bedstraw populations need suitable habitat that supports survival and reproduction of an adequate number of individuals with vital rates that maintain self-sustaining populations despite stochastic events. Overall, the species needs sufficiently resilient populations distributed across its range to withstand catastrophic events. Population sizes should be large enough so that the species has the ability to adapt to changing conditions.

At the time of listing, there were 19 known sites of island bedstraw, 13 on Santa Cruz Island and 6 on San Miguel Island. There may have been 44–133 or more plants on Santa Cruz Island and more than 470 on San Miguel Island, with an estimated 515–603 plants on the 2 islands combined.

After listing in 1997, from 2004 through 2006, significant efforts were

made to survey Santa Cruz Island for island bedstraw. Of the 13 historical sites, 10 were surveyed, and no plants were found at 3 of those sites. An additional 14 new sites were discovered, expanding the distribution of sites to the west and east of the historical sites. At least 692–792 plants were counted at the historical sites, and at least 459 plants were counted at the new sites, for a total of at least 1,151–1,251 plants. No comparable surveys occurred on San Miguel Island; the only observations were counts at two sites in 1998 (McEachern et al. 2019b, pp. 14–16).

In 2015 on Santa Cruz Island and in 2017 on San Miguel Island, Wildlands Conservation Science (Lompoc, CA) used helicopter surveys to conduct rare plant surveys (Ball and Olthof 2017, entire; Ball et al. 2018, entire). Additional observations, not associated with helicopter surveys, were made on both islands. For the helicopter surveys conducted in 2015 on Santa Cruz Island, 28 sites were visited consisting of 9 new sites, the 17 sites surveyed in 2004–2006, and 2 previously unsurveyed historical sites. Additional sites discovered during the survey brought the total number of known sites to 36 (13 historical prelisting sites, 14 additional sites discovered 2004–2006, 9 sites in 2015 helicopter surveys), and the known geographical distribution of island bedstraw on the island eastward. Most sites were only photographed, but percent cover and area was estimated for level terraces at seven sites. And with an average plant canopy area derived from monitoring data, researchers estimated that those 7 sites had 8,421 plants. An additional observation in 2019 estimated another 1,000 or more plants at another terrace site.

The 2017 helicopter surveys also conducted on San Miguel Island did not reveal new sites. Three of the six historical sites were visited, and percent cover and area of island bedstraw were estimated for level terraces at those sites. Using the average plant canopy area, researchers estimated that there were 5,339 plants at the 3 sites. A fourth site was previously confirmed to be extant in 2014; the other two sites have not been surveyed but are also presumed to have extant plants.

On Santa Cruz Island, the total number of known island bedstraw sites has increased from 13 at the time of listing, to 27 at the time of the 2004–2006 surveys, to 36 after the 2015 helicopter surveys (Service 2021a, table 14, p. 37). On San Miguel Island, the number of known sites is six, which is the same as at the time of listing. Of the 36 total number of known sites on Santa Cruz Island, 28 are known to be extant based on recent helicopter surveys and observations (Service 2021a, table 13, figure 9, pp. 35–36); five are presumed extant (four sites had plants in the 2004–2006 surveys but were not surveyed thereafter, and one site has not been surveyed since before listing); and three sites are possibly extirpated (targeted surveys took place in 2004–2006, but sites were not relocated or mapped by the 2015 helicopter surveys). Similarly, of the six known sites on San Miguel Island, four are known to be extant based on the 2017 helicopter survey and 2014 observational data (Service 2021a, table 13, figure 10, pp. 35–36), and the remaining two are presumed extant (but have not been surveyed since before listing). There are no known possibly extirpated sites on San Miguel Island.

The current totals, therefore, are 33 known or presumed extant on Santa Cruz Island and 6 on San Miguel Island. The total estimated number of known individuals within those sites on both islands combined has increased from 512–603 before listing to at least 15,730 after recent helicopter surveys.

Currently, island bedstraw appears to have increasing abundance and distribution. It has shown demographic capacity for population growth at one site studied over a 10-year span and adaptive capacity by expansion beyond historically occupied areas into more diverse habitats (*e.g.,* from cliff faces to terraces above the cliffs, and movement into nonnative-dominated vegetation). The species also shows the ability to withstand catastrophic events because it is distributed on two islands, has more sites now than at the time of listing, and has gaps between groups of sites within islands.

Island Bedstraw Threats

In 1997, island bedstraw was listed as an endangered species due to effects (habitat alteration and herbivory) resulting from feral livestock grazing and trampling, and subsequent soil erosion (62 FR 40954–40974, July 31, 1997). By the time the Recovery Plan was signed in 2000, sheep had been removed from both Santa Cruz and San Miguel Islands, but their residual effects remained. No feral pigs occurred on San Miguel Island after 1900, and TNC and NPS initiated an 18-month program that removed all pigs from Santa Cruz Island by the end of 2006. In the 2009 5-year review, we determined that island bedstraw still met the definition of an endangered species based on the following threats: (1) soil loss and erosion resulting from years of feral pig rooting and sheep grazing, (2) loss of habitat to nonnative, invasive plants, (3) random naturally occurring events due to its limited distribution and small population size, and (4) effects from climate change.

The major threats to island bedstraw at the time of listing, feral livestock grazing, trampling, and resulting erosion, have largely been eliminated, which consequently also reduced the threats of small population size and nonnative vegetation identified at the time of the 2009 5-year review. Effects from climate change remain but are not to the level where we conclude that the species is in danger of extinction. We determined that overutilization, disease, predation (herbivory), and the inadequacy of existing regulatory mechanisms are not threats to island bedstraw, so we do not discuss them in detail in this proposed rule. For more information, see the island bedstraw SSA (Service, 2021a).

Soil Loss and Erosion

Currently, vegetation cover has increased significantly on Santa Cruz Island since the eradication of herbivores (Beltran et al. 2014, p. 7), leading to reduced erosion. This trend appears similar on San Miguel Island.

Competition From Nonnative Plants

Nonnative invasive plants were not specifically identified as a threat for this species at the time of listing but were discussed in the 2009 5-year review. While the competitive ability of island bedstraw against nonnative plants is unknown, the species seems to be able to colonize areas dominated by relatively short nonnative annuals, such as the terrace at the ''Bluffs East of Prisoners'' site. Island bedstraw may also have an advantage because native perennials in general tend to be at an advantage over nonnatives at sites that are relatively more mesic (Corry 2006, p. 97), such as the north-facing cliffs, terraces, and slopes on the north coasts of Santa Cruz and San Miguel Islands where island bedstraw is found. Additionally, the loss of leaves by island bedstraw during dry summer conditions may give it another edge over nonnatives (Corry 2006, p. 185) by allowing it to survive drier soil conditions through dormancy.

Random Extinctions of Small Populations

On Santa Cruz Island, historical populations with known numbers of plants had 50 or fewer individuals, and 2004–2006 surveyed populations may have had hundreds of plants. While only a few of the 2015 surveyed sites

have population estimates, these estimates are in the thousands of individuals, and it is likely that more of the unsurveyed sites also have large numbers of plants. These sites with hundreds or thousands of plants have a greater likelihood of future persistence than sites with fewer than 50 plants. The three possibly extirpated historical sites on Santa Cruz Island that could not be located during the most recent surveys (Service 2021b, table 6, p. 26) probably had small numbers of individuals (Service 2021b, table 4, p. 22*).* Two of those sites were in relatively interior locations and could have gone undetected because of poor location descriptions. Similarly, the third site, while coastal, is in an area of extremely dense vegetation and could also have been equally difficult to find. Assuming extirpation, we estimate that these sites are exceptions to the general trend of increasing plant numbers at sites and represent only 3 of the 36 Santa Cruz Island sites. San Miguel Island has demonstrated similar trends of increasing numbers of plants within sites, from historical numbers of 250 or less, to estimates of 1,000 or more plants observed during the 2016 surveys (Service 2021b, table 12, p. 34). The general trend of increasing plant numbers at sites suggests that the threat of random extinction of small populations has been reduced.

Climate Change

The northern Channel Islands lie off mainland Santa Barbara and Ventura Counties. Of the two counties, Santa Barbara County is the better model for assessing climate impacts on the species since the flora of the northern Channel Islands, in general, is considered to have more northern affinities (Raven and Axelrod, 1995, pp. 63–64). Annual average (National Oceanic and Atmospheric Administration (NOAA) National Centers for Environmental Information (NCEI) 2019a) and maximum (NOAA NCEI 2019b) temperatures for Santa Barbara County for 2014–2018 have been the highest recorded since 1895. Rainfall does not show such distinct trends. However, except for 2017, annual rainfall for 2011–2018 has been below the 1885–2018 mean (NOAA NCEI 2109c), with 2013 and 2015 being two of the five driest years since 1885.

These recent increases in annual average and maximum temperatures and lower annual rainfall do not seem to have adversely affected recent island bedstraw survivorship and expansion. The monitoring data at Pelican Bay (figure 13, McEachern et al. 2019b, p. 26) show an increase in the number of reproductive plants in 2014 compared to 2011. No sites are known to have been extirpated between 2004 and 2019. Spread from cliff locations to adjacent terraces has also been confirmed during that time period. It is unknown how further increases in temperature and decreases in rainfall may affect the species.

The threat of fire increases with increases in annual average and maximum temperatures and lower annual rainfall. Neither natural nor anthropogenic fires are as common on the northern Channel Islands as on the adjacent mainland (Carroll et al. 1993, pp. 75–78). Just four natural fires are known to have occurred on the northern Channel Islands in the last 165 years, none of which have affected island bedstraw sites. Changes in future climate may increase this risk; however, we have no evidence that natural wildfires will be such a serious threat in the future that listing continues to be warranted.

Resiliency, Representation, and Redundancy

Resiliency

Resiliency describes the ability of populations to withstand stochastic disturbance. Resiliency is positively related to population size and growth rate and may be influenced by connectivity among populations. Currently, island bedstraw has populations that are increasing in numbers of individuals and spatial extent. Island bedstraw abundances have increased from 512–603 before listing to at least 15,730 currently, the largest recorded abundance. Individual sites are larger than they were at the time of previous surveys, and larger than at the time of listing. Observations show that populations have spread from cliffs to adjacent level terraces. The rate of growth appears to be positive, from both demographic research and observations of increasing areal extent at individual sites. At least 1,000 plants in half a hectare has been documented in an area that was known to have no plants 15 years earlier. Recent observations show this pattern repeating at other sites.

Representation

Representation describes the ability of a species to adapt to changing environmental conditions over time. It is characterized by the breadth of genetic and environmental diversity within and among populations. Island bedstraw has historically occupied different parts of the islands, from sea cliff faces to the interior of the islands. It is now colonizing terraces above the cliffs. Given how readily island bedstraw moves off the bluffs, onto flats, and into native and nonnative vegetation, the genetic breadth can be interpreted as sufficiently wide to occupy diverse niches. Finally, although the genetics of island bedstraw have not been similarly analyzed, the close relative *G. catalinense* ssp. *acrispum* has been shown to retain high genetic diversity after a ranching period with a similar grazing history (Riley et al. 2010, pp. 2020–2024) and occupies a similar range of habitats.

Redundancy

Redundancy describes the ability of a species to withstand catastrophic events. Redundancy is characterized by having sufficiently resilient populations distributed within the ecological settings of the species and across its range. Island bedstraw exhibits redundancy at two scales: across the northern islands and within each island where it occurs. First, it is distributed on two islands separated by a third, so the entire species is unlikely to be affected by any one catastrophic event. Second, more sites are known than at the time of listing on Santa Cruz Island, and population sizes are larger on both islands. Sites are distributed across the breadth of the northern shores of each island with gaps between groups of sites such that a single island catastrophe (like fire) would be unlikely to affect all sites at once.

Summary—Current Condition, Threats Influencing Viability

The major threats to island bedstraw at the time of listing were feral livestock grazing, trampling, and the resulting erosion. These major threats are either no longer relevant or have been minimized. The threats of small population size and loss of habitat to nonnative, invasive plants identified at the time of the 2009 5-year review have also been reduced. Additionally, there have been no apparent negative effects since the 2009 5-year review that are attributable to temperature and precipitation patterns associated with projected climate change trends.

Currently, island bedstraw is increasing in abundance and distribution and expanding beyond historically occupied areas and into more diverse habitats (*e.g.,* from cliff faces to terraces above the cliffs and movement into nonnative-dominated vegetation), indicating increasing resiliency, representation, and general overall adaptive capacity. Additionally, with a distribution on two islands (separated by a third) and more sites

now than at the time of listing with gaps between groups of sites within islands, a single island catastrophe would be unlikely to affect all sites at once. The catastrophic loss on one island would not affect the other islands, and the populations are spread out enough that there is some redundancy within islands.

The major remaining potential factor influencing island bedstraw population viability is climate change. Our current data do not show that the species is experiencing any significant effects from changing climate conditions.

Future Condition

Of the threats that have been discussed above, climate change remains the most reasonably foreseeable threat to persist and potentially affect island bedstraw. It is a potential catalyst of change for other threats and is expected to have multiple effects in the California Central Coast Region, including an increase in temperatures, changes in precipitation, sea level rise, and an increase in fire frequency (Langridge 2018, pp. 12–23). Fifty years is the evaluation timeframe for climate change because the best available information presented in the current integrated climate assessment for the Central California Coast forecast uses 2069 as its climate change analysis interval (Langridge 2018, pp. 12–23). The 50-year period integrates a wide amount of interannual variability in temperature and rainfall and contains typical drought cycles (NOAA NCEI 2019a, 2019b, 2019c). Sea level rise projections are from Griggs et al. 2017 (pp. 24–27), which is cited by Langridge 2018 (p. 24) as the latest California-focused sea level rise projections; Griggs et al. 2017 uses an 80-year timeframe.

We developed two future scenarios that capture the range of plausible effects to the species from a projected change in the factors influencing its viability over a 50-year period.

Future Scenario 1 summarizes effects of Representative Concentration Pathway (RCP) 4.5, and Future Scenario 2 summarizes effects of RCP8.5. The RCPs are based on alternate projections for climate change in the California Central Coast region based on Langridge (2018, pp. 12–22, 29–31) and Griggs et al. (2017, p. 27). RCP4.5 and RCP8.5 are described more fully in the SSA (Service 2021a, entire).

Under Future Scenario 1, the combination of increased temperature and increased rainfall support continued recruitment and expansion of island bedstraw over the next 50 years. Most vegetation is recovering island wide, and as it recovers, leaf litter depth and area of cover increase, as do subsurface roots. These factors protect the soil from direct impact and allow increased percolation of water into the soil. Surface flows are moderated, and erosion is reduced. Therefore, increasing rainfall does not substantially increase erosion, largely because most vegetation would benefit from the moderate additional rainfall and vegetation reduces the intensity of runoff. Moderate sea level rise could cause minor impacts from landslides on some Santa Cruz Island sites but not at the population level. If sea level rise is only a few feet, it will not directly impact many plants or sites because they are substantially higher in elevation. Because most sites are on relatively tough igneous rock, enough erosion will not occur to undermine and cause collapse of these coastal sites. Moreover, the negative effects of fire frequency on the species are not expected to increase, as vegetation flammability and ignition sources are not projected to increase. Few minor negative and some potential positive effects of climate change would occur under this future scenario, and sites are likely to persist while the species' abundance and range will continue to expand. Overall, Future Scenario 1 projects increases in abundance and expansion, which suggests resiliency would increase and representation and redundancy would remain stable for island bedstraw.

Under Future Scenario 2, during the next 50 years, temperatures are projected to increase over the current baseline even more than under Scenario 1, with rainfall also increasing over baseline but less than under Scenario 1. In addition, there is a projected increase in year-to-year variability with an increase in extreme dry events, drought conditions, and extreme rain events. The increase in extreme rain events would lead to flashier, more intense runoff.

Increased drying and drought events could lead to decreased soil moisture that will affect recruitment and adult survival, leading to less population expansion and possibly smaller increases in abundance, relative to Scenario 1. Rainfall events may increase the severity of runoff, which may dislodge or cover plants and lead to decreases in abundance. If conditions are severe enough, sites could be extirpated. The effects of sea level rise could be greater than in Scenario 1 for sites on sedimentary cliffs on the eastern end of the species' distribution on Santa Cruz Island. Undercutting from surf could increase landslides, eliminating some if not all plants in sites. Fire frequency and size could increase on Santa Cruz Island because of warmer temperatures, drier vegetation, windier conditions, increased lightning strikes, and increased visitor use over time that may lead to increased wildfire starts by the public. Fires could reduce abundance and eliminate sites. Overall, Future Scenario 2 projects decreases in abundance and expansion and potentially extirpation of sites, which suggests resiliency, representation, and redundancy could decrease for island bedstraw; however, given the improved habitat conditions for the species and increasing baseline distribution and abundance, we do not expect these threats to affect the species at the population level.

Summary of Species Potential Future Condition

Under Future Scenario 1, changes in abundance and distribution of island bedstraw continue on their current positive trajectory, with increasing numbers and site expansion. Under Scenario 2, some sites may decline and possibly become extirpated. Decreased soil moisture and drought are likely to negatively affect the species because recruitment, survivorship, and the rate of expansion would be slower than under Future Scenario 1, reducing resiliency. Increased soil and shoreline erosion and fire would also negatively affect island bedstraw by killing individuals and degrading habitat, reducing representation and redundancy. Given the improved habitat conditions for the species and increasing baseline distribution and abundance, we do not expect threat levels under either future scenario to affect the island bedstraw at the species level.

Island Bedstraw Overall Synthesis

Island bedstraw occurs on Santa Cruz and San Miguel Islands. At the time of listing, there were 19 known sites of island bedstraw, 13 on Santa Cruz Island and 6 on San Miguel Island. Currently, the number of sites known or presumed to be extant is 33 on Santa Cruz Island and 6 on San Miguel Island. The total estimated number of known individuals within those sites on both islands combined has increased from 512–603, at the time of listing, to at least 15,730, after recent helicopter surveys. This number (15,730) is likely an underestimate, because plant number estimates were not done at most sites during the helicopter surveys, but last had plant counts in the mid-2000s. Given the increase in the number of individuals at sites where plant number estimates were conducted during the

helicopter surveys, the sites that were last counted in the mid-2000s likely have more individuals. The major threats to island bedstraw at the time of listing, feral livestock grazing, trampling, and resulting erosion, are either no longer relevant or have been minimized. The threats of small population size and nonnative vegetation identified at the time of the 2009 5-year review have also been minimized. Currently, island bedstraw is increasing in abundance and distribution. It has shown demographic capacity for population growth at one site studied over a 10-year span and adaptive capacity by expansion beyond historically occupied areas and into more diverse habitats (*e.g.,* from cliff faces to terraces above the cliffs and movement into nonnative-dominated vegetation). The species also shows the ability to withstand some catastrophic events with its distribution on two islands (separated by a third), having more sites now than at the time of listing, and gaps between groups of sites within islands.

Potentially negative effects of future climate change remain, and we developed two future scenarios that capture the range of plausible effects to the species from projected changes in the factors influencing viability over a 50-year period. Climate change is expected to have multiple effects in the California Central Coast Region, including an increase in temperatures, change in precipitation, sea level rise, and increase in fire frequency. Future Scenarios 1 and 2 summarize effects of RCP4.5 and RCP8.5, respectively, based on projections for climate change in the California Central Coast Region derived from Langridge (2018, entire). Under Future Scenario 1, changes in abundance and distribution of island bedstraw continue on their current positive trajectory, with increasing numbers and site expansion. Under Future Scenario 2, some sites may decline and possibly become extirpated. Decreased soil moisture and drought are likely to negatively affect the species because recruitment, survivorship, and the rate of expansion would be slower than under Future Scenario 1. Increased erosion and fire would also negatively affect island bedstraw by killing individuals and reducing habitat. Given the improved habitat conditions for the species and increasing baseline distribution and abundance, we do not expect threat levels under either future scenario to affect the species at the population level.

Cumulative and synergistic interactions are possible between the effects of climate change and the effects of other potential threats, such as small population size, fire, and nonnative plant invasion. Increases in temperature and changes in precipitation are likely to cause increases in nonnative grasses, which are abundant in island bedstraw habitat. Increased grass abundance has the potential to carry fire more readily, which could affect the geographically limited population of island bedstraw. Uncertainty about how different plant species will respond under climate change, combined with uncertainty about how changes in plant species composition would affect suitability of island bedstraw habitat, make projecting possible cumulative and synergistic effects of climate change on island bedstraw challenging.

Our draft post-delisting monitoring plans will provide guidelines for evaluating both species following delisting to detect substantial declines that may lead to consideration of re-listing to threatened or endangered. Changes in land use will still be subject to State and Federal environmental review.

Santa Cruz Island Dudleya Biological Condition

The genus *Dudleya* is typically considered to be made up of three subgenera: Dudleya, Stylophyllum, and Hasseanthus, each of which at some time has been considered a distinct genus; Santa Cruz Island dudleya is in subgenus Hasseanthus.

Santa Cruz Island dudleya needs the right combination of position in soil, litter depth, and light to emerge from the seed and survive to and past the seedling stage. Seedlings and larger plants need seasonal soil moisture, light availability, and space to survive the dry season, reach a reproductive size, and successfully reproduce. The species, comprising a single population, needs a sufficiently broad distribution to adapt to changing environmental conditions and withstand catastrophic events. Finally, Santa Cruz Island dudleya needs a sufficient community of generalist pollinators to ensure effective pollination and seed set.

Santa Cruz Island dudleya is composed of one population and five subpopulations that occur in a general area of about 200 ha, although the total occupied area within that general area is about 13.7 ha (Schneider and Carson 2019, p. 10). The best information available suggests that, over the last 25 years, the population has fluctuated between at least 40,000 and 200,000 individuals and the current abundance is in the middle of that range (approximately 120,000 individuals). Past survey methods were not standardized, which limits our ability to confirm a definitive trend in abundance over time. However, the population at 120,000 is stable, and the most recent survey (Schneider and Carson 2019, entire) established robust survey methods that can be used in the future to detect changes in distribution and abundance.

Santa Cruz Island Dudleya Threats

At the time of listing, soil loss, herbivory by feral pigs (*Sus scrofa*), disturbance by pig rooting, and collecting for botanical or horticultural use were identified as threats to the species. The Recovery Plan identified the additional threats of competition from nonnative grasses, trampling by humans, and an increased risk of extinction from naturally occurring random events due to the species' limited distribution (Service 2000, p. 35). The 2009 5-year review also considered the effects of low genetic variability, climate change, and fire (Service 2009a, p. 12).

Soil Loss, Herbivory by Feral Pigs, Disturbance by Pig Rooting

In the original listing, the source of soil loss is specified as the result of feral ungulate activities (62 FR 40954, July 31, 1997; p. 40966). All feral ungulates were removed from Santa Cruz Island by 2006 (McEachern et al. 2016, pp. 759–760), eliminating that source of soil loss. Vegetation cover has increased significantly on Santa Cruz Island since 2006 (Beltran et al. 2014, p. 7), leading to reduced erosion and mitigating this threat.

Collecting for Botanical and Horticultural Use, Trampling by Humans

While Santa Cruz Island dudleya has a limited geographical range, it is very abundant where it is found. While Moran (1979) considered collecting to be a threat, McCabe (2004) did not. The species is in cultivation (*e.g.,* Trager 2004, entire) but is not often available for sale. It may be that the seasonal ephemerality of plants in the subgenus Hasseanthus makes Santa Cruz Island dudleya a plant not sought out for personal collections.

Trampling by humans is still a possible threat to the species, but it is unlikely to be a primary threat. TNC maintains a permit system for boaters that plan to land on TNC property (TNC 2020, p. 2), and offroad travel in the Fraser Point/Forney Cove area is prohibited to protect resources. TNC has erected signage in the area to reinforce the closure (Knapp pers. comm. 2021). Trespass occurs infrequently, and its

effects on Santa Cruz Island dudleya are likely to be light, especially in grassland locations away from the immediate coast because trespassers are more likely to stay close to the ocean.

Competition From Nonnative Annual Plants

Klinger et al. (unpublished entire) investigated the effects of nonnative grasses on Santa Cruz Island dudleya density. While the study offered no data about trends in overall abundance, Santa Cruz Island dudleya density declined in study plots in which annual grass density and litter increased. The study occurred before a major increase in the nonnative annual grass *Aegilops cylindrica* and does not explain a seemingly steady abundance of Santa Cruz Island dudleya over the years despite that increase. These differing findings suggest that the interactions among nonnative annual grasses and Santa Cruz Island dudleya are complex.

Moran (1979, p. 1) lists the nonnative annual succulent *Mesembryanthemum cystallinum* (crystalline ice plant) as found with Santa Cruz Island dudleya at Fraser Point. McCabe (2004, p. 269) lists *M. crystallinum* as a threat to Santa Cruz Island dudleya but does not define how it is a threat. *M. crystallinum* can dominate coastal vegetation by increasing soil salinity to levels higher than that tolerated by some native plants (Vivrette and Muller 1977, pp. 315–317), but it is unknown if this situation is a threat to Santa Cruz Island dudleya. *M. crystallinum* has been reported to be periodically abundant in the coastal bluff scrub vegetation, cycling with *Lasthenia gracilis* (common goldfields), depending on rainfall and temperature combinations (Vivrette 2002, entire). Schneider and Carson (2019) do not report *M. crystallinum* as common in their surveys. The data do not indicate if *M. crystallinum* is at a low abundance in a cycle or if there has been a major change in vegetation that may have disrupted the cycle.

Random Extinctions of Small Populations

The Recovery Plan identified randomly occurring natural events as threats to Santa Cruz Island dudleya (Service 2000, p. 35) because the species has a single population with a limited distribution over a small range. The 2009 5-year review (Service 2009a, p. 12) specified low genetic variability (inferred by small population size), climate change, and fire and emphasized their importance as threats to the continued existence of Santa Cruz Island dudleya, given its single population and limited distribution.

Low Genetic Variability

Because Santa Cruz Island dudleya has a single population with a small range, the genetic variability and the resiliency of the species to human-caused or natural disasters may be low (Ellstrand and Elam 1993, pp. 232–237). No studies have been done of genetic variability in Santa Cruz Island dudleya, but the 2009 5-year review speculated that species might have inherently low genetic diversity. If so, this situation has likely been the case throughout the existence of this species, and there is no indication that this level of genetic variability is a threat to the species or contributes to low population resiliency or viability.

Climate Change

Santa Cruz Island lies off mainland Santa Barbara and Ventura Counties. Of the two counties, Santa Barbara County is the better model for assessing climate impacts on the species since the flora of the northern Channel Islands is generally considered to have similar affinities (Raven and Axelrod 1995, pp. 63–64). Annual average (NOAA NCEI 2019a) and maximum (NOAA NCEI 2019b) temperatures for Santa Barbara County for 2014–2018 have been the highest recorded since 1895. Rainfall does not show such distinct trends. However, except for 2017, annual rainfall for 2011–2018 has been below the 1885–2018 mean (NOAA NCEI 2109c), with 2013 and 2015 being two of the five driest years since 1885.

In general, increased temperature and decreased rainfall could negatively affect survival and reproduction of the species. However, these recent increases in annual average and maximum temperatures and lower annual rainfall (combined with the removal of nonnative herbivores) do not seem to have adversely affected Santa Cruz Island dudleya abundance or distribution. The most recent survey (Schneider and Carson 2019, p. 11) shows an increased overall abundance and an additional subpopulation (figure 5) since the last surveys of 2006 (McEachern et al. 2010, p. 12), although one subpopulation did decrease in abundance.

A new threat to the species may be sea level rise. Sea level rise has been slow over the 20th century but has accelerated and is expected to keep accelerating (Sievanen et al. 2018, pp. 16–18). Sea level is expected to rise 0.4 to 1.1 m (16–43 in) by 2100 (Griggs et al. 2017, pp. 24–27). Sea level rise could affect Santa Cruz Island dudleya in two ways. First, some plants are close enough to the ocean that they can be directly impacted and dislodged by surf action. However, most plants are high enough up on the marine terrace that direct impacts of the surf would not affect them. Second, rising sea level and larger waves could undercut the sea cliffs and bluffs, causing slumps and landslides, and disturbing or destroying whole groups of plants. Most plants, however, are sufficiently inland that they would not be affected.

Fire

Neither natural nor anthropogenic fires are as common on the northern Channel Islands as on the adjacent mainland (Carroll et al. 1993, pp. 82–85). Just four natural fires have been known to occur on the northern Channel Islands in the last 165 years. More human-caused fires, mostly from machinery operation or uncontrolled campfires, have occurred. Campfires are prohibited in Channel Islands National Park, but they occasionally happen on isolated beaches on TNC property on Santa Cruz Island (Knapp pers. comm. 2020), and clandestine prohibited smoking is frequent. Three human-caused brush fires have occurred on Santa Cruz in the last 15 years: a vehicle-caused fire in 2007 (Knapp pers. comm. 2020), a biomass reduction burn escape in 2018 (Knapp pers. comm. 2020), and a construction-related fire in 2020 (KEYT 2020).

While no fires are known to have impacted the species, fire has been and remains a concern for land managers (Knapp pers. comm. 2020). Passive restoration after removal of feral ungulates (Beltran et al. 2014, entire) has increased fuel loads, and the results of a fire could be severe. With five distinct subpopulations across different vegetation types, the chance of a fire causing the extinction of the entire population of the species is reduced. However, each subpopulation is still within 400 m of another, which is relatively close in the event of a wind-driven wildfire.

Resiliency, Representation, Redundancy

Resiliency

Resiliency describes the ability of populations to withstand stochastic events. Resiliency is positively related to population size and growth rate and may be influenced by connectivity among populations. Recent research and survey efforts have shown Santa Cruz Island dudleya is at least stable in population size at 40,000–200,000 individuals over the last 25 years with

an increase in distribution (Schneider and Carson 2019, entire).

Currently, the single Santa Cruz Island dudleya population appears to have no trend of increasing or decreasing abundance, but the lack of standardized surveys makes it difficult to draw conclusions about changes in species abundance and distribution. Additional surveys over an appropriate time span and area are needed to document changes in abundance and further changes in distribution.

Threats to the species identified at listing have been removed, including soil loss, herbivory by feral pigs, disturbance by pig rooting, and collecting for botanical or horticultural use (62 FR 40954, July 31, 1997; p. 40959). We have found no evidence to show that trampling by humans or low genetic variability are currently affecting abundance, and resiliency is not increasing or decreasing. Remaining potential threats include competition from nonnative grasses, climate change, and fire. These threats may affect sparsely vegetated areas, suitable temperatures, and adequate soil moisture/rainfall needed for survival and reproduction, thereby decreasing the abundance and distribution of Santa Cruz Island dudleya. However, except for negative effects of nonnative grasses (Klinger unpublished entire), the effects of these factors on resiliency have not been studied, but they do not appear to be currently adversely affecting the species.

Representation

Representation describes the ability of a species to adapt to changing environmental conditions over time. It is characterized by the breadth of genetic, phenotypic, and ecological diversity within and among populations. No genetic analysis has been conducted to reveal the genetic diversity within Santa Cruz Island dudleya compared to other *Dudleya,* especially other members of subgenus Hasseanthus. Santa Cruz Island dudleya is limited to a small area, but within that area, plants are growing in a variety of combinations of distance from the ocean, substrate type, and vegetation type, which may reflect some amount of adaptive capacity within the population. It is unknown whether representation has changed for this species since it was first described.

Redundancy

Redundancy describes the ability of a species to withstand catastrophic events. Redundancy is characterized by having multiple, sufficiently resilient populations distributed within the ecological settings of the species and across its range. Santa Cruz Island dudleya has inherently low redundancy as a narrow endemic with only a single population in a relatively small geographic range. However, there are physical gaps between subpopulations, and the subpopulations occur in different vegetation types that could carry fire differently. Subpopulations also occur at different elevations, and some are protected from extreme wave events. Although germinable seeds are found in natural soil samples, the amount of seed in the natural soil seed bank is unknown (Wilken 1996, p. 25). Redundancy is somewhat bolstered by a high number of seeds that have recently been seed-banked at the SBBG (Service 2000, table 3, p. 25).

Additionally, an active grant issued under section 6 of the Act (Schneider 2017, pp. 4–6, 13) calls for bulking that banked seed (in progress) and establishing two new ''populations'' on Santa Cruz Island (planned but delayed because of the Covid–19 pandemic). These activities will continue into 2023 with additional NPS funding (McEachern et al. 2019a, pp. 9, 11).

Summary—Current Condition, Threats Influencing Viability

Several major threats to Santa Cruz Island dudleya identified at the time of listing, including soil loss, herbivory by feral pigs, and disturbance by pig rooting, have been removed or are no longer occurring. Collecting for botanical and horticultural use and trampling by humans also no longer pose threats to the species due to controls on access. Nonnative plants continue to occur with the species and do not seem to have affected population size, although no recent study on the specific effects of particular nonnatives or how changes in the nonnative assemblage might alter those effects has been undertaken. The threat of small population size still exists, as does concern about climate change and fire, but since the 2009 5-year review, there is no evidence that these potential threats have affected the species.

Santa Cruz Island dudleya abundance is apparently not increasing or decreasing in an obvious way, but data over time are lacking. Recent research and survey efforts have shown Santa Cruz Island dudleya is at least stable in population size over the last 25 years with an increase in distribution (Schneider and Carson 2019, entire).

Some amount of adaptive capacity is demonstrated in the variation in vegetation types and elevation where Santa Cruz Island dudleya is found. While the elevational range seems small and vegetation differences may seem negligible if gauged simply by absolute plant height, the locations where individuals of the species grow are remarkably varied. At the lowest elevations, the plants are in open native forb scrub that are likely subjected to relatively high amounts of salt spray. Soils here are influenced by the wind and are somewhat rocky. We suspect that here the primary stressors on the plants are from the physical environment. By contrast, higher up on the terraces, plants are in dense nonnative grassland with deeper soil that is less affected by salt spray. Given how dense the grasses are, we suspect that the primary stressor to the species must be competition. The two habitats grade into each other at some sites. In both situations, the species seems to be doing fine, and robust plants are showing good reproductive effort. The adaptability of this plant through disparate habitat zones is similar to a large species of tree capable of growing in open deserts or savanna to dense forests with similar-sized trees. We suspect that there must be quite a bit of phenotypic plasticity or genetic variability (adaptive capacity) that lets the species do well in such different conditions.

With only one population, redundancy is inherently low, but that issue may be mitigated somewhat by the diversity of the locations in which the species occurs, the presence of a seed bank, and the limited potential and extent of the most likely catastrophic threat. The most likely potential catastrophic threat to the species is fire. Fire has affected some mainland *Dudleya* species dramatically, while others seem to endure little mortality from being burned. We do not have specific fire data for Santa Cruz Island dudleya. While fire could be carried in areas where it occurs in dense grass, lower elevation areas are so open that fire is unlikely to spread there, so there is redundancy for the species, even over its small geographic range.

Future Condition

Of the threats that have been discussed above, climate change remains the most reasonably foreseeable to persist and potentially affect Santa Cruz Island dudleya. It is a potential catalyst of change for other threats and is expected to have multiple effects in the California Central Coast Region, including an increase in temperatures, change in precipitation, sea level rise, and increase in fire frequency (Langridge 2018, pp. 12–23). Fifty years is the evaluation timeframe for climate change because the best available

information presented in the current integrated climate assessment for the Central California Coast forecast uses 2069 as its climate change analysis interval (Langridge 2018, pp. 12–23). The 50-year period integrates a wide amount of interannual variability in temperature and rainfall and contains typical drought cycles (NOAA NCEI 2019a, 2019b, 2019c). Sea level rise projections are from Griggs et al. 2017 (pp. 24–27), which is cited by Langridge 2018 (p. 24) as the latest California-focused sea level rise projections; Griggs et al. 2017 uses an 80-year timeframe.

We developed two future scenarios that capture the range of plausible effects to the species from projected changes in the factors influencing its viability over a 50-year period. Future Scenario 1 summarizes effects of RCP4.5, and Future Scenario 2 summarizes effects of RCP8.5. The RCPs are alternate projections for climate change in the California Central Coast Region based on Langridge (2018, pp. 12–22, 29–31) and Griggs et al. (2017, p. 27). Under Future Scenario 1 (RCP scenario 4.5 for climate change), the combination of increased temperature and rainfall continue over the next 50 years but not at levels anticipated to affect current levels of recruitment and survivorship. Moderate sea level rise could cause minor impacts from coastal bluff undercutting at the lowest elevation sites. Under RCP4.5, anticipated sea level rise is less than 1 m, which is less likely to cause damage than the sea level rise under RCP8.5. Negative effects of fire frequency on the species are not expected to increase, as vegetation flammability and ignition sources are not projected to increase. Because there are few negative effects of climate change under RCP4.5, the population is likely to maintain viability, if not expand. Overall, under Scenario 1, we project stability or increases in abundance and distribution, which suggests resiliency, representation, and redundancy would remain similar to the current condition for Santa Cruz Island dudleya.

Under Future Scenario 2 (RCP scenario 8.5 for climate change), temperature and rainfall increase, with fewer, more intense rain events, with a net result that soil moisture decreases over the next 50 years. The decreased soil moisture affects recruitment and adult survival, leading to decreases in expansion, and possibly abundance. If conditions are severe enough, subpopulations could be extirpated. The effects of competition with nonnative annual grasses will increase with rising temperatures and likely affect recruitment and expansion of the species. The effects of sea level rise could be substantial for plants on coastal bluffs. Undercutting from surf and erosion from episodic rainfall could increase the occurrence of landslides, eliminating some if not all plants on coastal bluffs. Fire frequency and size could increase because of warmer temperatures, drier vegetation, windier conditions, increased lightning strikes, and increased visitor use over time due to increases in human population. Fires could reduce abundance and distribution of the species. Overall, under Scenario 2, we project a decrease in abundance and a reduced rate of expansion, and potentially the extirpation of subpopulations, which suggests resiliency, representation, and redundancy could decrease for Santa Cruz Island dudleya. Given the improved habitat conditions for the species and apparently stable baseline distribution and abundance, we do not expect threat levels under either future scenario to affect the species at the population level.

Summary of Species Potential Future Condition

Under Future Scenario 1, maintenance of recruitment and survivorship continue over the next 50 years. Because few negative effects of climate change are expected under Scenario 1, the population is likely to maintain viability, if not expand. Overall, Scenario 1 predicts little or no change in abundance and distribution, which suggests resiliency, representation, and redundancy would remain comparable to current levels for Santa Cruz Island dudleya. Under Scenario 2, decreases in abundance and reduced geographic expansion and potentially extirpation of subpopulations could occur, which suggests resiliency, representation, and redundancy could decrease for Santa Cruz Island dudleya. Given the improved habitat conditions for the species and apparently stable baseline distribution and abundance, we do not expect threat levels under either future scenario to affect the species at the population level.

Santa Cruz Island Dudleya Overall Synthesis

Santa Cruz Island dudleya is composed of one population and five subpopulations that occur in a total occupied area of 13.7 ha in a general area of about 200 ha (Schneider and Carson 2019, p. 10) on the westernmost tip of Santa Cruz Island. Over the last 25 years, the population has fluctuated between at least 40,000 and 200,000 individuals, and abundance is currently approximately 120,000 individuals.

Several major threats to Santa Cruz Island dudleya identified at the time of listing have been removed or are no longer occurring. Collecting for botanical and horticultural use and trampling by humans also no longer pose threats to the species due to controls on access. Nonnative plants continue to occur with the species. The risk associated with small population size still exists, as does concern about climate change and fire, but since the 2009 5-year review, there is no evidence that these risk factors have affected the species. Santa Cruz Island dudleya abundance is apparently not increasing or decreasing in an obvious way, nor is resiliency increasing or decreasing. Some amount of representation is demonstrated in variation in vegetation types and elevation where Santa Cruz Island dudleya is found. Redundancy is inherently low with only one population, but that issue may be mitigated somewhat by the diversity of the locations in which the species occurs and the presence of a seed bank, and the limited potential and extent of wildfire. We do not have specific fire data for Santa Cruz Island dudleya. While fire could be carried in areas where it occurs in dense grass, lower elevation areas are so open that fire is unlikely to spread there, so there is redundancy for the species, even over its small geographic range.

Under Future Scenario 1 (RCP scenario 4.5 for climate change), the combination of increased temperature and rainfall continue over the next 50 years but not at levels anticipated to affect current levels of recruitment and survivorship. Moderate sea level rise could cause minor impacts from coastal bluff undercutting at the lowest elevation sites. The effects of fire on the species are not expected to increase. Because few negative effects of climate change are expected under RCP4.5, the population is likely to maintain viability, if not expand. Overall, under Scenario 1, we project stability or increases in abundance and distribution, which suggests resiliency, representation, and redundancy would remain similar to the current condition for Santa Cruz Island dudleya.

Under Future Scenario 2 (RCP scenario 8.5 for climate change), temperature and rainfall increase, with fewer, more intense rain events, with a net result that soil moisture decreases (due to drought) over the next 50 years. The decreased soil moisture affects recruitment and adult survival, leading to decreases in expansion, and possibly abundance. If conditions are severe

enough, subpopulations could be extirpated. The effects of competition with nonnative annual grasses will increase and likely affect recruitment and expansion of the species. The effects of sea level rise could be substantial for plants on coastal bluffs. Undercutting from surf and erosion from episodic rainfall could increase the occurrence of landslides, eliminating some if not all plants on coastal bluffs. Fire frequency and size could increase because of warmer temperatures, drier vegetation, windier conditions, increased lightning strikes, and increased visitor use over time with increases in the human population. Fires could reduce abundance and distribution of the species. Overall, under Scenario 2, we project a decrease in abundance and a reduced rate of expansion, and potentially the extirpation of subpopulations, which suggests resiliency, representation, and redundancy could decrease for Santa Cruz Island dudleya. Given the improved habitat conditions for the species and apparently stable baseline distribution and abundance, we do not expect threat levels under either future scenario to affect the species at the population level.

Cumulative and synergistic interactions are possible between the effects of climate change and the effects of other potential threats, such as small population size, fire, and nonnative plant invasion. Increases in temperature and changes in precipitation are likely to cause increases in nonnative grasses, which are abundant in Santa Cruz Island dudleya habitat. Increased grass abundance can possibly more readily carry fire, which could affect the geographically limited population of Santa Cruz Island dudleya. Uncertainty about how different plant species will respond under climate change, combined with uncertainty about how changes in plant species composition would affect suitability of Santa Cruz Island dudleya habitat, make projecting possible cumulative and synergistic effects of climate change on Santa Cruz Island dudleya challenging.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on each of the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Our draft post-delisting monitoring plan will provide guidelines for evaluating both species following delisting to detect substantial declines that may lead to consideration of re-listing to threatened or endangered. Changes in land use will still be subject to State and Federal environmental review.

Island Bedstraw and Santa Cruz Island Dudleya Conservation Efforts and Regulatory Mechanisms

State Protections

Island bedstraw and Santa Cruz Island dudleya are both listed as State Rare by the State of California under the Native Plant Protection Act of 1977 (Fish and Game Code chapter 10, sections 1900–1913) and the California Endangered Species Act of 1984 (California Code of Regulations, title 14, chapter 6, sections 783.0–787.9; Fish and Game Code chapter 1.5, sections 2050–2115.5) and so they receive special considerations for their protection by the State of California under the California Environmental Quality Act (CEQA) for California permitted projects on private TNC land. The official California listing of endangered and threatened species is contained in the California Code of Regulations, title 14, section 670.5.

Island bedstraw is listed as 1B.2 by the California Native Plant Society (CNPS), meaning it is considered rare, threatened, or endangered in California or elsewhere and moderately threatened in California. Santa Cruz Island dudleya is listed as 1B.1 by the California Native Plant Society (CNPS), meaning it is considered rare, threatened, or endangered in California or elsewhere and seriously threatened in California. A cooperative relationship exists between the California Department of Fish and Wildlife—California Natural Diversity Database (CNDDB) (the State) and CNPS. The ''threatened'' category means two different things in the CNPS rankings. The first ''threatened category'' (''considered rare, threatened, or endangered in California or elsewhere'') refers to a government agency (*e.g.,* Service, CDFW) or nongovernmental organization (NGO) (*e.g.,* CNPS, NatureServe) having formally declared a plant in some sense to be rare, threatened, or endangered. The second threatened category (''moderately threatened in California'' for bedstraw and ''seriously threatened in California'' for dudleya) are estimates at the time of listing (by CNPS or CDFW) about the degree to which the species is under threat (in the sense that something might harm the species). They have different ranking systems for rare plants but work together on them. Because of the efforts of the CNDDB program and CNPS to bring attention to rare plants through these parallel ranking systems, these plants receive some attention via the CEQA and the National Environmental Policy Act (CNDDB and CNPS, 2020).

Federal and Federal Partner Protections

We evaluated whether any existing regulatory mechanisms or other voluntary conservation efforts may have ameliorated any of the threats acting on island bedstraw and Santa Cruz Island dudleya. All of the land on which both species occur is managed by TNC or NPS for conservation of unique island species and habitats. The most significant single action has been the elimination of feral ungulates and feral pigs by TNC and NPS, as discussed above. The elimination of feral ungulates and feral pigs has eliminated the major sources of soil loss, habitat alteration, and herbivory affecting the species. This effort has resulted in passive restoration of the vegetation. It is likely that the positive effects of the feral ungulate and feral pig removal will continue into the future.

Determination of Status for Island Bedstraw and Santa Cruz Island Dudleya

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial,

recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout the Range

Island Bedstraw

Through this proposed rule, we have assessed the section 4(a)(1) factors by evaluating the best scientific and commercial information available regarding the past, present, and future threats faced by island bedstraw. We have found that the major threats to island bedstraw at the time of listing, feral livestock grazing (Factor A), trampling (Factor A), and the resulting erosion (Factor A), have either been removed or have been minimized. The threats of risk from small population size (Factor E) and loss of habitat to nonnative invasive plants (Factor A) identified in the 2009 5-year review have also been minimized.

At the time of listing, there were 19 known sites of island bedstraw, 13 on Santa Cruz Island and 6 on San Miguel Island. Currently, the number of sites known or presumed to be extant has grown to 33 on Santa Cruz Island and continues at 6 on San Miguel Island. The total estimated number of known individuals within those sites on both islands combined has increased from 512–603 before listing to at least 15,730. Currently, island bedstraw is increasing in abundance and distribution. It has shown demographic capacity for population growth and adaptive capacity by expansion beyond historically occupied areas into more diverse habitats (*e.g.,* from cliff faces to terraces above the cliffs and movement into nonnative-dominated vegetation), indicating increasing resiliency, representation, and generally overall adaptive capacity. The species also shows the ability to withstand catastrophic events because it is distributed on two islands, has more sites now than at the time of listing, and has gaps between groups of sites within islands. A single island catastrophe would be unlikely to affect all sites at once.

Although climate change (Factor E) has had no apparent effects since the 2009 5-year review, the potentially negative effects of climate change remain and may still impact the species, but such impacts are not currently causing the species to be in danger of extinction. The best available information indicates that overutilization (Factor B), disease (Factor C), predation (herbivory) (Factor C), and the inadequacy of existing regulatory mechanisms (Factor D) are not currently affecting the species throughout its range. The existing regulatory mechanisms will remain in place to ensure the continued persistence of island bedstraw occurrences and suitable potential habitat even if the species is delisted and protections under the Act are removed.

All of the occurrences of island bedstraw are on Federal and private lands that are protected and managed for conservation by the NPS and TNC. Both NPS and TNC have natural resource conservation as part of their mission. For example, the mission of TNC is to conserve the lands and waters on which all life depends. The TNC vision is a world where the diversity of life thrives and people act to conserve nature for its own sake and its ability to fulfill our needs and enrich lives. The NPS preserves unimpaired the natural and cultural resources and values of the NPS System for the enjoyment, education, and inspiration of this and future generations. The NPS cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world. Thus, after assessing the best available information, we conclude that island bedstraw is not currently in danger of extinction throughout all of its range and, therefore, does not meet the definition of an endangered species.

In order to assess whether the species is likely to become in danger of extinction within the foreseeable future, we evaluated any remaining future threats. The major remaining potential threat influencing island bedstraw population viability in the future is climate change. Future climate change is expected to have multiple effects in the California Central Coast Region, including increases in temperatures, changes in precipitation, sea level rise, and increases in fire frequency (Langridge 2018, pp. 12–23). Fifty years is the evaluation timeframe for climate change because the best available information presented in the current integrated climate assessment for the Central California Coast forecast uses 2069 as its climate change analysis interval (Langridge 2018, pp. 12–23). The 50-year period integrates a wide amount of interannual variability in temperature and rainfall and contains typical drought cycles (NOAA NCEI 2019a, 2019b, 2019c). Sea level rise projections are from Griggs et al. 2017 (pp. 24–27), which is cited by Langridge 2018 (p. 24) as the latest California-focused sea level rise projections; Griggs et al. 2017 uses an 80-year timeframe.

We developed two future scenarios that capture the range of plausible effects to the species from projected changes in factors influencing viability over a 50-year period. Future Scenario 1 summarizes effects of RCP4.5, and Future Scenario 2 summarizes effects of RCP8.5 projections for climate change in the California Central Coast Region based on Langridge (2018, entire). Under Future Scenario 1, changes in abundance and distribution of island bedstraw continue on their current positive trajectory, with increasing numbers and site expansion. Under Future Scenario 2, some sites may decline and possibly become extirpated. Decreased soil moisture and drought are likely to negatively affect the species because recruitment, survivorship, and the rate of expansion would be lower. Increased erosion and fire would also negatively affect island bedstraw by killing individuals and reducing habitat. Negative impacts to individuals may occur under RCP8.5 but given the current improvement in habitat and increases in distribution and abundance, we do not think that the impacts will rise to a population level such that the species is likely to become endangered in the foreseeable future throughout its range. Therefore, the currently predicted changes in climate do not indicate that the species may become endangered due to those changes in the foreseeable future throughout its range. Thus, after assessing the best available information, we conclude that island bedstraw is not currently in danger of extinction or likely to become so within the foreseeable future throughout all of its range.

Santa Cruz Island Dudleya

Through this proposed rule, we have assessed the section 4(a)(1) factors by evaluating the best scientific and commercial information available regarding the past, present, and future threats faced by Santa Cruz Island dudleya. We have found that the major threats to Santa Cruz Island dudleya identified at the time of listing have either been removed or have been minimized, due to the removal of feral pigs from Santa Cruz Island by NPS. Those prior threats included soil loss (Factor A), herbivory by feral pigs (Factor A), and disturbance by pig rooting (Factor A). The threats of collecting for botanical and horticultural use (Factor B) and trampling by humans (Factor A) also have been reduced by conservation and protection measures implemented by NPS and no longer

appear to pose threats to the species. At the time of listing, nonnative plants (Factor A) as a whole were considered a threat to island native plant species in general, though there have been no recent studies of the effects of individual nonnative species or of the shifting composition of nonnatives on the persistence of Santa Cruz Island dudleya. However, non-native plants are not considered to be a concern as they were at the time of listing because the species is stable. The threats presented by the risk of small population size (Factor E), climate change (Factor E), and fire (Factor E) still exist, but since the 2009 5-year review there is no evidence that these threats have affected Santa Cruz Island dudleya. We determined that disease (Factor C), predation (herbivory) (Factor C), and the inadequacy of existing regulatory mechanisms (Factor D) are not currently affecting Santa Cruz Island dudleya throughout its range. The existing regulatory mechanisms in place ensure the continued persistence of Santa Cruz Island dudleya occurrences and suitable potential habitat even if the species is delisted and protections under the Act are removed; the single occurrence is on private land and is protected and managed for conservation by TNC. Thus, after assessing the best available information, we conclude that Santa Cruz Island dudleya is not currently in danger of extinction throughout all of its range and, therefore, does not meet the definition of an endangered species.

In order to assess whether the species is likely to become in danger of extinction within the foreseeable future, we evaluated any remaining future threats. Similar to island bedstraw, as discussed above, the major remaining potential factor influencing Santa Cruz Island dudleya viability in the future is climate change. Santa Cruz Island dudleya occurs with nonnative plants (Factor A), which are still considered a threat, though there have been no comprehensive studies that project the future effects of individual nonnative species or of the shifting composition of nonnatives on the persistence of Santa Cruz Island dudleya. However, non-native plants are not considered to be a concern as they were at the time of listing because the species is projected to be either increasing or stable in the future. The threats presented by the risk of small population size (Factor E), climate change (Factor E), and fire (Factor E) may continue into the future, but since the 2009 5-year review, there is no evidence that these threats have significantly affected Santa Cruz Island dudleya and we do not think this will change in the foreseeable future. Negative impacts to individuals may occur under climate change RCP8.5 but given the improvement in habitat conditions and apparent baseline population stability, we find that the impacts will not likely rise to a population level such that the species would be likely to become endangered in the foreseeable future. Therefore, the currently predicted changes in climate do not indicate that the species may become endangered due to those changes in the foreseeable future.

Thus, after assessing the best available information, we conclude that Santa Cruz Island dudleya is not currently in danger of extinction or likely to become so within the foreseeable future throughout all of its range.

Status in Significant Portion of Their Ranges

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Since we determined that neither species warrants continued listing as endangered or threatened throughout their ranges, we proceed to evaluating whether the species are threatened or endangered in a significant portion of their range—that is, whether there is any portion of the species' range for which both (1) the portion is significant and (2) the species is in danger of extinction now, or likely to become so in the foreseeable future, in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for island bedstraw and Santa Cruz Island dudleya, we choose to address the status question first. We consider information pertaining to the geographic distribution of the species and the threats that the species faces to identify any portions of the range where the species may be threatened or endangered.

For island bedstraw, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. Island bedstraw consists of 33 sites on Santa Cruz Island and 6 sites on San Miguel Island where each site is treated as a separate population. The total estimated number of known individuals is at least 15,730 after recent helicopter surveys occurred in a general area of about 6,000 ha (15,000 acres), although the total occupied area within that general area is much less (has not been estimated). We examined the following threats to island bedstraw: feral livestock grazing, trampling, erosion, small population size, and climate change including cumulative effects.

We found that the major threats to island bedstraw at the time of listing, feral livestock grazing, trampling, and resulting erosion, have largely been eliminated on both Santa Cruz and San Miguel Islands. The elimination of these threats also minimized the threats of small population size and nonnative vegetation on both islands. The major remaining potential factor influencing island bedstraw population viability is climate change. Our current analysis does not show that the species is experiencing any significant effects from changing climate conditions in any of the populations on either island, or that the species will in the foreseeable future. We did not find any biologically meaningful portion of island bedstraw's range where the condition of the species differs from its condition elsewhere in its range such that the status of the species in that portion differs from any other portion of the species' range either now or in the foreseeable future. Therefore, there is no difference in the status of the species in any portion of the range because we have determined that the threat of climate change is acting on the species evenly throughout the range now and in the foreseeable future.

Thus, there are no portions of the species' range where the species has a different status from its rangewide status. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range, and we find the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range.

Two court decisions (*Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–1074 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017)) held that aspects of the definition of ''significant'' in the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (''Final Policy''; 79 FR 37577, July 1, 2014), are invalid. However, in

reaching our conclusion regarding island bedstraw, we did not need to consider whether any portions of the range are significant. Therefore, this finding does not conflict with the courts' holdings regarding the definition of ''significant.''

Santa Cruz Island dudleya occurs in a general area of about 200 ha, although the total occupied area within that general area is about 13.7 ha (Schneider and Carson 2019 p. 10). The area can be divided into five sites or subpopulations, each within 400 m of another, that function as a single, contiguous population. Therefore, according to the definition of the California Natural Diversity Database (CNDDB 2018 p. 3), these sites comprise a single occurrence. Previous work on gene flow in a population of another member of the subgenus Hasseanthus, *Dudleya multicaulis* (Marchant et al. 1998, pp. 217–219) that is similarly dispersed, suggests that all *D. nesiotica* subpopulations probably comprise a single mixing population. Thus, due to being a narrow endemic that functions as a single, contiguous population and occurs within a very small area, there is no biologically meaningful way to break the limited range of Santa Cruz Island dudleya into notable portions. This means that no portions of the species' range have a different status from its rangewide status. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range.

As explained above for our finding regarding island bedstraw, this finding does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–1074 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d. 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not need to consider whether any portions are significant and therefore did not apply the aspects of the Final Policy's definition of ''significant'' that those court decisions held were invalid.

Determination of Status

Our review of the best scientific and commercial data available indicates that island bedstraw and Santa Cruz Island dudleya do not meet the definition of endangered species or threatened species in accordance with sections 3(6) and 3(20) of the Act. In accordance with our regulations at 50 CFR 424.11(e)(2), Island bedstraw and Santa Cruz Island dudleya have recovered. Therefore, we propose to remove island bedstraw and Santa Cruz Island dudleya from the Federal List of Endangered and Threatened Plants.

Effects of This Rule

This proposed rule, if made final, would revise 50 CFR 17.12(h) by removing island bedstraw and Santa Cruz Island dudleya from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to these species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect island bedstraw and Santa Cruz Island dudleya. No critical habitat is designated for island bedstraw or Santa Cruz Island dudleya, so this rulemaking action would have no effect on 50 CFR 17.96.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We are proposing to delist island bedstraw and Santa Cruz Island dudleya based on our analysis in the SSA report, expert opinions, and conservation and recovery actions taken. Since delisting would be, in part, due to conservation actions taken by stakeholders, we have prepared draft post-delisting monitoring (PDM) plans for island bedstraw and Santa Cruz Island dudleya. The draft PDM plans describe the methods proposed for monitoring if we delist these taxa. The draft PDM plans: (1) describe frequency and duration of monitoring; (2) discuss monitoring methods and potential sampling regimes; (3) define what potential triggers will be evaluated to address the need for additional monitoring; (4) outline reporting requirements and procedures; (5) propose a schedule for implementing the PDM plans; and (6) define responsibilities. It is our intent to work with our partners towards maintaining the recovered status of island bedstraw and Santa Cruz Island dudleya. We will seek public and peer reviewer comments on the draft PDM plans, including their objectives and procedures (see **FOR FURTHER INFORMATION CONTACT** and Information Requested, above), with the publication of this proposed rule.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206

of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. No Tribal lands are associated with this proposed rule.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Ventura Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Fish and Wildlife Service's Species Assessment Team and the Ventura Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. In § 17.12, in paragraph (h) amend the table ''List of Endangered and Threatened Plants'' by removing the entries for ''*Dudleya nesiotica*'' and ''*Galium buxifolium*'' under Flowering Plants.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–25974 Filed 11–30–22; 8:45 am]

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Notices

Federal Register

Vol. 87, No. 230

Thursday, December 1, 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

Rural Utilities Service

[Docket No. RUS–22–TELECOM–0051]

Notice of Solicitation of Applications for the Distance Learning and Telemedicine Grants for Fiscal Year 2023

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: President Joe Biden has pledged that every American will have access to affordable, reliable, high speed internet. Digital equity—devices, skills and affordability that bring the internet to life—are a critical part of that mission. As part of that work, the Rural Utilities Service (RUS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announce the acceptance of applications under the Distance Learning and Telemedicine (DLT) grant program for Fiscal Year (FY) 2023, subject to the availability of funding. This notice is being issued prior to passage of a FY 2023 Appropriations Act in order to allow applicants sufficient time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY 2023. Based on FY 2022 appropriated funding, the Agency estimates that approximately $64 million will be available for FY 2023. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Applications must be submitted through *https://www.grants.gov/* and received no later than January 30, 2023 to be eligible for funding under this grant opportunity. Late or incomplete applications will not be eligible for funding under this grant opportunity.

ADDRESSES: All applications must be submitted electronically at *https://www.grants.gov.* Instructions and additional resources, to include an Application Guide, are available at *https://www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants,* under the ''To Apply'' tab.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding eligibility concerns, please contact program staff at *https://www.usda.gov/reconnect/contact-us.* Other inquiries, please contact Randall Millhiser, Deputy Assistant Administrator, Office of Loan Origination and Approval, RUS, USDA, 1400 Independence Avenue SW, Mail Stop 1590, Room 4121–S, Washington, DC 20250–1590, telephone: (202) 720–0800, email: *randall.millhiser@usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: United States Department of Agriculture, Rural Development, Rural Utilities Service.

Funding Opportunity Title: Distance Learning and Telemedicine Grants.

Announcement Type: Notice of Solicitation of Applications.

Funding Opportunity Number: RUS–23–01–DLT.

Assistance Listing Number: 10.855.

Dates: Applications must be submitted through *https://www.grants.gov/* and received no later than January 30, 2023 to be eligible for funding under this grant opportunity. Late or incomplete applications will not be eligible for funding under this grant opportunity.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure.
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. *Purpose of the Program.* Seeking to make progress toward President Biden's goal of digital equity throughout the country, the DLT program provides financial assistance to enable and improve distance learning and telemedicine services in rural areas. DLT grant funds support the use of telecommunications-enabled information, audio and video equipment, and related advanced technologies by students, teachers, medical professionals, and rural residents. These grants are intended to increase rural access to education, training, and health care resources that are otherwise unavailable or limited in scope.

2. *Statutory and Regulatory Authority.* The DLT program is authorized under 7 U.S.C. 950aaa and implemented by 7 CFR part 1734.

3. *Definitions.* The definitions applicable to this notice are published at 7 CFR 1734.3. Additional definitions applicable to this notice are listed below.

Rural area refers to any area, as confirmed by the most recent decennial Census of the United States, which is not located within a city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants; and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the most recent decennial Census.

Opioid or other substance use disorder treatment is defined as the interactive communication between medical or educational professionals and opioid users or their families, other treatment professionals or those who interact with opioid or other substance users.

4. *Application of Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on 7 CFR 1734.26. Awards under the DLT program will be made on a competitive basis using specific selection criteria provided in 7 CFR 1734.27. The Agency advises all interested parties that the applicant

bears the full burden in preparing and submitting an application in response to this notice regardless of whether or not funding is appropriated for the DLT program in FY 2023.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: FY 2023.

Available Funds: Based on FY 2022 appropriated funding, the Agency estimates that approximately $64 million will be available for FY 2023.

To combat a key threat to economic prosperity, rural workforce and quality of life, the Agency sets aside $12 million for projects that seek to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in rural communities by strengthening the capacity to address prevention, treatment and/or recovery at the community level. The amount for this set aside is subject to change based on FY 2023 appropriations.

The total appropriated amount minus the determined set aside amount will be available for all eligible projects. RUS may at its discretion, increase the total level of funding available in this funding round from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts: Pursuant to 7 CFR 1734.24, the Administrator has established that the minimum grant amount of $50,000 and the maximum grant amount of $1,000,000 will be applied to this grant opportunity, if and when funds are appropriated.

Anticipated Award Date: September 30, 2023.

Performance Period: Three-year period, beginning the date funds are released.

Renewal or Supplemental Awards: Although prior DLT grants cannot be renewed, existing DLT awardees can submit applications for new projects that are distinct from previously funded projects, either because they are for a completely separate purpose and technology or because they propose to serve a new service area, unassociated with prior funded service areas. The Agency will evaluate project proposals from existing awardees as new applications. Grant applications must be submitted during the application window.

Type of Assistance Instrument: Grant Agreement.

C. Eligibility Information

1. *Eligible Applicants.* Eligible applicants must meet the eligibility requirements of 7 CFR 1734.4.

(a) Applicants must have a Unique Entity Identifier (UEI) and an active registration that includes the Financial Assistance Representations and Certifications and has current information in the System for Award Management (SAM) at: *https://www.sam.gov.* Further information regarding UEI acquisition and SAM registration can be found in Section D.3 of this document.

(b) Corporations that have been convicted of a federal felony within the past 24 months are not eligible. Any corporation that has been assessed to have any unpaid federal tax liability, for which all judicial and administrative remedies have been exhausted or have lapsed and is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance.

(c) Applicants are required to provide evidence of their ability to contract with RUS to obtain the grant and comply with all applicable requirements, in accordance with 7 CFR 1734.4(a). It is incumbent on applicants to determine the appropriate entity to apply for the grant. Entities created by educational or medical institutions for the purpose of applying for and managing grants, such as university or hospital foundations, should not be applicants unless they can own and manage grant-funded equipment as required by the Grant Agreement and applicable regulations, including 2 CFR part 200. Accordingly, RUS will not transfer awards to another entity because the applicant has later determined that it cannot close the award, execute the standard Grant Agreement, which is publicly available, nor hold the grant assets in its name.

2. *Tribal Government Resolution of Consent.* A certification from the appropriate tribal official is required if a project is being proposed by a non-Tribal applicant over or on Tribal Lands. The appropriate certification is a Tribal Government Resolution of Consent. The appropriate tribal official is the Tribal Council of the Tribal Government with jurisdiction over the Tribal Lands at issue. Any non-Tribal applicant that fails to provide a certification to administer a project on Tribal Lands will not be considered for funding.

3. *Cost Sharing or Matching.* The DLT Program requires matching contributions for grants as outlined in 7 CFR 1734.22. The Application Guide located on the DLT website at *https://www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants* provides additional guidance information for matching contributions.

(a) *Match Documentation.* Grant applicants must demonstrate matching contributions, in cash or in kind (new or non-depreciated items), of at least 15 percent of the grant amount requested. Matching contributions must be used for approved purposes for grants (see 7 CFR 1734.21 and Section D.6 of this notice). Applications that do not provide sufficient documentation of the required 15 percent match will be deemed ineligible.

(b) *Discounts and Donations.* A review of applications submitted in the past determined that vendor-donated matches did not have value without a required subsequent purchase of vendor equipment or licenses with grant funds. For example, in many grant applications, software licenses were donated in satisfaction of the matching requirement. However, such licenses only worked with, and thus only had value with, the same vendor's equipment. Additionally, by side agreement, grant applicants were required to purchase the vendor's equipment once the grant was made with grant funds. The Agency determined that such a practice violated federal procurement standards found at 2 CFR 200.317–326, because the grant applicant did not put the purchase out for bid, either because no other equipment would work with the ''donated'' licenses, or because they were contractually obligated to buy the equipment before the grant was made. As such, the Agency has determined that vendor matches requiring subsequent purchases, either by necessity or contract, are not permitted.

4. *Other.* The Application Guide provides additional information regarding eligible and ineligible items for equipment and facilities.

Grant applications that are written by vendors who are mentioned in the application as vendors to be used on the project to be funded by the DLT award are ineligible as a violation of the competition rules in 2 CFR 200.319. Such vendors are also prohibited from bidding on the project because of conflict of interest. Additionally, applicants must fully understand the procurement requirements of 2 CFR part 200 subpart D and the DLT regulations when compiling an application for submission and must avoid the use of predetermined equipment as a violation of the bidding requirements unless they have adequately demonstrated in the application that no other equipment is available for the intended purpose.

Projects located in areas covered by the Coastal Barrier Resources Act (16

U.S.C. 3501 *et seq.*) are not eligible for financial assistance from the DLT Program. See 7 CFR 1734.23(a)(11).

D. Application and Submission Information

1. *Address to Request Application Package.* The Application Guide, copies of forms and resources are available at *https://www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants.*

The Application Guide provides specific, detailed instructions for each item of a complete application. The Agency emphasizes the importance of including every item and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the Application Guide.

2. *Content and Form of Application Submission.*

(a) *Application Completion.* Carefully review 7 CFR part 1734 subparts A and B. A list of items for a complete application can be found at 7 CFR 1734.25. The Application Guide also provides additional information on how to complete the application.

(b) *Description of Project Sites.* Most DLT grant projects contain several project sites. The Agency provides a site worksheet to help applicants clearly identify hub, hub/end-user, and end-user sites. The Application Guide provides a sample site worksheet to help guide the Applicant on what information to provide to the Agency. As in prior DLT funding windows, site information must be consistent throughout the application. Applications without consistent site information will be returned as ineligible.

(c) *Submission of Application Items.* Given the high volume of program interest, applicants should submit the application items in the order as indicated in the table below. Applications that are not assembled in the specified order prevent timely determination of eligibility. For duplicate applications submitted through *Grants.gov*, the Agency will base its evaluation on the last copy of the application submitted. If an applicant submits multiple applications for different projects, then the Agency will only consider the application with the highest score.

Application item	Regulation	Comments
SF–424 (Application for Federal Assistance Form)	7 CFR 1734.25(a)	Form provided through *Grants.gov.*
Executive Summary of the Project	7 CFR 1734.25(b)	Narrative, including a publicly releasable section that describes the population served.
Scoring Criteria Documentation	7 CFR 1734.25(c)	Provide documentation on how applicant meets each of the scoring criteria (see § 1734.26).
Scope of Work	7 CFR 1734.25(d)	Narrative and documentation, including the budget.
Financial Information and Sustainability	7 CFR 1734.25(e)	Narrative.
Statement of Experience	7 CFR 1734.25(f)	Narrative.
Funding Commitments from All Sources	7 CFR 1734.25(g)	Worksheet and match documentation letters with authorized signatures.
Telecommunications System Plan	7 CFR 1734.25(h)	Documentation.
Compliance with other Federal Statutes	7 CFR 1734.25(i)	Addressed by providing Financial Assistance Representations and Certifications in *www.SAM.gov.*
Non-Duplication of Services	7 CFR 1734.25(i)	Guidance provided in the Application Guide.
Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.	7 CFR 1734.25(i)	Addressed by providing Financial Assistance Representations and Certifications in *www.SAM.gov.*
Environmental Review Requirements	7 CFR 1734.25(j)	Guidance provided in the Application Guide.
Evidence of Legal Authority and Existence	7 CFR 1734.25(k)	Guidance provided in the Application Guide.
Federal Debt Certification	7 CFR 1734.25(l)	SF–424, Application for Federal Assistance.
Consultation with USDA State Director	7 CFR 1734.25(m)	Documentation.
Supplemental Information	7 CFR 1734.25(n)	Documentation.

Submit the electronic application through *www.grants.gov.* Do not send a paper copy to RUS. To increase the range of applicants that will be successful in FY 2023, only ONE application per applicant is eligible for approval. If an applicant submits more than one application through *www.grants.gov,* the Agency will base its evaluation on the application last submitted.

3. *System for Award Management and Unique Entity Identifier.*

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25, Universal Entity Identifier and System for Award Management. To register in SAM, entities will be required to create a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(b) Each applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active federal award or an application under consideration by a federal awarding agency.

(c) Each applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110, Exceptions.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

4. *Submission Dates and Times.*

(a) *Application Technical Assistance.* Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to January 17, 2023. Agency contact information can be found in **FOR FURTHER INFORMATION CONTACT** section of this notice.

(b) *Application Deadline Date.* Applications must be submitted through *www.grants.gov* and received no later than January 30, 2023 to be eligible for funding under this grant opportunity.

(c) *Applications Received After Deadline Date.* Late or incomplete

applications will not be eligible for funding under this grant opportunity.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification on materials contained in the submitted application.

5. *Intergovernmental Review.* The DLT Grant Program is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Submit one copy of the application to the State government single point of contact, if one has been designated, at the same time as application submission to the Agency. If the project is located in more than one state, submit a copy to each applicable state government single point of contact. Go to *https://www.whitehouse.gov/wp-content/uploads/2020/04/SPOC-4-13-20.pdf* for state office contact information. Applications from Federally recognized Indian tribes are not subject to this requirement.

6. *Funding Restrictions.* Ineligible grant purposes are outlined in 7 CFR 1734.23.

Hub sites located in non-rural areas are not eligible for grant assistance unless they are necessary to provide DLT services to rural residents at end user sites. See 7 CFR 1734.2(h). Applicants should exclude ineligible items and ineligible matching contributions from the budget. If an ineligible item or matching contribution is included in the budget, the item will be removed and may result in an application being deemed ineligible. See the Application Guide for more details on funding restrictions, matching contributions, a recommended budget format, and detailed budget compilation instructions.

7. *Other Submission Requirements.*

(a) Applications will not be accepted via paper, fax or electronic mail.

(b) Submit the electronic application through *www.grants.gov.* Do not send a paper copy to RUS.

(c) *Grants.gov* requires some credentialing and online authentication procedures. These procedures may take several business days to complete. Therefore, the applicant should complete the registration, credentialing, and authorization procedures at *www.grants.gov* before submitting an application. Instructions on all required passwords, credentialing, and software are available on *www.grants.gov.* If system errors or technical difficulties occur, use the customer support resources available at the *Grants.gov* website.

E. Application Review Information

1. *Criteria.* Grant applications are scored competitively and are subject to the criteria provided in 7 CFR 1734.26 and this notice, and further guidance on these criteria is provided in the Application Guide.

(a) *Rurality Category (up to 40 points).* The rurality score is based on two factors: (1) the population size of each community where an end-user site is located and (2) whether an end-user site lies within an urbanized area contiguous and adjacent to a city or town having a population in excess of 50,000 inhabitants. For non-fixed site projects and projects which contain non-fixed components, the rurality score will be based on the hub site. Applicants should use 2010 census data from the census website (*https://data.census.gov/cedsci/*) as their source for population data. To determine if a site lies in any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants or an urbanized area contiguous and adjacent to a city or town having a population in excess of 50,000 inhabitants, applicants should check the site address, using the DLT mapping tool at *https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=15a73830555645ae93d2fa773ed8e971.* The Application Guide provides additional guidance for this category, including a Rurality Worksheet to assist applicants in the calculation of their rurality scores.

(b) *Economic Need Category (up to 30 points).* Economic need is based on the county poverty percentage of the end-user sites proposed in the application. The percentages must be determined by utilizing the United States Census Small Area Income and Poverty Estimates (SAIPE) Program. Applicants can use the spreadsheet posted to the DLT Program website to look up current SAIPE county-level data. End-user sites located in geographic areas, for which no SAIPE data exist, will be determined to have an average SAIPE poverty percentage of 30 percent. Such geographic areas may include territories of the United States or other locations eligible for funding through the DLT Grant Program. End-user sites located in geographic areas for which no SAIPE data exist will be determined to have an average SAIPE poverty percentage of 30 percent. Such geographic areas may include territories of the United States or other locations eligible for funding through the DLT Grant Program.

(c) *Service Needs and Benefits Category (up to 30 points).* This category measures the extent to which the proposed project meets the need for distance learning or telemedicine services in rural areas, the benefits derived from the proposed services, and the local community involvement in the planning, implementation, and financial assistance of the project. RUS will also consider the extent to which the applicant's documentation identifies the local economic, education, or health care challenges. The applicant must explain how the project proposes to address these issues and why the applicant cannot complete the project without a grant.

(d) *Special Consideration (up to 10 points).* Special consideration points will be awarded for projects with at least one end-user site in the following areas. Applicants may only receive special consideration points in one area (up to 10 points):

(i) (10 points) Projects that serve Tribal Lands, Farmworker Communities, or Distressed Energy Communities. Projects that enable and improve distance learning and telemedicine services on Tribal Lands are eligible for 10 points. Non-Tribal applicants must submit a letter of Tribal consent consistent with Section C.2 if services are being proposed on Tribal Lands. from the Tribe(s) with whom they propose to partner. If the applicant proposes to partner with more than one Tribe, consent from each Tribe is required. If consent is not provided, the project will be deemed ineligible. Projects that enable and improve distance learning and telemedicine services to Farmworker Communities in rural areas are eligible for 10 points. The key to the success of the food and agriculture industries is the millions of workers that power it. Farmworkers include agricultural workers, field crop workers, nursery workers, livestock workers, graders and sorters. Applicants seeking these points should describe the type of farm work that is prevalent in the community they intend to serve and how many farmworkers will be served by the project. Projects that enable and improve distance learning and telemedicine services to Distressed Energy Communities in rural areas are eligible for 10 points.

Tribal Lands, Farmworker Communities, and Distressed Energy Communities are identified in GIS layers included in the DLT mapping tool located at: *https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=15a738305555645ae93d2fa773ed8e971.*

Tribal Lands will be identified using the GIS layers (Tribal Area (BIA LAR);

Tribal Supplemental Area (BIA LAR); Tribal Statistical Area (BIA); and Census Tribal areas in Alaska. The GIS layer for Farmworker Communities will consist of rural areas that have received funding under the USDA Rural Housing Service (RHS) Farm Labor Housing Programs. Distressed Energy Communities are identified as communities that are fossil fuel dependent (*e.g.,* coal, oil, gas, and power plant communities) whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. The energy community list is defined by the Report to the President on Empowering Workers Through Revitalizing Energy Communities.

(ii) (10 points) Projects that support Native American Language(s). Language helps people engage meaningfully with one another, share knowledge, worldviews, cultural expressions, beliefs, traditions, and hope for the future—from generation to generation. Yet, many indigenous languages across the world are in danger of falling into disuse. It is the policy of the United States to preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native languages. Projects that use distance learning to protect, revitalize, and promote the use of Native languages are eligible for 10 points. For this criterion, USDA will look to the Native American Languages Preservation Act of 2006 which defines Native American Language as the historical, traditional languages spoken by Native Americans, including the languages spoken by Native Hawaiian and Native American Pacific Islander Peoples. To receive these points, an applicant must indicate the Native American Language(s) that will be supported by the project, list the qualifications of the instructor(s) to teach that language, and include the number of students that will be served by the project.

(iii) (10 points) Projects that support Mental Health Services. Rural communities have fewer mental health facilities and less access to mental health services and professionals. The lack of this vital infrastructure puts low-income residents, veterans, and young people in rural communities at risk, with the suicide rate growing at a faster pace among rural youth. Projects that enable and improve telemedicine services to support mental health services in rural communities are eligible for 10 points. The executive summary and the needs and benefits section of the application must demonstrate that supporting mental health services is a primary purpose of the application.

2. *Review and Selection Process.*

(a) Grant applications are ranked by the final score. RUS selects applications based on those rankings, subject to the availability of funds. As noted in Section D.2.c. of this announcement, RUS will approve no more than one application per applicant. If an applicant submits more than one application for different projects, then the Agency will only consider the application with the highest score. If an applicant submits more than one application for the same project, then the Agency will only consider the latest submission. In addition, the Agency has the authority to limit the number of applications selected in any one state or for any one project during a fiscal year. See 7 CFR 1734.27 for a description of the grant application selection process. An application receiving fewer points can be selected over a higher scoring application in the event that there are insufficient funds available to cover the costs of the higher scoring application, as stated in 7 CFR 1734.27(b)(3).

(b) The Agency evaluates grant applications in accordance with 7 CFR 1734.27(c).

(c) The agency reserves the right to offer the applicant less than the grant funding requested.

F. Federal Award Administration Information

1. *Federal Award Notices.* RUS notifies applicants whose projects are selected for awards by mailing or emailing a copy of an award letter. The receipt of an award letter does not authorize the applicant to commence performance under the award. After sending the award letter, the Agency will send an agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the agreement, within the number of days specified in the selection notice letter. The standard agreement is available on the *https://www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants.*

2. *Administrative and National Policy Requirements.*

The items listed in this announcement, the DLT Grant Program regulation, the Application Guide, and program resources implement the appropriate administrative and national policy requirements, which include but are not limited to:

(a) Executing a DLT Grant Agreement.

(b) Using Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements (along with the submission of receipts for expenditures and any other documentation to support the request for reimbursement).

(c) Submitting an annual Project Performance Activity Report, no later than January 31st of the year following the year in which all or any portion of the grant is first advanced and continuing in subsequent years until completion of the project.

(d) Ensuring that records are maintained to document all activities and expenditures utilizing DLT grant funds and matching funds (receipts for expenditures are to be included in this documentation).

(e) Providing a final project performance report, no later than one hundred twenty (120) days after the expiration date, termination of the grant, the project completion, or the final disbursement of the grant by the grantee, whichever event occurs last.

(f) Complying with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations, and any successor regulations:

(i) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

(ii) 2 CFR parts 417 and 180 (Government-wide Nonprocurement Debarment and Suspension).

(g) Complying with Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency.'' For information on limited English proficiency and agency-specific guidance, go to *https://www.LEP.gov.*

(h) Accountability and Compliance with Civil Rights Laws. The regulation found at 7 CFR part 1901 Subpart E contains policies and procedures for implementing the regulations of the Department of Agriculture issued pursuant to Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Title IX, Section 504 of the Rehabilitation Act of 1973, Executive Order 13166, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to the Rural Development. Nothing herein shall be interpreted to prohibit preference to American Indians on Indian Reservations.

The policies contained in this subpart apply to recipients. As recipients of federal financial assistance, awardees are required to comply with the applicable federal, state and local laws. Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act prohibits discrimination by recipients of federal financial assistance. Recipients are required to adhere to specific outreach activities. These outreach activities include contacting

community organizations and leaders that include minority leaders; advertising in local newspapers and other media throughout the entire service area; and including the nondiscrimination slogan, ''This is an Equal Opportunity Program. Discrimination is prohibited by Federal Law,'' in methods that may include, but not be limited to, advertisements, electronic media, public broadcasts, and printed materials, such as brochures and pamphlets.

By completing the Financial Assistance Representations and Certifications in SAM, recipients affirm that they will operate the program free from discrimination. The recipient will maintain the race and ethnic data on the board members and beneficiaries of the program. The recipient will provide alternative forms of communication to persons with limited English proficiency. The Agency will conduct Civil Rights Compliance Reviews on recipients to identify the collection of racial and ethnic data on program beneficiaries. In addition, the compliance review will ensure that equal access to the program benefits and activities are provided for persons with disabilities and language barriers.

3. *Reporting.*

(a) *Performance Reporting.* All recipients of DLT financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting the DLT Grant Program objectives. See 7 CFR 1734.7 for additional information on these reporting requirements.

(b) *Annual Audit.* All recipients of DLT financial assistance must provide an annual audit as follows:

(i) Non-Federal Entities, which include recipients that are states, local governments, Indian tribes, institutions of higher education, or nonprofit organizations, shall provide RUS with an audit pursuant to 2 CFR part 200, subpart F (Audit Requirements). The recipient must follow subsection 2 CFR 200.502 in determining federal awards expended. All RUS loans impose an ongoing compliance requirement for the purpose of determining federal awards expended during a fiscal year. In addition, the recipient must include the value of new federal loans made along with any grant expenditures from all federal sources during the recipient's fiscal year. Therefore, the audit submission requirement for this program begins in the recipient's fiscal year that the loan is made and thereafter, based on the balance of federal loan(s) at the beginning of the audit period. All required audits must be submitted within the earlier of: (i) 30 calendar days after receipt of the auditor's report; or (ii) nine months after the end of the recipient's audit period.

(ii) For all other entities, recipients shall provide RUS with an audit within 120 days after the as of audit date in accordance with 7 CFR part 1773. With respect to grant funds, the audit is required until all grant funds have been expended or rescinded. While an audit is required, recipients must also submit the reports on internal control; compliance with provisions of laws, regulations, contracts and grant agreements; and instances of fraud.

(c) *Recipient and Sub-recipient Reporting.* The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding, unless such applicant is exempt from such reporting requirements pursuant to 2 CFR 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

(i) First Tier Sub-Awards of $25,000 or more (unless they are exempt under 2 CFR part 170) must be reported by the recipient to *https://www.fsrs.gov* no later than the end of the month following the month the obligation was made. Please note that currently underway is a consolidation of eight federal procurement systems, including the Federal Sub-award Reporting System (FSRS), into one system, the System for Award Management (SAM). As a result, the FSRS will soon be consolidated into and accessed through *https://www.sam.gov.*

(ii) The total compensation of the recipient's executives (the five most highly compensated executives) must be reported by the recipient (if the recipient meets the criteria under 2 CFR part 170) to *https://www.sam.gov* by the end of the month following the month in which the award was made.

(iii) The total compensation of the sub-recipient's executives (the five most highly compensated executives) must be reported by the sub-recipient (if the sub-recipient meets the criteria under 2 CFR part 170) to the recipient by the end of the month following the month in which the sub-award was made.

(d) *Record Keeping and Accounting.* The agreement will contain provisions related to record keeping and accounting requirements.

G. Federal Awarding Agency Contacts

For general questions about this announcement, please contact the point of contact provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

H. Buy America

Awards under this announcement for Infrastructure projects to Non-Federal entities, defined pursuant to 2 CFR 200.1 as any state, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABA) within the Infrastructure Investment and Jobs Act (IIJA), and its implementing regulations. The Act requires the following Buy America preference:

(1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

(3) All construction materials (excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure

project but are not an integral part of the structure or permanently affixed to the infrastructure project.

I. Other Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with the programs, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0096.

National Environmental Policy Act

All recipients under this notice are subject to the requirements of 7 CFR part 1970 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1970*).

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25 (*https://www.ecfr.gov/current/title-2/part-25*), must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170 (*https://www.ecfr.gov/current/title-2/part-170*).

Civil Rights Act

All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

Nondiscrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

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

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

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

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

USDA is an equal opportunity provider, employer, and lender.

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2022–26128 Filed 11–30–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–34–2022]

Foreign-Trade Zone (FTZ) 75—Phoenix, Arizona; Authorization of Production Activity; Lucid Motors USA, Inc. (Electric Automobiles and Subassemblies); Casa Grande and Tempe, Arizona

On July 29, 2022, Lucid Motors USA, Inc., submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 75N, in Casa Grande and Tempe, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (75 FR 50288, August 16, 2022). On November 28, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 28, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–26119 Filed 11–30–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[Docket No. 221117–0245]

XRIN 0694–XC093

Request for Public Comments Regarding Areas and Priorities for U.S. and Japan Export Control Cooperation for the Japan-U.S. Commercial and Industrial Partnership Export Control Working Group

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry, request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) requests public comments regarding areas and priorities for U.S. and Japan export control cooperation to help inform the work of the Japan-U.S. Commercial and Industrial Partnership (JUCIP) Export Control Working Group. Comments should address ways in which existing U.S. and/or Japanese dual-use export control policies and practices may be more transparent, more efficient and effective, and more convergent, including in identifying and controlling emerging or foundational technologies, and in better facilitating research collaboration between Japan and U.S. research organizations.

DATES: Comments must be received by BIS January 17, 2023.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*www.regulations.gov*). The *regulations.gov* ID for this rule is BIS–2022–0029. All relevant comments (including any personally identifying information) will be made available for public inspection and copying. All filers

using the portal should use the name of the person or entity submitting the comments as the name of their files.

FOR FURTHER INFORMATION CONTACT: Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, by phone at (202) 482–0092, or by email at *eileen.albanese@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2021, Commerce Secretary Gina Raimondo and Japan's Ministry of Economy, Trade and Industry (METI) Minister Koichi Hagiuda issued a joint-statement establishing the Japan-U.S. Commercial and Industrial Partnership (JUCIP), available at *https://www.commerce.gov/news/press-releases/2021/11/joint-statement-between-department-commerce-secretary-gina-raimondo-and.* Together, the United States and Japan account for 30 percent of global GDP, with U.S.-Japan two-way trade in goods and services amounting to $252.2 billion in 2020. In view of this, the JUCIP serves as a forum for the United States and Japan to coordinate approaches to key global trade, economic, and technology issues, and to deepen transpacific trade and economic relations based on shared democratic values.

The main goals of the JUCIP are to strengthen the competitiveness, resiliency, and security of both economies; to address shared global challenges such as climate change; and to achieve prosperity and maintain a free and fair economic order. The JUCIP's four working groups provide a framework for promoting investment and vitalizing cooperation between the private sectors of both countries; advancing innovation in areas such as digital and advanced technologies; promoting the resiliency of supply chains for semiconductors, 5G, and other vital industry segments; strengthening collaboration in the protection of critical technologies and the development of infrastructure; addressing market-distorting measures to counter unfair trade practices; and placing a priority on promoting the development and use of clean energy and related technologies. With a view to building upon the two countries' strong and vibrant commercial and industrial relationship, the Secretary and the Minister also committed to ensuring active stakeholder involvement and maintaining robust engagement under the JUCIP to achieve commercially meaningful outcomes.

On May 4, 2022, Secretary Raimondo and Minister Hagiuda held the first Ministerial meeting of the JUCIP. They reaffirmed that deeper cooperation on commercial and industrial issues is critical to responding to threats to the global economic order and reviewed progress made to date under the JUCIP. For the Export Control Working Group, this includes: the joint establishment of a Work Plan on Export Control Cooperation, which will further strengthen technical consultations on current and possible future legislative and regulatory developments, sensitive dual-use technologies, and advanced technologies that may be used for human rights violations or abuses; identification of specific actions to be considered by both sides in 2022 and beyond, to advance export control cooperation with a view toward enhancing international security while maintaining a level playing field for industry; and joint initiation of a process to solicit inputs from a wide range of stakeholders from both country's industries on the export control issues. On July 29, 2022, at the first meeting of the Economic Policy Consultative Committee held by Secretary Gina Raimondo, Secretary of State Anthony Blinken, Minister Koichi Hagiuda, and Minister of Foreign Affairs Yoshimasa Hayashi, they welcomed the progress of, and reaffirmed, to continue joint efforts to enhance U.S.-Japan cooperation on export control, including that under the JUCIP.

In furtherance of Secretary Raimondo and Minister Hagiuda's commitment to ensuring active stakeholder involvement in the JUCIP and the Export Control Working Group's agreement to solicit inputs from a wide range of stakeholders on export control issues, the Bureau of Industry and Security (BIS) is seeking comments on ways in which existing U.S. and/or Japanese dual-use export control policies and practices may be more transparent, more efficient and effective, and more convergent, including in identifying and controlling emerging or foundational technologies, and in better facilitating research collaboration between Japan and U.S. research organizations. BIS welcomes inputs from all interested persons to assist BIS in developing ideas and proposals, as well as facilitate a productive dialogue with Japan. Comments providing specific and concrete examples where further convergence in U.S. and Japanese export control practices and policies could enhance international security and support a global level-playing field and joint technology development and innovation, would be particularly helpful.

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–25915 Filed 11–30–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Industry and Security Bureau

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet December 13, 2022, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Opening remarks by the Bureau of Industry and Security
3. Presentation: John Cooney, SEMI
4. Presentation: Jimmy Goodrich, Semiconductor Industry Association (SIA)
5. Presentations of Papers by the Public
6. Regulations Update
7. Automated Export System Update
8. Working Group Reports

Closed Session

9. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than December 6, 2022.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation

materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 19, 2022, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Yvette Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2022–26113 Filed 11–30–22; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind in Part; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) received countervailable subsidies during the period of review (POR) January 1, 2020, through December 31, 2020. Additionally, Commerce intends to rescind the review with respect to 21 companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 1, 2022.

FOR FURTHER INFORMATION CONTACT: Konrad Ptaszynski or Brontee George, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6187 or (202) 482–4656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2021, Commerce published a notice of initiation of an administrative review for the countervailing duty order on rebar from Turkey.[1] On July 5, 2022, Commerce extended the deadline for the preliminary results of this administrative review by 120 days, until November 30, 2022.[2]

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

Scope of the Order

The merchandise covered by the *Order* is rebar from Turkey. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this countervailing duty administrative review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Intent To Rescind Administrative Review, in Part

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[5] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.[6] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated countervailing duty assessment rate calculated for the review period.[7] According to the CBP import data, except for the two mandatory respondents Colakoglu Metalurji A.S. and Kaptan Demir Celik Endustrisi ve Ticaret A. S. (Kaptan), and the non-selected company, Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S., the remaining 21 companies subject to this review did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we intend to rescind this administrative review with respect to these 21 other companies, in accordance with 19 CFR 351.213(d)(3).[8]

Preliminary Rate for Non-Selected Companies Under Review

There is one company for which a review was requested, *i.e.,* Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (including its cross-owned affiliates), which was not selected as a mandatory respondent or found to be cross-owned with a mandatory respondent, and which also had entries of subject merchandise during the POR. Because

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 73734 (December 28, 2021).

[2] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2020 Countervailing Duty Administrative Review,'' dated July 5, 2022.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review, and the Preliminary Intent to Rescind, in Part: Steel Concrete Reinforcing Bar from the Republic of Turkey; 2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[5] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017); and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017,* 84 FR 14650 (April 11, 2019).

[6] *See* 19 CFR 351.212(b)(2).

[7] *See* 19 CFR 351.213(d)(3).

[8] The 21 companies are: Acemar International Limited.; A G Royce Metal Marketing; Agir Haddecilik A.S.; Ans Kargo Lojistik Tas ve Tic.; As Gaz Sinai ve Tibbi Gazlar A.S.; Asil Celik Sanayi ve Ticaret A.S.; Bastug Metalurji Sanayi A.S.; Baykan Dis Ticaret; Demirsan Haddecilik Sanayi Ve Ticaret A.S.; Diler Dis Ticaret A.S.; Ege Celik Endustrisi Sanayi ve Ticaret A.S.; Izmir Demir Celik Sanayi A.S.; Kibar dis Ticaret A.S.; Kocaer Haddecilik Sanayi Ve Ticar A.S.; Meral Makina Iml Ith Ihr Gida; Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi; MMZ Onur Boru Profil A.S.; Ozkan Demir Celik Sanayi A.S.; Sami Soybas Demir Sanayi ve Ticaret; Wilmar Europe Trading BV; and YucelBoru Ihracat Ithalat ve Pazarlama.

the rate calculated for the mandatory respondent, Kaptan, was above *de minimis* and not based entirely on facts available, we applied the subsidy rate calculated for Kaptan to the non-selected company. This methodology for establishing the subsidy rate for the non-selected companies is consistent with our practice and with section 705(c)(5)(A) of the Act.

Preliminary Results of Review

We preliminarily find that the net countervailable subsidy rates for the period January 1, 2020, through December 31, 2020, are as follows:

Company	Subsidy rate (percent *ad valorem*)
Kaptan Demir Celik Endustrisi ve Ticaret A.S., Kaptan Metal Dis Ticaret ve Nakliyat A.S., and their cross-owned affiliates.[9]	2.17
Colakoglu Dis Ticaret A.S., Colakoglu Metalurji A.S.[10]	0.07 (*de minimis*)
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S., and its cross-owned affiliates[11]	2.17

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. If the rate calculated for any respondent, in the final results is zero or *de minimis,* we will instruct CBP to liquidate all appropriate entries of subject merchandise without regard to countervailing duties. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above, except, where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose its calculations and analysis performed in reaching the preliminary results within five days of publication of these preliminary results, in accordance with 19 CFR 351.224(b).[12]

Interested parties may submit written arguments (case briefs) on the preliminary results within 30 days of publication of the preliminary results, and rebuttal comments (rebuttal briefs) within seven days after the time limit for filing case briefs.[13] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs.[14] Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All briefs must be filed electronically using ACCESS. Note that Commerce has temporarily modified certain of its requirements for service documents containing business proprietary information, until further notice.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days after the date of publication of this notice by submitting a written request to the Assistant Secretary for Enforcement and Compliance, using Enforcement and Compliance's ACCESS system. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5 p.m. eastern time on the due date.

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: November 22, 2022.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Intent to Rescind the Administrative Review, in Part
V. Non-Selected Rate
VI. Subsidies Valuation Information
VII. Analysis of Programs

[9] Commerce preliminarily finds the following companies to be cross-owned with Kaptan: Martas Marmara Ereglisi Liman Tesisleri A.S.; Aset Madencilik A.S.; Kaptan Is Makinalari Hurda Alim Satim Ltd. Sti.; Efesan Demir San. Ve Tic. A.S.; and Nur Gemicilik ve Tic. A.S.

[10] Commerce preliminarily finds Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S to be cross-owned companies. *See* Preliminary Decision Memorandum at 7.

[11] In the last review where Icdas was a mandatory respondent Commerce found the following companies to be cross-owned with Icdas: Mardas Marmara Deniz Isletmeciligi A.S.; Oraysan Insaat Sanayi ve Ticaret A.S.; Artim Demir Insaat Turizm Sanayi Ticaret Ltd. Sti.; Anka Entansif Hayvancilik Gida Tarim Sanayi ve Ticaret A.S.; Karsan Gemi Insaa Sanayi Ticaret A.S.; Artmak Denizcilik Ticaret Ve Sanayi A.S.; and Eras Tasimacilik Taahhut Ins.Tic A.S. *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission, in Part; 2018,* 86 FR 53279 (September 27, 2021).

[12] *See* 19 CFR 351.224(b).

[13] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l). Interested parties will be notified through ACCESS regarding the deadline for submitting case briefs. *See also* 19 CFR 351.303 (for general filing requirements).

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

VIII. Recommendation

[FR Doc. 2022–26156 Filed 11–30–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial section D responses.

Opportunity to Request a Review: Not later than the last day of December 2022,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period
Antidumping Duty Proceedings	
BRAZIL: Carbon Steel Butt-Weld Pipe Fittings A–351–602	12/1/21–11/30/22
CHILE: Certain Preserved Mushrooms A–337–804	12/1/21–11/30/22
GERMANY: Non-Oriented Electrical Steel A–428–843	12/1/21–11/30/22
INDIA:	
Carbazole Violet Pigment 23 A–533–838	12/1/21–11/30/22
Certain Hot-Rolled Carbon Steel Flat Products A–533–820	12/1/21–11/30/22
Commodity Matchbooks A–533–848	12/1/21–11/30/22
Forged Steel Fittings A–533–891	12/1/21–11/30/22
Stainless Steel Wire Rod A–533–808	12/1/21–11/30/22
Utility Scale Wind Towers A–533–897	5/24/2021–11/30/22
INDONESIA:	
Certain Hot-Rolled Carbon Steel Flat Products A–560–812	12/1/21–11/30/22
Polyester Textured Yarn A–560–838	6/3/21–11/30/22
JAPAN:	
Non-Oriented Electrical Steel A–588–872	12/1/21–11/30/22
Prestressed Concrete Steel Wire Strand A–588–068	12/1/21–11/30/22
Welded Large Diameter Line Pipe A–588–857	12/1/21–11/30/22
OMAN: Circular Welded Carbon-Quality Steel Pipe A–523–812	12/1/21–11/30/22
MALAYSIA:	
Polyester Textured Yarn A–557–823	6/3/21–11/30/22
Utility Scale Wind Towers A–557–821	10/13/21–11/30/22
PAKISTAN: Circular Welded Carbon-Quality Steel Pipe A–535–903	12/1/21–11/30/22
REPUBLIC OF KOREA:	
Forged Steel Fittings A–580–904	12/1/21–11/30/22
Non-Oriented Electrical Steel A–580–872	12/1/21–11/30/22
Welded ASTM A–312 Stainless Steel Pipe A–580–810	12/1/21–11/30/22
Welded Line Pipe A–580–876	12/1/21–11/30/22
RUSSIA: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products A–821–809	12/1/21–11/30/22
SINGAPORE: Acetone A–559–808	12/1/21–11/30/22
SOCIALIST REPUBLIC OF VIETNAM:	
Polyester Textured Yarn A–552–832	6/3/21–11/30/22
Uncovered Innerspring Units A–552–803	12/1/21–11/30/22
SOUTH AFRICA: Uncovered Innerspring Units A–791–821	12/1/21–11/30/22
SPAIN: Acetone A–469–819	12/1/21–11/30/22
SWEDEN: Non-Oriented Electrical Steel A–401–809	12/1/21–11/30/22
TAIWAN:	
Carbon Steel Butt-Weld Pipe Fittings A–583–605	12/1/21–11/30/22
Non-Oriented Electrical Steel A–583–851	12/1/21–11/30/22
Steel Wire Garment Hangers A–583–849	12/1/21–11/30/22
Welded ASTM A–312 Stainless Steel Pipe A–583–815	12/1/21–11/30/22
THAILAND:	
Carbon and Alloy Steel Threaded Rod A–549–840	12/1/21–11/30/22
Polyester Textured Yarn A–549–843	6/3/21–11/30/22
THE PEOPLE'S REPUBLIC OF CHINA:	
Aluminum Wire and Cable A–570–095	12/1/21–11/30/22
Carbazole Violet Pigment 23 A–570–892	12/1/21–11/30/22
Certain Cased Pencils A–570–827	12/1/21–11/30/22
Certain Cut-to-Length Carbon Steel [3] A–570–849	11/1/21–10/31/22
Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules A–570–979	12/1/21–11/30/22
Hand Trucks and Certain Parts Thereof A–570–891	12/1/21–11/30/22
Honey A–570–863	12/1/21–11/30/22
Malleable Cast Iron Pipe Fittings A–570–881	12/1/21–11/30/22
Mattresses A–570–092	12/1/21–11/30/22
Melamine A–570–020	12/1/21–11/30/22
Multilayered Wood Flooring A–570–970	12/1/21–11/30/22
Non-Oriented Electrical Steel A–570–996	12/1/21–11/30/22
Refillable Stainless Steel Kegs A–570–093	12/1/21–11/30/22
Silicomanganese A–570–828	12/1/21–11/30/22
Vertical Metal File Cabinets A–570–110	12/1/21–11/30/22
TURKEY: Welded Line Pipe A–489–822	12/1/21–11/30/22
UNITED ARAB EMIRATES: Circular Welded Carbon-Quality Steel Pipe A–520–807	12/1/21–11/30/22
Countervailing Duty Proceedings	
INDIA:	
Carbazole Violet Pigment 23 C–533–839	1/1/21–12/31/21
Certain Hot-Rolled Carbon Steel Flat Products C–533–821	1/1/21–12/31/21
Commodity Matchbooks C–533–849	1/1/21–12/31/21
Forged Steel Fittings C–533–892	1/1/21–12/31/21
Utility Scale Wind Towers C–533–898	3/25/21–12/31/21
INDONESIA: Certain Hot-Rolled Carbon Steel Flat Products C–560–813	1/1/21–12/31/21
TAIWAN: Non-Oriented Electrical Steel C–583–852	1/1/21–12/31/21
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products C–549–818	1/1/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA:	

	Period
Aluminum Wire and Cable C–570–096	1/1/21–12/31/21
Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules C–570–980	1/1/21–12/31/21
Melamine C–570–021	1/1/21–12/31/21
Mobile Access Equipment and Subassemblies Thereof C–570–140	7/30/21–12/31/21
Non-Oriented Electrical Steel C–570–997	1/1/21–12/31/21
Multilayered Wood Flooring C–570–971	1/1/21–12/31/21
Refillable Stainless Steel Kegs C–570–094	1/1/21–12/31/21
Vertical Metal File Cabinets C–570–111	1/1/21–12/31/21
TURKEY: Welded Line Pipe C–489–823	1/1/21–12/31/21
Suspension Agreements	
MEXICO:	
Sugar A–201–845	12/1/21–11/30/22
Sugar C–201–846	1/1/22–12/31/22

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[4]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[5] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[6] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[7] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of December 2022. If Commerce does not receive, by the last day of December 2022, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated

[3] In the opportunity notice that published on October 3, 2022, (87 FR 59775) Commerce inadvertently listed the case above. This case has a November anniversary date and is listed correctly in the November opportunity notice.

[4] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[6] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[7] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[9] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[10] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[11]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.''[12]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[13] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[14] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.''[15] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 18, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–26153 Filed 11–30–22; 8:45 am]

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[9] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[10] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[11] *Id.*

[12] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[13] *See Procedural Guidance,* 86 FR at 53206.

[14] *See Final Rule,* 86 FR at 52335.

[15] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for January 2023

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in January 2023 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan A–583–008 (5th Review)	Jacky Arrowsmith (202) 482–5255.
Certain Welded Carbon Steel Pipes and Tubes from India A–533–502 (5th Review)	Mary Kolberg (202) 482–1785.
Certain Welded Carbon Steel Pipes and Tubes from Thailand A–549–502 (5th Review)	Mary Kolberg (202) 482–1785.
Certain Welded Carbon Steel Pipes and Tubes from Turkey A–489–501 (5th Review)	Mary Kolberg (202) 482–1785.
Circular Welded Non-Alloy Steel Pipe from South Korea A–580–809 (5th Review)	Jacky Arrowsmith (202) 482–5255.
Circular Welded Non-Alloy Steel Pipe from Mexico A–201–805 (5th Review)	Jacky Arrowsmith (202) 482–5255.
Circular Welded Non-Alloy Steel Pipe from Taiwan A–583–814 (5th Review)	Jacky Arrowsmith (202) 482–5255
Circular Welded Non-Alloy Steel Pipe from Brazil A–351–809 (5th Review)	Jacky Arrowsmith (202) 482–5255.
Cold-Drawn Mechanical Tubing from China A–570–058 (1st Review)	Mary Kolberg (202) 482–1785.
Cold-Drawn Mechanical Tubing from Germany A–428–845 (1st Review)	Mary Kolberg (202) 482–1785.
Cold-Drawn Mechanical Tubing from India A–533–873 (1st Review)	Mary Kolberg (202) 482–1785.
Cold-Drawn Mechanical Tubing from Italy A–475–838 (1st Review)	Mary Kolberg (202) 482–1785.
Cold-Drawn Mechanical Tubing from South Korea A–580–892 (1st Review)	Mary Kolberg(202) 482–1785.
Cold-Drawn Mechanical Tubing from Switzerland A–441–801 (1st Review)	Mary Kolberg (202) 482–1785.
Seamless Line and Pressure Pipe from Germany A–428–820 (1st Review)	Jacky Arrowsmith (202) 482–5255.
Countervailing Duty Proceedings	
Circular Welded Carbon Steel Pipes and Tubes from Turkey C–489–502 (5th Review)	Mary Kolberg(202) 482–1785.
Cold-Drawn Mechanical Tubing from China C–570–059 (1st Review)	Mary Kolberg (202) 482–1785.
Cold-Drawn Mechanical Tubing from India C–533–874 (1st Review)	Thomas Martin(202) 482–3936.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in January 2023.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 25, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–26155 Filed 11–30–22; 8:45 am]

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[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–045, C–570–046]

1-Hydroxyethylidene-1,1-Diphosphonic Acid From the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD and CVD orders.

DATES: Applicable December 1, 2022.

FOR FURTHER INFORMATION CONTACT: Rachel Jennings (AD) or Benito Ballesteros (CVD), AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1110 or (202) 482–7425, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2017, Commerce published in the **Federal Register** the AD and CVD orders on HEDP from China.[1] On April 1, 2022, the ITC instituted, and Commerce initiated, the first sunset review of the *Orders,* pursuant to section 751(c) of the Tariff

[1] *See 1-Hydroxyethylidene-1,1-Diphosphonic Acid from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 82 FR 22807 (May 18, 2017); and *1-Hydroxyethylidene-1,1-Diphosphonic Acid from the People's Republic of China: Countervailing Duty Order,* 82 FR 22809 (May 18, 2017) (collectively, *Orders*).

Act of 1930, as amended (the Act).[2] As a result of its review, Commerce determined that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and countervailable subsidies and, therefore, notified the ITC of the magnitude of the margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked.[3]

On November 25, 2022, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Orders

The merchandise covered by the *Orders* includes all grades of aqueous acidic (non-neutralized) concentrations of HEDP, also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The Chemical Abstract Service (CAS) registry number for HEDP is 2809–21–4.

The merchandise subject to the *Orders* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.90.9043. It may also enter under HTSUS subheadings 2811.19.6090, 2931.90.9041, 2931.90.9051, 2811.19.6190, and 2931.39.0018.[5] While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of the *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and countervailable subsidies, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.* CBP will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

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

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 25, 2022.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–26160 Filed 11–30–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

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

DATES: Applicable December 1, 2022.

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

SUPPLEMENTARY INFORMATION:

Background

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

Initiation of Review

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

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–357–820	731–TA–1347	Argentina	Biodiesel (1st Review)	Jacky Arrowsmith (202) 482–5255.

[2] *See 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from China; Institution of Five-Year Reviews,* 87 FR 19125 (April 1, 2022); and *Initiation of Five-Year (Sunset) Reviews,* 87 FR 19069 (April 1, 2022).

[3] *See 1-Hydroxyethylidene-1,1-Diphosphonic Acid from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order,* 87 FR 42705 (July 18, 2022) (*AD Sunset Final*); and *1-Hydroxyethylidene-1,1-Diphosphonic Acid from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 87 FR 42707 (July 18, 2022) (*CVD Sunset Final*).

[4] *See 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from China,* 87 FR 72510 (November 25, 2022); *see also 1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from China,* Inv. Nos. 701–TA–558 and 731–TA–1316 (Review), USITC Pub. 5386 (November 2022).

[5] On September 24, 2020, U.S. Customs and Border Protection (CBP) notified Commerce of additional HTSUS subheadings under which subject merchandise can be entered. Accordingly, the scope of the *Orders* now reflects those additional HTSUS subheadings. *See AD Sunset Final,* 87 FR at 42706; and *CVD Sunset Final,* 87 FR at 42707.

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–560–830	731–TA–1348	Indonesia	Biodiesel (1st Review)	Jacky Arrowsmith (202) 482–5255.
A–822–806	731–TA–1349	Belarus	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785.
A–475–836	731–TA–1350	Italy	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785.
A–580–891	731–TA–1351	Korea	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785.
A–821–824	731–TA–1352	Russia	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785.
A–791–823	731–TA–1353	South Africa	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785.
A–469–816	731–TA–1354	Spain	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785.
A–489–831	731–TA–1355	Turkey	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785.
A–823–816	731–TA–1356	Ukraine	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785
A–520–808	731–TA–1357	United Arab Emirates.	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785.
A–412–826	731–TA–1358	United Kingdom.	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Mary Kolberg (202) 482–1785.
A–122–857	731–TA–1342	Canada	Certain Softwood Lumber (1st Review)	Thomas Martin (202) 482–3936.
A–570–051	731–TA–1341	China	Hardwood Plywood (1st Review)	Thomas Martin (202) 482–3936.
A–570–970	731–TA–1179	China	Multilayered Wood Flooring (2nd Review)	Mary Kolberg (202) 482–1785.
A–570–056	731–TA–1360	China	Tool Chest and Cabinets (1st Review)	Mary Kolberg (202) 482–1785.
A–552–821	731–TA–1361	Vietnam	Tool Chest and Cabinets (1st Review)	Mary Kolberg (202) 482–1785.
C–357–821	701–TA–571	Argentina	Biodiesel (1st Review)	Jacky Arrowsmith (202) 482–5255.
C–560–831	701–TA–572	Indonesia	Biodiesel (1st Review)	Jacky Arrowsmith (202) 482–5255.
C–475–837	701–TA–573	Italy	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Jacky Arrowsmith (202) 482–5255.
C–489–832	701–TA–574	Turkey	Carbon and Certain Alloy Steel Wire Rod (1st Review)	Thomas Martin (202) 482–3936.
C–122–858	701–TA–566	Canada	Certain Softwood Lumber (1st Review)	Mary Kolberg (202) 482–1785.
C–570–052	701–TA–565	China	Hardwood Plywood (1st Review)	Thomas Martin (202) 482–3936.
C–570–971	701–TA–476	China	Multilayered Wood Flooring (2nd Review)	Mary Kolberg (202) 482–1785.
C–570–057	701–TA–575	China	Tool Chest and Cabinets (1st Review)	Mary Kolberg (202) 482–1785.

Filing Information

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

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

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

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

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

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

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

countervailing duty proceedings at Commerce.

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

Dated: November 25, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–26154 Filed 11–30–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 221004–0210]

Manufacturing USA Semiconductor Institutes; Extension of Comment Period

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: The National Institute of Standards and Technology (NIST) is extending the period for submitting comments relating to potential Manufacturing USA semiconductor institutes until December 12, 2022. In a Request for Information (RFI) that published in the **Federal Register** on October 13, 2022, NIST requested information to inform the design of, and requirements for, potential Manufacturing USA institutes to strengthen the semiconductor and microelectronics innovation ecosystem, which could include design, fabrication, advanced test, assembly, and packaging capability. Responses to the RFI will inform NIST's development of funding opportunities for federal assistance to establish Manufacturing USA semiconductor institutes.

DATES: Comments must be received by 11:59 p.m. Eastern time on December 12, 2022. Comments received after November 28, 2022 and before publication of this notice are deemed to be timely. Submissions received after December 12, 2022 may not be considered. Those who have already submitted comments need not resubmit.

ADDRESSES: Comments may be submitted by either of the following methods:

- *Electronic submission:* Submit electronic public comments via the Federal eRulemaking Portal.

1. Go to *www.regulations.gov* and enter NIST–2022–0002 in the search field,

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

- *Email:* Comments in electronic form may also be sent to *MfgRFI@nist.gov* in any of the following formats: HTML; ASCII; Word; RTF; or PDF.

Please submit comments only and include your name, organization's name (if any), and cite ''Manufacturing USA semiconductor institutes'' in all correspondence. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials.

All comments responding to this document will be a matter of public record. Relevant comments will generally be available on the Federal eRulemaking Portal at *http://www.Regulations.gov* and on NIST's website at *https://www.nist.gov/oam/manufacturing-usa-semiconductor-institute-request-information-rfi.* NIST will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: Kelley Rogers in the Office of Advanced Manufacturing, National Institute of Standards and Technology, telephone number 301–219–8543 or email *manufacturingusa@nist.gov.* Please direct media inquiries to NIST's Office of Public Affairs at (301) 975–2762.

SUPPLEMENTARY INFORMATION: In an RFI that published in the **Federal Register** on October 13, 2022 (87 FR 62080), NIST requested information to inform the design of, and requirements for, potential Manufacturing USA institutes to strengthen the semiconductor and microelectronics innovation ecosystem, which could include design, fabrication, advanced test, assembly, and packaging capability. These Manufacturing USA institutes are envisioned in Title XCIX of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America) to support efforts in research and development as well as education and workforce development, and that Act also provides for complementary initiatives including the National Semiconductor Technology Center, the National Advanced Packaging Manufacturing Program, and the NIST laboratories program supporting measurement science and standards. Responses to the RFI will inform NIST's development of funding opportunities for federal assistance to establish Manufacturing USA semiconductor institutes. NIST is extending the comment period announced in the October 13, 2022 RFI from November 28, 2022 to December 12, 2022 in response to stakeholder requests for more time to respond to this important issue. NIST held three informational webinars explaining how the public could submit comments to the RFI, on October 20, November 2 and November 16, 2022. A link to a recording of the October 20, 2022 webinar as well as answers to Frequently Asked Questions can be found at *https://www.nist.gov/oam/manufacturing-usa-semiconductor-institute-request-information-rfi.*

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–26147 Filed 11–30–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC584]

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops will be held in January, February, and March of 2023. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all Federally permitted Atlantic shark dealers. The Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted in 2023 and will be announced in a future notice. In addition, NMFS has implemented online recertification workshops for

persons who have already taken an in-person training.

DATES: The Atlantic Shark Identification Workshops will be held on January 19, 2023 and March 16, 2023. The Safe Handling, Release, and Identification Workshops will be held on January 18, 2023, February 16, 2023, and March 2, 2023.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Kenner, LA and Fort Pierce, FL. The Safe Handling, Release, and Identification Workshops will be held in Portsmouth, NH, Key Largo, FL, and Houston, TX.

FOR FURTHER INFORMATION CONTACT: Tiffany Weidner by email at *tiffany.weidner@noaa.gov* or by phone at 301–427–8550.

SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (HMS) fisheries are managed under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan and its amendments are implemented by regulations at 50 CFR part 635. Section 635.8 describes the requirements for the Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops. The workshop schedules, registration information, and a list of frequently asked questions regarding the Atlantic Shark Identification and Safe Handling, Release, and Identification workshops are available online at: *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops* and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057, October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Thus, certificates that were initially issued in 2019 will expire in 2022. Approximately 195 free Atlantic Shark Identification Workshops have been conducted since October 2008.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit that first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate must be in any trucks or other conveyances that are extensions of a dealer's place of business.

Workshop Dates, Times, and Locations

1. January 19, 2023, 12 p.m.–4 p.m., Home 2 Suites, 1112 Veterans Memorial Highway, Kenner, LA 70062.

2. March 16, 2023, 12 p.m.–4 p.m., Hampton Inn & Suites Fort Pierce, 1985 Reynolds Drive, Fort Pierce, FL 34945.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *ericssharkguide@yahoo.com* or at 386–852–8588. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited access and swordfish limited access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057, October 2, 2006). These certificate(s) are valid for 3 years. Certificates issued in 2019 will expire in 2022. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited access permits. Additionally, new shark and swordfish limited access permit applicants who intend to fish with longline or gillnet gear must attend a Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 397 free Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to vessel owners, at least one operator on board vessels issued a limited access swordfish or shark permit that uses longline or gillnet gear is required to attend a Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates on board at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited access permits on which longline or gillnet gear is used.

Workshop Dates, Times, and Locations

1. January 18, 2023, 9 a.m.–5 p.m., Residence Inn Downtown, 100 Deer Street, Portsmouth, NH 03801.

2. February 16, 2023, 9 a.m.–5 p.m., Holiday Inn Key Largo, 99701 Overseas Highway, Key Largo, FL 33037.

3. March 2, 2023, 9 a.m.–5 p.m., Holiday Inn Express & Suites- Houston Medical Center, 9300 South Main Street, Houston, TX 77025.

Registration

To register for a scheduled Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at 386–682–0158. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification;
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification; and
- Vessel operators must bring proof of identification.

Workshop Objectives

The Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, smalltooth sawfish, Atlantic sturgeon, and prohibited sharks. In an effort to improve reporting, the proper identification of protected species and prohibited sharks will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species and prohibited sharks, which may prevent additional regulations on these fisheries in the future.

Online Recertification Workshops

NMFS implemented an online option for shark dealers and longline and gillnet fishermen to renew their certificates in December 2021. To be eligible for online recertification workshops, dealers and fishermen need to have previously attended an in-person workshop. Information about the courses is available online at *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops* and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops.* To access the course please visit: *https://hmsworkshop.fisheries.noaa.gov/start.*

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 28, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–26174 Filed 11–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC577]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ecosystem-Based Fishery Management Committee (EBFM) and Advisory Panel Chairs via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, December 20, 2022, at 1 p.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/99034538973828109.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Ecosystem-Based Fishery Management (EBFM) Committee and Advisory Panel Chairs will meet as stakeholders to provide guidance for the development of a Prototype Management Strategy Evaluation (pMSE) for Georges Bank EBFM. They will also review and modify management objectives and performance metrics to be used for the pMSE as well as identify and discuss management alternatives to be tested by the pMSE including combinations of monitoring, species complex aggregations, assessment methods, and types of control rules.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 28, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–26161 Filed 11–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–203–000.

Applicants: Portland Natural Gas Transmission System.

Description: § 4(d) Rate Filing: Heritage name change to Eastward Energy Inc—NR/Non Conf Amendment to be effective 11/4/2022.

Filed Date: 11/23/22.

Accession Number: 20221123–5014.

Comment Date: 5 p.m. ET 12/5/22.

Docket Numbers: RP23–204–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Update (Pioneer Jan–Mar 2023) to be effective 1/1/2023.

Filed Date: 11/23/22.

Accession Number: 20221123–5026.

Comment Date: 5 p.m. ET 12/5/22.

Docket Numbers: RP23–206–000.

Applicants: Freebird Gas Storage, L.L.C.

Description: § 4(d) Rate Filing: Updates to Freebird Gas Storage LLC FERC Gas Tariff to be effective 12/23/2022.

Filed Date: 11/23/22.

Accession Number: 20221123–5105.

Comment Date: 5 p.m. ET 12/5/22.

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: November 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–26139 Filed 11–30–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–495–000]

AES CE Solutions, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of AES CE Solutions, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 15, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–26136 Filed 11–30–22; 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 rate filings:

Docket Numbers: ER23–495–000.
Applicants: AES CE Solutions, LLC.
Description: Baseline eTariff Filing: AES CE Solutions, LLC MBR Tariff to be effective 11/24/2022.
Filed Date: 11/23/22.
Accession Number: 20221123–5182.
Comment Date: 5 p.m. ET 12/12/22.

Docket Numbers: ER23–496–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: Amendment to BP Products North America, Inc to be effective 10/1/2019.
Filed Date: 11/23/22.
Accession Number: 20221125–5000.
Comment Date: 5 p.m. ET 12/12/22.

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: *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: November 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–26132 Filed 11–30–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0230; FRL–10245–01–OCSPP]

Pesticide Registration Review; Proposed Interim Decision for Carbaryl; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decision and opens a 75-day public comment period on the proposed interim decision for carbaryl.

DATES: Comments must be received on or before February 14, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0230, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information,* please contact the Chemical Review Manager for carbaryl identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; email address: *biscoe.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for carbaryl identified in Table 1 in Unit IV.

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 on 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.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed a proposed interim decision for carbaryl (Table 1). Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of carbaryl pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decision for carbaryl and opens a 75-day public comment period on the proposed interim registration review decision.

TABLE 1—CARBARYL REGISTRATION REVIEW DOCKET DETAILS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Carbaryl, Case Number 0800	EPA–HQ–OPP–2010–0230	Anna Romanovsky, *romanovsky.anna@epa.gov,* (202) 566–2771.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the docket describe EPA's rationales for conducting additional risk assessments for the registration review of carbaryl, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. The proposed interim registration review decision is supported by the rationale included in those documents. Following public comment, the Agency will issue an interim or final registration review decision for carbaryl.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 75-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for carbaryl. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''Response to Comments Memorandum'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 22, 2022.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–26172 Filed 11–30–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–10422–01–ORD]

Board of Scientific Counselors (BOSC) Executive Committee Meeting—December 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of a virtual meeting of the Board of Scientific Counselors (BOSC) Executive Committee (EC) to follow up on the review of the New Chemicals Collaborative Research Program that occurred on October 24–25, 2022. The FRN was not published within a 15 day notice due to technical difficulties.

DATES: The deliberation meeting will be held over one day via videoconference on Tuesday, December 13, 2022, from 2 p.m. to 5 p.m. (EDT).

Attendees must register by December 12, 2022.

Meeting times are subject to change. This series of meetings is open to the public. Comments must be received by December 12, 2022, to be considered by the BOSC. Requests for the draft agenda or making a presentation at the meeting will be accepted until December 12, 2022.

ADDRESSES: Instructions on how to connect to the videoconference will be provided upon registration at: *https://EPA-BOSC-CSS-OPP.eventbrite.com.*

Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0765 by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
  - *Note:* comments submitted to the *www.regulations.gov* website are anonymous unless identifying information is included in the body of the comment.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0765.
  - *Note:* comments submitted via email are not anonymous. The sender's email will be included in the body of the comment and placed in the public docket which is made available on the internet.

Instructions: All comments received, including any personal information provided, will be included in the public docket without change and may be made available online at *www.regulations.gov.* Information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute will not be included in the public docket and should not be submitted through *www.regulations.gov* or email. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Public Docket: Publicly available docket materials may be accessed *Online* at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Tom Tracy, via phone/voicemail at: 919–541–4334; or via email at: *tracy.tom@epa.gov.*

Any member of the public interested in receiving a draft agenda, attending the meeting, or making a presentation at the meeting should contact Tom Tracy no later than December 12, 2022.

SUPPLEMENTARY INFORMATION: The Board of Scientific Counselors (BOSC) is a Federal advisory committee that provides advice and recommendations to EPA's Office of Research and Development on technical and management issues of its research programs. The meeting agenda and materials will be posted to *https://www.epa.gov/bosc.*

Proposed agenda items for the meeting include, but are not limited to, the following: review of the New Chemicals Collaborative Research Program.

Information on Services Available: For information on translation services, access, or services for individuals with disabilities, please contact Tom Tracy at 919–541–4334 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy at least ten days prior to the meeting to give the EPA adequate time to process your request.

Authority: Pub. L. 92–463, 1, Oct. 6, 1972, 86 Stat. 770.

Mary Ross,

Director, Office of Science Advisor, Policy and Engagement.

[FR Doc. 2022–26124 Filed 11–30–22; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, December 8, 2022.

PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe,

at least 24 hours in advance, visit *FCA.gov*, select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of November 10, 2022, Minutes
- Quarterly Report on Economic Conditions and Farm Credit System Condition and Performance
- Semiannual Report on Office of Examination Operations

CONTACT PERSON FOR MORE INFORMATION: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2022–26209 Filed 11–28–22; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL TRADE COMMISSION

[File No. 202–3092]

Google LLC and iHeartMedia, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 3, 2023.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Google LLC and iHeartMedia, Inc.; File No. 202–3092'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Karen Mandel (202–326–2491), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 3, 2023. Write ''Google LLC and iHeartMedia, Inc.; File No. 202–3092'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Google LLC and iHeartMedia, Inc.; File No. 202–3092'' on your comment and on the envelope and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this document and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 3, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order as to Google LLC (''Google'' or ''respondent''). The proposed consent order (''order'') has been placed on the public record for 30

days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received and will decide whether it should withdraw the order or make it final.

This matter involves Google's practices with respect to advertising for its Pixel 4 smartphone (the ''Pixel 4''). The complaint alleges that Google wrote, recorded, and disseminated first-person endorsements for the Pixel 4 by local radio personalities in several states. The complaint further alleges that, in the advertising, the respondent represented that the radio personalities owned or regularly used the Pixel 4, and had used it to take pictures at night, when the radio personalities did not own or regularly use the phone and had not used it to take pictures at night. The complaint alleges Google's representations were false and misleading, and violated section 5(a) of the FTC Act.

The order includes injunctive relief that prohibits the alleged violations and fences in similar and related conduct for any Covered Product. Covered Product is defined as any: (i) Respondent consumer electronic product; (ii) any Respondent operating system for handheld devices; and (iii) any Respondent operating system or consumer-facing feature when marketed as part of any consumer electronic product.

Part I prohibits misrepresenting that an endorser has owned or used any Covered Product or about an endorser's experience with any Covered Product. Part II requires the respondent to cooperate in any Commission investigation or case related to the conduct that is the subject of the complaint. Part III requires the respondent to distribute the order to certain persons and submit signed acknowledgments of order receipt.

Part IV requires the respondent to file compliance reports with the Commission, and to notify the Commission of changes in corporate structure that might affect compliance obligations. Part V contains recordkeeping requirements for certain accounting records, personnel records, consumer complaints, training materials, and advertising and marketing materials, and all records necessary to demonstrate compliance with the order. Part VI contains other requirements related to the Commission's monitoring of the respondent's order compliance.

Part VII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–26143 Filed 11–30–22; 8:45 am]

BILLING CODE 6750–01–P

OFFICE OF GOVERNMENT ETHICS

Potential Improvements to the OGE Form 278e (Executive Branch Personnel Public Financial Disclosure Report) and the OGE Form 450 (Executive Branch Confidential Financial Disclosure Report)

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of public meeting.

SUMMARY: The U.S. Office of Government Ethics (OGE) is hosting a public meeting to obtain input from interested parties regarding potential improvements to the OGE Form 278e and the OGE Form 450 as part of a form revision planning process that will precede the next requested renewal of these forms under the Paperwork Reduction Act. The next scheduled renewal is in 2024; however, OGE may decide to make changes earlier.

DATES:

Public Meeting Date: The public meeting will be held on January 19, 2023, from 11 a.m. to 12 p.m., eastern time.

Registration: By close of business on January 17, 2023.

Written Comment Period Dates: Written comments must be received by January 6, 2023. Information on how to register for this meeting and to submit a written comment may be found in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The public meeting will be held via Cisco Webex Meetings.

FOR FURTHER INFORMATION CONTACT: Jody Keegan; Program Analyst, General Counsel and Legal Policy Division, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917; Telephone: (202) 482–9300; TTY: (800) 877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, and the Ethics in Government Act (EIGA), 5 U.S.C. app. section 102, as amended, OGE is seeking feedback on the OGE Form 278e and the OGE Form 450. On July 13, 2022 and July 20, 2022, OGE held listening sessions to seek agency input on issues specifically related to potential language and formatting changes to the OGE Form 278e and the OGE Form 450. OGE is now inviting all interested members of the public to share ideas, provide information, and express concerns about potential changes to the forms. This meeting will both allow interested groups to hear and respond to the concerns of other affected persons and allow OGE to further develop its understanding of the views of various constituencies. The goal of these meetings is to exchange ideas rather than come to a consensus.

Commenters may make any suggestions that they believe will improve the OGE Form 278e or the OGE Form 450. However, the public financial disclosure requirements are dictated by the Ethics in Government Act (EIGA), 5 U.S.C. app. section 102, as amended, and OGE's regulations at 5 CFR part 2634. OGE will be unable to consider any suggested change that would require a statutory change or regulatory change in this form revision cycle. Additionally, when considering suggested changes, OGE will consider any potential cost burden, particularly if the change will require reprogramming of agency or Government-wide electronic filing systems. Generally, text changes within the instructions impose substantially fewer costs than changes to the look or order of the data entry grids. Commenters should consider and explain how the changes they are proposing provide concrete benefits, such as easier identification of potential conflicts of interest or ease of use of the forms.

To facilitate discussion at the public meeting, OGE welcomes input on issues related to suggested changes to the OGE Form 278e and the OGE Form 450 including, but not limited to, the following topics on which OGE has previously received comments:

Potential Areas for Comment on the OGE Form 278e

1. General information fields:

The OGE Form 278e includes certain general information fields on the first page, such as the filer's name and position. These fields are not specifically authorized in the controlling statutory and regulatory authorities but are deemed permissible because they are necessary to provide an adequate understanding and processing of the form and do not impose any

undue privacy or data entry burdens on filers.

(a) Filer identification number:

OGE received a suggestion for assigning each filer an identification number that would stay with the individual in perpetuity. Commenters advocating for such an identification number are advised to include the specific benefits of the number and to address the competing costs, privacy, and burden concerns. Commenters who oppose this identification number should identify any privacy concerns, costs, or administrative burdens, or any other concerns.

(b) Type of appointment:

OGE received a comment requesting that the OGE Form 278e display information regarding a filer's type of appointment. (*i.e.,* Career SES, Non-Career SES, Senate-confirmed Presidential appointees (PAS), Schedule C, Uniformed Services, Other). OGE is interested in views on whether the provision of this information on the face of the form would assist the public in understanding the filer's risk of potential conflicts without undue burden or privacy concerns.

2. Excepted Investment Fund (EIF) Field:

OGE is considering changing the EIF field. The EIF field currently contains three choices: Yes (the item is an asset with underlying portfolio holdings but the item qualifies as an excepted investment fund); No (the item is an asset with underlying portfolio holdings and the asset does not qualify as an excepted investment fund); and N/A (the item is a source of non-investment income or the item is an asset without underlying portfolio assets). OGE is considering providing just two choices for the EIF field: Yes (the item is an asset with underlying portfolio holdings but the item qualifies as an excepted investment fund); or No (the item is an asset with underlying portfolio holdings and the asset does not qualify as an excepted investment fund; or the item is a source of non-investment income; or the item is an asset without underlying portfolio assets). OGE is interested in views on whether such a change would make the form more understandable.

3. Definitions:

OGE received comments requesting clarification to the instructions concerning the EIF field. OGE is interested in views on specific text suggestions on how the definition of ''excepted investment fund'' might be improved in the instructions. OGE also seeks comments on whether the instructions to any part of the form should include additional definitions of key terms and whether there are specific terms that need further definition.

4. Examples:

The OGE Form 450 includes a page of examples to assist filers in completing the form. OGE is considering adding a similar list of examples to the OGE Form 278e. OGE is interested in views on whether there are specific topic areas for which an example would be particularly useful.

Potential Areas for Comment on the OGE Form 450

1. Form types:

OGE currently makes the OGE Form 450 available in three different form types: (1) a dynamic Adobe Acrobat PDF version that has an automated Add-Page button; (2) an accessible, 508-compliant Adobe Acrobat PDF version that lacks an automated Add-Page button; and (3) a dynamic Microsoft Excel version that has an automated Add-Page button. Unfortunately, OGE has been unable to find any contractor that is able to support the dynamic PDF version and it is becoming less and less stable. OGE is considering retiring the dynamic PDF version. Feedback is requested as to whether the dynamic PDF version should be retained, despite its technical limitations.

2. Definitions and examples:

The last page of the OGE Form 450 includes examples for each Part. OGE seeks comments on whether any of these examples should be revised or removed, what new examples would be of value for the average filer, and whether any new definitions should be added to the instructions.

Registration: Individuals wishing to attend the public meeting must register at *https://dcnet.webex.com/weblink/register/rc97caed77fdf3f1ce2e2158480a47425.* Meeting information will be provided at the time of registration.

Written Comments: You may submit comments in writing to OGE by use of the following methods:

Email: usoge@oge.gov. Include ''OGE PRA Form 278e and OGE Form 450 Review'' in the subject line.

Mail: Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917, Attention: ''OGE PRA Form 278e and OGE Form 450 Review.''

Instructions: Comments may be posted on OGE's website, *https://www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

Approved: November 28, 2022.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2022–26130 Filed 11–30–22; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspection of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces fees for vessel sanitation inspections for Fiscal Year (FY) 2023. These inspections are conducted by HHS/CDC's Vessel Sanitation Program (VSP). VSP helps the cruise ship industry fulfill its responsibility for developing and implementing comprehensive sanitation programs to minimize the risk for acute gastroenteritis. Every vessel that has a foreign itinerary and carries 13 or more passengers is subject to twice-yearly unannounced operations inspections and, when necessary, reinspection.

DATES: These fees apply to inspections conducted from January 1, 2023, through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: CDR Andrew Kupper, Acting Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS 106–6, Atlanta, Georgia 30341–3717; phone: 800–323–2132; email: *vsp@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Background

HHS/CDC established the Vessel Sanitation Program (VSP) in the 1970s as a cooperative activity with the cruise ship industry. VSP helps the cruise ship industry prevent and control the introduction, transmission, and spread of gastrointestinal illnesses on cruise ships. VSP operates under the authority of the Public Health Service Act (section 361 of the Public Health Service Act; 42 U.S.C. 264, ''Control of Communicable Diseases''). Regulations found at 42 CFR 71.41 (Foreign Quarantine—Requirements Upon Arrival at U.S. Ports: Sanitary Inspection; General

Provisions) state that carriers arriving at U.S. ports from foreign areas are subject to sanitary inspections to determine whether there exists rodent, insect, or other vermin infestations; contaminated food or water; or other sanitary conditions requiring measures for the prevention of the introduction, transmission, or spread of communicable diseases. VSP's mandate is specific to preventing and controlling gastrointestinal illnesses on cruise ships.

The fee schedule for sanitation inspections of passenger cruise ships by VSP was first published in the **Federal Register** on November 24, 1987 (52 FR 45019). HHS/CDC began collecting fees on March 1, 1988. This notice announces fees for inspections conducted during FY 2023 (beginning on January 1, 2023, through September 30, 2023).

The following formula will be used to determine the fees:

$$\textit{Average cost per inspection} = \frac{\textit{Total cost of VSP}}{\textit{Weighted number of annual inspections}}$$

Total cost of VSP includes the total cost of operating the program, such as administration, travel, staffing, sanitation inspections, and outbreak response.

The weighted number of annual inspections includes the total number of ships and inspections per year accounting for vessel size, number of inspectors needed for vessel size, travel logistics to conduct inspections, and vessel location and arrivals in U.S. jurisdiction per year.

The fee schedule was most recently published in the **Federal Register** on August 21, 2019 (84 FR 43602). The fee schedule for FY 2023 is presented in appendix A.

Fee

The fee schedule (appendix A) applies to inspections conducted from January 1, 2023, through September 30, 2023.

Applicability

The fees will apply to all passenger cruise vessels for which inspections are conducted as part of HHS/CDC's VSP.

Angela K. Oliver,

Executive Secretary, Centers for Disease Control and Prevention.

Appendix A

FEE SCHEDULE FOR EACH VESSEL SIZE—OPERATIONS INSPECTIONS AND REINSPECTIONS

Vessel size (GRT [1])	Inspection fee (US$)
Extra Small (<3,000 GRT)	1,495
Small (3,001–15,000 GRT)	2,990
Medium (15,001–30,000 GRT)	5,980
Large (30,001–60,000 GRT)	8,970
Extra Large (60,001–120,000 GRT)	11,960
Mega (120,001–140,000 GRT)	17,940
Super Mega (>140,001 GRT)	23,920

[1] Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Operations inspections and reinspections involve the same procedures and require the same amount of time, so they are charged at the same rates.

FEE SCHEDULE FOR EACH VESSEL SIZE—CONSTRUCTION AND RENOVATION INSPECTIONS

Vessel size (GRT [1])	Inspection fee (US$)
Extra Small (<3,000 GRT)	2,990
Small (3,001–15,000 GRT)	5,980
Medium (15,001–30,000 GRT)	11,960
Large (30,001–60,000 GRT)	17,940
Extra Large (60,001–120,000 GRT)	23,920
Mega (120,001–140,000 GRT)	35,880
Super Mega (>140,001 GRT)	47,840

[1] Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Construction and renovation inspections require at least twice the amount of time as operations inspections, so they are charged double the rates.

[FR Doc. 2022–26159 Filed 11–30–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3233]

Request for Nominations for Voting Members on a Public Advisory Committee; Technical Electronic Product Radiation Safety Standards Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) in the Center for Devices and Radiological Health. Nominations will be accepted for current and upcoming vacancies effective January 1, 2023, with this notice. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before January 30, 2023, will be given first consideration for membership on TEPRSSC. Nominations received after January 30, 2023, will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All nominations for membership should be sent electronically by accessing FDA's Advisory Committee Membership Nomination Portal at *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Akinola Awojope, Office of Management Services, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–636–0512, email: *Akinola.Awojope@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members on TEPRSSC that include five general public representatives and five government representatives.

I. General Description of the Committee's Duties

The committee provides advice and consultation to the Commissioner of Food and Drugs (Commissioner) on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products, and may recommend electronic product radiation safety standards to the Commissioner for consideration.

II. Criteria for Voting Members

The committee consists of a core of 15 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of science or engineering, applicable to electronic product radiation safety. Members will be invited to serve for overlapping terms of up to 4 years. Terms of more than 2 years are contingent upon the renewal of the committee by appropriate action prior to its expiration.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address and/or home address, telephone number, and email address if available and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: November 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26125 Filed 11–30–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recharter for the National Advisory Council on Nurse Education and Practice

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, HHS is hereby giving notice that the National Advisory Council on Nurse Education and Practice (NACNEP) has been rechartered. The effective date of the recharter is November 30, 2022.

FOR FURTHER INFORMATION CONTACT: Kimberly Huffman, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301–443–3863; or *BHWNACNEP@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACNEP provides advice and recommendations to the Secretary of HHS (Secretary) and Congress on policy matters and the preparation of general regulations concerning activities under Title VIII of the Public Health Service Act, including the range of issues relating to the nurse workforce, education, and practice improvement. NACNEP also prepares and submits an annual report to the Secretary and Congress describing its activities, including NACNEP's findings and recommendations concerning activities under title VIII, as required by the Public Health Service Act.

The recharter of NACNEP was approved on November 14, 2022. The filing date for the NACNEP recharter is November 30, 2022. The recharter of NACNEP gives authorization for the Council to operate until November 30, 2024.

A copy of the NACNEP charter is available on the NACNEP website at *https://www.hrsa.gov/advisory-committees/nursing/about.html.* A copy of the charter can also be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the

General Services Administration. The website address for the FACA database is *http://www.facadatabase.gov/*.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–26118 Filed 11–30–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIGMS Review of Centers of Biomedical Research Excellence (COBRE) Phase 2 Applications.

Date: February 27–28, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manas Chattopadhyay, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, *manasc@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: November 28, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26120 Filed 11–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 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: Center for Scientific Review Special Emphasis Panel; PAR–22–078: Lasker Clinical Research Scholar Program.

Date: December 20, 2022.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 27, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26122 Filed 11–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53

FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal**

Register, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2022–26170 Filed 11–30–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–62]

30-Day Notice of Proposed Information Collection: Multifamily Coinsurance Claims Package, Section 223(f), OMB Control No.: 2502–0420

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* January 3, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, 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. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* 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.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 16, 2022 at 87 FR 56969.

A. Overview of Information Collection

Title of Information Collection: Multifamily Coinsurance Claims Package, Section 223(f).

OMB Approval Number: 2502–0420.

OMB Expiration Date: February 29, 2004.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired. Forms will be terminated and discontinued after reinstatement. The coinsurance program has already been terminated by federal regulation (see 24 CFR in package).

Form Numbers: HUD–27008, HUD–27009B, HUD–27009D, HUD–27009F.

Description of the Need for the Information and Proposed Use: A lender with an insured multifamily mortgage pays an annual insurance premium to the Department. When and if the mortgage goes into default, the lender may elect to file a claim for FHA Multifamily insurance benefits with the Department. HUD needs this information to determine if FHA multifamily insurance claims submitted to HUD are accurate, valid and support payment of an FHA multifamily insurance claim.

Respondents: Business or other for-profit; State, Local, or Tribal Government.

Estimated Number of Respondents: 12.

Estimated Number of Responses: 48.

Frequency of Response: Occasion.

Average Hours per Response: 4.6 hours.

Total Estimated Burden: 55 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.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–26144 Filed 11–30–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–34]

60-Day Notice of Proposed Information Collection: Financial Statement of Corporate Application for Cooperative Housing Mortgage; OMB Control No.: 2502–0058

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:* January 30, 2023.

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, REE, 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. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, 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. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

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: Financial Statement of Corporate Application for Cooperative Housing Mortgage.

OMB Approval Number: 2502–0058.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–93232A.

Description of the need for the information and proposed use: Information is a critical element and the source document by which HUD determines the cooperative member and group capacity to meet the statutory requirements. Credit reports on the individual members and their personal financial statements are submitted on form HUD–93232–A in order to determine their credit standing, ability to pay and stability of employment.

Respondents: 13.

Estimated Number of Respondents: 13.

Estimated Number of Responses: 13.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burden: 13.

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.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2022–26157 Filed 11–30–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–63]

30-Day Notice of Proposed Information Collection: ONAP Training and Technical Assistance Evaluation Form, OMB Control No.: 2577–0291

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* January 3, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, 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. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* 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.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 28, 2022 at 87 FR 17099.

A. Overview of Information Collection

Title of Information Collection: ONAP Training and Technical Assistance Evaluation Form.

OMB Approval Number: 2577–0291.

Type of Request: Reinstatement without change.

Form Number: Form HUD–5879.

Description of the need for the information and proposed use: The Native American Housing Assistance and Self-Determination Act (NAHASDA) authorizes funding for the Indian Housing Block Grant (IHBG) program that supports the development, management, and operation of affordable homeownership and rental housing and other forms of housing assistance for low-income persons in Indian areas. Federally-recognized Native American tribes and Alaska Native villages, tribally-designated housing entities, and State-recognized tribes formerly eligible under the U.S. Housing Act of 1937 are eligible to receive IHBG funds.

HUD's Office of Native American Programs (ONAP) administers the IHBG program and offers contracted training and technical assistance to IHBG recipients on program requirements. ONAP's Notice of Funding Opportunity for training and technical assistance services includes the requirement for the contractor(s) to use an OMB-approved evaluation form at all ONAP-sponsored events. At the end of each training and technical assistance event, participants are invited to voluntarily complete the Training and Technical Assistance Evaluation Form (form HUD–5879) to assess training and technical assistance effectiveness and solicit ideas for improvement. Form HUD–5879 is a two-page survey instrument and does not collect any personally identifiable information, including a participant's name.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–5879	40	200	8,000	.2	1,600	$36	$57,600
Total	40	200	8,000	.2	1,600	36	57,600

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.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–26142 Filed 11–30–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–55]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Loss Mitigation Programs, OMB Control No. 2502–0589

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. This notice replaces the notice HUD published on September 17, 2021.

DATES: *Comments Due Date:* January 30, 2023.

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, REE, 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. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* 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: FHA-Insured Mortgage Loan Servicing Involving the Loss Mitigation Program.

OMB Approval Number: 2502–0589.

Type of Request: Revision.

Form Numbers: HUD–27011, HUD–90035, HUD–90041, HUD–90045, HUD–90051, HUD–90052.

Description of the need for the information and proposed use: FHA's Loss Mitigation program options (24 CFR 203.501) and incentives efforts provide mortgagees with reimbursement for using tools to bring a delinquent FHA-insured mortgage loan current in as short a time as possible, to provide an alternative to foreclosure to the extent possible, and to minimize losses to the Mutual Mortgage Insurance Fund. Home retention options promote reinstatement of the mortgage, allowing the mortgagor to retain home ownership, while disposition options assist mortgagors who cannot recover with an alternative to foreclosure. The

HUD forms used are part of the collection effort for non-performing insured mortgage loans.

Respondents: Mortgagees or Mortgagors.

Estimated Number of Respondents: 412,966.

Estimated Number of Responses: 1,254,958.

Frequency of Response: On occasion.

Average Hours per Response: 1.38 hours.

Total Estimated Burdens: 1,736,478.

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.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2022–26152 Filed 11–30–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Final Programmatic Environmental Impact Statement for the 2015 Integrated Resource Management Plan for the Colville Indian Reservation, Nespelem, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, and the Confederated Tribes of the Colville Reservation (Tribes) intends to file a Final Programmatic Environmental Impact Statement (FEIS) with the Environmental Protection Agency (EPA) for the 2015 Colville Reservation Integrated Resource Management Plan (IRMP). This notice announces that the FEIS is now available for public review.

DATES: The BIA will not issue a final decision on the proposal for a minimum of 30 days after the date that the EPA publishes its Notice of Availability (NOA) in the **Federal Register**. Any comments on the FEIS must arrive on or before the date 30 days after the EPA publishes a Notice of Availability in the **Federal Register**. The Record of Decision (ROD) on the proposed action will be issued no sooner than 30 days after the release of the FEIS.

ADDRESSES:

Comments: You may mail or hand-deliver written comments to Randall Friedlander, Superintendent, Bureau of Indian Affairs, Colville Agency, P.O. Box 111, 21 Colville Street, 3rd Floor NE, Nespelem, WA 99155–0111. Please include your name, return address, and the caption ''FEIS Comments, Colville Reservation IRMP,'' on the first page of your written comments. You can also submit comments by email to *randall.friedlander@bia.gov.* If emailing comments, please use ''FEIS Comments, Colville Reservation IRMP,'' as the subject of your email.

Public Review: The FEIS is available online at *http://www.colvilletribes.com/irmp.* The FEIS is also available for review during regular business hours at the following locations:

- BIA Colville Agency, 21 Colville St., 3rd Floor NE, Nespelem, WA 99155–0111.
- Inchelium Resource Center, 12 Community Center Loop, Inchelium, WA 99138.

FOR FURTHER INFORMATION CONTACT: Randall Friedlander, Superintendent, Bureau of Indian Affairs, Colville Agency, P.O. Box 111, Nespelem, WA 99155–0111, (509) 634–2316.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is approval the IRMP for the Tribes' natural and cultural resources. The proposed action updates the original IRMP that was prepared and implemented in 2000. The IRMP incorporates management goals and objectives for the commercial forest, rangeland, and agricultural lands of the Tribes.

The Tribes' forest products industry, livestock grazing, and agriculture have the potential to impact the natural and human environments of the Reservation. The FEIS analyzes the potential impacts associated with these activities. These include impacts to land resources such as geology, minerals, and soils, watershed function, surface and groundwater resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions, transportation and forest access roads, land use, public services, noise, aesthetics, recreation, climate change, cumulative effects, and indirect and growth-inducing effects.

The FEIS considers five management alternatives developed by the Tribes' IRMP Core Team. The interdisciplinary team developed these management alternatives for consideration and analysis and designated a preferred alternative (Alternative 2) that was approved by the Colville Business Council in June 2014. The team also conducted a community survey in 2014 that asked community members to choose a preferred alternative. All groups were unanimous in selecting Alternative 2 as the preferred alternative. The alternatives are:

1. Continue the Current Management Strategy
2. Enhance and Improve the Current Management Strategy (Preferred Alternative)
3. Concentrate on Forest and Rangeland Health Problems
4. Expand Forest and Livestock Production
5. Eliminate Timber Harvesting and Livestock Grazing

A Notice of Intent (NOI) to prepare an EIS was released in the **Federal Register** on November 21, 2014 (79 FR 69521). Public scoping meetings were held in four Reservation communities in October 2015, and a Scoping Meetings Report was released in March 2016. An administrative draft DEIS was prepared and reviewed by the IRMP Core Team and appropriate revisions were incorporated along with supplemental information.

The Draft EIS (DEIS) was completed in November 2016. Notices of Availability (NOA) were published in the **Federal Register** by the BIA on June 14, 2017 (82 FR 27278) and the EPA on July 28, 2017 (82 FR 35200). The public review period ended on September 11, 2017. The Response to Comments was released on January 24, 2018. The original FEIS was completed on August 14, 2018, and page-count revisions were completed on December 18, 2018.

Public Comment Availability

Comments, including names and addresses of respondents, will be

available for public review during regular business hours at the BIA mailing address shown in the **ADDRESSES** section of this notice. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published pursuant to 40 CFR 1506.10(a) of the Council of Environmental Quality Regulations (40 CFR 1500 *et seq.*) and 43 CFR 46.305 of the Department of Interior Regulations (43 CFR part 46), the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and is in accordance with the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–26151 Filed 11–30–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–WS–NPS0034514; PPWOWMADL3, PPMPSAS1Y.TD0000 (222); OMB Control Number 1024–0022]

Agency Information Collection Activities; Backcountry/Wilderness Use Permit

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS) are proposing to revise a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before January 30, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, NPS Information Collection Clearance Officer, 12201 Sunrise Valley Drive (MS–242), Reston, Virginia 20192; or to *phadrea_ponds@nps.gov* (email). Please reference Office of Management and Budget (OMB) Control Number 1024–0022 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Roger Semler, Chief, Wilderness Stewardship Division at *roger_semler@nps.gov* (email). Please reference OMB Control Number 1024–0022 in the subject line of your comments. 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 ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies 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.

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 the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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 Backcountry/Wilderness Use Permit is an extension of the NPS statutory authority and responsibility to protect the park areas it administers and to manage the public use thereof (54 U.S.C. 100101, 100751, and 320102). In 1976, the NPS initiated a backcountry registration system by the regulations codified in 36 CFR 1.5, 1.6, and 2.10. The NPS regulations codified in 36 CFR parts 1 through 7, 12, and 13 are designated to implement statutory mandates that provide for resource protection and public enjoyment. The registration system aims to provide users access to backcountry and wilderness areas of national parks while enhancing the protection of natural and cultural resources by using better management practices by the park management. Data collected through the registration process serves as an important resource that informs backcountry/wilderness management and stewardship planning, decision-making, and operations, and provides a means of disseminating public safety and outdoor ethics messages regarding backcountry/wilderness travel and camping along with continuing opportunities for primitive and unconfined recreation. Permitting enhances the ability of the NPS to educate users on potential hazards, search and rescue efforts, and resource protection. The objectives of the permit system carried out by park managers are to ensure:

(1) Requests by backcountry users are evaluated by park managers per applicable statutes and NPS regulations.

(2) The use of consistent standards and permitting criteria throughout the agency.

(3) To the extent possible, the use of a single and efficient permitting document, NPS Forms 10–404 *Backcountry/Wilderness Use Permit Application* and 10–404A *Backcountry/Wilderness Use Permit Hangtag,* are used to provide access to NPS backcountry areas, including areas that require a reservation to enter where use limits are imposed per other NPS regulations. The 10–404AK *Alaska Backcountry/Wilderness Use Permit Application,* is used within Alaskan park units, Denali National Park and Preserve and Glacier Bay National Park

and Preserve, due to unique, park-specific requirements like the additional permitted methods of travel as regulated by ANILCA Section 1110(a).

We are proposing to add a new form 10–404C *Backcountry/Wilderness Use Permit Application for Climbing* to this collection. This form will address the need for a separate permitting system for climbing in the backcountry and use the of fixed anchors. This form would include fields specific to climbing carried over from the currently approved form 10–404 *Backcountry/Wilderness Use Permit Application* and additional fields for the use of fixed anchors while climbing.

Title of Collection: Backcountry/Wilderness Use Permit, 36 CFR 1.5, 1.6, and 2.10.

OMB Control Number: 1024–0022.

Form Number: NPS Forms 10–404 *Backcountry/Wilderness Use Permit Application,* 10–404A *Backcountry/Wilderness Use Permit Hangtag,* 10–404AK *Alaska Backcountry/Wilderness Use Permit Application,* and New 10–404C *Backcountry/Wilderness Use Permit Application for Climbing.*

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals, private sector, and state, local, or tribal government entities applying to use backcountry and wilderness areas within units of the national park system.

Total Estimated Number of Annual Respondents: 351,121.

Total Estimated Number of Annual Responses: 351,121.

Estimated Completion Time per Response: Varies from 5 minutes to 8 minutes depending on the activity.

Total Estimated Number of Annual Burden Hours: 39,116.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor nor is a person 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.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2022–26140 Filed 11–30–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–IMR–YELL–NPS0034654; PPIMYELL60 POPCF8099.XZ0000 PX.P0241364E.00.1 (222); OMB Control Number 1024–0266]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before January 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242) Reston, VA 20191 (mail); or to *phadrea_ponds@nps.gov* (email). Please reference OMB Control Number 1024–0266 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Becky Wyman, Concessions Management Specialist, P.O. Box 168, Mammoth Hot Springs, Yellowstone National Park, WY 82190–0168; or *becky_wyman@nps.gov* (email); or at 307–344–2278 (telephone). Please reference OMB Control Number 1024–0266 in the subject line of your comments. 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 ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 16, 2022 (87 FR 8877). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(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 National Park Service (NPS) is authorized by regulations codified in 36 CFR 7.13(l), Special Regulations; Areas of the National Park

System; Yellowstone National Park; Winter Use, to establish a management framework that allows the public to experience the unique winter resources and values at Yellowstone National Park (YELL). Access to most of the park in the winter is limited by distance and the harsh winter environment, which presents challenges to safety and park operations. In response, the NPS provides opportunities for park visitors to experience Yellowstone in the winter via over-snow vehicles (snowmobiles and snowcoaches, collectively OSVs). The NPS will use Form 10–650 *OSV Monthly Use Report* to ensure that OSVs meet NPS emission standards to operate in the park. The completed forms are used to evaluate commercial tour operators' compliance with allocated transportation events and daily and seasonal OSV group size limits and to ensure that established daily transportation event limits for the park are not exceeded. The NPS will confirm that commercial tour operators do not run out of authorizations before the end of the season and create a gap when prospective visitors cannot be accommodated and guarantee compliance with applicable laws. Our previously approved information collection identified three information collections.

(1) *Emission and Sound Standards—Snowcoaches* (§ 7.13(l)(4)(vii) and (5)). Only OSVs that meet NPS emission and sound standards may operate in the park. Before the start of each winter season, snowcoach manufacturers or commercial tour operators must demonstrate, by means acceptable to the Superintendent, that their snowcoaches meet the emission and sound standards.

2. *Enhanced Emission Standards* (§ 7.13(l)(11)(iv)). To qualify for the increased average size of snowmobile transportation events or increased maximum size of snowcoach transportation events, before the start of each winter season each commercial tour operator must:

(a) demonstrate, by means acceptable to the Superintendent, that his or her snowmobiles or snowcoaches meet the enhanced emission standards; and

(b) maintain separate records for snowmobiles and snowcoaches that meet enhanced emission standards and those that do not.

3. *OSV Monthly Use Report* (Form 10–650). To maintain accurate and complete records on the number of snowmobiles and snowcoaches commercial tour operators bring into the park on a daily basis. These records must be made available for inspection by the park upon request.

The previously approved submission combined the responses and burden for Snowcoaches and Snowmobiles. The revision separates the category which creates a new IC:

4. *New IC—Emission and Sound Standards—Snowmobiles* (§ 7.13(l)(4)(vii) and (5)). Only OSVs that meet NPS emission and sound standards may operate in the park. Before the start of each winter season snowmobile manufacturers must demonstrate, by means acceptable to the Superintendent, that their snowmobiles meet the emission and sound standards.

Title of Collection: Reporting and Recordkeeping for Snowcoaches and Snowmobiles, Yellowstone National Park.

OMB Control Number: 1024–0266.

Form Number: NPS Form 10–650.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Businesses desiring to operate snowcoaches and snowmobiles in Yellowstone National Park.

Total Estimated Number of Annual Respondents: 87.

Estimated Completion Time per Response: Varies from 30 minutes to 2 hours depending on respondent and/or activity.

Total Estimated Number of Annual Burden Hours: 146 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

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.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2022–26149 Filed 11–30–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–566 and 731–TA–1342 (Review)]

Softwood Lumber Products From Canada; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on softwood lumber products from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted December 1, 2022. To be assured of consideration, the deadline for responses is January 3, 2023. Comments on the adequacy of responses may be filed with the Commission by February 13, 2023.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On January 3, 2018, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of certain softwood lumber products from Canada (83 FR 347 and 350). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is Canada.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of softwood lumber that is coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to include all U.S. producers of softwood lumber except certain producers excluded from the *Domestic Industry* as related parties.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is January 3, 2018.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 13, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–550, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation

of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/softwood_lumber_canada/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in board feet and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in board feet and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in board feet and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours

per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–26049 Filed 11–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–571–572 and 731–TA–1347–1348 (Review)]

Biodiesel From Argentina and Indonesia; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on biodiesel from Argentina and Indonesia would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted December 1, 2022. To be assured of consideration, the deadline for responses is January 3, 2023. Comments on the adequacy of responses may be filed with the Commission by February 9, 2023.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 4, 2018, the Department of Commerce (''Commerce'') issued countervailing duty orders on imports of biodiesel from Argentina and Indonesia (83 FR 522, corrected 83 FR 3114, January 23, 2018). On April 26, 2018, Commerce issued antidumping duty orders on imports of biodiesel from Argentina and Indonesia (83 FR 18278). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Argentina and Indonesia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of all biodiesel within Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of biodiesel.

(5) The *Order Dates* are the dates that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Dates* are January 4, 2018 and April 26, 2018.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21

days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 9, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–547, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/biodiesel_argentina_and_indonesia/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a

U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Dates.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in gallons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in gallons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in gallons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Dates,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above

definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–26046 Filed 11–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–476 and 731–TA–1179 (Second Review)]

Multilayered Wood Flooring From China; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on multilayered wood flooring from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted December 1, 2022. To be assured of consideration, the deadline for responses is January 3, 2023. Comments on the adequacy of responses may be filed with the Commission by February 13, 2023.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202–205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 8, 2011, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of multilayered wood flooring from China (76 FR 76690–76696). Following the first five-year reviews by Commerce and the Commission, effective January 3, 2018, Commerce issued a continuation of the antidumping and countervailing duty orders on imports of multilayered wood flooring from China (83 FR 344). The Commission is now conducting second reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its full first five-year review determinations, the Commission defined a single *Domestic Like Product* as multilayered wood flooring, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of multilayered wood flooring. The Commission also determined that U.S. Floors merely engaged in finishing operations and did not perform sufficient production-related activities to warrant inclusion in the *Domestic Industry.* In its full first five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of multilayered wood flooring.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO)

and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 13, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–552, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/multilayered_wood_flooring_china/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in square feet and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in square feet and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in square feet and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–26048 Filed 11–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–575 and 731–TA–1360–1361 (Review)]

Tool Chests and Cabinets From China and Vietnam; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on tool chests and cabinets from China and the antidumping duty orders on tool chests and cabinets from China and Vietnam would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted December 1, 2022. To be assured of consideration, the deadline for responses is January 3, 2023. Comments on the adequacy of responses may be filed with the Commission by February 13, 2023.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 24, 2018, the Department of Commerce (''Commerce'') issued a countervailing duty order on imports of certain tool chests and cabinets from China (83 FR 3299). On June 4, 2018, Commerce issued antidumping duty orders on imports of certain tool chests and cabinets from China and Vietnam (83 FR 25645). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Vietnam.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of tool chests, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to include all domestic producers of in-scope tool chests.

(5) The *Order Dates* are the dates that the orders under review became effective. In these reviews, the *Order Dates* are January 24, 2018 (countervailing duty order) and June 4, 2018 (antidumping duty orders).

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 13, 2023. All written submissions must conform with the

provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–549, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/tool_chests_and_cabinets_china_and_vietnam/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Dates.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Dates,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–26050 Filed 11–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–573–574 and 731–TA–1349–1358 (Review)]

Carbon and Certain Alloy Steel Wire Rod From Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty orders on carbon and certain alloy steel wire rod (''wire rod'') from Italy and Turkey and the antidumping duty orders on wire rod from Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted December 1, 2022. To be assured of consideration, the deadline for responses is January 3, 2023. Comments on the adequacy of responses may be filed with the Commission by February 9, 2023.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 24, 2018, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of wire rod from Belarus, Russia, and the United Arab Emirates (83 FR 3297, corrected 83 FR 5402, February 7, 2018). On March 14, 2018, Commerce issued antidumping duty orders on imports of wire rod from South Africa and Ukraine (83 FR 11175). On May 21, 2018, Commerce issued countervailing duty orders on imports of wire rod from Italy and Turkey (83 FR 23420) and antidumping duty orders on imports of wire rod from Italy, South Korea, Spain, Turkey, and the United Kingdom (83 FR 23417). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to

continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Belarus, Italy, Russia, South Africa, South Korea, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of all wire rod, including grade 1080 tire cord and tire bead wire rod, corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of the *Domestic Like Product.*

(5) The *Order Dates* are the dates that the orders under review became effective. In these reviews, the *Order Dates* are January 24, 2018 (antidumping duty orders on Belarus, Russia, and the United Arab Emirates), March 14, 2018 (antidumping duty orders on South Africa and Ukraine), and May 21, 2018 (countervailing duty orders on Italy and Turkey and antidumping duty orders on Italy, South Korea, Spain, Turkey, and the United Kingdom).

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 9, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this

time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–551, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/carbon_and_certain_alloy_steel_wire_rod_belarus/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Dates.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S.

commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Dates,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–26043 Filed 11–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–565 and 731–TA–1341 (Review)]

Hardwood Plywood From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on hardwood plywood from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted December 1, 2022. To be assured of consideration, the deadline for responses is January 3, 2023. Comments on the adequacy of responses may be filed with the Commission by February 9, 2023.

FOR FURTHER INFORMATION CONTACT: Stamen Borisson (202–205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 4, 2018, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of certain hardwood plywood products from China (83 FR 504 and 513). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations,

the Commission defined the *Domestic Industry* to include all U.S. producers of hardwood plywood.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is January 4, 2018.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 3, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is February 9, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–548, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/hardwood_plywood_china/adequacy.htm* and download and complete the ''NOI worksheet'' Excel

form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in square feet and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in square feet and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in square feet and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or

availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: November 23, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–26047 Filed 11–30–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1120]

Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: Kerry Farms LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to its regulations governing the program of growing marihuana for scientific and medical research under DEA registration.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before January 30, 2023.

ADDRESSES: DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may submit electronic comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (APIs) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). DEA will conduct this evaluation in the manner described in the rule published at 85 FR 82333 on December 18, 2020, and reflected in DEA regulations at 21 CFR part 1318.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on October 27, 2022, Kerry Farms, LLC, 28W531 Roosevelt Road, Winfield, Illinois 60190–1530, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–26178 Filed 11–30–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities; Comment Request; Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veterans' Preference

ACTION: Notice; request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), DOL is soliciting public comments regarding the proposed revision of this Office of the Assistant Secretary for Veterans' Employment and Training Service (VETS) sponsored information collection for the authority to revise the information collection request (ICR) titled, ''VETS USERRA/VP/VEOA Claim Form,'' previously titled ''Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veterans' Preference.'' The existing version of the form is currently approved under Office of Management and Budget (OMB) Control Number 1293–0002.

DATES: Consideration will be given to all written comments received by January 30, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting William Coughlin by email at *coughlin.william.e@dol.gov.*

Electronic submission: You may submit comments and attachments electronically at *1010-FRN-2022-VETS@dol.gov.* Include ''VETS–1010 Form'' in the subject line of the message, identified by OMB Control Number 1293–0002.

Comments are invited on: (1) whether the collection of information is

necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: William Coughlin, Investigative Analyst, Compliance and Investigations, by telephone at 202–693–4715, or by email at: *1010-FRN-2022-VETS@dol.gov.*

SUPPLEMENTARY INFORMATION:

Form Description: The VETS USERRA/VP/VEOA Claim Form, VETS USERRA/VP/VEOA Form 1010 (VETS–1010) is used to file complaints with the DOL VETS under either the Uniformed Services Employment and Reemployment Rights Act (USERRA) or the laws and regulations related to Veterans' Preference (VP) or the Veterans' Employment Opportunities Act (VEOA) in Federal employment. On October 13, 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA), Public Law 103–353, 108 Stat. 3150 was signed into law. The purpose of USERRA is: (1) to minimize disruption to the lives of persons who perform service in the uniformed services (including the National Guard and Reserves), as well as to their employers, their fellow employees, and their communities, by providing for prompt reemployment of such persons upon completion of such service; (2) to encourage individuals to participate in non-career uniformed service by eliminating and minimizing the disadvantages to civilian careers and employment which can result from such service; and (3) to prohibit discrimination in employment and acts of reprisal against persons because of their obligations in the uniformed services, prior service, intention to join the uniformed services, filing of a USERRA claim, seeking assistance concerning an alleged USERRA violation, testifying in a proceeding, or otherwise assisting in an investigation of a USERRA claim. The Veterans Employment Opportunities Act (VEOA) of 1998, Public Law 105–339, 12 Stat. 3182, contained in Title 5 U.S.C. 3330a–3330c, authorizes the Secretary of Labor to provide assistance to preference eligible individuals who believe their rights under the veterans' preference laws have been violated, and to investigate claims filed by those individuals. The purpose of VP and VEOA is: (1) to provide preference for certain veterans over others in Federal hiring from competitive lists of applicants; (2) to allow access to Federal job opportunities to veterans that might otherwise be closed to the public; and (3) to provide preference eligible veterans with preference over others in retention during reductions in force (RIF) in Federal agencies.

Purpose of Request

DOL is proposing to revise VETS USERRA/VP/VEOA Claim Form, which was previously approved in April 2020 under the title ''Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veterans' Preference.'' Proposed revisions to the form include updates which add new or missing collection elements, remove non-pertinent collection elements, improve form accessibility and structure, improve compliance with DOL form requirements, and update form selection options. These changes are being made to comply with DOL requirements, amendments to USERRA, and other statutory, regulatory, or policy requirements described in Figure 1.

FIGURE 1

Name	Abbreviation	Type
Civilian Reservist Emergency Workforce Act of 2021	CREW Act	Statutory.
Executive Order 13985—Advancing Racial Equity, and Support for Underserved Communities Through the Federal Government.	E.O. 13985	Executive Order.
Section 508 of the Rehabilitation Act as amended by the Workforce Innovation and Opportunities Act of 2014—29 U.S.C. 794d.	Sec. 508	Statutory.
DLMS 7–1300 DOL Forms Management Program	DLMS 7–1300	Department Policy.
5 U.S.C. 3501, 3502	VP–RIF	Statutory.
Plain Writing Act of 2010	PWA	Statutory.
National Defense Authorization Act	NDAA	Statutory.

Proposed Changes

Form Design and Structure: VETS has updated the design of the form to comply with requirements in DLMS 7–1300. This includes converting the overall layout of the form to a Box Design, with captions in the upper left corner of fields. Fields and elements within the form were also reorganized based on a logical sequence for completion of the form. The sections of the form were also modified to have a templated hierarchy that better organizes the sections by heading, and form field number. This improves the compatibility of the form with screen-readers, and other assistive technology as required by Section 508 requirements. Accessibility was further improved with the addition of more descriptive field text and labels, tag ordering, and form controls.

Removal of Content: Several elements of the prior form were removed from the new form due to logistical changes within VETS, a desire to improve clarity, and a determination that some of the requested information in the form was not necessary at the time of claim filing. The largest removal from the form is of Section II: Uniformed Service Information. VETS determined that the information necessary to review eligibility for coverage under USERRA or Veterans Preference are notably different, therefore, the information was separated into the corresponding claim sections. Questions about the uniformed service unit the claimant is assigned to, and the unit's contact information were removed, due to their non-relevance at this stage of claim processing.

Within the Employer Information Section VETS removed the question asking about cumulative uniformed

service. The count of cumulative uniformed service is heavily influenced by a determination that an investigator must make about types of service which are exempted from the cumulative count. It is an unreasonable burden on the claimant to request they assess the authority for every mobilization they performed and calculate the cumulative time while they are filing their claim. Within the Employer Information Section VETS also removed the question asking about Union Representation. The claimant's representation by a Union is not relevant to the intake of their claim, or subsequent assignment to an investigator.

Within the form, the information and ability to file dual claims for USERRA and Veterans Preference simultaneously was also removed. While a claimant may have multiple claims, the eligibility criteria, and information relevant to those claims is distinct, and can possibly conflict. Therefore, a separate form is required for each claim they wish to file.

Finally, VETS also removed contact information by phone from the form. The phone number previously provided was to the generic 1(866) 4–USA–DOL phone line, which did not connect claimants directly to staff within VETS who could immediately assist them, often delaying or preventing the filing of claims.

Modification of Content: The Claim Information Section from the prior version of the form has been separated into five more appropriate sub-sections, detangling separate claim types from one another. These subsections improve clarity for claimants about which information is required based on the type of claim they are filing and reduce the likelihood of accidental over-disclosure at the time of claim filing. For example, all information related to USERRA versus VP/VEOA claims are split in the form, with clear instructions in the form about when the claimant can skip a section.

Many of the fields in each section of the form were modified to include drop-down lists, radio-boxes, and check boxes, when possible, to narrow the field entry options to only values that are relevant to USERRA, or the statutes and regulations covering Veterans Preference or VEOA. This reduces the risk of improper claim filing, and risk of providing more information than is necessary to review and assign their claim to an investigator. Existing fields were also modified to provide additional validation coding for dates, social security numbers, phone numbers, etc. Drop boxes and selection options were also expanded to include additional relevant values based on updated statutes, regulations, and orders. For example, Space Force, and FEMA have been added to the list of uniformed service branches based on the creation of the Space Force through the NDAA and expanded coverage to FEMA service members through the CREW Act.

VETS has also replaced the USERRA Issue section of the claim information section with a series of statements that the claimant must answer ''Yes'' or ''No'' to, to help VETS process and investigate their claim. The prior version of the form allowed claimants to select multiple checkboxes from a list of ''USERRA Issue Codes'' that match with coding in our databases that help categorize the types of claims received. However, many of these ''Issue Codes'' are not clearly explained to the claimant and create miscommunication early in investigations. The replacement statements will help to more clearly identify the exact issue that the claimant is requesting assistance for, and only if it's covered by USERRA.

Next, VETS updated the language and references contain in all ''statements'' (Section K through Section O) in the form. These have been reviewed and updated with input provided by the DOL Solicitor's office.

Finally, the instructions pages for the form have been separated into a companion document titled ''VETS USERRA/VP/VEOA Claim Form Instructions'' or VETS–1010a. This reduces the overall quantity of pages in the claim document, and ultimately reduces the resources required to print, scan, fax, or electronically send or the form.

Addition of Content: VETS modified the form to include additional fields and content we want to collect at the time of initial claim filing. To comply with E.O. 13985, VETS has added ''Section H. Claimant Demographic Data'' as a section in the form. This section requests the claimant voluntarily identify their disability status, date of birth, ethnicity, race, and gender. This information will be used to provide better training to investigators to better serve underserved populations, through review and analysis of case trends and outcomes that may be related to claimants' demographic profiles.

VETS has also added a VP Reduction in Force (RIF) Claim Information Section. RIF claims are distinct from Federal hiring claims in the information needed to process them. Therefore, this claim type required its own distinct claim section, with information required to process the claim.

VETS also added fields to request an email address for person identified in the document. Missing email addresses at the time of claim processing reduces efficiency of investigators and can create delays in completing an investigation.

Estimated Change in Hour Burden: VETS estimates that the proposed revisions will increase the currently approved public burden from an estimated 30 minutes to 45 minutes. VETS has determined that this increase is related to the inclusion of fields and sections for USERRA Claim Eligibility (for USERRA Cases), Reduction in Force Claim Information (for VP RIF cases), and Claimant Demographic Information (All Cases). However, VETS also estimates a time savings of one to three hours during the investigation phase for those claim types, which resulted from investigators trying to obtain the missing information through investigative tasks. VETS further estimates the inclusion of this new material will reduce the volume of erroneously filed claims for situations that are not covered by USERRA or VP, which decrease the administrative burden on Federal staff and resources.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–VETS.

Type of Review: Revision.

Title of Collection: Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veterans' Preference.

OMB Control Number: 1293–0002.

Form: VETS/USERRA/VP (VETS–1010 Form).

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 2,250.

Frequency: On occasion.

Total Estimated Number of Responses: 2,250.

Estimated Average Time per Response: 45 minutes, including 10 minutes estimated to collect the information needed to file a USERRA or VP claim, and 35 minutes estimated to complete the form.

Total Estimated Burden Hours: 1,688 hours.

Total Estimated Other Burden Costs (Operating and Maintenance): $0.

(Authority: 44 U.S.C. 3506(c)(2)(A)).

James D. Rodriguez,

Assistant Secretary, Veterans' Employment and Training Service, U.S. Department of Labor.

[FR Doc. 2022–26112 Filed 11–30–22; 8:45 am]

BILLING CODE 4510–79–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 22–CRB–0007–AU (Sirius XM)]

Notice of Intent To Audit

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges announce receipt from SoundExchange, Inc., of notice of intent to audit the 2019, 2020, and 2021 statements of account submitted by Sirius XM Radio Inc.'s Commercial Webcaster service, Preexisting Satellite Digital Audio Radio Service, New Subscription Service, and Business Establishment Service concerning royalty payments they made pursuant to two statutory licenses.

ADDRESSES: *Docket:* For access to the dockets to read background documents, go to eCRB at *https://app.crb.gov* and perform a case search for docket 22–CRB–0007–AU (Sirius XM).

FOR FURTHER INFORMATION CONTACT: Anita Brown, (202) 707–7658, *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Act grants to sound recordings copyright owners the exclusive right to publicly perform sound recordings by means of certain digital audio transmissions, subject to limitations. Specifically, the right is limited by the statutory license in section 114, which allows nonexempt noninteractive digital subscription services, eligible nonsubscription services, and preexisting satellite digital audio radio services to perform publicly sound recordings by means of digital audio transmissions. 17 U.S.C. 114(f). In addition, a statutory license in section 112 allows a service to make necessary ephemeral reproductions to facilitate digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges. The rates and terms for the section 112 and 114 licenses are codified in 37 CFR parts 380 and 382–84.

As one of the terms for these licenses, the Judges designated SoundExchange, Inc., (SoundExchange) as the Collective, *i.e.,* the organization charged with collecting the royalty payments and statements of account submitted by licensees, including those that operate commercial webcaster services, preexisting satellite digital audio radio services, new subscription services, and those that make ephemeral copies for transmission to business establishments. The Collective is also charged with distributing the royalties to the copyright owners and performers entitled to receive them under the section 112 and 114 licenses. *See* 37 CFR 380.4(d)(1), 382.5(d)(1), 383.4(a), 384.4(b)(1).

As the Collective, SoundExchange may, only once a year, conduct an audit of a licensee for any or all of the prior three calendar years to verify royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and deliver the notice to the licensee. *See* 37 CFR 380.6(b), 382.7(b), 383.4(a) and 384.6(b).

On November 1, 2022, SoundExchange filed with the Judges a notice of intent to audit Sirius XM Radio Inc. for the years 2019, 2020, and 2021.[1] The Judges must publish notice in the **Federal Register** within 30 days of receipt of a notice announcing the Collective's intent to conduct an audit. *See* 37 CFR 380.6(c) 382.7(c), 383.4(a) and 384.6(c). This notice fulfills the Judges' publication obligation with respect to SoundExchange's November 1, 2022 notice of intent to audit Sirius XM Radio Inc. for the years 2019, 2020, and 2021.

Dated: November 23, 2022.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2022–26074 Filed 11–30–22; 8:45 am]

BILLING CODE 1410–72–P

[1] The notice does not include an intent to audit statutory license payments made by Pandora Media, LLC or its predecessor company, Pandora Media, Inc.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446; NRC–2022–0183]

Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the renewal of Facility Operating License Nos. NPF–87 and NPF–89, which authorize Vistra Operations Company LLC (Vistra, the applicant) to operate Comanche Peak Nuclear Power Plant (CPNPP), Units 1 and 2. The renewed licenses would authorize the applicant to operate CPNPP for an additional 20 years beyond the period specified in each of the current licenses. The current operating licenses for CPNPP expire as follows: Unit 1 on February 8, 2030, and Unit 2 on February 2, 2033.

DATES: A request for a hearing or petition for leave to intervene must be filed by January 30, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0183 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0183. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *Public Library:* A copy of the license renewal application for CPNPP can be accessed at the following public libraries: Somervell County Library, 108 Allen Dr., Glen Rose, TX 76043, and Hood County Library, 222 N Travis St., Granbury, TX 76048.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Emmanuel Sayoc, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–4084; email: *Emmanuel.Sayoc@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received a license renewal application (LRA) from Vistra, dated October 3, 2022 (ADAMS Accession No. ML22276A082), filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended (the Act), and part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' to renew the operating licenses for CPNPP at 3,612 megawatt thermal each. The CPNPP units are pressurized-water reactors and are located in Somervell County, Texas. A notice of receipt of the LRA was published in the **Federal Register** on October 31, 2022 (87 FR 65617).

The NRC staff determined that Vistra has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and that the application is, therefore, acceptable for docketing. The current Docket Nos. 50–445 and 50–446 for Facility Operating License Nos. NPF–87 and NPF–89, respectively, will be retained. The determination to accept the LRA for docketing does not constitute a determination that a renewed operating license should be issued and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed licenses, the NRC will have made the findings required by the Act and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review; and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed licenses will continue to be conducted in accordance with the current licensing basis and that any changes made to the plant's current licensing basis will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement as a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated June 2013 (ADAMS Accession No. ML13106A241). In considering the LRA, the Commission must find that the applicable requirements of subpart A of 10 CFR part 51 have been satisfied, and that any matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold public scoping meetings. Detailed information regarding the environmental scoping meetings will be the subject of a separate **Federal Register** notice.

II. Opportunity To Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Information about the license renewal process can be found under the Nuclear Reactors icon at *https://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's public website. Copies of the application to renew the operating licenses for CPNPP are available for public inspection at the NRC's PDR, and on the NRC's public website at *https://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* The application may be accessed in ADAMS through the NRC Library on the internet at *https://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML22276A082. As previously stated, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *PDR.Resources@nrc.gov.*

Dated: November 28, 2022.

For the Nuclear Regulatory Commission.

Lauren K. Gibson,

Chief, License Renewal Project Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–26202 Filed 11–30–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2023–54; Order No. 6342]

Inbound Parcel Post (at UPU Rates)

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing of a change in rates not of general applicability for Inbound Parcel Post (at Universal Postal Union rates) to be effective January 1, 2023. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 6, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On November 22, 2022, the Postal Service filed notice announcing its intention to change rates not of general applicability for Inbound Parcel Post (at Universal Postal Union (UPU) Rates) effective January 1, 2023.[1]

II. Contents of Filing

With the Notice, the Postal Service filed: a redacted copy of Governors' Decision No. 19–1, a redacted copy of the UPU International Bureau (IB) Circular 186 that contains the new rates, a copy of the certification required under 39 CFR 3035.105(c)(2), redacted Postal Service data used to justify any bonus payments, and a copy of the Postal Service's submission to the UPU in support of an inflation-linked adjustment. Notice at 2–3; *see id.* Attachments 2–6. The Postal Service also filed redacted Excel versions of financial workpapers. Notice at 3.

[1] Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound Parcel Post (at UPU Rates), and Notice of Filing Non-Public Materials Under Seal, November 22, 2022, at 1 (Notice).

Additionally, the Postal Service filed an unredacted copy of Governors' Decision 19–1, an unredacted copy of the UPU IB Circular 186, and unredacted Postal Service data used to justify any bonus payments under seal. *See id.* at 2. The Postal Service filed an application for non-public treatment of materials filed under seal. *Id.; id.* Attachment 1.

The Postal Service states that it has provided supporting documentation as required by Order No. 2102 and Order No. 2310.[2] In addition, the Postal Service states that it provided citations and copies of relevant UPU IB Circulars and updates to inflation-linked adjustments as required by Order No. 4933.[3]

III. Commission Action

The Commission establishes Docket No. CP2023–54 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632 and 3633 and 39 CFR part 3035. Comments are due no later than December 6, 2022. The public portions of the filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2023–54 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than December 6, 2022.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–26176 Filed 11–30–22; 8:45 am]

BILLING CODE 7710–FW–P

[2] Notice at 4–6. *See* Docket No. CP2014–52, Order Accepting Price Changes for Inbound Air Parcel Post (at UPU Rates), June 26, 2014, at 6, 7 (Order No. 2102); Docket No. CP2015–24, Order Accepting Changes in Rates for Inbound Parcel Post (at UPU Rates), December 29, 2014, at 4 (Order No. 2310).

[3] Notice at 6. *See* Docket No. CP2019–43, Order Acknowledging Changes in Prices for Inbound Parcel Post (at UPU Rates), December 19, 2018 (Order No. 4933).

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for First Quarter FY 2023

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loans interest rate for loans approved on or after October 26, 2022.

DATES: Issued on 11/17/2022.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The Small Business Administration publishes an interest rate for Military Reservist Economic Injury Disaster Loans (13 CFR 123.512) on a quarterly basis. The interest rate will be 3.305 for loans approved on or after October 26, 2022.

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–26114 Filed 11–30–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17655 and #17656; SEMINOLE TRIBE of FLORIDA Disaster Number FL–00179]

Presidential Declaration Amendment of a Major Disaster for the Seminole Tribe of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Seminole Tribe of Florida

(FEMA–4675–DR), dated 09/30/2022.

Incident: Hurricane Ian.

Incident Period: 09/23/2022 through 11/04/2022.

DATES: Issued on 11/22/2022.

Physical Loan Application Deadline Date: 11/29/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/30/2023.

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: The notice of the President's major disaster declaration for the Seminole Tribe of Florida, dated 09/30/2022, is hereby amended to establish the incident period for this disaster as beginning 09/23/2022 through 11/04/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–26116 Filed 11–30–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17715 and #17716; ALASKA Disaster Number AK–00057]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4672–DR), dated 11/21/2022.

Incident: Severe Storm, Flooding, and Landslides.

Incident Period: 09/15/2022 through 09/20/2022.

DATES: Issued on 11/21/2022.

Physical Loan Application Deadline Date: 01/20/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 08/21/2023.

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 President's major disaster declaration on 11/21/2022, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: Bering Strait REAA, Kashunamiut (Chevak) REAA, Lower Kuskokwim REAA, Lower Yukon REAA, Pribilof Islands REAA.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17715 B and for economic injury is 17716 0.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–26115 Filed 11–30–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17649 and #17650; PUERTO RICO Disaster Number PR–00043]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the Commonwealth of Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated 09/29/2022.

Incident: Hurricane Fiona.

Incident Period: 09/17/2022 through 09/21/2022.

DATES: Issued on 11/22/2022.

Physical Loan Application Deadline Date: 11/28/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/29/2023.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 09/29/2022, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Municipalities: Barceloneta, Catano, Dorado, Florida, Hatillo, Isabela, Luquillo, Quebradillas, Rio Grande, San Juan, San Sebastian, Toa Baja, Trujillo Alto, Vega Baja.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–26117 Filed 11–30–22; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36648]

Aberdeen Carolina and Western Railway Company—Acquisition Exemption—Norfolk Southern Railway Company

The Aberdeen Carolina and Western Railway Company (ACWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.42. to acquire from Norfolk Southern Railway Company (NSR) approximately 104 miles of rail line between milepost 282.63 at Gulf, Chatham County, and milepost 386.91 at Charlotte, Mecklenburg County, and running through Mecklenburg, Cabarrus, Stanly, Montgomery, and Chatham Counties, N.C. (the Line).[1] According to the verified notice, ACWR has operated the Line, which is also known as the Piedmont Subdivision, pursuant to a Lease and Option to Purchase Agreement since 1989.[2]

The verified notice states that ACWR and NSR have negotiated a Purchase and Sale Agreement and expect to close on or shortly after the effective date of the exemption.

ACWR certifies that the proposed acquisition of the Line does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. ACWR further certifies that it's projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed $5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, ACWR's verified notice includes a request for waiver of the 60-day advance labor notice requirements. ACWR's waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 8, 2022.

All pleadings referring to Docket No. FD 36648, should be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on ACWR's representative, Suzanne L. Silverman, Kaplan Kirsch & Rockwell LLP, 1634 I (Eye) Street NW, Suite 300, Washington, DC 20006.

According to ACWR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 28, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2022–26177 Filed 11–30–22; 8:45 am]

BILLING CODE 4915–01–P

[1] In the verified notice, ACWR states that it also owns and operates a connected 34.5-mile rail line, known as the Sandhills Division, between Aberdeen, N.C., and Star, N.C., where it connects with the Line.

[2] *See Aberdeen Carolina and W. Ry.—Lease Exemption—S. Ry Co's line between Charlotte and Gulf, N.C.,* FD 31404 (ICC served March 28, 1989).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Reopening of Comment Period for Proposed Voluntary Agreement at Statue of Liberty National Monument and Governors Island National Monument

AGENCY: Federal Aviation Administration (FAA), Transportation.

ACTION: Notice; reopening of comment period.

SUMMARY: The FAA, in cooperation with the National Park Service (NPS), announces the reopening of the public comment period for an additional 30 days on the proposed voluntary agreement for Statue of Liberty National Monument and Governors Island National Monument. On October 21, 2022 the agencies announced a 30-day comment period ending November 21, 2022. Comments previously submitted need not be resubmitted.

DATES: The comment period for the notice published at 87 FR 64130 on October 21, 2022 is reopened. Comments must be received on or before 30 days from this notice.

ADDRESSES: Comments will be received on the NPS Planning, Environment and Public Comment System (PEPC) website. The PEPC website for the Parks is: *https://parkplanning.nps.gov/NYHarborAirTours.*

FOR FURTHER INFORMATION CONTACT: Sandra Fox, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, 777 S. Aviation Boulevard, Suite 150, El Segundo, CA 90245, telephone: (424) 405–7016, email: *Sandra.Y.Fox@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA and NPS issued the proposed voluntary agreement for Statue of Liberty National Monument and Governors Island National Monument pursuant to the National Parks Air Tour Management Act of 2000 on October 21, 2022 and announced a 30-day comment period. A voluntary agreement manages commercial air tour operations over a national park by establishing conditions for the conduct of the commercial air tour operations that help protect park resources and visitor experience without compromising aviation safety or the air traffic control system. During the comment period, the agencies received requests to extend the public comment. As the previous comment period has closed, the agencies are now reopening comment for an additional 30 days.

Written comments on the proposed voluntary agreement can be submitted via PEPC. The voluntary agreement document is also available at the PEPC site link included in the **ADDRESSES** section above. Comments will not be accepted by fax, email, or any other way than those specified above. All written comments become part of the official 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.

Issued in El Segundo, CA, on November 25, 2022.

Sandra Fox,

Special Programs Staff Western-Pacific Region.

[FR Doc. 2022–26111 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0180]

Entry-Level Driver Training: Robert Towle; Application for Exemption

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application for exemption from Robert Towle from two provisions in the entry-level driver training (ELDT) regulations. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before January 3, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0180 by 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. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0180) for this notice. 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), 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 *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 366–2722; *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

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–2022–0180), 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–2022–0180'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on 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) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Robert Towle seeks an exemption from two requirements in the ELDT regulations. First, he seeks an exemption from the requirement in 49 CFR 380.713 that a training provider use instructors who meet the definition of ''theory instructor'' in 49 CFR 380.605. Mr. Towle also requests an exemption from the requirement in 49 CFR 380.609 that an individual who applies for the first time for a Class A or B commercial driver's license (CDL), or who upgrades to a Class A or B CDL, must complete training from a provider listed on the Training Provider Registry (TPR) as set forth in 49 CFR part 380 subpart G. Mr. Towle explains that he is an incarcerated inmate in the New Hampshire State Prison. According to Mr. Towle, the New Hampshire Department of Corrections operates a Special School District, Granite State High School, that provides a CDL training class. Mr. Towle states that the requested exemptions would allow eligible students at Granite State High School to receive the requisite theory instruction in order to obtain their Commercial Learner's Permit as a step towards job-readiness as part of their community re-entry plan.

A copy of Robert Towle's application for exemption is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Robert Towle's application for two exemptions from the ELDT regulations, as described above. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–26129 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0199]

Hours of Service of Drivers: Application for Exemption; Wayne Moore, Jr.

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Wayne Moore, Jr. requests an exemption from four provisions in the Federal hours of service (HOS) regulations. The applicant believes that his safe driving record and experience demonstrate an equivalent level of safety. He requests an exemption for a five-year period. FMCSA requests public comment on the applicant's request.

DATES: Comments must be received on or before January 3, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number (FDMS) FMCSA–2022–0199 by 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. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0199) for this notice. 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), 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 *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–366–2722 or *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366–9826.

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–2022–0199), 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–2022–0199'') in the ''Keyword'' box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on 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) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Wayne Moore, Jr. requests a five-year exemption from 49 CFR 395.3(a)(1) (the requirement for 10 consecutive hours off duty), section 395.3(a)(2) (the 14 hour ''driving window''), section 395.3(a)(3)(ii) (the 30-minute break requirement), and section 395.3(b)(2) (the 70 hours-in-8-days limit). The applicant is a commercial motor vehicle operator who has driven for over 25 years, and currently works for a large transportation company in Indiana. The requested exemption is solely for the applicant. The applicant states that he would like the ability to split off-duty time into periods that are more conducive to proper rest and sleep without having to comply with the HOS regulations.

A copy of Mr. Moore's application for exemption is included in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Wayne Moore, Jr.'s application for an exemption from various HOS provisions in 49 CFR part 395. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–26127 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0244]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BIG TROUBLE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0244 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0244 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0244,

1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel BIG TROUBLE is:

—*Intended Commercial Use of Vessel:* ''Limited fishing charters.''
—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas.'' (Base of Operations: North Palm Beach, FL)
—*Vessel Length and Type:* 67′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0244 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0244 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26185 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0239]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: THE GRAY WOLF (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0239 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0239 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0239, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include

your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel THE GRAY WOLF is:

—*Intended Commercial Use of Vessel:* ''My intent is to charter this boat for sails off the East Coast, Gulf Coast, and navigable tributaries of the Mississippi River.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, all states bordering Mississippi River and its navigable tributaries.'' (Base of Operations: Stuart, FL)

—*Vessel Length and Type:* 32′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0239 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0239 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26189 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0234]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PALLIN' AROUND (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0234 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0234 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* 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–2022–0234, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body

of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PALLIN' AROUND is:

—*Intended Commercial Use of Vessel:* ''Scuba dive and dining charters in the Hood Canal.''
—*Geographic Region Including Base of Operations:* ''Washington.'' (Base of Operations: Pleasant Harbor, WA)
—*Vessel Length and Type:* 36′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0234 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0234 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26193 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0243]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LOVE WELL (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0243 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0243 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0243, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LOVE WELL is:

—*Intended Commercial Use of Vessel:* ''Sunset sail, snorkeling, whale watching, and other adventures.''
—*Geographic Region Including Base of Operations:* ''Hawaii.'' (Base of Operations: Ke'ehi Harbor, HI)
—*Vessel Length and Type:* 42′ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2022–0243 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0243 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26191 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0235]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: WHATEVER (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0235 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0235 and follow the instructions for submitting comments.
- *Mail or Hand Delivery*: 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–2022–0235, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the

intended service of the vessel WHATEVER is:

—*Intended Commercial Use of Vessel:* ''Private vessel charters, passengers only.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska).'' (Base of Operations: San Francisco, CA)

—*Vessel Length and Type:* 45.5′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0235 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0235 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26197 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0237]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ARIALE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0237 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0237 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0237, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ARIALE is:

—*Intended Commercial Use of Vessel:* ''Use for commercial purposes carrying 6 passenger or less.''
—*Geographic Region Including Base of Operations:* ''Puerto Rico.'' (Base of Operations: Renaissance Villa Marina in Fajardo, PR)
—*Vessel Length and Type:* 24′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0237 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0237 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26184 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0236]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: WHITE SHARK (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0236 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0236 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* 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–2022–0236, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel WHITE SHARK is:

—*Intended Commercial Use of Vessel:* ''Vessel will be providing water taxi between Culebra and the island of Culebrita, North Cay, Luis Pena Cay, St. Thomas, Vieques and Ceiba PR.''
—*Geographic Region Including Base of Operations:* ''Puerto Rico.'' (Base of Operations: Culebra, PR)
—*Vessel Length and Type:* 25′ Motor

The complete application is available for review identified in the DOT docket

as MARAD 2022–0236 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0236 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26198 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0242]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: FLOOD CUTS (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0242 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0242 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0242, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel FLOOD CUTS is:

—*Intended Commercial Use of Vessel:* ''Passenger vessel for hire.''
—*Geographic Region Including Base of Operations:* ''Florida, South Carolina, North Carolina, Rhode Island, Connecticut, Massachusetts.'' (Base of Operations: Tampa, FL)
—*Vessel Length and Type:* 55′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0242 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly

adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–xxxx or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26187 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0246]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: GODSPEED (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0246 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0246 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0246, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel GODSPEED is:

—*Intended Commercial Use of Vessel:* ''Local charter services.''

—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Boca Raton, FL)

—*Vessel Length and Type:* 61.4′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0246 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0246 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26188 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0241]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PEPPER (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0241 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0241 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0241, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PEPPER is:

—*Intended Commercial Use of Vessel:* ''Seasonal charter and bareboat charter for no more than 6 people.''
—*Geographic Region Including Base of Operations*: ''Illinois, Michigan, Indiana, Wisconsin.'' (Base of Operations: Chicago, IL)
—*Vessel Length and Type:* 32′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0241 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English.

We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0241 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26194 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0238]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KE ALOHA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0238 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0238 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0238, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KE ALOHA is:

—*Intended Commercial Use of Vessel:* ''Commercial charters carrying up to 12 passengers.''
—*Geographic Region Including Base of Operations:* ''Hawaii.'' (Base of Operations: Honolulu, HI)
—*Vessel Length and Type:* 48′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0238 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0238 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that

you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26190 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0233]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SEA CANDY (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0233 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0233 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0233, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SEA CANDY is:

—*Intended Commercial Use of Vessel:* ''To conduct 6 pack charter fishing day trips in Atlantic waters off the Florida Coast.''

—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Jupiter, FL)

—*Vessel Length and Type:* 32′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0233 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0233 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26195 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0232]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: DAKITI (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0232 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0232 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0232, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel DAKITI is:

—*Intended Commercial Use of Vessel:* ''Charter in the areas of Fajardo and Culebra, Puerto Rico.''

—*Geographic Region Including Base of Operations:* ''Puerto Rico.'' (Base of Operations: San Juan, PR)

—*Vessel Length and Type:* 61.9′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0232 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0232 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible,

please provide a summary of your submission that can be made available to the public.

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.

Privacy Act

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26186 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0245]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: TITANIA (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0245 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0245 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0245, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel TITANIA is:

—*Intended Commercial Use of Vessel:* ''Private vessel charters, passengers only.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska.'' (Base of Operations: Long Beach, CA)

—*Vessel Length and Type:* 56′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0245 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0245 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26196 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0240]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MARY L. McNAMARA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0240 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0240 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* 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–2022–0240, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document 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, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@*dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MARY L. McNAMARA is:

—*Intended Commercial Use of Vessel:* ''Private vessel charters, passengers only.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York (excluding waters in New York Harbor), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska).'' (Base of Operations: San Francisco, CA)

—*Vessel Length and Type:* 33.5′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0240 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2022–0240 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

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.

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(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26192 Filed 11–30–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0771]

Agency Information Collection Activity: Insurance Customer Satisfaction Surveys

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administrations, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed from Veterans to determine the level of satisfaction with existing services among its customers. The 10 surveys are: Beneficiary Survey, Cash Surrender Survey, Correspondence Survey, Insurance Claims Survey, Policy Loan Survey, Service-Disabled Veterans Insurance (S–DVI) Survey, Waiver Survey, Veterans Mortgage Life Insurance (VMLI) Survey, Telephone Insurance Claims Survey, and Telephone Policy Service Survey, The surveys solicit voluntary opinions and are not intended to collect information required to obtain or maintain eligibility for a Department of Veterans Affairs (VA) program or benefit.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 30, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0771'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0771'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Insurance Customer Satisfaction Surveys.

OMB Control Number: 2900–0771.

Type of Review: Reinstatement of a previously approved collection.

Abstract: The Insurance Service (29) conducts surveys to determine the level of satisfaction with existing services among its customers. The 10 surveys are: Beneficiary Designation Survey, Cash Surrender Survey, Correspondence Survey, Insurance Claims Survey, Policy Loan Survey, Service-Disabled Veterans' Insurance (S–DVI) Survey, Waiver Survey, Veterans' Mortgage Life Insurance (VMLI) Survey, Telephone Insurance Claims Survey, and Telephone Policy Service Survey, The surveys solicit voluntary opinions and are not intended to collect information required to obtain or maintain eligibility for a Department of Veterans Affairs (VA) program or benefit.

Affected Public: Individuals and households.

Estimated Annual Burden: 444 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 4,440.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–26203 Filed 11–30–22; 8:45 am]

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Part II

Department of Labor

Employee Benefits Security Administration
29 CFR Part 2550
Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AC03

Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (Department) is adopting amendments to the Investment Duties regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The amendments clarify the application of ERISA's fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, including selecting qualified default investment alternatives, exercising shareholder rights, such as proxy voting, and the use of written proxy voting policies and guidelines. The amendments reverse and modify certain amendments to the Investment Duties regulation adopted in 2020.

DATES:

Effective date: This rule is effective on January 30, 2023.

Applicability dates: See § 2550.404a–1(g) of the final rule for compliance dates for § 2550.404a–1(d)(2)(iii) and (d)(4)(ii) of the final rule.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Acting Chief of the Division of Regulations, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning ERISA and employee benefit plans may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline, at 1–866–444–EBSA (3272) or visit the Department of Labor's website (*www.dol.gov/ebsa*).

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I. Background

A. General

Title I of the Employee Retirement Income Security Act of 1974 (ERISA) establishes minimum standards that govern the operation of private-sector employee benefit plans, including fiduciary responsibility rules. Section 404 of ERISA, in part, requires that plan fiduciaries act prudently and diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.[1] Sections 403(c) and 404(a) also require fiduciaries to act solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan.[2]

To maximize employee pension and welfare benefits, section 404 of ERISA dictates that the focus of ERISA plan fiduciaries on the plan's financial returns and risk to beneficiaries must be paramount.[3] And for years, the Department's non-regulatory guidance has recognized that, under the appropriate circumstances, ERISA does not preclude fiduciaries from making investment decisions that reflect environmental, social, or governance (''ESG'') considerations, and choosing economically targeted investments (''ETIs'') selected in part for benefits in addition to the impact those considerations could have on investment return.[4] The Department's non-regulatory guidance has also recognized that the fiduciary act of managing employee benefit plan assets includes the management of voting rights as well as other shareholder rights connected to shares of stock, and that management of those rights, as well as shareholder engagement activities, is subject to ERISA's prudence and loyalty requirements.[5] Subsection B of this background section provides a complete overview of the Department's prior non-regulatory guidance.

The Department's Investment Duties regulation under Title I of ERISA is codified at 29 CFR 2550.404a–1(hereinafter ''current regulation'' or ''Investment Duties regulation,'' unless otherwise stated). On June 30 and

[1] 29 U.S.C. 1104.

[2] 29 U.S.C. 1103(c) and 1104(a).

[3] *See* Interpretive Bulletin 2015–01, 80 FR 65135 (Oct. 26, 2015).

[4] *See, e.g., id.*

[5] *See, e.g.,* Interpretive Bulletin 2016–01, 81 FR 95879 (Dec. 29, 2016).

September 4, 2020, the Department published in the **Federal Register** proposed rules to remove prior non-regulatory guidance from the CFR and to amend the Department's Investment Duties regulation. The objective was to address perceived confusion about the implications of that non-regulatory guidance with respect to ESG considerations, ETIs, shareholder rights, and proxy voting.[6] The preambles to the 2020 proposals expressed concern that some ERISA plan fiduciaries might be making improper investment decisions, and that plan shareholder rights were being exercised in a manner that subordinated the interests of plans and their participants and beneficiaries to unrelated objectives.[7] Given the persistent confusion in this area due in part to varied statements the Department had made on the subject over the years in non-regulatory guidance, the Department believed that providing further clarity on these issues in the form of a notice and comment regulation would be more helpful and permanent than another iteration of non-regulatory guidance.

Less than six months later, on November 13, 2020, the Department published a final rule titled ''Financial Factors in Selecting Plan Investments,'' which adopted amendments to the Investment Duties regulation that generally require plan fiduciaries to select investments and investment courses of action based solely on consideration of ''pecuniary factors.'' [8] Among these amendments was a prohibition against adding or retaining any investment fund, product, or model portfolio as a qualified default investment alternative (QDIA) as described in 29 CFR 2550.404c–5 if the fund, product, or model portfolio includes even one non-pecuniary objective in its investment objectives or principal investment strategies. On December 16, 2020, the Department published a final rule titled ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,'' which also adopted amendments to the Investment Duties regulation to establish regulatory standards for the obligations of plan fiduciaries under ERISA when voting proxies and exercising other shareholder rights in connection with plan investments in shares of stock.[9]

On January 20, 2021, the President signed Executive Order 13990 (E.O. 13990), titled ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' [10] Section 1 of E.O. 13990 acknowledges the Nation's ''abiding commitment to empower our workers and communities; promote and protect our public health and the environment.'' Section 1 also sets forth the policy of the Administration to listen to the science; improve public health and protect our environment; bolster resilience to the impacts of climate change; and prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals. Section 2 directed agencies to review all existing regulations promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policies set forth in section 1 of E.O. 13990. Section 2 further provided that for any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.[11]

On March 10, 2021, the Department announced that it had begun a reexamination of the current regulation, consistent with E.O. 13990, the Administrative Procedure Act, and ERISA's grant of regulatory authority in section 505.[12] The Department also announced that, pending its review of the current regulation, the Department will not enforce the current regulation or otherwise pursue enforcement actions against any plan fiduciary based on a failure to comply with the current regulation with respect to an investment, including a QDIA, investment course of action or an exercise of shareholder rights. In announcing the enforcement policy, the Department also stated its intention to conduct significantly more stakeholder outreach to determine how to craft rules that better recognize the role that ESG integration can play in the evaluation and management of plan investments in ways that further fundamental fiduciary obligations.[13]

On May 20, 2021, the President signed Executive Order 14030 (E.O. 14030), titled ''Executive Order on Climate-Related Financial Risk.'' [14] The policies set forth in section 1 of E.O. 14030 include advancing acts to mitigate climate-related financial risk and actions to help safeguard the financial security of America's families, businesses, and workers from climate-related financial risk that may threaten the life savings and pensions of U.S. workers and families. Section 4 of E.O. 14030 directed the Department to consider publishing, by September 2021, for notice and comment a proposed rule to suspend, revise, or rescind ''Financial Factors in Selecting Plan Investments,'' [15] and ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights.'' [16]

B. The Department's Prior Non-Regulatory Guidance

The Department has a longstanding position that ERISA fiduciaries may not sacrifice investment returns or assume greater investment risks as a means of promoting collateral social policy goals. These proscriptions flow directly from ERISA's stringent standards of prudence and loyalty under section 404(a) of the statute.[17] The Department has a similarly longstanding position that the fiduciary act of managing plan assets that involve shares of corporate stock includes making decisions about voting proxies and exercising shareholder rights. Over the years the Department repeatedly has issued non-regulatory

[6] *See* 85 FR 39113 (June 30, 2020); 85 FR 55219 (Sept. 4, 2020).

[7] *See* 85 FR 39116; 85 FR 55221.

[8] 85 FR 72846 (Nov. 13, 2020).

[9] 85 FR 81658 (Dec. 16, 2020).

[10] 86 FR 7037 (Jan. 25, 2021). E.O. 13990 was signed eight days after the effective date of ''Financial Factors in Selecting Plan Investments,'' and five days after the effective date of ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights.''

[11] A Fact Sheet issued simultaneously with E.O. 13990, specifically confirmed that the Department was directed to review the final rule on ''Financial Factors in Selecting Plan Investments'' Available at *www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/.*

[12] 29 U.S.C. 1135.

[13] *See* U.S. Department of Labor Statement Regarding Enforcement of its Final Rules on ESG Investments and Proxy Voting by Employee Benefit Plans (Mar. 10, 2021) Available at *www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/erisa/statement-on-enforcement-of-final-rules-on-esg-investments-and-proxy-voting.pdf.* Following publication of the final rules the Department heard from a wide variety of stakeholders, including asset managers, labor organizations and other plan sponsors, consumer groups, service providers and investment advisers that questioned whether the 2020 Rules properly reflect the scope of fiduciaries' duties under ERISA to act prudently and solely in the interest of plan participants and beneficiaries. The stakeholders also questioned whether the Department rushed the rulemakings unnecessarily and failed to adequately consider and address the substantial evidence submitted by public commenters on the use of environmental, social and governance considerations in improving investment value and long-term investment returns for retirement investors.

[14] 86 FR 27967 (May 25, 2021). E.O. 14030 was signed 128 days after the effective date of ''Financial Factors in Selecting Plan Investments,'' and 125 days after the effective date of ''Fiduciary Duties Regarding Proxy Voting and Shareholder Rights.''

[15] 85 FR 72846 (Nov. 13, 2020).

[16] 85 FR 81658 (Dec. 16, 2020).

[17] 29 U.S.C. 1104(a).

guidance to assist plan fiduciaries in understanding their obligations under ERISA to apply these principles to ETIs and ESG.

1. ETI/ESG Investing

Interpretive Bulletin 94–1 (IB 94–1), published in 1994, addressed economically targeted investments (ETIs) selected, in part, for collateral benefits apart from the investment return to the plan investor.[18] The Department's objective in issuing IB 94–1 was to state that ETIs [19] are not inherently incompatible with ERISA's fiduciary obligations. The preamble to IB 94–1 explained that the requirements of sections 403 and 404 of ERISA do not prevent plan fiduciaries from investing plan assets in ETIs if the investment has an expected rate of return at least commensurate to rates of return of available alternative investments, and if the ETI is otherwise an appropriate investment for the plan in terms of such factors as diversification and the investment policy of the plan. Some commentators have referred to this as the ''all things being equal'' test or the ''tiebreaker'' standard. The Department stated in the preamble to IB 94–1 that when competing investments serve the plan's economic interests equally well, plan fiduciaries can use such collateral considerations as the deciding factor for an investment decision. This was the Department's unchanged position for approximately three decades.

In 2008, the Department replaced IB 94–1 with Interpretive Bulletin 2008–01 (IB 2008–01),[20] and then, in 2015, the Department replaced IB 2008–01 with Interpretive Bulletin 2015–01 (IB 2015–01).[21] Although the Interpretive Bulletins differed from each other in tone and content to some extent, each endorsed the ''all things being equal'' test, while also stressing that the paramount focus of plan fiduciaries must be the plan's financial returns and providing promised benefits to participants and beneficiaries. Each Interpretive Bulletin also cautioned that fiduciaries violate ERISA if they accept reduced expected returns or greater risks to secure social, environmental, or other policy goals.

Additionally, the preamble to IB 2015–01 explained that if a fiduciary prudently determines that an investment is appropriate based solely on economic considerations, including those that may derive from ESG factors, the fiduciary may make the investment without regard to any collateral benefits the investment may also promote. In Field Assistance Bulletin 2018–01 (FAB 2018–01), the Department indicated that IB 2015–01 had recognized that there could be instances when ESG issues present material business risk or opportunities to companies that company officers and directors need to manage as part of the company's business plan, and that qualified investment professionals would treat the issues as material economic considerations under generally accepted investment theories. As appropriate economic considerations, such ESG issues should be considered by a prudent fiduciary along with other relevant economic factors to evaluate the risk and return profiles of alternative investments. In other words, in these instances, the factors are not ''tiebreakers,'' but ''risk-return'' factors affecting the economic merits of the investment.

FAB 2018–01 cautioned, however, that ''[t]o the extent ESG factors, in fact, involve business risks or opportunities that are properly treated as economic considerations themselves in evaluating alternative investments, the weight given to those factors should also be appropriate to the relative level of risk and return involved compared to other relevant economic factors.'' [22] The Department further emphasized in FAB 2018–01 that fiduciaries ''must not too readily treat ESG factors as economically relevant to the particular investment choices at issue when making a decision,'' as ''[i]t does not ineluctably follow from the fact that an investment promotes ESG factors, or that it arguably promotes positive general market trends or industry growth, that the investment is a prudent choice for retirement or other investors.'' Rather, ERISA fiduciaries must always put first the economic interests of the plan in providing retirement benefits, and ''[a] fiduciary's evaluation of the economics of an investment should be focused on financial factors that have a material effect on the return and risk of an investment based on appropriate investment horizons consistent with the plan's articulated funding and investment objectives.'' [23]

FAB 2018–01 also explained that in the case of an investment platform that allows participants and beneficiaries an opportunity to choose from a broad range of investment alternatives, a prudently selected, well managed, and properly diversified ESG-themed investment alternative could be added to the available investment options on a 401(k) plan platform without requiring the plan to remove or forgo adding other non-ESG-themed investment options to the platform.[24] According to the FAB, however, the selection of an investment fund as a QDIA is not analogous to a fiduciary's decision to offer participants an additional investment alternative as part of a prudently constructed lineup of investment alternatives from which participants may choose. FAB 2018–01 expressed concern that the decision to favor the fiduciary's own policy preferences in selecting an ESG-themed investment option as a QDIA for a 401(k)-type plan without regard to possibly different or competing views of plan participants and beneficiaries would raise questions about the fiduciary's compliance with ERISA's duty of loyalty.[25] In addition, FAB

[18] 59 FR 32606 (June 23, 1994) (appeared in Code of Federal Regulations as 29 CFR 2509.94–1). Prior to issuing IB 94–1, the Department had issued a number of letters concerning a fiduciary's ability to consider the collateral effects of an investment and granted a variety of prohibited transaction exemptions to both individual plans and pooled investment vehicles involving investments that produce collateral benefits. *See* Advisory Opinions 80–33A, 85–36A and 88–16A; Information Letters to Mr. George Cox, dated Jan. 16, 1981; to Mr. Theodore Groom, dated Jan. 16, 1981; to The Trustees of the Twin City Carpenters and Joiners Pension Plan, dated May 19, 1981; to Mr. William Chadwick, dated July 21, 1982; to Mr. Daniel O'Sullivan, dated Aug. 2, 1982; to Mr. Ralph Katz, dated Mar. 15, 1982; to Mr. William Ecklund, dated Dec. 18, 1985, and Jan. 16, 1986; to Mr. Reed Larson, dated July 14, 1986; to Mr. James Ray, dated July 8, 1988; to the Honorable Jack Kemp, dated Nov. 23, 1990; and to Mr. Stuart Cohen, dated May 14, 1993. The Department also issued a number of prohibited transaction exemptions that touched on these issues. *See* PTE 76–1, part B, concerning construction loans by multiemployer plans; PTE 84–25, issued to the Pacific Coast Roofers Pension Plan; PTE 85–58, issued to the Northwestern Ohio Building Trades and Employer Construction Industry Investment Plan; PTE 87–20, issued to the Racine Construction Industry Pension Fund; PTE 87–70, issued to the Dayton Area Building and Construction Industry Investment Plan; PTE 88–96, issued to the Real Estate for American Labor A Balcor Group Trust; PTE 89–37, issued to the Union Bank; and PTE 93–16, issued to the Toledo Roofers Local No. 134 Pension Plan and Trust, et al. In addition, one of the first directors of the Department's benefits office authored an article on this topic in 1980. *See* Ian D. Lanoff, *The Social Investment of Private Pension Plan Assets: May It Be Done Lawfully Under ERISA?,* 31 Labor L.J. 387, 391–92 (1980) (stating that ''[t]he Labor Department has concluded that economic considerations are the only ones which can be taken into account in determining which investments are consistent with ERISA standards,'' and warning that fiduciaries who exclude investment options for non-economic reasons would be ''acting at their peril'').

[19] IB 94–1 used the terms ETI and economically targeted investments to broadly refer to any investment or investment course of action that is selected, in part, for its expected collateral benefits, apart from the investment return to the employee benefit plan investor.

[20] 73 FR 61734 (Oct. 17, 2008).

[21] 80 FR 65135 (Oct. 26, 2015).

[22] FAB 2018–01 (Apr. 23, 2018).

[23] *Id.*

[24] *Id.*

[25] FAB 2018–01.

2018–01 stated that, even if consideration of such factors could be shown to be appropriate in the selection of a QDIA for a particular plan population, the plan's fiduciaries would have to ensure compliance with the previous guidance in IB 2015–01. For example, the selection of an ESG-themed target date fund as a QDIA would not be prudent if the fund would provide a lower expected rate of return than available non-ESG alternative target date funds with commensurate degrees of risk, or if the fund would be riskier than non-ESG alternative available target date funds with commensurate rates of return.

2. Exercising Shareholder Rights

The Department's past non-regulatory guidance has also consistently recognized that the fiduciary act of managing employee benefit plan assets includes the management of voting rights as well as other shareholder rights connected to shares of stock, and that management of those rights, as well as shareholder engagement activities, is subject to ERISA's prudence and loyalty requirements.

The Department first issued non-regulatory guidance on proxy voting and the exercise of shareholder rights in the 1980s. For example, in 1988, the Department issued an opinion letter to Avon Products, Inc. (the Avon Letter), in which the Department took the position that the fiduciary act of managing plan assets that are shares of corporate stock includes the voting of proxies appurtenant to those shares, and that the named fiduciary of a plan has a duty to monitor decisions made and actions taken by investment managers with regard to proxy voting.[26] In 1994, the Department issued its first interpretive bulletin on proxy voting, Interpretive Bulletin 94–2 (IB 94–2).[27] IB 94–2 recognized that fiduciaries may engage in shareholder activities intended to monitor or influence corporate management if the responsible fiduciary concludes that, after taking into account the costs involved, there is a reasonable expectation that such shareholder activities (by the plan alone or together with other shareholders) will enhance the value of the plan's investment in the corporation. The Department also reiterated its view that ERISA does not permit fiduciaries, in voting proxies or exercising other shareholder rights, to subordinate the economic interests of participants and beneficiaries to unrelated objectives.

In October 2008, the Department replaced IB 94–2 with Interpretive Bulletin 2008–02 (IB 2008–02).[28] The Department's intent was to update the guidance in IB 94–2 and to reflect interpretive positions issued by the Department after 1994 on shareholder engagement and socially-directed proxy voting initiatives. IB 2008–02 stated that fiduciaries' responsibility for managing proxies includes both deciding to vote and deciding not to vote.[29] IB 2008–02 further stated that the fiduciary duties described at ERISA sections 404(a)(1)(A) and (B) require that, in voting proxies, the responsible fiduciary shall consider only those factors that relate to the economic value of the plan's investment and shall not subordinate the interests of the participants and beneficiaries in their retirement income to unrelated objectives. In addition, IB 2008–02 stated that votes shall only be cast in accordance with a plan's economic interests. IB 2008–02 explained that if the responsible fiduciary reasonably determines that the cost of voting (including the cost of research, if necessary, to determine how to vote) is likely to exceed the expected economic benefits of voting, the fiduciary has an obligation to refrain from voting.[30] The Department also reiterated in IB 2008–02 that any use of plan assets by a plan fiduciary to further political or social causes ''that have no connection to enhancing the economic value of the plan's investment'' through proxy voting or shareholder activism is a violation of ERISA's exclusive purpose and prudence requirements.[31]

In 2016, the Department issued Interpretive Bulletin 2016–01 (IB 2016–01), which reinstated the language of IB 94–2 with certain modifications.[32] IB 2016–01 reiterated and confirmed that ''in voting proxies, the responsible fiduciary [must] consider those factors that may affect the value of the plan's investment and not subordinate the interests of the participants and beneficiaries in their retirement income to unrelated objectives.'' [33] In its guidance, the Department has also stated that it rejects a construction of ERISA that would render the statute's tight limits on the use of plan assets illusory and that would permit plan fiduciaries to expend trust assets to promote a myriad of personal public policy preferences at the expense of participants' economic interests, including through shareholder engagement activities, voting proxies, or other investment policies.[34]

C. Executive Order Review of Current Regulation

In early 2021, consistent with E.O. 13990 and E.O. 14030, the Department engaged in informal outreach to hear views from interested stakeholders on how to craft regulations that better recognize the important role that climate change and other ESG factors can play in the evaluation and management of plan investments, while continuing to uphold fundamental fiduciary obligations. The Department heard from a wide variety of stakeholders, including asset managers, labor organizations and other plan sponsors, consumer groups, service providers, and investment advisers. Many of the stakeholders expressed skepticism as to whether the current regulation properly reflects the scope of fiduciaries' duties under ERISA to act prudently and solely in the interest of plan participants and beneficiaries.

That outreach effort by the Department suggested that, rather than provide clarity, some aspects of the current regulation instead may have created further uncertainty about whether a fiduciary under ERISA may consider ESG and other factors in making investment and proxy voting decisions that the fiduciary reasonably believes will benefit the plan and its participants and beneficiaries. Many stakeholders questioned whether the Department rushed the current regulation unnecessarily and failed to adequately consider and address substantial evidence submitted by public commenters suggesting that the use of climate change and other ESG factors can improve investment value and long-term investment returns for retirement investors. The Department also heard from stakeholders that the current regulation, and investor confusion about it, including whether climate change and other ESG factors may be treated as ''pecuniary'' factors under the regulation, already had begun to have a chilling effect on appropriate integration of climate change and other ESG factors in investment decisions. This continued through the current non-enforcement period, including in circumstances where the current

[26] Letter to Helmuth Fandl, Chairman of the Retirement Board, Avon Products, Inc. 1988 WL 897696 (Feb. 23, 1988).

[27] 59 FR 38860 (July 29, 1994).

[28] 73 FR 61731 (Oct. 17, 2008).

[29] 73 FR 61732.

[30] *Id.*

[31] 73 FR 61734.

[32] 81 FR 95879 (Dec. 29, 2016). In addition, the Department issued a Field Assistance Bulletin to provide guidance on IB 2016–01 on April 23, 2018. *See* FAB 2018–01, at *www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-01.pdf.*

[33] 81 FR 95882.

[34] *See* 81 FR 95881.

regulation may in fact allow consideration of ESG factors.

After conducting a review of the current regulation, the Department concluded there is a reasonable basis for the concerns raised by the stakeholders. A number of public comment letters had criticized the 2020 proposed regulatory text for appearing to single out ESG investing for heightened scrutiny, which they asserted was inappropriate in light of research and investment practices suggesting that climate change and other ESG factors are material economic considerations.[35] In response, the Department did not include explicit references to ESG in the current regulation and furthermore acknowledged in the preamble discussion to the *Financial Factors in Selecting Plan Investments* final rulemaking that there are instances where one or more ESG factors may be properly taken into account by a fiduciary.[36] The preamble to the *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rulemaking also acknowledged academic studies and investment experience surrounding the materiality of ESG considerations in investment decisionmaking.[37] However, other statements in the preamble appeared to express skepticism about fiduciaries' reliance on ESG considerations. For instance, the preamble to the *Financial Factors in Selecting Plan Investments* final rulemaking asserted that ESG investing raises heightened concerns under ERISA, and cautioned fiduciaries against ''too hastily'' concluding that ESG-themed funds may be selected based on pecuniary factors.[38] Similarly, the preamble to the *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rulemaking expressed the view that it is likely that many environmental and social shareholder proposals have little bearing on share value or other relation to plan financial interests.[39] Many stakeholders indicated that the current regulation has been interpreted as putting a thumb on the scale against the consideration of ESG factors, even when those factors are financially material.

The Department's review under the Executive orders caused it concern that, as stakeholders warned, uncertainty with respect to the current regulation may be deterring fiduciaries from taking steps that other marketplace investors would take in enhancing investment value and performance, or improving investment portfolio resilience against the potential financial risks and impacts associated with climate change and other ESG factors. The Department was concerned that the current regulation created a perception that fiduciaries are at risk if they include any ESG factors in the financial evaluation of plan investments, and that they would need to have special justifications for even ordinary exercises of shareholder rights.

Based on these concerns, the Department, on October 14, 2021, published a notice of proposed rulemaking (NPRM) proposing amendments to the current regulation.[40] The intent of the NPRM was to address uncertainties regarding aspects of the current regulation and its preamble discussion relating to the consideration of ESG issues, including climate-related financial risk, by fiduciaries in making investment and voting decisions, and to provide further clarity that will help safeguard the interests of participants and beneficiaries in the plan benefits.

II. Purpose of Regulatory Action and Proposed Rule

A. Purpose

Like the NPRM, the purpose of the final rule is to clarify the application of ERISA's fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, including selecting QDIAs, exercising shareholder rights, such as proxy voting, and the use of written proxy voting policies and guidelines. The need for clarification comes from the chilling effect and other potential negative consequences caused by the current regulation with respect to the consideration of climate change and other ESG factors in connection with these activities. Overall, the public comments support the clarifications provided by this final rule, although some commenters challenged the stated need. The Department disagrees with commenters who asserted that any clarifications to the current regulation are unnecessary. The Department's conclusion, supported by many public commenters, is that the current regulation creates uncertainty and is having the undesirable effect of discouraging ERISA fiduciaries' consideration of climate change and other ESG factors in investment decisions, even in cases where it is in the financial interest of plans to take such considerations into account. This uncertainty may further deter fiduciaries from taking steps that other marketplace investors take in enhancing investment value and performance or improving investment portfolio resilience against the potential financial risks and impacts associated with climate change and other ESG factors. Major comments are addressed in detail below in conjunction with specific provisions of the final rule.

B. Major Provisions of Proposed Rule

Consistent with the purpose of the overall rulemaking initiative, the NPRM proposed several key changes and clarifications to the current regulation, as follows:

- The NPRM proposed to delete the ''pecuniary/non-pecuniary'' terminology from the current regulation based on concerns that the terminology causes confusion and has a chilling effect on financially beneficial choices.
- The NPRM proposed the addition of regulatory text that would have made it clear that, when considering projected returns, a fiduciary's duty of prudence may often require an evaluation of the economic effects of climate change and other ESG factors on the particular investment or investment course of action.
- The NPRM proposed to add to the operative text of the rule three sets of examples of climate change and other ESG factors that, depending on the facts and circumstances, may be material to the risk-return analysis.
- The NPRM proposed to remove the special rules for QDIAs that apply under the current regulation. The NPRM would instead apply the same standards to QDIAs as apply to other investments.
- The NPRM proposed to modify the current rule's ''tiebreaker'' test, which permits fiduciaries to consider collateral benefits as tiebreakers in some circumstances. The current regulation imposes a requirement that the competing investments underlying a

[35] *See, e.g.,* Comment # 567 at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00567.pdf* and Comment # 709 at *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95/00709.pdf.*

[36] *See* 85 FR 72859 (Nov. 13, 2020) (''[T]he Department believes that it would be consistent with ERISA and the final rule for a fiduciary to treat a given factor or consideration as pecuniary if it presents economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories'').

[37] 85 FR 81662 (Dec. 16, 2020) (''This [Fiduciary Duties Regarding Proxy Voting and Shareholder Rights] rulemaking project, similar to the recently published final rule on ERISA fiduciaries' consideration of financial factors in investment decisions, recognizes, rather than ignores, the economic literature and fiduciary investment experience that show a particular 'E,' 'S,' or 'G' consideration may present issues of material business risk or opportunities to a specific company that its officers and directors need to manage as part of the company's business plan and that qualified investment professionals would treat as economic considerations under generally accepted investment theories.'').

[38] 85 FR 72848, 72859 (Nov. 13, 2020).

[39] 85 FR 81681 (Dec. 16, 2020).

[40] 86 FR 57272 (Oct. 14, 2021).

tiebreaker situation be indistinguishable based on pecuniary factors alone before fiduciaries can turn to collateral factors to break a tie and imposes a special documentation requirement on the use of such factors. The NPRM proposed replacing those provisions with a standard that would have instead required the fiduciary to conclude prudently that competing investments, or competing investment courses of action, equally serve the financial interests of the plan over the appropriate time horizon. In such cases, the fiduciary is not prohibited from selecting the investment, or investment course of action, based on collateral benefits other than investment returns. The NPRM also proposed to remove the current regulation's special documentation requirements in favor of ERISA's generally applicable statutory duty to prudently document plan affairs.

• To the extent individual account plans use the tiebreaker test in the selection of a designated investment alternative, the NPRM proposed that plans must prominently disclose to the plans' participants the collateral considerations that were used as tiebreakers.

• The NPRM proposed to eliminate the statement in paragraph (e)(2)(ii) of the current regulation that ''the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right,'' which the Department was concerned could be misread as suggesting that plan fiduciaries should be indifferent to the exercise of their rights as shareholders, even if the cost is minimal.

• The NPRM proposed to eliminate paragraph (e)(2)(iii) of the current regulation, which sets out specific monitoring obligations with respect to use of investment managers or proxy voting firms, and to address such monitoring obligations in another provision of the regulation that more generally covers selection and monitoring obligations. The Department was concerned that the specific monitoring provision could be read as requiring some special obligations above and beyond the statutory obligations of prudence and loyalty that generally apply to monitoring the work of service providers.

• The NPRM proposed to remove the two ''safe harbor'' examples for proxy voting policies permissible under paragraphs (e)(3)(i)(A) and (B) of the current regulation. One of these safe harbors permitted a policy to limit voting resources to particular proposals that the fiduciary had prudently determined were substantially related to the issuer's business activities or were expected to have a material effect on the value of the investment. The other safe harbor permitted a policy of refraining from voting on proposals when the plan's holding in a single issuer relative to the plan's total investment assets was below a quantitative threshold. The Department was concerned that the safe harbors did not adequately safeguard the interests of plans and their participants and beneficiaries.

• The NPRM proposed to eliminate from the current regulation a specific requirement on maintaining records on proxy voting activities and other exercises of shareholder rights, which appeared to treat proxy voting and other exercises of shareholder rights differently from other fiduciary activities and risked creating a misperception that proxy voting and other exercises of shareholder rights are disfavored or carry greater fiduciary obligations than other fiduciary activities.

The Department invited interested persons to submit comments on the NPRM. In response to this invitation, the Department received more than 895 written comments and 21,469 petitions (*e.g.,* form letters) submitted during the open comment period. These comments and petitions (hereinafter collectively referred to as ''comments'' unless otherwise specified) came from a variety of parties, including plan sponsors and other plan fiduciaries, individual plan participants and beneficiaries, financial services companies, academics, elected government officials, trade and industry associations, and others, both in support of and in opposition to the NPRM. These comments are available for public review on the Department's Employee Benefits Security Administration website.

III. The Final Rule

A. Executive Summary of Major Changes and Clarifications

The final rule generally tracks the NPRM but makes certain clarifications and changes in response to public comments. Before describing these changes, the Department emphasizes that the final rule does not change two longstanding principles. First, the final rule retains the core principle that the duties of prudence and loyalty require ERISA plan fiduciaries to focus on relevant risk-return factors and not subordinate the interests of participants and beneficiaries (such as by sacrificing investment returns or taking on additional investment risk) to objectives unrelated to the provision of benefits under the plan. Second, the fiduciary duty to manage plan assets that are shares of stock includes the management of shareholder rights appurtenant to those shares, such as the right to vote proxies. As described in further detail below in subsection B of this section III, the final rule adopts the following changes to the current regulation:

• Like the NPRM, the final rule amends the current regulation to delete the ''pecuniary/non-pecuniary'' terminology based on concerns that the terminology causes confusion and a chilling effect to financially beneficial choices.

• Like the NPRM, the final rule amends the current regulation to make it clear that a fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis and that such factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action.

• Like the NPRM, the final rule amends the current regulation to remove the stricter rules for QDIAs, such that, under the final rule, the same standards apply to QDIAs as to investments generally.

• Like the NPRM, the final rule amends the current regulation's ''tiebreaker'' test, which permits fiduciaries to consider collateral benefits as tiebreakers in some circumstances. The current regulation imposes a requirement that competing investments be indistinguishable based on pecuniary factors alone before fiduciaries can turn to collateral factors to break a tie and imposes a special documentation requirement on the use of such factors. The final rule replaces those provisions with a standard that instead requires the fiduciary to conclude prudently that competing investments, or competing investment courses of action, equally serve the financial interests of the plan over the appropriate time horizon. In such cases, the fiduciary is not prohibited from selecting the investment, or investment course of action, based on collateral benefits other than investment returns. The final rule also removes the current regulation's special regulatory documentation requirements in favor of ERISA's generally applicable statutory duty to prudently document plan affairs.

• The final rule adds a new provision clarifying that fiduciaries do not violate

their duty of loyalty solely because they take participants' preferences into account when constructing a menu of prudent investment options for participant-directed individual account plans. If accommodating participants' preferences will lead to greater participation and higher deferral rates, as suggested by commenters, then it could lead to greater retirement security. Thus, in this way, giving consideration to whether an investment option aligns with participants' preferences can be relevant to furthering the purposes of the plan.

• Like the NPRM, the final rule amends the current regulation to eliminate the statement in paragraph (e)(2)(ii) of the current regulation that ''the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right.'' The final rule eliminates this provision because it may be misread as suggesting that plan fiduciaries should be indifferent to the exercise of their rights as shareholders, even if the cost is minimal.

• Like the NPRM, the final rule amends the current regulation to remove the two ''safe harbor'' examples for proxy voting policies permissible under paragraphs (e)(3)(i)(A) and (B) of the current regulation. One of these safe harbors permitted a policy to limit voting resources to types of proposals that the fiduciary has prudently determined are substantially related to the issuer's business activities or are expected to have a material effect on the value of the investment. The other safe harbor permitted a policy of refraining from voting on proposals or types of proposals when the plan's holding in a single issuer relative to the plan's total investment assets is below a quantitative threshold. Taken together, the Department believes the safe harbors encouraged abstention as the normal course and the Department does not support that position because it fails to recognize the importance that prudent management of shareholder rights can have in enhancing the value of plan assets or protecting plan assets from risk. Because of this failure, the Department believes these safe harbors do not adequately safeguard the interests of plans and their participants and beneficiaries.

• Like the NPRM, the final rule eliminates paragraph (e)(2)(iii) of the current regulation, which sets out specific monitoring obligations with respect to use of investment managers or proxy voting firms. The final rule instead addresses such monitoring obligations in another provision of the regulation that more generally covers selection and monitoring obligations. These amendments address concerns that the specific monitoring provision could be read as requiring special obligations above and beyond the statutory obligations of prudence and loyalty that generally apply to monitoring the work of service providers.

• Like the NPRM, the final rule amends the current regulation to eliminate from paragraph (e)(2)(ii)(E) of the current regulation a specific requirement on maintaining records on proxy voting activities and other exercises of shareholder rights. The provision is removed from the current regulation because it is widely perceived as treating proxy voting and other exercises of shareholder rights differently from other fiduciary activities and, in that respect, risks creating a misperception that proxy voting and other exercises of shareholder rights are disfavored or carry greater fiduciary obligations than other fiduciary activities.

B. Detailed Discussion of Public Comments and Final Regulation

1. Section 2550.404a–1(a) and (b)—General and Investment Prudence Duties

(a) Paragraph (a)

Paragraph (a) of the final rule is unchanged from the NPRM and derives from the exclusive purpose requirements of ERISA section 404(a)(1)(A), and the prudence duty of ERISA section 404(a)(1)(B). The provision is also the same as paragraph (a) of the current regulation. The Department did not accept comments to expand the scope of the regulation to provide additional guidance on the duty of diversification under section 404(a)(1)(C) and the duty of impartiality under section 404(a)(1)(A) as interpreted in cases such as *Varity* v. *Howe,*[41] as these other duties generally are beyond the scope of this rulemaking initiative.

(b) Paragraph (b)

Paragraph (b) of the final rule addresses the investment prudence duties of a fiduciary under ERISA. Like the NPRM, paragraph (b) of the final rule contains four subordinate paragraphs. As discussed below, the final rule includes several changes from the proposal based on public comment, mostly in paragraphs (b)(2) and (4) of the final rule.

[41] 516 U.S. 489 (1996).

(c) Paragraph (b)(1)

The NPRM did not propose any amendments to paragraph (b)(1) of the current regulation. Like the current regulation (and the 1979 Investment Duties regulation before it), paragraph (b)(1) of the NPRM provided that the requirements of section 404(a)(1)(B) of the Act set forth in paragraph (a) are satisfied with respect to a particular investment or investment course of action if the fiduciary meets two conditions. First, the fiduciary must give ''appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment . . . including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties.'' And second, the fiduciary must have ''acted accordingly.'' Except for the addition of the words ''or menu'' after the word ''portfolio'' for clarification, as explained below, paragraph (b)(1) of the final rule is unchanged from the NPRM.

(d) Paragraph (b)(2)

Paragraph (b)(2) of the NPRM addressed the ''appropriate consideration'' language referenced in paragraph (b)(1) of the proposal. Paragraph (b)(2) of the NPRM contained two prongs.

First, paragraph (b)(2)(i) of the NPRM provided that for purposes of paragraph (b)(1), ''appropriate consideration'' shall include, but is not necessarily limited to, a determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan. For this purpose, the plan fiduciary must take into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action compared to the opportunity for gain (or other return) associated with reasonably available alternatives with similar risks.

Second, paragraph (b)(2)(ii) of the NPRM provided that for purposes of paragraph (b)(1), ''appropriate consideration'' shall also include, but is not necessarily limited to, consideration of the composition of the portfolio with regard to diversification (paragraph (b)(2)(ii)(A)), the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan (paragraph (b)(2)(ii)(B)), and

the projected return of the portfolio relative to the funding objectives of the plan, which may often require the evaluation of the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action (paragraph (b)(2)(ii)(C)).

(1) Reasonably Available Alternatives

Several commenters provided views on the condition in paragraph (b)(2)(i) that a fiduciary must compare an investment or investment course of action under evaluation with reasonably available alternatives. This condition was not part of the original investment duties regulation adopted in 1979 and was added to the current regulation in 2020. The Department carried forward this condition in the 2021 NPRM and solicited comments on whether it was necessary to restate this principle of general applicability as part of this regulation.

Some commenters agreed that prudent fiduciaries should and generally do compare similar, available investments when making investment decisions. Some commenters said that because the provision is a simple restatement of a fundamental prudence tenet, its inclusion in the final rule is unnecessary. Some commenters were concerned that the term ''reasonably available'' is ambiguous and could make fiduciaries vulnerable to litigation challenging the reasonableness of a fiduciary's determination of the number of investments used in making the required comparison. Commenters were also concerned that the requirement imposes burdens on fiduciaries that do not necessarily have the resources to conduct research on all reasonably available alternatives. Some commenters noted that the Department did not adopt a comparative requirement in the 1979 rule and furthermore expressed concerns that the rule could be interpreted to require all fiduciaries, regardless of factors such as plan assets, to purchase and implement extensive and expensive systems to conduct the comparative analysis. One commenter suggested adding operative text that would explicitly allow for market-based comparisons using benchmarks or other market data as alternatives to the ''reasonably available investment alternatives'' language. One commenter cautioned that removing the provision would imply that the Department no longer believes that the marketplace is a true forum and benchmark of the investment selection process.

The Department continues to believe the requirement to compare reasonably available alternatives is commonly understood by plan fiduciaries, is uncontroversial in nature, and reflects the ordinary practice of fiduciaries in selecting investments. The Department is unpersuaded by some commenters' concerns regarding perceived ambiguity in the meaning of ''reasonably available.'' The scope of a fiduciary's obligation to compare an investment or investment course of action is limited to those facts and circumstances that a prudent person having similar duties and familiar with such matters would consider reasonably available. Further, the term allows for the possibility that the characteristics and purposes served by a given investment or investment course of action may be sufficiently rare that a fiduciary could prudently determine that there are no other reasonably available alternatives for comparative purposes. Accordingly, the final rule continues to require in paragraph (b)(2)(i) that ''appropriate consideration'' shall include taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action compared to the opportunity for gain (or other return) associated with reasonably available alternatives with similar risks. The language reflects the Department's longstanding view, articulated in Interpretive Bulletin 94–1 (and reiterated in subsequent Interpretive Bulletins) and earlier interpretive letters, that facts and circumstances relevant to an investment or investment course of action would include consideration of the expected return on alternative investments with similar risks available to the plan.[42]

(2) Portfolio Versus Menu

The final rule adopts minor amendments to the text in paragraph (b)(2) of the current regulation in response to commenters' requests to clarify whether and how it applies in the context of participant-directed individual account plans. Commenters observed that language in paragraph (b)(2), which was originally developed in 1979, contains certain considerations and factors that, in their view, are germane to the selection of investments for defined benefit plans but not to the selection of investments for defined contribution plans that have a set of designated investment alternatives available for participant to choose from, often referred to as a ''menu.'' For instance, they noted that paragraphs (b)(2)(i) and (ii) require focusing on a ''portfolio,'' which they believe is confusing because a participant-directed defined contribution plan's menu may include both funds that participants have chosen as investments as well as funds that have not been chosen. The commenters further noted that, in conventional investment parlance, the term ''portfolio'' refers to a collection of assets actually owned by an investor, whereas a menu of investment options for a participant-directed individual account plan consists of a range of designated investment alternatives that are available to participants. In addition, they questioned how to determine ''anticipated cash flow requirements of the plan'' in evaluating investment options for the menu of a participant-directed defined contribution plan. A commenter stated that, in its view, many of the appropriate consideration factors in paragraph (b)(2)(ii) of the NPRM seem largely irrelevant to participant-directed plans. These commenters suggested that clarification on the application of paragraph (b)(2)(ii) to the selection of investment options would be helpful for plan sponsors.

The Department appreciates the difficulties raised by commenters. Paragraph (b)(2)(ii) sets out a non-exclusive list of factors that functions as a minimum set of considerations for a fiduciary seeking to rely upon paragraph (b)(1). Failure to meet those minimum considerations would leave a fiduciary at risk of failing the standard even if, in the context of choosing investment options for a participant-directed plan, the responsible fiduciary has considered the relevant facts and circumstances surrounding its decision, including making a sound determination as described in paragraph (b)(2)(i). Accordingly, the Department is making changes to paragraph (b)(2) of the final rule. The changes clarify that the determination factors in paragraph (b)(2)(i) apply to menu construction and the factors in paragraph (b)(2)(ii) do not. Specifically, the Department is adding to paragraph (b)(2)(i) of the final rule references to an investment ''menu,'' and is adding an introductory clause to paragraph (b)(2)(ii) of the final rule limiting its application to employee benefit plans other than participant-directed individual account plans.

These changes do not affect the requirements of paragraph (b)(1)(i) of

[42] 59 FR 32606 at 32607 (June 23, 1994); I.B. 2008–1, 73 FR 61734 (Oct. 17, 2008); I.B. 2015–1, 80 FR 65135 (Oct. 26, 2015); *see, e.g.,* Information Letter to Mr. Michael A. Feinberg, dated August 4, 1985; Information Letter to Mr. James Ray, dated July 8, 1988 (''It is the position of the Department that, to act prudently, a fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments.'').

the final rule, that a fiduciary must give appropriate consideration to those facts and circumstances a fiduciary knows or should know are relevant to the investment. These changes also should not be interpreted as suggesting that a fiduciary of an individual account plan is subject to a lower standard in giving appropriate consideration to the facts and circumstances surrounding a particular decision relating to an investment or investment course of action. Notwithstanding the changes to paragraph (b)(2)(ii), the Department believes that in selecting investment options for a plan menu, a fiduciary's considerations of surrounding facts and circumstances should be soundly reasoned and supported and reflect the requirements of section 404(a)(1)(B) of ERISA. The Department agrees with one commenter that, in the context of constructing a menu of investment options, the relevant analysis involves two questions: First, how does a given fund fit within the menu of funds to enable plan participants to construct an overall portfolio suitable to their circumstances? Second, how does a given fund compare to a reasonable number of alternative funds to fill the given fund's role in the overall menu?

Except for the questions described above with respect to application in the context of plan investment menus, the Department did not receive substantive comments on paragraphs (b)(2)(ii)(A) and (B) of the proposal. Those provisions are otherwise unchanged in the final rule.

(3) ''May Often Require''

The Department received several comments on the language in paragraph (b)(2)(ii)(C) of the proposal which specified that consideration of the projected return of the portfolio relative to the funding objectives of the plan ''may often require an evaluation of the economic effects of climate change and other environmental, social or governance factors on the particular investment or investment course of action.'' This new language—the ''may often require'' clause—was proposed by the Department to counteract any negative perception against the consideration of climate change and other ESG factors in investment decisions caused by the current regulation. The intent behind this new clause was to clarify that plan fiduciaries may, and often should depending on the investment under consideration, consider the economic effects of climate change and other ESG factors on the investment at issue. In no way did the Department consider this proposed clause to be an expression of a novel concept. Indeed, the sentiment had been expressed in earlier non-regulatory guidance, although using different terminology.[43]

The Department received comments supporting and opposing this new clause. On the one hand, some commenters indicated that it helped address the chilling effect on evaluating ESG issues and served as a useful reminder to fiduciaries that ESG factors often do have an impact on investments. In the main, these commenters support the regulatory text as an express acknowledgement that climate change and other ESG factors are relevant to risk and return, and as an indication that fiduciaries should not be exposed to additional perceived or actual fiduciary liability risk under ERISA if they include such factors in their evaluation of plan investments.

On the other hand, a great many commenters, including some who concurred with the need to address the chilling effect under the current regulation, expressed a variety of concerns with this provision. Some commenters were concerned that by differentiating ESG considerations from other factors in express regulatory text, the regulation goes beyond removing the chilling effect and improperly places a thumb on the scale in favor of ESG investing. Some further cautioned that fiduciaries may treat the provisions as an effective mandate that they must consider ESG factors under all circumstances. The commenters argued that, absent guidance on when such an evaluation would not be required, plan fiduciaries would feel obligated to consider climate change and other ESG factors for every investment. Several commenters criticized the Department for, in their view, essentially favoring ESG investment strategies and overriding a fiduciary's considered judgment with respect to which investment factors or strategies to consider. Multiple commenters indicated that studies and research on investment performance involving ESG strategies show mixed results, and that a regulatory bias in favor of ESG investing is not justified. In line with this comment, some commenters questioned whether the Department presented sufficient evidence to support a position on the frequency (''may often require'') with which fiduciaries may be required to consider ESG factors, or argued that the market has already priced ESG factors into the price of any given investment.

[43] *See* Field Assistance Bulletin 2018–01 and Interpretive Bulletin 2015–01.

Some commenters who criticized the new language in paragraph (b)(2)(ii)(C) stated that if the regulation takes the position that evaluating the economic effects of climate change and other ESG factors ''may often'' be required, then ambiguity surrounding the definition of the term ESG factors must be reduced to provide regulatory certainty. Commenters noted, however, that it would be difficult to precisely define ESG factors. Commenters also expressed concern that the language may be interpreted as effectively directing fiduciaries to take on the costs and complexity of evaluating the effects of climate change and other ESG factors, even if not otherwise prudent. In this regard, a commenter argued that there are common situations when a prudent analysis of the projected return relative to the portfolio's funding objective is unlikely to require an evaluation of the economic effects of ESG factors, such as when the objective of the applicable portion of the portfolio is to track the performance of an index. Several commenters offered alternative language to reduce the likelihood of misinterpreting the provision. Other commenters opined that the ''may often require'' language is largely unnecessary to address the chilling effect on consideration of ESG factors under the current regulation because of the broad language in paragraph (b)(4) of the proposal relating to the consideration of ''any material factor.''

Based on the comments received, the Department has decided to modify paragraph (b)(2)(ii)(C) of the proposal by deleting the ''which may often require'' language altogether and consolidating the reference to ''climate change and other environmental, social, or governance ESG factors'' with language in paragraph (b)(4), as further modified below. The proposed language in paragraph (b)(2)(ii)(C) of the NPRM was not intended to create an effective or de facto regulatory mandate. Nor was the language intended to create an overarching regulatory bias in favor of ESG strategies. The Department is not persuaded that alternative language suggested by commenters to replace the ''may often require'' would be as effective in removing regulatory bias as the course chosen in the final rule. The modified version of the proposed language is intended to make it clear that climate change and other ESG factors may be relevant in a risk-return analysis of an investment and do not need to be treated differently than other relevant investment factors, without causing a perception that the

Department favors such factors in any or all cases.

As modified (and relocated to paragraph (b)(4) of the final regulation), the new text sets forth three clear principles. First, a fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan established pursuant to section 402(b)(1) of ERISA. Second, risk and return factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action. Whether any particular consideration is a risk-return factor depends on the individual facts and circumstances. Third, the weight given to any factor by a fiduciary should appropriately reflect an assessment of its impact on risk and return.

In the Department's view, this principles-based approach is sufficient to address the chilling effect under the current regulation without establishing an effective mandate or explicitly favoring climate change and other ESG factors. This principles-based approach is designed to eliminate the substantial chilling effect caused by the current regulation, including its reference to ''pecuniary factors.'' As previously discussed, numerous commenters indicated that the current regulation puts a thumb on the scale against ESG factors, and chills fiduciaries from considering any ESG factors even when they are relevant to a risk-return analysis. The undesired effect of the current regulation is to chill and discourage fiduciaries from considering relevant investment factors that prudent investors otherwise would consider. At the same time, the final rule makes unambiguous that it is not establishing a mandate that ESG factors are relevant under every circumstance, nor is it creating an incentive for a fiduciary to put a thumb on the scale in *favor* of ESG factors. By declining to carry forward the ''may often require'' clause in paragraph (b)(2)(ii)(C) of the proposal, the final rule achieves appropriate regulatory neutrality and ensures that plan fiduciaries do not misinterpret the final rule as a mandate to consider the economic effects of climate change and other ESG factors under all circumstances. Instead, the final rule makes clear that a fiduciary may exercise discretion in determining, in light of the surrounding facts and circumstances, the relevance of any factor to a risk-return analysis of an investment. A fiduciary therefore remains free under the final rule to determine that an ESG-focused investment is *not* in fact prudent. Finally, nothing about the principles-based approach should be construed as overturning long established ERISA doctrine or displacing relevant common law prudent investor standards.

(e) Paragraph (b)(3)

Paragraph (b)(3) of the final rule is unchanged from the proposal and states that an investment manager appointed pursuant to the provisions of section 402(c)(3) of the Act to manage all or part of the assets of a plan may, for purposes of compliance with the provisions of paragraphs (b)(1) and (2) of the proposal, rely on, and act upon the basis of, information pertaining to the plan provided by or at the direction of the appointing fiduciary, if such information is provided for the stated purpose of assisting the manager in the performance of the manager's investment duties, and the manager does not know and has no reason to know that the information is incorrect. The Department did not receive substantive comment on the provision, which carries forward, without change, regulatory language dating back to the 1979 Investment duties regulation.

(f) Paragraph (b)(4)

(1) Introductory Text

The introductory text of paragraph (b)(4) of the proposal provided that ''a prudent fiduciary may consider any factor in the evaluation of an investment or investment course of action that, depending on the facts and circumstances, is material to the risk return analysis[.]'' This introductory text was then followed by three paragraphs of specific ESG examples. Commenters were generally supportive of this provision minus the three paragraphs describing specific ESG examples. In context, many viewed paragraph (b)(4) of the NPRM as confirming the discretionary authority of fiduciaries to consider whatever factor or factors, in the reasoned judgment of the fiduciaries, are relevant to risk and return of the investment or investment course of action, including climate change and other ESG factors. Some commenters expressed the view that this introductory text (without the three paragraphs of examples), in conjunction with the removal of the so-called ''pecuniary-only'' terminology from the current regulation, would make significant headway in counteracting the negative perception of the consideration of climate change and other ESG factors caused by the current regulation. Paragraph (b)(4) of the final rule, therefore, retains the introductory text's focus on factors that are relevant to a risk and return analysis. Paragraph (b)(4) also retains its central recognition that relevant risk and return factors may, depending on the facts and circumstances, include the economic effects of climate change and other ESG factors. But, paragraph (b)(4) of the final rule otherwise contains substantial modifications discussed below.

(2) Three Paragraphs of ESG Examples

Comments on the list of examples in paragraph (b)(4) of the NPRM focused on both content and placement and were varied. Some commenters supported both the content (only ESG examples) and placement of the examples. In general, these commenters are of the view that the list of examples, even though limited to only ESG factors, is an appropriate corrective for what they view as the severe anti-ESG bias of the current regulation. In their view, adding the three paragraphs of ESG examples directly to the regulatory text will help to reassure fiduciaries that they will not be subject to litigation solely because of the use of such factors.

Many commenters, however, had concerns with the list of examples in paragraph (b)(4) of the NPRM and recommended their removal from the operative regulatory text. One frequently cited concern was that the list of examples in the proposal was too one-sided in favor of ESG factors. According to these commenters, the perceived regulatory bias would predictably trigger revisions by a future Administration with opposing views, effectively reducing the reliability and durability of the rule. This concern was raised by commenters who both supported and opposed the content of the examples.

Another frequently cited concern was that the list might have unintended consequences. For example, plan fiduciaries might erroneously conclude that the factors listed in the operative text are more prudent than non-listed factors. A different but possible unintended consequence mentioned several times was that some plan fiduciaries might perceive the list as a safe harbor, such that fiduciaries may believe they will be deemed to have made a prudent investment decision if they consider only the listed examples (and no others). Others suggested that, by singling out these particular examples to the exclusion of other examples, the regulation could be read

as implying that these factors were especially important when selecting an investment. Consequently, according to these commenters, at least some fiduciaries would feel obligated to document in writing their justification for not considering these example factors. Similarly, some commenters suggested that, in their view, listing in the operative text only a few of the potentially material factors that a prudent fiduciary might consider might unintentionally create a perception that the Department expects fiduciaries will take these specific factors into consideration, even where it might not be possible, practical, or prudent.

Another repeated concern of commenters was that the list of factors is unnecessary. According to these commenters, the general reference to material risk-return factors in paragraph (b)(4) of the NPRM would be sufficient to make clear that fiduciaries may consider any factor material to a risk-return analysis, including ESG factors. To these commenters, the concept of materiality provides for the determination of relevant factors on a case-by-case basis. In their view, such a principles-based approach better serves plans and provides greater flexibility for ERISA fiduciaries to consider the unique factors relevant to particular investment decisions.

Another frequently cited concern was that the examples would become stale over time. Several commenters opined that a list of specific examples of material factors that may be of particular importance now may be of less importance in the future. Thus, at a minimum, the regulation could require updates over time as risk management and investment strategies evolve.

Some commenters indicated that the list of ESG factors could be improved with additional examples. For instance, many commenters suggested that the list should be balanced by expanding the list to include non-ESG factors that may be material risk-return factors (*e.g.,* good products, compelling corporate strategy, tight cost controls). Some further suggested it would be helpful for the Department to add examples of when it is not prudent to consider ESG factors. A commenter noted that by including only ESG factors as examples, the Department risks creating a perception that fiduciaries may take only ESG factors into account. Another commenter criticized that some of the examples as proposed are broad and ambiguous, inherently subjective, and give too much flexibility to plan fiduciaries who may be inclined to use plan assets to further particular ESG goals. Some commenters further characterized the proposed examples as singling out special interests and progressive ESG priorities that have little to no impact on financial returns. Multiple commenters suggested additions of factors that seemed to fall within the broad categories of examples but were not specifically listed. Commenters also suggested the addition of factors that did not appear to fall within any of those categories.

After consideration of the comments received, the Department is persuaded that paragraph (b)(4) of the final rule should not include a list of examples. The list of examples was never intended to be exclusive; nor was it intended to define ''ESG'' or introduce any new conditions under the prudence safe harbor. The list of examples was merely intended to reaffirm that fiduciaries may consider ESG factors that are relevant to a risk-return analysis of the investment. The examples were intended to make clear that ESG factors may be more than mere tiebreakers, but rather financially material to the investment decision. The Department believes, however, that this point is made sufficiently clear by the general language in paragraph (b)(4) of the final rule. The primary justification for removing the examples from the operative text of the final rule is that the Department is wary of creating an apparent regulatory bias in favor of particular investments or investment strategies.

Removal of the list from paragraph (b)(4) should not be viewed as limiting a fiduciary's ability to take into account any risk and return factor that the fiduciary reasonably determines is relevant to a risk/return analysis. The Department continues to be of the view that, depending on the surrounding facts and circumstances, these may include the factors listed in paragraph (b)(4) of the proposal. Thus, depending on the surrounding circumstances, a fiduciary may reasonably conclude that climate-related factors, such as a corporation's exposure to the real and potential economic effects of climate change including exposure to the physical and transitional risks of climate change and the positive or negative effect of Government regulations and policies to mitigate climate change, can be relevant to a risk/return analysis of an investment or investment course of action. A fiduciary also may make a similar determination with respect to governance factors, such as those involving board composition, executive compensation, and transparency and accountability in corporate decisionmaking; a corporation's avoidance of criminal liability; compliance with labor, employment, environmental, tax, and other applicable laws and regulations; the corporation's progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention; investment in training to develop a skilled workforce; equal employment opportunity; and labor relations and workforce practices generally.

The foregoing examples are merely illustrative, and not intended to limit a fiduciary's discretion to identify factors that are relevant with respect to its risk/return analysis of any particular investment or investment course of action. A fiduciary may reasonably determine that a factor that seems to fall within a general category described above (*e.g.,* climate-related factors), but is not specifically identified above, nonetheless is relevant to the analysis (*e.g.,* drought). For example, depending on the facts and circumstances, relevant factors may include impact on communities in which companies operate, due diligence and practices regarding supply chain management, including environmental impact, human rights violations records, and lack of transparency or failure to meet other compliance standards. As another example, labor-relations factors, such as reduced turnover and increased productivity associated with collective bargaining, also may be relevant to a risk and return analysis.

Of course, a fiduciary's determination of relevant factors is not limited to the general categories described above. Prudent investors commonly take into account a wide range of financial circumstances and considerations, depending on the particular circumstances, such as a corporation's operating and financial history, capital structure, long-term business plans, debt load, capital expenditures, price-to-earnings ratios, operating margins, projections of future earnings, sales, inventories, accounts receivable, quality of goods and products, customer base, supply chains, barriers to entry, and a myriad of other financial factors, depending on the particular investment. This rule, as amended, does not supplant such considerations, but rather makes clear that there is no inconsistency between the appropriate consideration of ESG factors and ERISA section 404(a)(1)(B)'s standard of prudence, which requires that fiduciaries act with the ''care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.''

(3) Consolidation of Multiple Provisions Into Paragraph (b)(4) of the Final Rule

In concert with removing the list of examples from paragraph (b)(4) of the NPRM, elements of paragraphs (b)(2)(ii)(C) and (c)(2) of the NPRM are now merged into paragraph (b)(4) of the final rule. These edits address commenters' concerns that aspects of paragraph (b)(2)(ii)(C) of the NPRM could constitute an effective or de facto mandate to always consider the effects of climate change and other ESG factors on every investment or investment course of action, that the examples in paragraph (b)(4) of the NPRM interject inappropriate regulatory bias in favor of ESG factors, and that the final rule not retreat from the principle in paragraph (c)(2) of the NPRM that fiduciaries must base investment decisions only on factors that are relevant to a risk and return analysis. The essence of paragraph (c)(2) of the NPRM was not changed when merged into paragraph (b)(4) of the final rule. As mentioned below, the merger avoids the existence of redundant concepts in multiple paragraphs and reflects that the substance of paragraph (c)(2) of the NPRM is more closely connected to ERISA's duty of prudence than the duty of loyalty.

Accordingly, paragraph (b)(4) of the final rule provides that a fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan established pursuant to section 402(b)(1) of ERISA. It further indicates that risk and return factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action, and whether any particular consideration is a risk-return factor depends on the individual facts and circumstances. Finally, it provides that the weight given to any factor by a fiduciary should appropriately reflect a reasonable assessment of its impact on risk-return.

As revised, paragraph (b)(4) of the final rule subsumes core elements of paragraphs (c)(1) and (f)(3) of the current regulation. Specifically, the emphasis on risk and return factors in these two paragraphs carries forward into paragraph (b)(4) of the final rule. The current regulation's reliance on ''pecuniary only'' and related terminology, however, is otherwise rescinded. The framework in paragraph (b)(4) of the final rule continues to adhere to the principle, underpinning paragraphs (c)(1) and (f)(3) of the current regulation, that when selecting an investment or investment course of action plan fiduciaries must focus on relevant risk and return factors, but the Department no longer supports the current regulation's framework and terminology for advancing this principle. The Department, instead, agrees with the commenters who found the current regulation's framework and terminology confusing and susceptible to inferences of bias against the treatment of climate change and other ESG factors as potentially relevant risk and return factors. The Department intends with these edits to dispel the perception caused by the current regulation that climate change and other ESG factors are somehow presumptively suspect or unlikely to be relevant to the risk and return of an investment or investment course of action. Paragraph (b)(4) of the final recognizes that, as with other factors, climate change and other ESG factors sometimes may be relevant to a risk and return analysis and sometimes not—and when relevant, they may be weighted and factored into investment decisions alongside other relevant factors, as deemed appropriate by the plan fiduciary.

(4) Conforming Terminology—''Relevance'' Versus ''Material''

In addition, paragraph (b)(4) of the final rule contains a change in terminology to establish consistency with the terminology in paragraph (b)(1) of the final rule. Several commenters noted that paragraph (b)(1) of the NPRM refers to ''relevant'' factors but that paragraph (b)(4) of the NPRM refers to ''material'' factors. Noting a body of decisional and regulatory law underpinning ''materiality'' under Federal securities laws and accounting conventions, many of these commenters considered the NPRM's use of these different terms a source of confusion. In conjunction with proposed paragraph (b)(4)'s focus on risk and return factors, many commenters were concerned that paragraph (b)(4)'s use of ''material'' might be construed as circumscribing the role or authority of plan fiduciaries under ERISA's prudence standard as reflected in the use of ''relevance'' in paragraph (b)(1) of the NPRM.

In discussing these concerns, commenters mentioned many factors that, in their view, are relevant factors routinely considered by plan fiduciaries when selecting investments, such as brand name or reputation of the fund or fund manager, lifetime income options, style of fund (*e.g.,* growth versus value), style of fund management (passive versus active), an investment's regulatory regime, participants' understanding of the investment, participants' preferences, and other investment-related operational considerations. These commenters expressed concern that such factors may not always perfectly align with securities law or accounting concepts of materiality or directly affect the risk and return of an investment in clear or obvious ways.

In response to some of these concerns, paragraph (b)(4) of the final rule uses the word ''relevant'' instead of ''material.'' [44] The Department stresses, however, that under paragraph (b)(4) of the final rule, the fiduciary's investment determination must ultimately rest on factors relevant to a risk and return analysis. The Department does not undertake in this document to address specific risk and return factors, but it notes that it has previously concluded that plan contributions do not constitute a ''return'' on investment.

2. Section 2550.404a–1(c) Investment Loyalty Duties

(a) Removal of Pecuniary-Only Requirement—Paragraph (c)(2) of the Proposal

Paragraph (c)(2) of the NPRM modified the requirement in paragraph (c)(1) of the current regulation that a fiduciary's evaluation of an investment or investment course of action must be based ''only on pecuniary factors,'' which is defined at paragraph (f)(3) of the current regulation as a factor that a fiduciary prudently determines is expected to have a material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the funding policy. The Department used the phrase ''pecuniary factors'' for the first time in the 2020 regulations, and although the Department defined it in those regulations, the phrase is not found in ERISA and has no longstanding meaning in employee benefits law. The NPRM proposed to remove the ''pecuniary only'' formulation of the requirement and to integrate the concept of ''risk/return'' factors directly into paragraph (c)(2) of the NPRM. This approach was intended to address stakeholder concerns about ambiguity in the meaning and application of the

[44] A similar change was made in paragraph (d)(2)(ii)(D) of the final regulation to appropriately align terminology in similar contexts across different paragraphs of the final regulation.

''pecuniary only'' terminology of the current regulation.

A significant number of commenters supported the NPRM's proposed removal of the pecuniary-only test and related terminology. Many commenters on this issue were of the view that, rather than providing clarity, the current regulation's pecuniary-only terminology created confusion by layering an additional standard or test onto the existing fiduciary framework. That framework already unambiguously required fiduciaries to base plan investment decisions on financially relevant factors. In line with that concern, many commenters asserted that this pecuniary-only terminology chills plan fiduciaries from considering climate change and other ESG factors even where they have a material effect on the bottom line of an investment, merely because such factors also may have the effect of supporting non-financial objectives. In such ''dual purpose'' circumstances, the position of these commenters was that just because an investment factor or strategy may simultaneously have economic and non-economic dimensions, the non-economic dimensions do not lessen the factor or strategy's economic significance. These commenters stated that the NPRM's proposed elimination of the pecuniary-only and related terminology would make clear to fiduciaries that they are free to consider the full range of potential material risk-return factors without undue fear of regulatory second-guessing or litigation. According to these commenters, the elimination would encourage fiduciaries to take the same steps that other marketplace investors take in enhancing investment value and performance or improving investment portfolio resilience against the potential financial risks and impacts associated with climate change and other ESG factors.

Some commenters opposed the NPRM's proposed changes; they emphasized the importance of basing investment decisions on only pecuniary considerations and urged the Department to retain the pecuniary factors and related terminology. These commenters generally were of the view that ERISA requires that plan fiduciaries focus solely on the economics of an investment and state that climate change and other ESG factors rarely can be harmonized with this requirement. Given that belief, these commenters were concerned that participants' retirement security will suffer as plan fiduciaries and money managers pursue agendas unrelated to the exclusive purpose of providing financial benefits to retirement plan participants and beneficiaries. In line with this concern, one commenter asserted that the insertion of non-pecuniary investment criteria in the management of pension and other such funds imposes a substantial penalty over time in terms of realized returns. One commenter questioned the consistency of permitting the consideration of non-pecuniary goals with the Supreme Court's opinion in *Fifth Third Bancorp* v. *Dudenhoeffer,* which stressed the fiduciary's obligation to focus on retirement plan participants' financial interests.[45]

The Department is not persuaded to retain the current regulation's use of and reliance on the novel pecuniary-only formulation and its related terminology. The pecuniary-only requirement and related terminology unfortunately caused a great deal of confusion, and it accounts for a substantial amount of the chilling effect this rulemaking project set out to redress. These facts are manifest in the many comment letters on the NPRM. Many view the ''pecuniary-only'' terminology as ambiguous or decidedly prohibitive on the question of whether climate change and other ESG factors may be considered when those factors are relevant to the risk-and-return analysis. Indeed, as indicated by commenters, the current rule actually has a chilling effect that discourages fiduciaries from prudently considering climate change and other ESG factors that may be relevant to the risk-return analysis. Some commenters, in particular, asked questions about considering factors that have both economic and noneconomic components, suggesting apprehension that this would fall outside the current regulation's pecuniary-only requirement. In light of the foregoing, the Department no longer supports the use of this terminology. Rather, the Department thinks, and many commenters agree, that paragraph (c)(2) of the NPRM, subject to certain modifications discussed elsewhere in this preamble, is a more understandable formulation of ERISA's requirement that a fiduciary's evaluation of an investment or investment course of action must focus on factors that the fiduciary reasonably determines are relevant to a risk and return analysis. Removing the ''based only on pecuniary factors'' language (and related terminology throughout) from the current regulation will help re-establish the Department's position reflected in non-regulatory guidance as early as 2015 that climate change and other ESG factors that may be relevant in a risk-return analysis of an investment do not need to be treated differently than other relevant investment factors, even though they may possess the ''dual purpose'' dimensions mentioned by some commenters. Put differently, removing this novel terminology is removing the current regulation's thumb from the scale so as not to discourage fiduciaries from considering climate change and other ESG factors where relevant to the risk-return analysis.

Finally, the Department finds no merit to the argument that the final rule, either in general or in not carrying forward the pecuniary/non-pecuniary terminology, permits or requires behavior contrary to the holding in *Dudenhoeffer.* On the contrary, the central premise behind the final rule's rescission of the pecuniary/non-pecuniary distinction is that the current regulation is being perceived by plan fiduciaries and others as undermining the fundamental principle *Dudenhoeffer* expressed: fiduciaries must protect the financial benefits of plan participants and beneficiaries. In this way, the pecuniary-only requirement would effectively prohibit or encumber plan fiduciaries from managing against or taking advantage of climate change and other ESG risk factors in selecting investments, even when it is financially prudent to do so. Thus, the final rule's amendments to the current regulation, which are aimed solely at counteracting that perception, are entirely consistent with the principle articulated in *Dudenhoeffer.*

Notwithstanding the foregoing, paragraph (c)(2) of the proposal has been incorporated into paragraph (b)(4) of the final rule for clarity and to avoid potentially redundant and confusing requirements. This consolidation reflects that the essence of the requirement of paragraph (c)(2) of the proposal that fiduciaries make investment decisions based on factors relevant to a risk and return analysis is inherently prudential in nature, rather than a loyalty obligation, and therefore overlaps with the requirements of paragraph (b)(4) of the proposed rule. Although including such a requirement in the regulation's loyalty provisions may help establish regulatory guideposts for fiduciaries,[46] that same function is fulfilled by incorporating it into the final regulation's prudence provisions at paragraph (b)(4) of the final rule.

[45] *Fifth Third Bancorp* v. *Dudenhoeffer,* 573 U.S. 409 (2014).

[46] *See* 85 FR 72854.

(b) Paragraph (c)(1)

Paragraph (c)(1) of the proposal restated the Department's longstanding expression of ERISA's duty of loyalty in the context of investment decisions, as also expressed in Interpretive Bulletins and associated preamble discussions. It provided that a fiduciary may not subordinate the interests of participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives and may not sacrifice investment return or take on additional investment risk to promote goals unrelated to the plan and its participants and beneficiaries. Similar language is contained in paragraph (c)(2) of the current regulation. The Department did not receive substantive comments on paragraph (c)(1) of the proposal, and it is being adopted in the final rule without change. As in the proposal and current regulation, the final rule's paragraph (c)(1) is a legal requirement and not a safe harbor.

(c) Paragraph (c)(2)—Tie Breaker Test and Tie Breaker Standard

Paragraph (c)(3) of the proposal directly rescinded the ''tiebreaker'' standard in paragraph (c)(2) of the current regulation and replaced it with a standard intended to align more closely with the Department's original non-regulatory guidance from nearly three decades ago, IB 94–1, which first advanced the ''tiebreaker'' concept. In explaining the standard in the preamble to IB 94–1, the Department stated that ''a plan fiduciary may consider collateral benefits in choosing between investments that have comparable risks and rates of return.'' [47] In contrast, the current regulation narrowly focused on whether competing investments are ''indistinguishable'' based on pecuniary factors alone. Under such circumstances, the current regulation permits a plan fiduciary to use a non-pecuniary factor as a deciding factor in making its investment decision, but only if the fiduciary also complies with a specific documentation requirement.

A number of commenters supported both the rescission of the current tiebreaker standard and the proposal's replacement standard—*i.e.,* that competing investments ''equally serve'' the financial interests of the plan. In their view, the proposed formulation represented a significant improvement over the current regulation, which they argued set out an unrealistically difficult and prohibitively stringent standard. Some further suggested that the standard in the current regulation is so stringent that it effectively eliminated the Department's historical tiebreaker test. For instance, according to one commenter, the current regulation's tiebreaker standard improperly limits its application, because it would only apply when a fiduciary is unable to distinguish two or more investments based on pecuniary factors alone—an occurrence that is rare and unreasonably difficult to identify, according to this commenter. In actual practice, the commenter states, a prudent fiduciary process often produces a variety of investments that are consistent with, and in the fiduciary's judgement, equally promote, the financial interests of participants and beneficiaries. According to a different commenter, the current regulation's ''economically indistinguishable'' standard is in practice impossible for fiduciaries to surmount, given that differences exist even among very similar investments. As put by yet another commenter, the requirement that investments be ''economically indistinguishable'' before a fiduciary can consider collateral factors (such as ESG factors when not relevant to risk and return) effectively subverts the fiduciary's best judgment in favor of a standard that is virtually impossible to meet. Overall, these commenters viewed the proposal's standard as tracking the Department's prior guidance more closely, and more accurately reflecting the realities of fiduciary decisionmaking. They supported adoption of the NPRM's standard without change.

Other commenters supported the proposal's rescission of the current tiebreaker standard, but raised concerns with the proposal's ''equally serve'' formulation. Commenters indicated that the proposal was not clear as to how to determine when investments meet the ''equally serve'' standard and requested further guidance. Questions presented included whether the equally-serve analysis is based on how similar investments are, or based on the potential financial effects of the investments on the plan's portfolio. One commenter suggested that the Department should recognize that investments may vary from each other but still serve the same plan purpose. Another commenter asked how small deviations in the financial effects of two investments would affect the equally serve analysis. These commenters did not believe the tiebreaker standard should require investments to be identical, and suggested clarifying language, such as a standard based on investments that serve the financial interests of the plan comparably well, or equally well.

Other commenters indicated that the ''equally serve'' standard appeared to imply an investment process under which a fiduciary selection process involves evaluating a group of potential investments, paring the group down to a few competing investments, and then moving on to the tiebreaker test and the selection of a single investment. Commenters opined that such a mechanical process of elimination should not be necessary if a fiduciary has already prudently determined that each investment is consistent with the plan's objectives and is reasonably designed to further the purposes of the plan. Some commenters asserted that the tiebreaker test should focus on whether investments are the result of a prudent fiduciary process rather than on an analysis of their equivalence, and suggested formulations based on ''equally prudent'' investments, or investments identified through a prudent process.

Some commenters supported the tiebreaker standard in the current regulation and objected to the rescission of the current standard. These commenters viewed the proposal's standard as far too lenient, and the current regulation's indistinguishability based on pecuniary factors only standard as appropriate in light of ERISA's high standard of fiduciary responsibilities. They asserted that the current regulation's provisions are a valuable curb against behavior that could otherwise lead to subordinating the interests of participants and beneficiaries in their retirement income. These commenters expressed concern that the proposal, with changes to the tiebreaker standard and related documentation provisions, would invite abuse and open the door to using pension plan assets for policy agendas, or encourage fiduciaries to advance personal policies and agendas at the expense of interests of trust beneficiaries in a secure retirement.

A number of commenters did not support inclusion of any tiebreaker provision in the regulation. Some commenters believe the tiebreaker test cannot be reconciled with ERISA's duty of loyalty, which requires that fiduciaries discharge their duties for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan. Commenters also cautioned that the tiebreaker provision weakens the focus on the best financial outcome for plan participants and beneficiaries by encouraging consideration of collateral factors. In

[47] 59 FR 32607 (June 23, 1994).

their view, fiduciaries desiring to seek third-party benefits may, deliberately or inadvertently, be encouraged to declare ties to free themselves from the duty of loyalty. Several of these commenters did not believe a tiebreaker is necessary regardless of formulation because, in their view, ties generally do not exist, particularly in liquid financial markets. Furthermore, they argued that the purpose of an investment manager is to exploit differences among investments and to select a winner (or buy both for increased diversification in the case of ties). In their view, fiduciaries are accustomed to deliberating on such matters, including close calls, and if they are doing their job and creating an appropriate record, there should be no need for tiebreaker guidance in the rule.

Some commenters also believed that a tiebreaker test may potentially cause harm or detriment to plans. For instance, some suggested that a tiebreaker test may reduce accountability and promote complacency by allowing investment decisionmakers to adopt a ''close enough'' attitude and point to some reason other than financial merit to justify their decisions. In contrast, others suggested that the tiebreaker test promotes a misconception that there is a single ''best'' investment for a plan. Still others cautioned that the mere existence of a tiebreaker test could unintentionally signal that ESG factors cannot, on their own, be considered material to a risk-return analysis. Some also suggested that there is a chance the tiebreaker test may be overused unnecessarily in cases where the fiduciary has little doubt about the financial merits of the investment in question but where the fiduciary perceives the tiebreaker route as providing a level of protection from future allegations of disloyalty. Such overuse may lead to substantial burdens on recordkeepers in connection with the proposal's related collateral benefit disclosure requirement.

The Department is not persuaded that the tiebreaker provision should be removed from the final rule. The Department does not agree with commenters who asserted that the tiebreaker test is unnecessary or inconsistent with ERISA. Although there has been some mostly semantic variation in what constituted ties under the Department's prior non-regulatory guidance, some version of the tiebreaker test has appeared in the CFR since 1994. Consequently, since at least that time, the Department has recognized that fiduciaries may use collateral benefits to break ties between various investments. The tiebreaker test thus aligns the final rule with the settled expectations of fiduciaries and others involved in the investment of assets of employee benefits plans under ERISA, especially in the multiemployer plan context. Although some fiduciaries, by the nature of their arrangements with plans, may apply investment strategies that never require them to choose between alternatives that equally serve the plan's needs, other fiduciaries, such as those making investments outside liquid financial markets, may find the tiebreaker test useful for circumstances in which there are equally strong cases for competing investments under a risk-return analysis. In addition, although some commenters question the need for a tiebreaker test and whether ties exist, other commenters acknowledge the utility of the tiebreaker standard. For instance, some commenters argued that in the event of a tie between two investment options, the fiduciary should increase diversification by investing in both investment options. They acknowledge, however, that in not all circumstances is this appropriate, and thus, the tie will need to be broken. Under the commenter's approach, for example, the tiebreaker test provides plan fiduciaries with a solution in cases when investing in two (or more) alternatives that equally serve the financial interests of the plan, rather than one, entails additional costs (such as transactional or monitoring costs) that offset the benefits of investing in two (or more) investments rather than one.

More generally, those questioning the need for a tiebreaker test are reminded that ERISA does not specifically address a fiduciary's investment choice in circumstances where multiple investment alternatives equally serve the financial interests of the plan and thus the economic interests of the plan's participants and beneficiaries are protected by choosing either alternative. The Department is choosing to leave that decision in the hands of fiduciaries, who are charged with choosing among investment alternatives that equally serve the financial interests of the plan. Fiduciaries without a need to break a tie while selecting investments need not use the provision. This may be the case, for example, with respect to participant-directed individual account plans where adding additional investment options is not necessarily a zero-sum game, such that the fiduciary may choose only one option. Moreover, when there is a need to break a tie, there is nothing in the regulation that requires fiduciaries to look to climate change or other ESG factors to break the tie.

With respect to concerns that the tiebreaker provision might be subject to abuse or not be part of a prudent fiduciary process, we note that fiduciaries utilizing the tiebreaker provision remain subject to ERISA's prudence requirements. In addition, they also remain subject to the explicit prohibition against accepting expected reduced returns or greater risks to secure such additional benefits. The Department is of the view that these provisions, coupled with the safeguards added by ERISA's statutory prohibited transaction provisions, discussed below, sufficiently protect participants' and beneficiaries' retirement benefits in this context.

As to commenters who suggested that the existence of a tiebreaker provision implies that ESG factors are non-economic, the potential economic relevance of ESG factors is reflected in paragraph (b)(4) of the final rule, as discussed above. When such factors are relevant to a risk and return analysis, the tiebreaker test is not at issue. Put differently, as with other types of investment factors, climate change and other ESG factors sometimes may be relevant to a risk and return analysis and sometimes not—and when relevant, they may be factored into investment decisions alongside other relevant factors, as deemed appropriate by the plan fiduciary under paragraph (b)(4) of the final rule. However, when such factors are not relevant to a risk and return analysis, such factors may nevertheless be the decisive factor under the tiebreaker test, provided that the other conditions of the tiebreaker test are satisfied. The Department believes that rescission of the current regulation's tiebreaker standard and replacement with a standard more closely aligned with prior non-regulatory guidance is appropriate. The current regulation's tiebreaker standard, ''unable to distinguish on the basis of pecuniary factors alone,'' in practice, has meant indistinguishable in all respects, or identical. This standard is causing a great a deal of confusion, given that no two investments are the same in each and every respect. The imposition of a standard that effectively requires investments to be precisely identical therefore is both impractical and unworkable. Investments can and do differ in a wide range of attributes, but when considered in their totality, may serve the financial interests of the plan equally well. This problem was noted by the Department in 2020 when making the current regulation's tiebreaker standard, but as shown by the comments discussed above, the current

regulation has not effectively resolved this problem.[48] The Department believes the final rule's ''equally serve'' standard comports with the realities of fiduciary decisionmaking and firmly protects participant retirement benefits, since it strictly forbids the subordination of plans' and participants' financial interests to any other objective.

In response to comments requesting further guidance on the determination of whether investments equally serve the financial purposes of the plan, the Department has not made changes to the proposed standard. In the Department's view, as explained in the preamble to the proposal, investments may differ on a wide range of attributes, but when considered in their totality, serve the financial interests of the plan equally well.[49] Given the wide range of attributes associated with different investments, the uncertainties inherent in investing, and the practical limitations on the availability and processing of relevant data, the Department does not agree with those commenters who suggested that fiduciaries can never conclude that competing alternatives serve the financial purposes of the plan equally well. Under the final rule, investments do not need to be identical in order to equally serve the financial interests of a plan. Whether, in any particular circumstances, the tiebreaker standard is met is an inherently factual question.

Like the NPRM, the final rule's tiebreaker provision does not define or explicitly limit the concept of ''collateral benefits.'' On this topic, the preamble to the NPRM specifically provided that the proposal did not place parameters on the collateral benefits that may be considered by a fiduciary to break the tie. The preamble to the NPRM explained that this position is consistent with prior nonregulatory guidance, but the preamble nevertheless solicited comments on whether more specificity should be provided in the provision. For instance, the preamble asked if the final rule should require that any collateral benefit relied upon as a tiebreaker be based upon an assessment of the shared interests or views of the participants, above and beyond their financial interests as plan participants, such as the investment's likely impact on participants' jobs or plan contribution rates. This scenario was just an example.

Some commenters opposed such limitations, both as a general idea and specifically the scenario mentioned in the preamble of the NPRM, *i.e.,* placing additional constraints in the form of requiring an assessment of the shared interests or views of the participants. Commenters stated that the Department's longstanding position prior to the 2020 amendments, going back at least to 1994, never defined or limited the concept of ''collateral benefits'' and that there is no history justifying a change now. Focusing on the specific scenario in the preamble to the NPRM, one commenter stated that it is not clear how a fiduciary would use information on participant views, collect such information, or even what issues should be included in such an assessment. A different commenter also focusing on this scenario stated the concern that making decisions based on a survey or estimation of participants' views unrelated to plan returns is in tension with ERISA's command that fiduciaries operate ''for the exclusive purpose'' of providing benefits and defraying reasonable expenses. One commenter argued that a regulatory definition is not necessary because the tiebreaker test already ensures that the investment must be prudent and serve the best interests of the participants and beneficiaries regardless of whether a collateral benefit is used. Requiring further assessment would increase costs and complexity, according to this commenter.

Other commenters had different views on this question. One commenter stated that, in its view, the tiebreaker provision is unlawful, but that if some version of it is retained in the final rule, the retained version should require that any collateral benefit relied upon as a tiebreaker be based upon an assessment of the shared interests or views of the participants, along with the consent of each participant to pursue collateral benefits with funds in their account and a delineation of the causes they support. One commenter raised the concern that, because the NPRM did not place any parameters on the collateral benefits that fiduciaries may consider, fiduciaries could be left guessing which factors would be appropriate for consideration, with the possibility that the Department's views could shift over the years.

The final rule takes the same approach as the NPRM. Some form of the tiebreaker test permitting fiduciaries to consider collateral benefits has existed for more than four decades, and the Department is not aware of plan fiduciaries struggling with the concept of permissible collateral benefits. In the Department's experience, collateral benefits have routinely involved criteria or considerations other than factors that are relevant to a risk and return analysis of the investment, such as stimulating union jobs and investing in the geographic region where participants live and work, as just a few examples. In response to requests from several commenters, the Department confirms that an investment that stimulates or maintains employment that, in turn, results in continued or increased contributions to a multiemployer plan is an example of ''collateral benefits other than investment returns'' under paragraph (c)(2) of the final rule. In response to the concern that, without a definition, plan fiduciaries will be forced to guess as to what constitutes a legitimate ''collateral benefit'' versus an impermissible collateral benefit, the Department reminds that plan fiduciaries are not required to consider collateral benefits in choosing between investments that have comparable risks and rates of return. Moreover, the statement that the final rule does not contain explicit parameters on the collateral benefits that may be considered by a fiduciary to break a tie directly responds to and addresses commenters' concerns about exceeding such parameters. Finally, while the final rule itself adds no explicit parameters on collateral benefits, ERISA's prohibited transaction provisions in section 406 remain and generally forbid collateral benefits to the extent any such benefit involves a transaction that violates those provisions.[50]

(d) Paragraph (c)(2) Tiebreaker Test—Documentation

Paragraph (c)(3) of the NPRM also rescinded the current regulation's novel documentation requirement applicable to any instance of use of the tiebreaker test; instead, the proposal included a requirement that if a plan fiduciary uses the tiebreaker to select a designated investment alternative for a participant-directed individual account plan based on collateral benefits other than investment returns, ''the plan fiduciary must ensure that the collateral-benefit characteristic of the fund, product, or model portfolio is prominently displayed in disclosure materials provided to participants and beneficiaries.''

A number of commenters objected to the removal of the current regulation's

[48] 85 FR 72846, 62.

[49] 86 FR 57278.

[50] *See, e.g.,* AO 85–36A (Oct. 23, 1985) (certain investment arrangements may involve a use of plan assets for the benefit of a party in interest in violation of ERISA section 406(a)(1)(D)); Information Letter to Katz (Mar. 15, 1982) (purchase by a plan of an insurance policy pursuant to an arrangement under which it is expected that the insurance company will make a loan to a party in interest is a prohibited transaction).

documentation provision, under which a fiduciary using the tiebreaker test is required to document, among other things, its analysis in those cases where the fiduciary has concluded that pecuniary factors alone were insufficient to be the deciding factor.[51] The requirement was intended to ''provide a safeguard against the risk that plan fiduciaries will improperly find economic equivalence and make decisions based on non-pecuniary factors without a proper analysis and evaluation.'' [52] Some of these commenters are of the view that the tiebreaker test may be inconsistent with ERISA, as discussed above, and that a stringent documentation requirement is perhaps the best way for plan fiduciaries to contemporaneously document their decisionmaking with respect to tiebreakers and mitigate the effects of their reliance on factors that do not materially affect risk-return or directly promote retirement income.

Other commenters supported removal of the current regulation's documentation requirement, arguing that the disclosure was formulaic, singled out one investment category, could chill fiduciaries from properly considering ESG factors, and was largely unnecessary given ERISA's general obligations. For instance, one commenter indicated that the documentation requirement has a chilling effect and is seen as suggesting that ESG investing entails extraordinary risks. Other commenters also viewed the documentation requirement as creating a stigma around considering ESG factors in investment decisions. Commenters also believed that the regulation's documentation provision is unnecessary because fiduciaries commonly document and maintain records about their investment decisions as part of their general prudence obligation. Others believed that removal of the documentation provision brings the tiebreaker standard more in line with prior non-regulatory guidance and may provide additional cost savings, which would ultimately benefit plan participants and beneficiaries. A commenter noted that some fiduciaries, even before the 2020 amendments, may have viewed tiebreaker situations as perhaps requiring enhanced documentation. This commenter requested that the Department provide further clarification regarding prudent recordkeeping if the final rule removes the current regulation's documentation requirement.

The Department is not persuaded that the current regulation's brand new documentation requirement should be retained in the tiebreaker provision. Commenters confirmed the Department's initial concern that the documentation provision in the current regulation is very likely to chill and discourage plan fiduciaries from using the tiebreaker test generally, including in cases involving the appropriate consideration of ESG factors (when such factors are not otherwise relevant to a risk and return analysis). The tiebreaker test, by its terms, applies only where competing investments equally serve the financial interests of the plan. It disallows the investment selection from sacrificing the plan's economic interests or from exposing plans to additional risk. In light of these guardrails, the Department sees no reason for a regulatory provision imposing further burdens on its use. Since the tiebreaker test only applies in cases where the competing investments equally serve the financial interests of the plan, the Department is of the view that use of the tiebreaker test should not be discouraged with additional burdens, because neither of the competing investments sacrifices the economic interests of the plan, but one of them promotes collateral benefits the other does not. In addition, the elaborateness of the current regulation's tiebreaker-specific documentation provision likely will be viewed by fiduciaries as suggesting that the Department sees tiebreakers as occurring infrequently, and the Department did not have in 2020 and does not now have sufficient information to make a judgement as to the frequency of ties. The documentation requirement also may be viewed by fiduciaries as a self-reported ''red flag'' that uniquely directs potential litigants' attention to tie-breaker decisions as inherently problematic, even though there is no necessary or presumed inconsistency between their use and the requirements of ERISA. The Department is wary that the potential for litigation may cause fiduciaries to consciously or unconsciously skew their investment analyses to avoid open acknowledgment of a ''tie'' and the requirement of specifically prescribed documentation, while still favoring investments that provide collateral benefits. The Department believes this potentially creates incentives that discourage, rather than promote, proper fiduciary activity and transparency, and further reduces the likelihood that the benefits associated with the additional documentation obligation would outweigh the associated costs.

The Department also agrees with commenters that the current regulation's prescribed documentation provisions are unnecessary given the general obligations of prudence under ERISA. The Department finds it noteworthy that no commenter provided contrary evidence demonstrating that ERISA's general obligations of prudence are deficient in protecting the interests of plan participants and beneficiaries in this context. The Department emphasizes that removal of the documentation provision from the regulation does not suggest that ERISA fiduciaries are excused from complying with ERISA's prudence obligations, or subject to a lower standard of care, with regard to documentation or otherwise. Fiduciary documentation of their investment activities already is a common practice. As explained in the preamble to the NPRM, the Department's concern with the current regulation's document provision rests on its formulaic and rigid nature. The Department believes ERISA section 404's prudence obligation sufficiently protects participants' and beneficiaries' financial interests in their plans in this regard. That obligation, which fiduciaries had prior to the 2020 amendments and will continue to have, provides that the nature and degree of the fiduciary's duty to document an investment decision depends upon the facts and circumstances particular to that decision, regardless of whether the decision is under the tiebreaker test or the type of collateral benefit at issue.[53] Thus, the Department believes the current regulation's specific documentation provision is not necessary and can lead to conduct contrary to the plan's interests. This includes the risk that fiduciaries will over-document or under-document their investment decisions.[54] Over-documentation would result in increased transaction costs for no particular benefit to plan participants.

[51] 29 CFR 2550.404a–1(c)(2) (2021).

[52] 85 FR 72862.

[53] The preamble to Interpretive Bulletin 2015–01, in relevant part, stated that, ''the Department does not construe consideration of ETIs or ESG criteria as presumptively requiring additional documentation or evaluation beyond that required by fiduciary standards applicable to plan investments generally. As a general matter, the Department believes that fiduciaries responsible for investing plan assets should maintain records sufficient to demonstrate compliance with ERISA's fiduciary provisions. As with any other investments, the appropriate level of documentation would depend on the facts and circumstances.''

[54] 86 FR 57272 at 57279.

(e) Paragraph (c)(2) Tiebreaker Test—Collateral Benefit Disclosure

The NPRM contained a disclosure requirement within the tiebreaker test limited to participant-directed individual account plans. Specifically, paragraph (c)(3) of the NPRM, in relevant part, provided that if a plan fiduciary selects an investment, or investment course of action, based on collateral benefits other than investment returns, ''the plan fiduciary must ensure that the collateral-benefit characteristic of the fund, product, or model portfolio is prominently displayed in disclosure materials provided to participants and beneficiaries.'' This would have been a new disclosure requirement under ERISA.

The preamble to the NPRM explained the policy intent behind this proposed requirement. In relevant part, the NPRM explained that the ''essential purpose of this proposed disclosure requirement is to ensure that plan participants are given sufficient information to be aware of the collateral factor or factors that tipped the scale in favor of adding the investment option to the plan menu, as opposed to its economically equivalent peers that were not.'' [55] The Department thought the disclosure of this information would have been of potential benefit to plan participants and beneficiaries because of the possibility that ''a particular plan participant or a population of plan participants does not share the same preference for a given collateral purpose as the plan fiduciary that selected the designated investment alternative for placement on the menu among the plan's other options.''

The preamble to the NPRM also provided an example of an application of this proposed requirement. The example, in relevant part, provided that ''if the tiebreaking characteristic of a particular designated investment alternative were that it better aligns with the corporate ethos of the plan sponsor or that it improves the esprit de corps of the workforce, . . . then such feature or features prompting the selection of the investment must be prominently disclosed by the plan fiduciary. . . .'' The NPRM believed this information ''will be useful to participants and beneficiaries in deciding how to invest their plan accounts.'' [56]

The preamble to the NPRM also clarified that, in terms of compliance, the Department's intent was to provide flexibility in how plan fiduciaries would fulfill this requirement given the unknown spectrum of collateral benefits that might influence a plan fiduciary's selection. The preamble to the NPRM explained that one likely way to comply ''is that the plan fiduciary could simply use the required disclosure under 29 CFR 2550.404a–5.'' [57] That regulation, adopted in 2012, already entitles participants in participant-directed individual account plans to receive sufficient information regarding designated investment alternatives to make informed decisions about the management of their individual accounts. The information required by the 2012 rule includes information regarding the alternative's objectives or goals and the alternative's principal strategies (including a general description of the types of assets held by the investment) and principal risks. The NPRM, therefore, assumed these existing disclosures, perhaps with minor modifications or clarifications, would have been sufficient to satisfy the disclosure element of the tiebreaker provision in paragraph (c)(3) of the proposal.

As is evident from the foregoing discussion, the NPRM assumed appreciable benefits to plan participants and beneficiaries and relatively small compliance costs resulting from this proposed disclosure requirement.[58] The NPRM solicited comments on the overall utility of this disclosure provision, including ideas on how best to operationalize the provision considering its intended purpose balanced against costs of implementation and compliance.

(1) Support for Disclosure Requirement

The public record reflects limited support for the proposed disclosure requirement. One commenter stated that plan participants and beneficiaries should have information about collateral benefits because such information may impact participant behavior, such as whether to participate, savings rates, and asset allocations. One commenter registered its support for better disclosure to plan participants and of investment policies more generally, inclusive of sustainable investment policies and collateral benefit factors. One commenter believed the proposed requirement would protect participants and beneficiaries by ensuring that plan sponsors fully considered collateral benefits alongside financial performance. One commenter supported the proposed disclosure requirement as ''reasonable,'' but recommended that the Department provide plan fiduciaries with a model notice to assist compliance with this disclosure requirement. Finally, one commenter conditionally supported the proposed disclosure requirement because the commenter believed it would give plan participants needed transparency in the tiebreaking context. However, this commenter recommended that the proposed requirement, if retained, be improved with additional content requirements, including a requirement that the fiduciary disclose what specific alternative investments were considered in breaking the tie and more analysis behind the fiduciary's decisionmaking process.

(2) Concerns With Disclosure Requirement

The public record also reflects substantial concerns with the proposed disclosure requirement. In summary, these concerns are as follows. Some commenters found the content requirements of proposed disclosure requirement to be inherently ambiguous. Some found the proposed disclosure requirement to be unnecessary and the required content of the disclosure to be of no economic significance. Other commenters were concerned that the proposed disclosure requirement may undermine the purposes of other disclosure regulations promulgated by the Department aimed at helping plan participants and beneficiaries make informed investment decisions. Certain commenters expressed concerns that the proposed disclosure requirement would single out certain factors and strategies over other factors and strategies, contrary to the principle of neutrality they believe is embedded in ERISA. Other commenters were concerned that the proposed disclosure requirement could have a chilling effect on the proper use of climate change and other ESG factors. Several commenters were concerned that the proposed disclosure provision would result in unnecessary litigation. Each of these concerns is explained in detail below.

(a) Ambiguity

Some commenters found the content requirements of the proposed disclosure requirement to be inherently ambiguous. According to them, the NPRM was unclear on what ''collateral-benefit characteristics'' a fiduciary would be required to disclose. They

[55] 86 FR 57272, 80.

[56] *Id.*

[57] *Id.*

[58] 86 FR 57272 at 57300 (''The Department estimates that it will take a legal professional twenty minutes on average per year to update existing disclosures for each of the 46,551 small individual account plans with participant direction that are anticipated to utilize this provision. This results in a per-plan cost of $46.14 annually relative to the pre-2020 final rule baseline.'').

contrasted regulatory language requiring the disclosure of the collateral benefit characteristics ''of the fund'' with preamble language focused on the ''features prompting the selection'' by the fiduciary and other language referencing ''improved employee morale'' as the factor that ''tipped the scale.'' Commenters requested clarification of whether the proposed disclosure requirement was focused on an objective characteristic of the fund or the subjective reason the fiduciary selected the fund. According to the commenters, these are not necessarily the same things. Commenters said the subjective collateral benefit perceived by the plan fiduciary may be wholly different from the characteristic of the fund that would be expected to provide the collateral benefit. For example, assume that the plan sponsor is an organization whose primary mission is to tackle climate change. The plan fiduciary may decide to use the tiebreaker test to select a fund that uses ESG criteria with an environmental focus to improve the morale of its employees. In this example, the commenters stated that the regulatory text and preamble were unclear on what must be disclosed under the proposal—would it be the environmental focus of the fund's strategy or improved employee morale? Most commenters on this issue requested confirmation that the former is what the Department intended, and they asserted flaws with the NPRM's cost-benefit analysis if the latter.

(b) Unnecessary

Some commenters were of the view that the proposed disclosure requirement is unnecessary, and the required content of the disclosure is of no economic significance. The commenters stated that the Department and the Securities and Exchange Commission already have regulations in place to ensure that participants and investors have ready access to necessary investment-related information, such as principal strategies and risks, performance information, benchmarks, and fees. Commenters alleged that the content requirements of the proposed disclosure, by contrast, contained no information about the economics of the investment in question, but instead focused on information that was collateral to the economics of the investment and therefore would have no economic relevance to participant investors. Whether a participant shares the fiduciary's preference for the collateral benefit or purpose that ''tipped the scale'' is of no relevance to whether the investment option is economically prudent and makes economic sense to a participant. The only thing that should matter to participants, in the view of these commenters, is whether the selected investment was prudently chosen. In their view, disclosures focused on the policy or social preferences of the selecting fiduciaries will not advance intelligent investment behavior and therefore are unnecessary.

(c) Interference With Existing Disclosure Regulations

Some commenters were concerned the proposed disclosure requirement would undermine the purposes of other disclosure regulations promulgated by the Department aimed at helping plan participants and beneficiaries make informed investment decisions. These commenters pointed to existing disclosures under 29 CFR 2550.404a–5, 2550.404c–1, and 2550.404c–5 as being sufficient to enable plan participants and beneficiaries to make informed investment decisions.[59] These disclosures, according to the commenters, focus on what the Department has determined, through multiple notice-and-comment rulemaking projects, is the relevant investment-related information that plan participants and beneficiaries need, as investors. The proposed collateral benefit disclosure requirement, by contrast, focused on non-investment information, *i.e.,* the collateral purpose that tipped the scale—information that, by definition, is not material to risk and return. These commenters argued that not only is the proposed collateral benefit disclosure of no economic relevance, but the disclosure risks distracting participants and beneficiaries from basic and important information required under the existing regulations mentioned above. Put differently, one commenter stated that it opposes the proposed disclosure requirement because it would disproportionately emphasize one part of the fiduciary decisionmaking process over other more relevant factors in a way that could mislead participants and impact participant choices in ways that are unintended by the Department.

(d) Lack of Neutrality & Chilling Effect

Commenters expressed concerns that the proposed disclosure requirement singles out certain factors over other factors, contrary to the principle of neutrality, while other commenters are concerned that the proposed disclosure requirement might have a chilling effect on the proper use of climate change and other ESG factors. Certain commenters expressed opposition to the idea of singling out any class of investment factor, including collateral benefit factors, as needing additional or stricter requirements. These commenters asserted that ERISA is, and should be, factor neutral, including with respect to collateral purposes or factors. By imposing special disclosure requirements on collateral benefits, the proposed disclosure is contrary to this principle, according to these commenters.

In line with this concern, other commenters were concerned that the proposed disclosure provision could inadvertently have a chilling effect on the proper use of climate change and other ESG factors. These commenters posited that investment strategies often simultaneously integrate multiple ESG factors into the analysis, some of which are relevant to a risk and return assessment while others are not. In these circumstances, commenters asserted that fiduciaries may avoid the investment based on ambiguity over whether it is subject to the disclosure requirement, or over disclose even when the options were selected solely for financial reasons.

(e) Litigation

Multiple commenters raised concerns that the proposed disclosure requirement would effectively act as an invitation to litigation. The very purpose of the disclosure, according to the commenters, is to draw the reader's attention to the non-financial motives of the plan fiduciary. Considering this purpose, commenters said the disclosures themselves unintendedly would serve as a signal of potential wrongdoing and as a roadmap to litigation. To altogether avoid the litigation risk, some plan sponsors and fiduciaries simply would not use the tiebreaker test even in cases when they otherwise might have been willing to use it to promote collateral purposes,

[59] The disclosure requirements to which these commenters refer include: 29 CFR 2550.404a–5 (requiring disclosure of certain plan administrative and investment-related information, including fee and expense information, to participants and beneficiaries in participant-directed individual account plans (*e.g.,* 401(k) plans)); 29 CFR 2550.404c–1 (requiring that participants and beneficiaries in participant-directed individual account plans are furnished specified information about the plan's investment alternatives and incidents of ownership appurtenant to such investment alternatives); and 29 CFR 2550.404c–5 (requiring that participants and beneficiaries whose plan assets may be invested, by default, into a plan's QDIA by a plan fiduciary are furnished specified investment-related information about the QDIA, the circumstances in which plan assets will be invested in a QDIA, and their ability to direct their assets to plan investment alternatives other than a QDIA).

such as addressing climate change, according to commenters.

(f) Per Se Disloyalty

Other commenters raised concerns with the idea that a disclosure violation would constitute a *per se* breach of ERISA's duty of loyalty, which the commenters saw as the necessary consequence of embedding a disclosure requirement within the portion of a regulation defining ERISA's duty of loyalty. They argued that a disclosure failure does not (and should not), by itself, prove disloyalty. But as structured, that seems to be the result under the NPRM regardless of how prudent and loyal the fiduciary is when selecting the investment, the commenters asserted. These commenters observed the unconventionality of the idea that ERISA commands that if fiduciaries fail in whole or in part to disclose their motivations to participants and beneficiaries, those fiduciaries are *per se* disloyal as a result of the failure, regardless of how loyal the fiduciaries were, in fact, when selecting the investment. These commenters assert that it is a non sequitur to say that a failure to disclose the scale-tipping attributes of an investment is dispositive evidence of disloyalty, especially when the investment is prudent and serves the financial interests of the plan equally as well as a reasonable number of alternatives. To this point, the commenters note that some version of the tiebreaker test has existed for approximately forty years without a related disclosure requirement, embedded in loyalty or otherwise—and nothing in the marketplace has changed in a way that supports the new disclosure requirement. The commenters question whether the many plan fiduciaries that used the tiebreaker test in the past would now be considered disloyal because they likely never disclosed to participants the collateral benefits that broke the tie.

(g) Other Technical Concerns

In addition to the foregoing concerns, commenters raised the following technical issues with the proposed disclosure requirement. First, commenters stated that although the NPRM is clear that a collateral benefit disclosure is required only if the fiduciary uses the tiebreaker provision to select a fund, nowhere does the NPRM offer concrete guidance on when or how often the plan fiduciary must furnish this information to participants. For example, commenters requested guidance and clarification on whether a disclosure would be required only when the fund is added to the lineup, only when a participant joins the plan, annually, any time the plan or its service providers furnish any disclosure materials pertaining to the fund, or at some other interval determined solely in the judgment of the plan fiduciary based on facts and circumstances.

Second, the NPRM specifies that the collateral benefit disclosure must be ''prominently'' displayed in disclosure materials provided to participants. But neither the regulation nor the preamble defines the meaning of prominence for this purpose. Several commenters therefore requested guidance on how to satisfy this standard. One concern is that this standard is being construed as requiring that collateral benefit information receive more attention or prominence than other information that likely will accompany the collateral benefit information, such as investment performance, fees, strategies, risk, etc. The commenters are of the view that collateral benefit information should not be more prominent than relevant investment-related information. These commenters assert that investment success generally turns on an intelligent evaluation of performance, fees, strategies, and risk, and that mandating the elevation of collateral information over such information potentially undermines the chances of an investor's success. According to the commenters, this is particularly important, in part, because the concept of ''prominence'' is inherently subjective, and in part, because violations of the proposed disclosure rule are per se acts of disloyalty.

(3) Decision

Based on the foregoing concerns, and reasons similar to those underlying the decision to remove the documentation requirements from the current regulation, the final rule does not adopt the proposed collateral benefit disclosure requirement at this time. The Department is aware that the Securities and Exchange Commission (SEC) is conducting rulemaking on investment company names, addressing, among other things, ''certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks.'' [60] The SEC also is conducting rulemaking on disclosures by mutual funds, other SEC-regulated investment companies, and SEC-regulated investment advisers designed to provide consistent standards for ESG disclosures, allowing investors to make more informed decisions, including as they compare various ESG investments.[61] The Department will monitor those rulemaking projects and may revisit the need for collateral benefit reporting or disclosure depending on the findings of that agency. The Department emphasizes that the decision against adopting a collateral benefit disclosure requirement in the final rule has no impact on a fiduciary's duty to prudently document the tiebreaking decisions in accordance with section 404 of ERISA.

(f) Paragraph (c)(3)—Participant Preferences

Several commenters requested clarification on whether a plan fiduciary may consider participants' policy, social, or value preferences (*i.e.,* non-financial preferences) in connection with constructing menus for defined contribution plans that permit participants to direct their own investments. Some commenters stated that, in their view, the NPRM is ambiguous on this question. Many other commenters expressed concern that the NPRM appears not to permit plan fiduciaries to consider participants' preferences or to consider them only under the tiebreaker test.

Several of these commenters stressed their view of the importance of accommodating participants' preferences in a voluntary retirement system heavily dependent on elective deferrals. These commenters, including institutional asset managers and asset custodians, assert that both increased participation and increased deferral rates follow from accommodating such preferences. They argue that participants may not use their voluntary participant-directed savings plans to save for retirement, or will leave those plans earlier, if they cannot get access to investment choices they find attractive. Consistent with this argument, many individual commenters claim they would roll their savings out of ERISA-protected plans if the plans cannot satisfactorily accommodate their preferences.

Several commenters alleged that plan fiduciaries should not have to rely solely on the tiebreaker test to consider participants' preferences. These commenters are of the view that the NPRM's tiebreaker test may be ill-suited to some methods of constructing menus for defined contribution plans because adding additional options is not necessarily a zero-sum game under these methods. To these commenters, therefore, if plan fiduciaries are unable to use the tiebreaker test because it does

[60] 87 FR 36594 (June 17, 2022).

[61] 87 FR 36654 (June 17, 2022).

not comport with how they construct defined contribution menus, they effectively have no ability under their reading of the NPRM to consider participants' preferences.

A few commenters believe that participants' preferences deserve equal treatment with risk and return factors; they believe fiduciaries should be allowed to consider and weigh participants' preferences alongside risk and return factors in a prudence analysis, giving participant's preferences such weight as the fiduciary deems appropriate, even if such preferences are not directly tied to risk or return. By contrast, a few commenters asserted that ERISA requires plan fiduciaries to focus on only pecuniary factors when selecting and retaining investments. They view participants' preferences as essentially irrelevant to menu construction.

In response to these comments, paragraph (c)(3) of the final rule provides clarification on this issue. Specifically, paragraph (c)(3) of the final rule provides that the plan fiduciary of a participant-directed individual account plan does not violate the duty of loyalty set forth in paragraph (c)(1) of the final rule solely because the fiduciary takes into account participants' preferences consistent with requirements of paragraph (b) of this section.

If accommodating participants' preferences will lead to greater participation and higher deferral rates, then it could lead to greater retirement security, as suggested by the commenters. Thus, in this way, giving consideration to whether an investment option aligns with participants' preferences can be relevant to furthering the purposes of the plan within the meaning of paragraph (b)(1) of the final rule. At the same time, however, plan fiduciaries may not add imprudent investment options to menus just because participants request or would prefer them.[62]

The clarification in paragraph (c)(3) of the final rule does not speak to the duty of prudence. Rather, paragraph (c)(3) provides only that a fiduciary does not violate the duty of loyalty as set forth in paragraph (c)(1) of the final rule solely because the fiduciary considers participants' preferences in a manner that is consistent with paragraph (b) of the final rule. The reference to paragraph (b) in paragraph (c)(3) clarifies that the duty of prudence is independent and, as such, prudence determinations must be made consistent with paragraph (b) of the final rule. As paragraph (b)(4) of the final rule makes clear, the selection of investment options must be grounded in the fiduciary's prudent risk and return analysis.

The clarification in paragraph (c)(3) of the final rule is not novel or a change in Departmental position. The preamble to the current regulation being amended by this final rule articulated this position when explaining the meaning and mechanics of paragraph (d)(2) of that rule (entitled ''Investment Alternatives for Participant-Directed Individual Account Plans''). In relevant part, that preamble stated: ''Nothing in the final rule precludes a fiduciary from looking into certain types of investment alternatives in light of participant demand for those types of investments. But in deciding whether to include such investment options on a 401(k)-style menu, the fiduciary must weigh only pecuniary . . . factors.''[63] The relevant portion of paragraph (d)(2) of that rule, however, was incorporated into paragraphs (b) and (c)(1) of the final rule (minus the pecuniary factor terminology). The final rule restates the position as regulatory text in paragraph (c)(3), rather than as a preamble statement, to provide enhanced clarity, accessibility, and prominence, as requested by commenters.

The final rule declines to mandate that fiduciaries factor participants' preferences into their evaluation, selection, and retention of designated investment alternatives, and declines to mandate a uniform methodology for determining such preferences, as requested by a few commenters. Some commenters had concerns that a mandate to consider and act on participants' preferences would raise complex questions, such as how plan fiduciaries should properly solicit, weigh, implement, and monitor participants' preferences, and how plan fiduciaries should reconcile conflicting preferences of their participants (*e.g.,* some participants may oppose so-called ''sin stocks'' and other participants in the same plan may favor them). No commenter had persuasive answers or recommendations on these questions, and the NPRM did not propose such a mandate or suggest how to resolve such competing preferences. In addition, as some commenters noted, ERISA's fiduciary obligations could compel plan fiduciaries to disregard participants' preferences to the extent they are imprudent. Accordingly, the final rule declines to mandate that fiduciaries factor participants' preferences into their evaluation, selection, and retention of designated investment alternatives, and declines to mandate a uniform methodology for determining such preferences; the final rule, instead, leaves these questions to be decided by plan fiduciaries considering the facts and circumstances of their plan and participant population.

3. Investment Alternatives in Participant-Directed Individual Account Plans Including Qualified Default Investment Alternatives

Paragraph (d) of the current regulation contains additional rules that specifically govern fiduciaries' selection and retention of investment alternatives for participant-directed individual account plans, including qualified default investment alternatives (QDIAs). The NPRM proposes to directly rescind this paragraph. The NPRM's justification for the rescission has two dimensions. First, proposed amendments to other provisions in the section effectively merged the substance of what was paragraph (d) into these other provisions. Second, the Department no longer supports the current regulation's provisions specific to QDIAs. As structured, paragraph (d)(2)(ii) of the current regulation disallows a fund to serve as a QDIA if it, or any of its component funds in a fund-of-fund structure, has investment objectives, goals, or principal investment strategies that include, consider, or indicate the use of one or more non-pecuniary factors in its investment objectives, even if the fund is objectively economically prudent from a risk-return perspective or even best in class.

Commenters overwhelmingly supported the NPRM. A few commenters raised technical concerns regarding compliance problems and costs with paragraph (d) of the current regulation. But more globally, and fundamentally, most commenters on this issue were of the view that the provisions in paragraph (d) of the current regulation are unnecessary. This view is based, in part, on the strongly held belief, shared among a broad spectrum of commenters from various backgrounds and industries, that the legal standards under ERISA's prudence and loyalty rules should be the same for all plans, including plans with QDIAs, with respect to the selection and retention of investment alternatives.

[62] *See Hughes* v. *Northwestern Univ.,* 142 S. Ct. 737 (2022) (''In *Tibble,* this Court explained that, even in a defined-contribution plan where participants choose their investments, plan fiduciaries are required to conduct their own independent evaluation to determine which investments may be prudently included in the plan's menu of options.'' (citing *Tibble* v. *Edison Int'l,* 575 U.S. 523 (2015)).

[63] 85 FR 72846 at 72863.

How these standards apply to a given set of facts may, of course, differ, according to the commenters, but the base standards of prudence and loyalty should be no different for these plans, absent a statutory underpinning for a difference. Yet the current regulation, according to these commenters, unnecessarily singles out individual account plans for what the commenters view as different, special, and stricter treatment (*e.g.,* some higher level of fiduciary oversight). This special treatment is especially extreme with respect to QDIAs, according to the commenters, with some commenters equating the provisions in paragraph (d)(2)(ii) of the current regulation to an effective ban on selecting investments that consider or integrate climate change and other ESG factors, regardless of the economic merits and prudence of the investment. Many commenters disagreed that QDIAs need heightened protections beyond those specifically contained in the Department's Qualified Default Investment Alternative regulation.[64] Overall, these commenters agree that the provisions of paragraph (d) of the current regulation create a perception that fiduciaries of individual account plans, including plans with QDIAs, are subject to different and heightened—but unclear—standards of prudence and loyalty as compared to fiduciaries of other plans. And the primary consequence of this perception, according to the commenters, was a concern that funds may be excluded from selection as QDIAs solely because they expressly considered climate change or other ESG factors, even though the funds are prudent based on a consideration of their financial attributes alone.

Some commenters opposed the NPRM's proposed changes to paragraph (d) of the current regulation. In the main, these commenters oppose all aspects of the NPRM, not just the NPRM's proposed deletion of paragraph (d) of the current regulation, but their expressed concerns with the proposed elimination of paragraph (d) are mainly limited to QDIAs. One of these commenters, for instance, stated that, because the proposal would allow a QDIA that states, as one of its investment objectives, a goal other than financial return, this part of the proposal, in the view of this commenter, is a per se violation of ERISA's exclusive purpose rule as interpreted by the Supreme Court in *Dudenhoeffer.*[65] A different commenter, noting that individual account plans shift the risk of investment loss to participants, asserted that this shift in risk justifies enhanced—not reduced—protections for participants that are defaulted into QDIAs. This risk is compounded, according to this commenter, by the fact that defaulted employees are an increasingly larger percentage of the universe, and they tend not to opt out of the default investment. In line with the concerns of this commenter, two other commenters asserted that, to the extent ESG investing is acceptable at all, it should never be allowed in the case of QDIAs. Even if active investors are given the prerogative to align their investments with their beliefs, inattentive defaulted investors should never, according to these commenters, be forced to accept the social investment preferences of their plan fiduciaries or burdened with the obligation of having to actively recognize that the default option is misaligned with the investors' desires for higher returns (or contrary social values) and opt out.

The Department was not persuaded by these objections and the final regulation retains this aspect of the NPRM, meaning that the final regulation does not contain the set of special rules for participant-directed individual account plans, including plans with QDIAs, codified in paragraph (d) of the current regulation. The first part of paragraph (d) of the current regulation (paragraphs (d)(1) and (d)(2)(i)) was eliminated because the essential principles of this part were merged into paragraphs (b) and (c) of the final rule.

As to the second part of paragraph (d) of the current regulation, *i.e.,* the part containing special provisions for QDIAs (paragraph (d)(2)(ii) of the current), the Department generally is of the view that QDIAs warrant special treatment because plan participants have not affirmatively directed the investment of their assets into the QDIA but are nevertheless dependent on the investments for long-run financial security. Although the Department continues to believe as a general matter that special protections may be needed in some contexts for plans containing these investments, the Department no longer supports the specific restrictions in paragraph (d)(2)(ii) of the current regulation. As structured, paragraph (d)(2)(ii) of the current regulation disallows a fund to serve as a QDIA if it, or any of its component funds in a fund-of-fund structure, has investment objectives, goals, or principal investment strategies that include, consider, or indicate the use of non-pecuniary factors in its investment objectives, even if the fund is objectively economically prudent from a risk-return perspective or even best in class.

The Department agrees with the many commenters asserting that, rather than protecting the interests of plan participants, paragraph (d)(2)(ii) of the current regulation will only serve to harm participants. It would, as the commenters notice, effectively preclude fiduciaries from considering QDIAs that include ESG strategies, even where they were otherwise prudent or economically superior to competing options. The Department sees no reason to deprive participants of such options. Consequently, the final rule directly rescinds paragraph (d)(2)(ii) of the current regulation. The rescission of this provision, however, does not leave participants and beneficiaries in plans with QDIAs without protections. QDIAs would continue to be subject to the same legal standards under the final rule as all other investments, including the prohibition against subordinating the interests of participants and beneficiaries in their retirement income to other objectives. QDIAs also would continue to be subject to the separate protections of the QDIA regulation.[66] The Department finds no merit to the argument that the final rule, either in general or in not carrying forward paragraph (d) of the current regulation in specific, sanctions behavior contrary to the holding in *Dudenhoeffer.* On the contrary, as already stated, the central premise behind the final rule's amendments to the current regulation is that the current regulation is being perceived by plan fiduciaries and others as an impediment to protecting the financial benefits of plan participants and beneficiaries by prohibiting or encumbering plan fiduciaries from managing against or taking advantage of climate change and other ESG risk factors in selecting investments. Thus, in this way, the final rule's rescission of the special provision for QDIAs is entirely consistent with the principle articulated in *Dudenhoeffer.*

4. Section 2550.404a–1(d)—Proxy Voting and Exercise of Shareholder Rights

Paragraph (d) of the final rule addresses the application of the duties of prudence and loyalty under ERISA section 404(a) to the exercise of shareholder rights, including proxy voting. As discussed below, the final rule includes several minor changes from the proposal based on public comment.

[64] 29 CFR 2550.404c–5.

[65] *Fifth Third Bancorp* v. *Dudenhoeffer,* 573 U.S. 409 (2014).

[66] 29 CFR 2550.404c–5.

(a) Paragraph (d)(1)

Paragraph (d)(1) of the final rule is unchanged from the proposal and provides that the fiduciary duty to manage plan assets that are shares of stock includes the management of shareholder rights appurtenant to those shares, such as the right to vote proxies. A commenter requested that the Department limit paragraph (d) to only proxy voting. The commenter noted that while the provisions cover both proxy voting and the exercise of shareholder rights, most of the substantive provisions relate only to proxy voting. The commenter further opined that other shareholder rights do not necessarily share the same objectives as those of proxy voting in connection with stock ownership. Moreover, according to the commenter, decisions on corporate actions like stock splits, tender offers, exchange offers on bond issues, and mergers and acquisitions are generally not governed by proxy voting policies or undertaken with advice from proxy advisors. For these reasons, the commenter expressed the view that exercise of shareholder rights should not be coupled with proxy voting in the regulation. The Department is not persuaded to make the suggested change. The exercise of shareholder rights has been part of the Department's prior guidance since at least the first Interpretive Bulletin in 1994. The Department believes that the exercise of shareholder rights to monitor or influence management, which may occur in lieu of, or in connection with, formal proxy proposals is no less important to fiduciary management of the investment asset as proxy voting and accordingly should be covered by the final rule.

(b) Paragraph (d)(2)

(1) Paragraph (d)(2)(i)

Paragraph (d)(2)(i) of the proposal provided that when deciding whether to exercise shareholder rights and when exercising such rights, including the voting of proxies, fiduciaries must carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan. Paragraph (d)(2)(i) was proposed without modification from paragraph (e)(2)(i) of the current regulation and is adopted without change.

(2) Paragraph (d)(2)(ii)

Paragraph (d)(2)(ii) of the proposal set forth specific standards for fiduciaries to meet when deciding whether to exercise shareholder rights and when exercising shareholder rights. It provided that a fiduciary must act solely in accordance with the economic interest of the plan and its participants and beneficiaries (paragraph (d)(2)(ii)(A)) and consider any costs involved (paragraph (d)(2)(ii)(B)). Paragraph (d)(2)(ii) further required that a fiduciary must not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to any other objective, or promote benefits or goals unrelated to the financial interests of the plan's participants and beneficiaries (paragraph (d)(2)(ii)(C)). The proposal additionally provided that a fiduciary must evaluate material facts that form the basis for any particular proxy vote or other exercise of shareholder rights (paragraph (d)(2)(ii)(D)). Finally, paragraph (d)(2)(ii)(E) of the proposal provided that a fiduciary must exercise prudence and diligence in the selection and monitoring of persons, if any, selected to exercise shareholder rights or otherwise advise on or assist with exercises of shareholder rights, such as providing research and analysis, recommendations regarding proxy votes, administrative services with voting proxies, and recordkeeping and reporting services.

Paragraph (d)(2)(ii) of the proposal was based on paragraph (e)(2)(ii) of the current regulation but proposed three significant changes. First, paragraph (d)(2)(ii) of the proposal directly rescinded the statement in paragraph (e)(2)(ii) of the current regulation that ''the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right.'' Second, proposed paragraph (d)(2)(ii) did not carry forward the current regulation's specific requirement at paragraph (e)(2)(ii)(E) that, when deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must maintain records on proxy voting activities and other exercises of shareholder rights. Third, paragraph (d)(2)(ii)(E) of the proposal broadened the corresponding provision in the current regulation (paragraph (e)(2)(ii)(F)) in connection with a proposed streamlining of fiduciary selection and monitoring obligations under the current regulation. Specifically, paragraphs (e)(2)(ii)(F) and (e)(2)(iii) of the current regulation both address fiduciary monitoring obligations, with paragraph (e)(2)(ii)(F) covering selection and monitoring of persons selected to advise or otherwise assist with the exercise of shareholder rights, and paragraph (e)(2)(iii) sets out specific monitoring obligations where the authority to vote proxies or exercise shareholder rights has been delegated to an investment manager or a proxy voting firm. The NPRM proposed streamlining this approach by eliminating paragraph (e)(2)(iii) and covering selection and monitoring obligations in a single more general provision (paragraph (d)(2)(ii)(E) of the proposal). Although based on paragraph (e)(2)(ii)(F) of the current regulation, paragraph (d)(2)(ii)(E) of the proposal was broader, and covered obligations related to monitoring service providers such as investment managers and proxy advisory firms that are addressed in paragraph (e)(2)(iii) of the current regulation.

(a) Rescission of ''Does Not Require Voting Every Proxy'' Language From Paragraph (e)(2)(ii) of the Current Regulation

The Department proposed to rescind the statement in paragraph (e)(2)(ii) of the current regulation that ''the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right'' out of a concern that the statement could be misread as suggesting that plan fiduciaries should be indifferent to the exercise of their rights as shareholders, particularly in circumstances where the cost is minimal as is typical of voting proxies. Such indifference could leave plan investments unprotected, as the exercise of shareholder rights is important to ensuring management accountability to the shareholders that own the company. Furthermore, abstaining from a vote is not a neutral act that has no bearing on the outcome of a particular matter put to shareholders for vote; rather, depending on the relevant voting standard under state law and the company's governing documents, abstention could determine whether a particular matter or proposal is approved.

Commenters expressed a range of views with respect to the rescission of the ''does not require voting every proxy'' language. Multiple commenters supported the rescission, and agreed with the Department's concerns that the language promotes indifference in managing proxy voting rights. A commenter furthermore cautioned that the language misleadingly signaled to fiduciaries that proxy voting is costly and unimportant. Some commenters expressed the view that the exercise of

shareholder rights is key to management accountability and paying attention to governance is as important as financial performance. Other commenters similarly supported rescission based on the view that exercise of shareholder rights, including through proxy voting, is an important tool for managing risk. Some commenters also indicated that the ''does not require voting every proxy'' language is not necessary in the current regulation because fiduciaries have never believed that ERISA required them to vote all proxies. In particular, commenters pointed to prior non-regulatory guidance which clearly indicated, in the context of foreign stock, that ERISA does not require fiduciaries to vote all proxies.[67]

Some commenters did not indicate support or opposition to rescission of the ''not required to vote every proxy'' language, but they cautioned that removal of the language could be misread as indicating that the Department believes that ERISA requires fiduciaries to vote every proxy. These commenters requested confirmation of the Department's view.

Other commenters opposed the rescission and viewed the NPRM as creating a presumption that all proxies should be voted. A commenter stated that many small plans abstain from proxy votes because performing the required due diligence would be inordinately expensive. Several commenters criticized that a presumption that all proxies should be voted will lead fiduciaries to further rely on proxy advisory firms, which they view as potentially harmful to plans because, according to these commenters, proxy advisory firms have conflicts of interest and base their votes on noneconomic ESG policy-driven goals. Some commenters also opposed the rescission because they believe language in the regulation was necessary because some fund managers believed they were obliged to vote proxies on all matters, which resulted either in the fund managers employing significant assets to explore the issues implicated in the matters, or in their relying on proxy advisory services to decide for them how to vote.

After considering the comments, the Department has decided to rescind the ''not required to vote every proxy'' language as proposed. The Department's longstanding view of ERISA is that proxies should be voted as part of the process of managing the plan's investment in company stock unless a responsible plan fiduciary determines voting proxies may not be in the plan's best interest (*e.g.,* in cases when voting proxies may involve exceptional costs or unusual requirements, such as in the case of voting proxies on shares of certain foreign corporations).[68] This position recognizes the importance that prudent management of shareholder rights can have in enhancing the value of plan assets or protecting plan assets from risk. However, as explained in the preamble to the NPRM, the removal of the language is not meant to indicate that fiduciaries must always vote proxies or engage in shareholder activism.[69] Prudent fiduciaries should take steps to ensure that the cost and effort associated with voting a proxy is commensurate with the significance of an issue to the plan's financial interests. The solution to proxy-voting costs is not abstention, but is, instead, for the fiduciary to be prudent in incurring expenses to make proxy decisions and, wherever possible, to rely on efficient structures (*e.g.,* proxy voting guidelines, proxy advisors/managers that act on behalf of large aggregates of investors, etc.). With regard to commenters' concerns about fiduciaries' reliance on proxy advisory firms, the Department notes that, as discussed below, the final rule retains requirements relating to the prudent selection and monitoring of services providers to advise or assist with the exercise of shareholder rights. In order to satisfy that provision, fiduciaries would be expected to assess the qualifications of the provider, the quality of services offered, and the reasonableness of fees charged in light of the services provided. A fiduciary's process also should be designed to avoid self-dealing, conflicts of interest or other improper influence.[70] Fiduciaries additionally should take steps to ensure they are fully informed of potential conflicts of proxy advisory firms and the steps such firms have taken to address them.[71] To the extent relevant, fiduciaries should review the proxy voting policies and proxy voting guidelines and the implementing activities of the person being selected. If a fiduciary determines that the recommendations and other activities of such person are not being carried out in a manner consistent with those policies and/or guidelines, then the fiduciary should take appropriate action in response. The Department further notes that in 2020, the U.S. Securities and Exchange Commission adopted final rules that were intended to help ensure that investors who use proxy voting advice receive more transparent, accurate, and complete information on which to make their voting decisions.[72] Information required to be provided pursuant to those final rules also may be useful to responsible plan fiduciaries relying on recommendations from proxy advisory firms.

(b) Removal of Specific Recordkeeping Requirement From Paragraph (e)(2)(ii)(E) of the Current Regulation

The Department proposed to eliminate the requirement in paragraph (e)(2)(ii)(E) of the current regulation that, when deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must maintain records on proxy voting activities and other exercises of shareholder rights. The Department was concerned that the provision appeared to treat proxy voting and other exercises of shareholder rights differently from other fiduciary activities and might create a misperception that proxy voting and other exercises of shareholder rights are disfavored or carry greater fiduciary obligations, and therefore greater potential liability, than other fiduciary activities. Such a misperception could be harmful to plans, as it could potentially chill plan fiduciaries from exercising their right or result in

[67] IB 94–2, 59 FR 38864; IB 2016–01, 81 FR 95882.

[68] 81 FR 95879, 81 (''The essential point of IB 94–2, however, was to articulate a general principle that a fiduciary's obligation to manage plan assets prudently extends to proxy voting. As such, IB 94–2 properly read was meant to express the view that proxies should be voted as part of the process of managing the plan's investment in company stock unless a responsible plan fiduciary determined that the time and costs associated with voting proxies with respect to certain types of proposals or issuers may not be in the plan's best interest.''). *See also* IB 94–2, 59 FR 38861, 63 (July 29, 1994) (''The fiduciary obligations of prudence and loyalty to plan participants and beneficiaries require the responsible fiduciary to vote proxies on Issues that may affect the value of the plan's investment. Although the same principles apply for proxies appurtenant to shares of foreign corporations, the Department recognizes that in voting such proxies, plans may, in some cases, incur additional costs. Thus, a fiduciary should consider whether the plan's vote, either by itself or together with the votes of other shareholders, is expected to have an effect on the value of the plan's investment that will outweigh the cost of voting. Moreover, a fiduciary, in deciding whether to purchase shares of a foreign corporation, should consider whether the difficulty and expense in voting the shares is reflected in their market price.'').

[69] 86 FR 57281.

[70] *See* 85 FR 81669; *see also* Department of Labor Information Letter to Diana Orantes Ceresi (Feb. 19, 1998).

[71] *See* ''Selecting and Monitoring Pension Consultants—Tips for Plan Fiduciaries'' *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/selecting-and-monitoring-pension-consultants.pdf.*

[72] *See* Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34–89372 (July 22, 2020), 85 FR 55082 (Sept. 3, 2020). In July 2022, the SEC amended these final rules. *See* 87 FR 43168 (July 19, 2022).

excessive expenditures as fiduciaries over-document their efforts.

Some commenters supported removal of the recordkeeping provision, echoing the Department's concerns stated in the preamble to the NPRM. Several commenters believed there was no need to single out proxy voting for special recordkeeping requirements. Some commenters criticized the recordkeeping requirement as creating a misperception that exercising shareholder rights carry a greater fiduciary obligation than other fiduciary activities and a heightened burden when exercised, which might cause fiduciaries to shy away from exercising shareholder rights or incur unnecessary compliance expenses when doing so. A commenter criticized the specific recordkeeping requirement as creating a new barrier and extra expense, without justification. Several commenters were of the view that the general framework of ERISA is sufficient to govern the recordkeeping requirements for proxy voting.

Other commenters opposed removal of the documentation requirement and suggested that it be retained in the regulation. A commenter indicated that removing the documentation provision deprives participants and beneficiaries of information they may use to evaluate whether fiduciaries are acting in their best interest for their exclusive benefit. Another commenter similarly suggested that eliminating the requirement impedes the ability of participants to monitor plan fiduciaries. Another commenter further opined that enhanced documentation would help to ensure that ERISA plan proxies are being voted only in a manner that is in the articulable financial interest of plan beneficiaries.

The Department is not persuaded by commenters to retain the specific recordkeeping provision. The Department does not disagree with the need for proper documentation of fiduciary activity. To the contrary, in previous guidance on proxy voting, the Department indicated that section 404(a)(1)(B) requires proper documentation both of the activities of the investment manager and of the named fiduciary of the plan in monitoring the activities of the investment manager.[73] Specifically, with respect to proxy voting, this would require the investment manager or other responsible fiduciary to keep accurate records as to the voting of proxies. It is the Department's view that in order for the named fiduciary to carry out the fiduciary's responsibilities under ERISA section 404(a), the fiduciary must be able to review periodically not only the voting procedure pursuant to which the investment manager votes the proxies appurtenant to plan-owned stock, but also the actions taken in individual situations so that a determination can be made whether the investment manager is fulfilling their fiduciary obligations in a manner which justifies the continuation of the management appointment. In context, however, the Department takes note of, and to a large extent agrees with, the commenters' concern that the current regulation could be viewed by some as treating proxy voting and other exercises of shareholder rights differently from other fiduciary activities and may create a misperception that proxy voting and other exercises of shareholder rights are disfavored or carry greater fiduciary obligations, and therefore greater potential liability, than other fiduciary activities. Because this misperception could be harmful to plans, as it could potentially chill plan fiduciaries from exercising their rights or result in excessive expenditures as fiduciaries over-document their efforts, the Department has concluded it is appropriate to rescind this provision in the current regulation.

(c) Removal of Specific Monitoring Requirement From Paragraph (e)(2)(iii) of the Current Regulation

As discussed above, the Department proposed to eliminate paragraph (e)(2)(iii) of the current regulation, which set out specific monitoring obligations where the authority to vote proxies or exercise shareholder rights has been delegated to an investment manager or proxy voting firm and proposed to broaden another provision of the regulation that more generally covers selection and monitoring obligations (paragraph (d)(2)(ii)(E) of the proposal). The Department was concerned that the more specific provision relating to providers of certain proxy-related services could be read as creating special monitoring obligations above and beyond the statutory obligations of prudence and loyalty that generally apply to monitoring service providers. In this regard, the Department noted that it had previously indicated in Interpretive Bulletin 2016–01 that the general prudence and loyalty duties under ERISA section 404(a)(1) require a fiduciary to monitor decisions made and actions taken by an investment manager with regard to proxy voting decisions. In addition, the Department had previously indicated that in adopting paragraph (e)(2)(iii) of the current regulation it did not intend to create a higher standard for a fiduciary's monitoring of an investment manager's proxy voting activities than would ordinarily apply under ERISA with respect to the monitoring of any other fiduciary or fiduciary activity.[74]

Some commenters agreed with the Department's proposed elimination of paragraph (e)(2)(iii) of the current regulation. One commenter opined that the specific monitoring requirement in that provision largely duplicated the general obligation in current paragraph (e)(2)(ii)(F), which the commenter viewed as redundant and suggestive that monitoring proxy-related services demand more rigor than required to monitor other service providers. Other commenters similarly observed that the current regulation's specific monitoring requirement may have created an impression that there are special obligations above and beyond the statutory obligations of prudence and loyalty that generally apply to monitoring service providers with respect to proxy voting. Some commenters noted that ERISA's general prudence and loyalty duties already impose a monitoring requirement on fiduciaries, and further expressed the view that monitoring service providers with respect to proxy voting is no different from other fiduciary obligations and should be subject to the

[73] *See* Letter to Helmuth Fandl, Chairman of the Retirement Board, Avon Products, Inc. 1988 WL 897696 (Feb. 23, 1988) (''[I]t is the opinion of the Department that section 404(a)(1)(B) requires proper documentation of the activities of the investment manager and of the named fiduciary of the plan in monitoring the activities of the investment manager. Specifically, with respect to proxy voting, this would require the investment manager or other responsible fiduciary to keep accurate records as to the voting of proxies.''); *see also* Interpretive Bulletin IB 94–2 (July 29, 1994) 59 FR 38860, 63 (''It is the view of the Department that compliance with the duty to monitor necessitates proper documentation of the activities that are subject to monitoring. Thus, the investment manager or other responsible fiduciary would be required to maintain accurate records as to proxy voting. Moreover, if the named fiduciary is to be able to carry out its responsibilities under ERISA § 404(a) in determining whether the investment manager is fulfilling its fiduciary obligations in investing plans assets in a manner that justifies the continuation of the management appointment, the proxy voting records must enable the named fiduciary to review not only the investment manager's voting procedure with respect to plan-owned stock, but also to review the actions taken in individual proxy voting situations.'').

[74] 85 FR 81670 (''The Department did not intend to create a higher standard for a fiduciary's monitoring of an investment manager's proxy voting activities than would ordinarily apply under ERISA with respect to the monitoring of any other fiduciary or fiduciary activity. Thus, the Department has revised the provision in the final rule to eliminate the requirement for documentation of the rationale for proxy voting decisions, and instead replaced it with a more general monitoring obligation.'').

same standards. A commenter asserted that there is no basis for heightened monitoring responsibilities when a fiduciary uses the services of a proxy advisory firm, and specifically disagreed with assertions contained in the preamble to the 2020 rule that proxy advisors are prone to factual and/or analytic errors.

Other commenters opposed the elimination of the specific monitoring requirement. A commenter viewed it as reasonable and justified to single out delegated voting authority as particularly deserving of due diligence and prudent monitoring. This commenter believed it appropriate for the regulation to remind fiduciaries of their obligations. Another commenter suggested that the specific monitoring requirement was necessary to protect plan participants. According to the commenter, proxy advisory firms are insufficiently staffed and otherwise ill-suited to conduct the sort of research required under fiduciary law, and demonstrate a history of advising on self-interested and politically motivated grounds instead of on purely financial interests. In this commenter's view, when fund managers rely on the recommendations of these firms, they may commit a violation of their duty of care. Another commenter cautioned that removal of the specific monitoring requirement may create confusion because it would remove the detailed standards fiduciaries must follow when monitoring the proxy voting of investment managers and proxy advisory firms.

The Department is not persuaded by the public comments to retain the specific monitoring provision in paragraph (e)(2)(iii) of the current regulation. Despite the Department's explicit indication, described above, that paragraph (e)(2)(iii) of the current regulation was not intended to create a higher standard in monitoring proxy voting activities of parties delegated such responsibilities, commenters continue to express concerns that paragraph (e)(2)(iii) of the current regulation suggests such heightened obligations. The Department believes it appropriate to resolve lingering doubts by eliminating paragraph (e)(2)(iii) of the current regulation, and broadening paragraph (d)(2)(ii)(E) of the final rule, which sets forth general selection and monitoring obligations, to additionally cover selection and monitoring of any person selected to exercise shareholder rights. The Department believes paragraph (d)(2)(ii)(E) is sufficient to remind fiduciaries of their responsibilities in selecting and monitoring persons selected to exercise shareholder rights, and is sufficient to protect the interests of plan participants and beneficiaries. With respect to concerns that removal of paragraph (e)(2)(iii) of the current regulation would eliminate detailed standards that fiduciaries must follow in monitoring the proxy voting of investment managers and proxy advisory firms, the Department notes that paragraph (e)(2)(iii) of the current regulation merely references monitoring activities relating to shareholder rights for consistency with the regulation. In the Department's view, a fiduciary's obligations with respect to monitoring a service provider would include measures to ascertain the service provider's compliance with ERISA and the terms of the plan.

(d) Provisions of Paragraph (d)(2)(ii) of the Final Rule

Paragraph (d)(2)(ii) of the final rule, like the NPRM and the current regulation, sets forth specific standards for fiduciaries to meet when deciding whether to exercise shareholder rights and when exercising shareholder rights. The requirements in paragraphs (d)(2)(ii)(A) through (E) of the final rule are intended to confirm and restate what the prudence and loyalty obligations of ERISA section 404(a)(1)(A) and (B) would require in this context. Paragraph (d)(2)(ii)(A) of the final rule is the same as proposed except for a change in cross-reference to paragraph (b)(4). It provides that a fiduciary must act solely in accordance with the economic interest of the plan and its participants and beneficiaries, in a manner consistent with paragraph (b)(4) of the final rule. A commenter requested confirmation of statements in prior non-regulatory guidance that in deciding whether to vote a proxy the fiduciary should determine whether ''the plan's vote, either by itself or together with the votes of other shareholders, is expected to have an effect on the value of the plan's investment that warrants the additional cost of voting.'' [75] In the commenter's view, without such confirmation, the ''solely in the interest'' requirement of paragraph (d)(2)(ii)(A) may limit plan voting where a plan holds a relatively small investment that, on its own, might not affect the outcome of a vote. In response, the Department confirms that in making decisions regarding the exercise of a plan's shareholder rights, a fiduciary's analysis may include consideration of the effects of the plan's exercise, either by itself or together with the exercise of rights of other shareholders.

Paragraph (d)(2)(ii)(B) of the final rule is adopted as proposed. It requires that when deciding whether to exercise shareholder rights and when exercising shareholder rights, a fiduciary must consider any costs involved. The Department received no comments on this provision.

Paragraph (d)(2)(ii)(C) of the proposal provided that a fiduciary must not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to any other objective, or promote benefits or goals unrelated to those financial interests of the plan's participants and beneficiaries. A commenter suggested deleting the clause ''or promote benefits or goals unrelated to those of financial interests of the plan's participants and beneficiaries'' from paragraph (d)(2)(ii)(C). The commenter reasoned that where a particular exercise of a shareholder right would not directly affect shareholder value, the language could be read to prohibit such exercise. Another commenter with the same request explained that the deletion would clarify that fiduciaries are not required to undertake a burdensome economic analysis before voting proxies. This commenter opined that in some cases, it may be even less expensive to cast the vote than speculate whether the vote in question ''promotes'' benefits or goals unrelated to those financial interests of the plan's participants and beneficiaries. Both commenters opined that voting under these circumstances would be allowed under a tiebreaker standard. Other commenters raised concerns regarding increased potential for litigation more generally and requested that the Department factor that potential into all decisions under the final regulation; in this context, that concern might present as a dispute over whether and the extent to which any particular vote was an affirmative ''promotion'' of an impermissible goal as opposed to a vote on a matter the outcome of which might confer an ancillary benefit on a stakeholder other than the plan.

The Department was persuaded by the commenters' suggestion to remove the clause from paragraph (d)(2)(ii)(C). On review, the Department has concluded that the clause at issue serves no independent function, in terms of adding protections to plan participants, that is not already served by paragraph (d)(2)(ii)(A) (requirement to act ''solely in accordance with the economic interests of the plan'') and the first clause of paragraph (d)(2)(ii)(C)

[75] Interpretive Bulletin 2016–01, 81 FR 95882 at 95883.

(requirement ''not to subordinate the interests of participant and beneficiaries in their retirement income or financial benefits under the plan to any other objectives'') of the final rule. In addition to being unnecessary, as pointed out by the commenters, the clause is easily misconstrued as suggesting or implying an affirmative duty on plan fiduciaries, above and beyond those duties contained in the other two paragraphs already mentioned, that requires the fiduciaries to do something further to investigate and ensure that their votes or other exercises do not promote objectives or goals unrelated the financial interests of the plan, or perform an analysis of each vote's benefit. The Department sees no reason to impose such additional duties, with their attendant costs and potential for litigation, when the other two provisions mentioned are fully adequate to protect the interests of plan participants.

The purpose of the clause was to ensure that a fiduciary does not exercise proxy voting and other shareholder rights with the goal of advancing nonpecuniary goals unrelated to the financial interests of the plan's participants and beneficiaries so long as it does not result in increased costs to the plan or a decrease in value of the investment.[76] This clause thus dovetailed with a longstanding position of the Department that ERISA prohibits plan fiduciaries from expending trust assets to promote myriad public policy preferences.[77] The final rule's removal of the clause at issue does not constitute a rejection of this principle. However, with respect to the concern that the fiduciary must determine that an exercise of shareholder rights *would directly* affect shareholder value, the Department's historical view has been that ERISA's fiduciary obligations of prudence and loyalty require the responsible fiduciary to vote proxies on issues that *may* affect the value of the plan's investment.[78] With respect to the commenters referring to the tiebreaker test, although that test is not applicable in this context, the Department further notes that when a plan fiduciary exercises voting authority, a violation of paragraph (d)(2)(ii)(C) of the final rule would not occur merely because stakeholders other than the plan would potentially benefit along with the investing plan.

Paragraph (d)(2)(ii)(D) of the final rule requires that when deciding whether to exercise shareholder rights and when exercising shareholder rights, a fiduciary must evaluate relevant facts that form the basis for any particular proxy vote or other exercise of shareholder rights. The provision is the same as proposed, except that the Department has substituted the term ''relevant'' for ''material'' for purposes of consistency throughout the regulation, as discussed above.

Paragraph (d)(2)(ii)(E) of the final rule is being adopted as proposed, and requires that a fiduciary must exercise prudence and diligence in the selection and monitoring of persons, if any, chosen to exercise shareholder rights or otherwise to advise on or assist with exercises of shareholder rights, such as providing research and analysis, recommendations regarding proxy votes, administrative services with voting proxies, and recordkeeping and reporting services. As discussed above, this provision covered obligations that were set forth in paragraphs (e)(2)(ii)(F) and (e)(2)(iii) of the current regulation. The provision is essentially a restatement of the general fiduciary obligations that apply to the selection and monitoring of plan service providers, articulated in the context of fiduciary and other service providers that exercise shareholder rights, or advise or assist with exercises of shareholder rights.

A commenter requested that the Department delete the list of services—''research and analysis, recommendations regarding proxy votes, administrative services with voting proxies, and recordkeeping and reporting services''—from the provision. The commenter was concerned that codifying an itemized list of duties that, according to the commenter, fiduciaries routinely delegate to investment managers and proxy voting firms may cause confusion or uncertainty over regulatory expectations regarding any delegation of these fiduciary responsibilities to a third party. The Department has not accepted this comment, and notes that this paragraph is focused on fiduciary duties of prudence and loyalty under ERISA section 404(a)(1)(A) and (B) in the selection and monitoring of particular service providers, and is not attempting to limit in any way the types of services that a plan or plan fiduciary may utilize in connection with exercising shareholder rights.

Another commenter requested that the Department clarify that fiduciaries are not required to monitor every proxy vote or second-guess other fiduciaries' specific proxy voting decisions, unless the fiduciary knows or should know the designated fiduciary is violating ERISA with their proxy voting procedures. Whether a fiduciary has complied with its obligations under paragraph (d)(2)(ii)(E) depends on the surrounding circumstances. The Department does not believe that a fiduciary would generally be required to monitor each vote or second-guess other fiduciaries' decisions. To the extent applicable, a fiduciary would be expected to review the proxy voting policies and/or proxy voting guidelines and the implementing activities of the person being selected to exercise votes. If a fiduciary determines that the activities of such person are not being carried out in a manner consistent with those policies and/or guidelines, then the fiduciary will be expected to take appropriate action in response.[79]

(3) Paragraph (d)(2)(iii)

Paragraph (d)(2)(iii) of the proposal stated that a fiduciary may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider without a determination that such firm or service provider's proxy voting guidelines are consistent with the fiduciary's obligations described in provisions of the regulation. This provision was based on paragraph (e)(2)(iv) of the current regulation, which was intended to address specific concerns involving fiduciaries' use of proxy advisory firms and similar service providers, including use of automatic voting mechanisms relying on proxy advisory firms.

Some commenters viewed paragraph (d)(2)(iii) as largely unnecessary because, in their view, a fiduciary's review of a service provider's proxy voting guidelines would already be required as part of the fiduciary's compliance with ERISA's prudence and loyalty requirements in the selection of a service provider. Some commenters moreover cautioned that paragraph (d)(2)(iii) could be construed as suggesting that monitoring proxy-related services demands more rigor than required to monitor other service providers. A commenter noted that the provision requires a specific determination when a fiduciary ''adopts a practice of following the recommendations of a proxy advisory firm or other service provider,'' and thus

[76] 85 FR 816658, 67 (Dec. 16, 2020).

[77] 81 FR 95879, 81 (Dec. 29, 2016) (preamble to IB 2016–01) (''The Department has rejected a construction of ERISA that would render ERISA's tight limits on the use of plan assets illusory and that would permit plan fiduciaries to expend trust assets to promote myriad public policy preferences. Rather, plan fiduciaries may not increase expenses, sacrifice investment returns, or reduce the security of plan benefits in order to promote collateral goals.''); Advisory Opinion Nos. 2008–05A (June 27, 2008) and 2007–07A (Dec. 21, 2007).

[78] *See* Interpretive Bulletin 94–2, 59 FR 38860; Interpretive Bulletin 2016–01, 81 FR 95879.

[79] *See* 85 FR 81669.

would establish an additional vague and heightened burden that is unnecessary and a potential deterrent to informed, responsible shareholder engagement.

Other commenters viewed the provisions as necessary. One commenter opined that it is crucial that ERISA fiduciaries have a full understanding of the proxy advisory firm's guidelines and recommendations before relying on their advice. In this commenter's view, robo-voting presents clear risks to participants given proxy advisory firms' one-size-fits-all policies. Another commenter expressed the view that evaluation of climate risks is extremely difficult, and criticizes proxy advisors as not being particularly well-suited to perform climate analysis. Furthermore, as described above, a number of other commenters expressed concerns about proxy advisory firms' conflicts and quality of services.

In proposing paragraph (d)(2)(iii), the Department did not propose to make any changes to requirements contained in the corresponding provision of the current regulation, paragraph (e)(2)(iii). The Department is not persuaded that any of the requirements should be eliminated or otherwise modified. We note that paragraph (d)(2)(iii) deals with a fiduciary's process for making proxy voting decisions (*i.e.,* the reliance on recommendations or advice from a service provider) and does not touch on the fiduciary's obligations with regard to the selection and monitoring of the service providers used. The provision relates to oversight obligations of fiduciaries that essentially automatically rely on a service provider in carrying out the fiduciary's own obligations.[80] We do not believe that potential misunderstandings as to fiduciary monitoring obligations with respect to providers of proxy-related services, which is addressed in paragraph (d)(2)(ii)(E) of the final rule, is sufficient to justify modification or elimination of paragraph (d)(2)(iii). As a result, paragraph (d)(2)(iii) is being adopted without change.

(c) Paragraph (d)(3)

In recognition of the appropriateness of ERISA fiduciaries' adoption of proxy voting policies to help them more cost effectively comply with their obligations under ERISA and the regulation, paragraph (d)(3) of the proposal carried forward from the current regulation general provisions relating to the adoption of proxy voting policies. The proposal did not, however, carry forward from the current regulation two ''safe harbor'' policies that could be used for satisfying the fiduciary responsibilities under ERISA with respect to decisions whether to vote. The first permitted a policy of limiting voting resources to particular types of proposals that the fiduciary has prudently determined are substantially related to the issuer's business activities or are expected to have a material effect on the value of the investment. The second permitted a policy of not voting on proposals or particular types of proposals when the plan's holding in a single issuer relative to the plan's total investment assets is below a quantitative threshold that the fiduciary prudently determines, considering its percentage ownership of the issuer and other relevant factors, is sufficiently small that the matter being voted upon is not expected to have a material effect on the investment performance of the plan's portfolio. The Department proposed rescinding these safe harbors because it lacked confidence that they were necessary or helpful in safeguarding the interests of plan participants and beneficiaries. The Department also was concerned that, in conjunction with other provisions in the current regulation, the safe harbors could be construed as regulatory permission for plans to broadly abstain from proxy voting without properly considering their interests as shareholders.

(1) Rescission of Safe Harbors From Paragraphs (e)(3)(i)(A) and (B) of the Current Regulation

The Department received a range of comments on the proposed rescission of the safe harbor policies. Some commenters agree with the Department's general concern that, by their nature safe harbors can invite adoption, which makes it important that the safe harbors be in participants' best interest. In this regard, some commenters generally asserted that the safe harbors may encourage fiduciaries to limit their proxy voting in ways that harm participants and beneficiaries. Also, without identifying a particular safe harbor, some commenters asserted that the proxy voting rule adopted in 2020 provided no justification as to how the safe harbors were consistent with ERISA's duties of loyalty and prudence. Another commenter opined that because a decision by an ERISA plan to not vote effectively cedes voting power to other shareholders, it should only be permitted on a case-by-case basis rather than pursuant to a general safe harbor to refrain from voting. One commenter opined that neither safe harbor was particularly helpful, and there is little evidence that a material number of fiduciaries are currently relying on them. Another commenter cautioned that the safe harbor provisions could be interpreted as best-practice and encourage shareholders to follow those examples, instead of their established practices in line with stated investment policies and obligations under ERISA.

Commenters also raised specific concerns on the safe harbors. With respect to the first safe harbor, a commenter expressed the view that a policy to vote only particular types of proposals, depending on the scope of the policy, may be too limited to capture all relevant proposals. Another commenter criticized the first safe harbor as being based on an unsupported premise that certain types of proxy votes are not substantially related to the issuer's business activities or are expected to have a material effect on the value of the investment. The commenter noted that many of the topics that corporate law permits shareholders to have a say on—*e.g.,* election of directors or ratification of auditors—play an important risk mitigation role, and asserted that these types of issues are often prophylactic and do not readily lend themselves to an analysis of whether they will lead to a material effect on the value of a plan investment. The commenter cautioned that the first safe harbor encouraged fiduciaries to pass on these and other proxy matters, and thus created a genuine risk to plan participants' long-term interests.

With respect to the second safe harbor, a commenter expressed concern that a policy to refrain from voting unless the plan holds a concentrated position in a company suggests that diversified investors, such as plan fiduciaries, should not have a voice in corporate decisions. Another commenter asserted that the second safe harbor was never fully explained or substantiated, and viewed it as being premised on the notion that not voting at most, or perhaps all, meetings a plan would be entitled to vote at would be in the best interest of participants.

Other commenters neither supported nor opposed elimination of the safe harbors, but emphasized that proxy voting policies in general are useful to fiduciaries in making proxy voting decisions. One commenter requested confirmation from the Department that removal of the safe harbors from the regulation would not preclude, and should not be interpreted as discouraging, the adoption of such policies in appropriate circumstances. The commenter indicated that for many types of investment strategies, limiting voting resources, for example, to those

[80] 85 FR 81671.

matters that are expected to have a material effect on the value of the investment is the prudent course of action. According to the commenter, in other cases adopting a policy to refrain from voting on proposals, or particular types of proposals, based on a prudently determined quantitative threshold could be in the best interest of plan participants and beneficiaries.

Other commenters opposed rescission of the safe harbors. A commenter stated that the safe harbors appropriately recognized instances in which proxy voting would not be expected to have economic effect. The commenter cautioned that without the safe harbors, fiduciaries find the path of least resistance in hiring proxy advisory firm to vote all proxies, which would result in promoting ESG policies and raising a variety of concerns regarding proxy advisory firms, as discussed above.

After considering the public comments, the Department is not persuaded to retain the safe harbors. Taken together, they encourage abstention as the normal course. Regulatory safe harbors tend to be widely adopted and the Department no longer believes it should be promoting abstention with these safe harbors. The Department has never taken the position that ERISA requires fiduciaries to cast a proxy vote on every ballot item. Thus, it follows that abstention or not voting on a matter or matters may be appropriate and not a violation of ERISA, from the Department's perspective. Voting rights, however, are a type of plan asset and, in the Department's view, an important tool to protect the plan's investment. The Department's longstanding view of ERISA is that proxies should be voted as part of the process of managing the plan's investment in company stock unless a responsible plan fiduciary determines voting proxies may not be in the plan's best interest (*e.g.,* in cases when voting proxies may involve out of the ordinary costs or unusual requirements, such as in the case of voting proxies on shares of certain foreign corporations).[81] This position recognizes the importance that prudent management of shareholder rights can have in enhancing the value of plan assets or protecting plan assets from risk. Finally, as to commenters' concerns about reliance on proxy advisory firms and quality of their services, the final rule also retains requirements relating to the prudent selection and monitoring of service providers to advise or assist with the exercise of shareholder rights.

(2) Provisions of Paragraph (d)(3) of the Final Rule

Paragraph (d)(3)(i) of the proposal provided that in deciding whether to vote a proxy pursuant to paragraphs (d)(2)(i) and (ii) of the proposal, fiduciaries may adopt proxy voting policies providing that the authority to vote a proxy shall be exercised pursuant to specific parameters prudently designed to serve the plan's interest in providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Proposed paragraph (d)(3)(i) was based on paragraph (e)(3)(i) of the current regulation, but as discussed above did not retain the current regulation's two safe harbor proxy voting policies. Several commenters expressed general support for the Department's recognition of the usefulness of proxy voting policies to fiduciaries. However, the Department did not receive substantive comment on this provision of the proposal, and it is being adopted without substantive modification.[82]

Paragraphs (d)(3)(ii) of the proposal required plan fiduciaries to periodically review proxy voting policies adopted pursuant to the regulation. The Department received no comments on this provision of the proposal, and it is being adopted without modification.

Paragraph (d)(3)(iii) of the proposal related to the effect of proxy voting policies adopted pursuant to the regulation, and provided that no proxy voting policies adopted pursuant to paragraph (d)(3)(i) shall preclude submitting a proxy vote when the fiduciary prudently determines that the matter being voted upon is expected to have a material effect on the value of the investment or the investment performance of the plan's portfolio (or investment performance of assets under management in the case of an investment manager) after taking into account the costs involved, or refraining from voting when the fiduciary prudently determines that the matter being voted upon is not expected to have such a material effect after taking into account the costs involved. This provision recognized that, depending on the circumstances, a fiduciary may conclude that the best interests of the plan and its participant and beneficiaries would not be served by following the plan's proxy voting policies in a particular case. In such cases, paragraph (d)(3)(iii) of the proposal ensured that a fiduciary have the needed flexibility to deviate from those policies and take a different approach. The Department received no substantive comments on this provision of the proposal, and it is being adopted without modification. One commenter requested clarification that fiduciaries are not required by this provision to conduct an analysis of each proxy vote to determine whether a fiduciary needs to deviate from the proxy voting policies. The commenter misapprehends the nature of the provision. The provision does not speak, directly or indirectly, to voting frequency or establish obligations with respect to the question of whether or how often plan fiduciaries should be voting proxies. The provision seeks to ensure that plan fiduciaries may safely deviate from the generally governing written instruments as may be needed from time-to-time in circumstances when doing so is in the best economic interest of plan participants. In this way, the provision shields a fiduciary from liability to the extent that a fiduciary deviates from written policies based on the fiduciary's conclusion that a different approach in a particular case is in the economic interests of the plan considering the facts and circumstances.

(d) Paragraph (d)(4)

Paragraphs (d)(4)(i) and (ii) of the proposal, like paragraphs (e)(4)(i) and (ii) of the current regulation, reflect longstanding positions expressed in the Department's prior Interpretive Bulletins.

(1) Paragraph (d)(4)(i)

Paragraph (d)(4)(i)(A) of the proposal stated that the responsibility for exercising shareholder rights lies exclusively with the plan trustee except to the extent that either the trustee is subject to the directions of a named fiduciary pursuant to ERISA section 403(a)(1), or the power to manage,

[81] 81 FR 95879, 81.

[82] Paragraph (d)(3)(iii) of the final rule uses the term ''*significant* effect on the value of the investment'' rather than ''material'' effect. No substantive change is intended by the revision as the Department believes that ''significant'' is generally the same as the adjective ''material'' in this context. The Department recognized this similarity in the preamble to the current regulation, but erroneously concluded then that the term ''material'' would be more familiar and helpful to ERISA plan fiduciaries. 85 FR 81658, 72 (December 16, 2020). However, as discussed above at section B1.(f) (4) of this preamble, commenters on the NPRM did not agree that the word ''material'' is a helpful term in this regulatory section because of its varied uses and meanings under accounting conventions, Federal securities laws, and other regulatory regimes. *Compare* note 44 (in other contexts, the final regulation substitutes ''material'' with ''relevant,'' but that adjective does not work well here where the focus is on the size of the impact of one thing on another thing as opposed to the closeness of connection between two things).

acquire, or dispose of the relevant assets has been delegated by a named fiduciary to one or more investment managers pursuant to ERISA section 403(a)(2). Paragraph (d)(4)(i)(B) of the proposal stated that where the authority to manage plan assets has been delegated to an investment manager pursuant to ERISA section 403(a)(2), the investment manager has exclusive authority to vote proxies or exercise other shareholder rights appurtenant to such plan assets in accordance with this section, except to the extent the plan, trust document, or investment management agreement expressly provides that the responsible named fiduciary has reserved to itself (or to another named fiduciary so authorized by the plan document) the right to direct a plan trustee regarding the exercise or management of some or all of such shareholder rights.

A commenter indicated that an increasing number of ERISA plan fiduciaries may choose to retain the ability to instruct the plan's trustee or investment manager to implement a proxy voting policy chosen by the plan fiduciary. The commenter requested that the Department add to paragraph (d)(4)(i)(B) language stating that a named fiduciary may direct an investment manager regarding the exercise or management of shareholder rights. The Department declines to adopt this commenter's request. In the Avon Letter, discussed above, the Department cautioned that ERISA contains no provision that would relieve an investment manager of fiduciary liability for any decision it made at the direction of another person. The commenter did not indicate whether it was requesting a reconsideration of this aspect of the Avon Letter, or guidance on different issues or arrangements than considered in the Avon Letter. In any event, an evaluation of issues related to the direction of a fiduciary investment manager by another person implicates provisions of ERISA, including sections 402, 403, and 405, that are beyond the scope of this rulemaking.

(2) Paragraph (d)(4)(ii)

Paragraph (d)(4)(ii) of the proposal described obligations of an investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan. The provision provides that an investment manager of such a pooled investment vehicle may be subject to an investment policy statement that conflicts with the policy of another plan. Furthermore, it provided that compliance with ERISA section 404(a)(1)(D) requires the investment manager to reconcile, insofar as possible, the conflicting policies (assuming compliance with each policy would be consistent with ERISA section 404(a)(1)(D)).[83] The provision further stated that, in the case of proxy voting, to the extent permitted by applicable law, the investment manager must vote (or abstain from voting) the relevant proxies to reflect such policies in proportion to each plan's economic interest in the pooled investment vehicle. The provision further provided that such an investment manager may, however, develop an investment policy statement consistent with Title I of ERISA and the regulation, and require participating plans to accept the investment manager's investment policy statement, including any proxy voting policy, before they are allowed to invest. In such cases, a fiduciary must assess whether the investment manager's investment policy statement and proxy voting policy are consistent with Title I of ERISA and the regulation before deciding to retain the investment manager.

The Department received a number of comments indicating generally that investment managers of pooled funds would face operational challenges in reconciling conflicting proxy voting policies of investing plans and voting in a proportional manner, as described in the beginning of proposed paragraph (d)(4)(ii). Commenters indicated that because of these challenges, most investment managers of pooled investments require investing plans to accept the investment manager's policy, which is also contemplated in the latter portions of proposed paragraph (d)(4)(ii). Some commenters suggested that paragraph (d)(4)(ii) could be improved by placing more emphasis on the current common practices that do not require proportional voting (*i.e.,* where investment managers require plans' acceptance of the managers' proxy voting policies prior to investment), and less emphasis on arrangements that require proportional voting, which these commenters believe is rare.

Some commenters requested that the Department broaden proposed paragraph (d)(4)(ii). One commenter requested modification to address the possibility that the responsible named fiduciary may choose to retain the authority to vote proxies or to direct an investment manager regarding the voting of proxies appurtenant to those plan assets that are invested in a pooled investment vehicle. Other commenters requested that the Department extend the provision to separately-managed accounts that are managed by investment managers. This suggestion appears to be based on the common practice of investment managers in single-plan separate account arrangements requiring that plans accept the managers' proxy voting policy prior to investing.

Some commenters requested that the final rule address circumstances where investment managers have not obtained consent from participating plans accepting the manager's investment policy and proxy voting policy prior to initial investment. Commenters requested that the Department allow an investment manager to rely on a ''negative consent'' procedure, such as by sending a written notice stating that plans will be deemed to have accepted the investment manager's investment policy and proxy voting policy if they continue investing with the investment manager after receiving the notice.

Another commenter suggested that the Department eliminate proposed paragraph (d)(4)(ii) in its entirety and revise proposed paragraph (d)(4)(i)(B) to explicitly cover investment managers for pooled investment vehicles that hold plan assets. According to the commenter, proposed paragraph (d)(4)(ii) could result in conflicting or misinterpreted regulatory expectations. Similar to commenters discussed above, this commenter explained that paragraph (d)(4)(ii) does not reflect current industry standard practice followed by investment managers for collective investment funds and other pooled investment vehicles that hold ERISA plan assets. In particular, it stated that it was not aware of any collective investment fund or other pooled investment vehicles that did not have their own investment objectives, guidelines, and/or policies that must be accepted as a condition for investment. The commenter further suggested that if a national bank trustee of a collective investment fund, in managing the fund's portfolio, attempts ''to reconcile, insofar as possible, the conflicting [investment] policies [of plans],'' this may inevitably favor some plans over others. The commenter raised the question as to whether this may be inconsistent with Office of the Comptroller of the Currency expectations regarding that bank's treatment of participants in a pooled investment fund.

The Department is not persuaded to remove paragraph (d)(4)(ii) from the

[83] Section 404(a)(1)(D) of ERISA provides that a fiduciary must discharge its duties with respect to the plan in accordance with the documents and instruments governing the plan insofar as such documents are consistent with the provisions of title I and title IV of ERISA. Under section 404(a)(1)(D), a fiduciary to whom an investment policy applies would be required to comply with such policy unless, for example, it would be imprudent to do so in a given instance.

final rule or make the language changes requested by commenters. Paragraph (d)(4)(ii) of the proposal is identical to paragraph (e)(4)(ii) of the current regulation, and also is similar to guidance relating to pooled investment vehicles that has been consistently part of the Department's prior Interpretive Bulletins since 1994. A number of the issues raised with respect to paragraph (d)(4)(ii) of the proposal, particularly relating to difficulties with proportional voting and industry common practices to avoid being subject to proportional voting, were also raised by commenters with respect to paragraph (e)(4)(ii) of the current regulation but not accepted by the Department. As with the current regulation, the Department declines to reorder the provisions within paragraph (d)(4)(ii) of the final rule solely to put more emphasis on the exception to the proportional voting provision. The Department does not interpret the public comments as saying that paragraph (d)(4)(ii) of the NPRM is unworkable, but rather that the popularity of the exception justifies a reorganization of the constituent parts of the paragraph to elevate the prominence of the exception to match common industry practice. The organizational structure of paragraph (d)(4)(ii) of the final rule intentionally begins with the general requirement and is followed by the exception to that requirement—a structure which has been in place for approximately four decades. The Department believes this structure to be sound and logical notwithstanding the current popularity of the exception. In addition, with respect to the commenters' more fundamental suggestions including eliminating paragraph (d)(4)(ii) in its entirety, the NPRM narrowly solicited comments on whether the provision in question should be revised to conform more closely to the Department's prior guidance.[84] These more fundamental suggestions are well beyond the scope of the solicitation in the NPRM because, if adopted, they would cause paragraph (d)(4)(ii) of the final to diverge substantially from the prior guidance. Also, as discussed above, issues relating to a named fiduciary's direction of an investment manager with respect to voting decisions implicate provisions of ERISA beyond the scope of this rulemaking. Although the Department declines to extend paragraph (d)(4)(ii) of the final rule to include managers of separately managed accounts, we note that there is nothing in ERISA that precludes an investment manager from requiring a plan fiduciary to accept the investment manager's proxy voting policies before agreeing to become a plan investment manager. With regard to requests for approval of ''negative consent'' procedure for adoption of proxy policies by plans with current investments in a pooled investment vehicle, the Department believes the later applicability date of paragraph (d)(4)(ii) should alleviate commenters' concerns.

(e) Paragraph (d)(5)

Paragraph (d)(5) of the NPRM provided that the regulation does not apply to voting, tender, and similar rights with respect to shares of stock that, pursuant to the terms of an individual account plan, are passed through to participants and beneficiaries with accounts holding such shares. The Department did not receive comments on this provision, which is being adopted as proposed. Despite this exclusion, participants and beneficiaries are not without ERISA's protections. The Department stresses that plan trustees and other fiduciaries must comply with ERISA's general statutory duties of prudence and loyalty provisions with respect to the pass through of votes to plan participants and beneficiaries. In doing so, however, plan fiduciaries may continue to rely on the Department's prior guidance with respect to such participant-directed voting, including 29 CFR 2550.404c–1 (implementing ERISA section 404(c)(1) to participant-directed pass-through voting) and interpretive letters.[85]

5. Section 2550.404a–1(e)—Definitions

Paragraph (e) of the final rule provides definitions and is unchanged from the proposal and current regulation. Under paragraph (e)(1) of the final rule, ''investment duties'' means any duties imposed upon, or assumed or undertaken by, a person in connection with the investment of plan assets which make or will make such person a fiduciary of an employee benefit plan or which are performed by such person as a fiduciary of an employee benefit plan as defined in section 3(21)(A)(i) or (ii) of ERISA. Paragraph (e)(2) defines the term ''investment course of action'' as any series or program of investments or actions related to a fiduciary's performance of the fiduciary's investment duties and includes the selection of an investment fund as a plan investment, or in the case of an individual account plan, a designated investment alternative under the plan. Paragraph (e)(3) defines ''plan'' to mean an employee benefit plan to which Title I of ERISA applies. Finally, under paragraph (e)(4) of the final rule, the term ''designated investment alternative'' means any investment alternative designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The provision further provides that the term ''designated investment alternative'' shall not include ''brokerage windows,'' ''self-directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

6. Section 2550.404a–1(f)—Severability

Paragraph (f) of the final rule, like paragraph (f) of the proposal and paragraph (h) of the current regulation, provides that should a court of competent jurisdiction hold any provision of the rule invalid, such action will not affect any other provision. Including a severability clause describes the Department's intent that any legal infirmity found with part of the final rule should not affect any other part of the rule.

7. Section 2550.404a–1(g)—Applicability Date

The proposed rule did not include an applicability date provision. Some commenters requested that the Department provide a prospective applicability date for all recent changes to the regulation (including both changes made in 2020 as well as amendments to the current regulation made today by the final rule) that is no earlier than the date that would be one year after the Department's publication of this final rule in the **Federal Register**. The commenters indicated that plan sponsors, investment managers, proxy advisory firms, and other fiduciaries need adequate time to, as necessary, review and modify their policies, procedures, and practices to conform to the final rule's requirements.

Some commenters also specifically suggested a need for transition relief or a delayed applicability date with respect to the proxy voting provisions. One commenter requested that the Department retain and extend the delayed applicability date of certain requirements of the regulation as set forth in paragraph (g)(3) of the current regulation. In general, that provision delayed until January 31, 2022, the applicability of the requirements of paragraphs (e)(2)(ii)(D) (evaluation of

[84] 86 FR 57283.

[85] *See, e.g.,* Letter from Deputy Assistant Secretary Lebowitz to Thobin Elrod (Feb. 23, 1989); Letter from Assistant Secretary Berg to Ian Lanoff (Sept. 28, 1995).

material facts that form the basis of a vote), (e)(2)(ii)(E) (maintenance of proxy voting records), (e)(2)(iv) (prohibition against adopting practice of following proxy advisory firm recommendations without determination that firm's voting guidelines consistent with requirements of regulation), and (e)(4)(ii) (responsibilities of investment managers to pooled investment vehicles holding plan assets) of the current regulation.[86] The commenter noted that investment managers to pooled investment vehicles may have delayed their implementation efforts due to the announcement in March 2021 of the Department's enforcement policy. Others pointed to difficulties faced by investment managers in assuring that investing plans had adequately adopted manager's proxy voting policies as required under paragraph (d)(4)(ii).

After consideration of the comments, the Department has decided to provide a general applicability date of 60 days after publication in the **Federal Register**, but to delay applicability of certain provisions of the final rule's proxy voting provisions until 1 year after the date of publication. The Department is persuaded that a delayed applicability of paragraph (d)(4)(ii) of the final rule is appropriate as it gives fiduciaries of plans invested in pooled investment vehicles additional time for reviewing any proxy voting policies of the investment vehicle's investment manager; and also provides investment managers additional time to determine whether investing plans have adequately adopted their proxy voting policies, as well as assessing and reconciling, insofar as possible, any conflicting policies. The Department also believes it appropriate to delay application of paragraph (d)(2)(iii) to give additional time to plan fiduciaries to review proxy voting guidelines of proxy advisory firms and make any necessary changes in their arrangements with such firms. The Department is providing for a delay of one year as requested by commenters. The Department's March 10, 2021, enforcement statement continues to apply with respect to paragraphs (d)(2)(iii) and (d)(4)(ii) until the delayed applicability date.

Thus, paragraph (g)(1) provides that except for paragraphs (d)(2)(iii) and (d)(4)(ii), the final rule will apply in its entirety to all investments made and investment courses of action taken after January 30, 2023. Paragraph (g)(2) provides that paragraphs (d)(2)(iii) and (d)(4)(ii) of the final rule will apply on December 1, 2023.

8. Miscellaneous

(a) Constitutional Concerns

A few commenters argue that the proposed rule violates the U.S. Constitution. These commenters contend that the proposal is unconstitutional because permitting fiduciaries to base their investment decisions on any non-pecuniary factors cannot be consistent with ERISA and thus rewrites the statute, which is the sole responsibility of Congress. As a result, they argue that the Department violates the separation of powers imposed by the Constitution.

The Department does not agree that the final rule rewrites ERISA or violates the Constitution. Congress has given the Secretary of Labor authority to promulgate regulations that interpret and fill up the details in the fiduciary duties under ERISA section 404, including the duties of prudence and loyalty.[87] The Department here interprets those duties to protect plan participants' financial benefits and strictly prohibits any other goal from subordinating their interests in those benefits. Nothing in the final rule permits a fiduciary, outside of a tiebreaker situation, to base investment decisions on factors irrelevant to a risk and return analysis. The Secretary has maintained these fundamental interpretive principles in its guidance, referenced earlier in this preamble, since 1980 and its first comprehensive guidance in 1994. Moreover, the principles stated in the proposed and final rule, including the tiebreaker, were fundamental aspects of that guidance.

(b) Administrative Procedure Act

In addition, some commenters asserted that the proposed rule was arbitrary and capricious and thus violated the Administrative Procedure Act (APA). The Department is of the view that the final rule comports with the APA.

Several commenters claimed that the NPRM did not engage in reasoned decision-making, did not look at all aspects of the problem, and did not properly consider the costs to participants and beneficiaries. These commenters, for instance, characterized the NPRM as arbitrarily and capriciously focused on clarifying that ERISA permits ESG considerations in plan investments at the expense of protecting participants from ESG investing ''run amok'' or violations of ERISA's duty of loyalty. One commenter contended that the NPRM was more a political action taken because of the popularity of ESG investing rather than a reflection of the current administration's concern about a problem to be addressed. Another commenter espoused that the Department's real agenda was to encourage ESG investing. Yet another asserted that the only reason this rule was being promulgated was because of an Executive order.[88] And another commenter contended that it could not give input on the Department's view of how its rule promotes retiree welfare, because, the commenter states, the agency gives no reasoning on this point.

The Department disagrees with these contentions. The final rule repeatedly emphasizes that the Department's purpose is to remedy the chilling effect of certain aspects of the 2020 rule and preamble on the consideration of ESG factors. As stated above, the final rule allows such factors to influence investment decisions *only* when relevant to a risk and return analysis or when used as a tiebreaker. By tying the final rule to the statutory language and to the fact that ESG factors may, in some circumstances, affect both returns and risk, the Department has engaged in the essence of reasoned decisionmaking. Moreover, the fact that ESG investing has increased in popularity is another reason why fiduciaries need a clarifying rule and why the Department is promulgating one. This would be the case even if the President had never issued Executive Orders 13990 and 14030. The final rule also emphatically addresses potential loyalty breaches by forbidding subordination of participants' financial benefits under the plan to ESG or any other goal and, likewise, by prohibiting fiduciaries from sacrificing investment return or taking on additional investment risk to promote benefits or goals unrelated to interests of participants and beneficiaries in their retirement or financial benefits under the plan.

A few commenters stated that the NPRM effectively placed a ''heavy thumb'' on the scale in favor of ESG factors and ignored other options, such as a policy statement or interpretive guidance. At least one commenter also claimed that the NPRM was trying to address a problem that does not exist. The Department has explained its reasons for amending the current regulation, including the chilling effect

[86] Fiduciaries that are investment advisers registered with the SEC were not able to take advantage of the delayed applicability of paragraphs (e)(2)(ii)(D) and (E). *See* 85 FR 81676.

[87] *See* 29 U.S.C. 1135 (providing that ''the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this subchapter'').

[88] E.O. 14030, 86 FR 27967 (May 25, 2021).

caused by, for example, its explicit documentation requirements for investments and the exercising of shareholder rights, and its restrictions on QDIAs, as discussed earlier in this preamble. The Department determined and received confirmation in public comments that features such as these, combined with the overall chilling tone of the current regulation (including its preamble) as it relates to financially beneficial ESG considerations, rendered interpretive guidance under the current regulation insufficient. Rather than placing a thumb on the scale, the final rule removes the current regulation's thumb against ESG strategies. It does this by simply clarifying that ESG factors may be relevant to a risk and return analysis to the same extent as any other relevant factor.

Many commenters expressed concerns that the NPRM language, as one put it, ''imposes a de facto mandate'' on retirement plan fiduciaries to consider ESG factors and declares that such a presumption would be arbitrary and capricious. The commenters referenced paragraph (b)(2)(ii)(C) of the NPRM stating that the consideration of the projected return of the portfolio relative to the plan's funding objectives ''may often require'' an evaluation of the economic effects of climate change and other ESG factors. As explained earlier in this preamble, in response to these comments, the Department recognizes that the language as drafted created a misimpression of its intent and has modified the provision to eliminate the ''may often require'' language altogether.

At least three commenters took issue with the NPRM's use of the term ''ESG''. They contended that the NPRM failed to define ''ESG'' factors and that the term ''ESG'' was too imprecise to serve as a basis for a regulatory standard. Commenters, citing to the November 2020 preamble statement that the term ''was not a clear or helpful lexicon for a regulatory standard,'' claimed the Department changed its position without acknowledging it. One commenter contended that a more precise definition was especially important given the perceived ''de facto mandate'' in the NPRM. Use of the term ESG in the NPRM was not intended to create a regulatory mandate or standard for compliance, and as stated above, the ''may often require'' provision has been removed in the final rule. Rather, it was the Department's intent to clarify that ESG factors are no different than other non-ESG relevant risk-return factors. Consequently, the final rule does not define ESG because the precision of terminology is less important than the Department's fundamental premise that fiduciaries may consider ESG factors—irrespective of the definition of the term ''ESG''—when they are relevant to a risk-return analysis to the same extent as any other relevant factor.

One commenter expressed an opinion about the Department's position on negative screening which the commenter defines as excluding certain types of investments from a portfolio based on non-economic or non-pecuniary reasons. The commenter states that the NPRM, if adopted, would change a Departmental position against negative screening, without considering a serious reliance interest on the prior position. The commenter is correct that when promulgating a change in policy, the Department must consider serious reliance interests in a prior policy. The Department never has posited, however, that ERISA imposes a blanket bar against all forms of exclusionary investments. The two Department of Labor (DOL) letters the commenter cites comport. They state that the exclusionary investment first required ''an economic analysis of economic consequences'' of the exclusion,[89] or put another way, a ''consideration of the economic and financial merit.'' [90] Both the NPRM and the final rule are fully consistent and in fact reinforce the position in these letters. Further, as stated in the preamble of the NPRM, the Department long has acknowledged, since the publication of those letters, the potential risk and return attributes of ESG criteria in fiduciary investment decisionmaking and portfolio construction. Thus, there is no change of position in this regard and no reliance interest on any former position to address.

Another commenter stated that the Department has not acknowledged or considered the cost of the risk of ''channeling'' plan assets into ESG investments given the concerns of misrepresentation highlighted by staff of Division of Examinations of the SEC in its April 2021 Risk Alert on ESG investing. The commenter concluded that the Department's NPRM, if adopted, would be arbitrary and capricious, in part, because of its failure to acknowledge the profound effect of the risk of misrepresentation. This final rule is not intended to channel assets into any particular type of investment. Rather, the intent of the final rule is simply to remove barriers to the fiduciary's consideration of all financially relevant factors, which may include ESG, as part of a prudent and loyal process of investment decisionmaking. The Department anticipates that fiduciaries will give careful consideration in a meaningful comparison and selection process of ESG investments just as they do with any other type of investment.

The Department also disagrees with the comment that it prejudged the outcome of this rule. Offering a proposed solution to a problem is the foundation of notice and comment rulemaking. Under the APA, policymakers are required to solicit comments on the problem and its proposed solution and to adequately review those comments in the development of the final rule. The changes made to the NPRM in this final rule demonstrate that the Department has not prejudged the rule's outcome. Substantive changes in response to public comments include the elimination of the language that the evaluation of investments ''may often require'' consideration of ESG factors, the elimination of the list of ESG examples from the regulatory text, and removal of the collateral benefit disclosure requirement.

Some commenters added that the Department failed to identify which investors the 2020 rule confused and did not produce data showing that consideration of ESG factors will sustain or increase plan returns—returns one commenter called ''phantom benefits.'' As amply explained in both the NPRM preamble and here, and as reflected by the Department's longstanding Investment Duties regulation, ensuring that determinations are based on relevant risk and return factors, which may include the economic effects of climate change and other ESG factors, will serve the retirement participants and beneficiaries' financial interests. The Department believes, and many commenters confirmed, the current regulation causes an unwanted chilling effect on the use of climate change and other ESG factors, and therefore is a barrier to that consideration. The Department is not required to produce a record of extensive and detailed data showing the extent to which ESG considerations will grow retirement accounts. The final rule does not require fiduciaries to consider ESG factors to a different extent than any other factors that the fiduciary reasonably determines are relevant to a risk and return analysis. Nor does the APA require the Department to specifically identify investors who were confused by or chilled by the current regulation. As

[89] Letter to the Honorable Howard M. Metzenbaum from Assistant Secretary Dennis Kass (May 27, 1986).

[90] Letter to Daniel O'Sullivan from Jeffrey Clayton (Aug. 2, 1982).

previously stated, many commenters—whose identity is public—indicated this concern.

Multiple commenters also questioned the quantitative support for the Department's position. For instance, some commenters contended that the Department's claims about climate change were unsubstantiated. The Department believes it has made reasonable efforts to quantify all aspects of the final rule, and their potential effects, for which data is available. The Department also notes that efforts have been made to qualitatively address those areas where the Department is unable to adequately derive quantitative assessments. Further, the preamble to this final rule (as well as the proposed rule) adequately cites to research supporting the Department's views. Responses to these and related additional comments are discussed later in the Regulatory Impact Analysis (RIA) section of this preamble.

Finally, one commenter asserts *Chevron* deference does not apply to the NPRM because, if adopted, it would be a ''major question'' in the sense that it would constitute a ''decision of vast political and economic significance'' and ''in the realm of climate.'' The final rule does not represent one of the rare ''extraordinary cases'' for which the major questions doctrine compels a ''different approach'' to analyzing agency authority.[91] Indeed, far from representing a ''transformative expansion in [the agency's] regulatory authority,'' [92] the Department has for decades issued guidance addressing how fiduciaries, compliant with ERISA's prudence and loyalty duties, may or may not incorporate various factors into investment and shareholder rights decisions. And even if the major questions doctrine did apply, Congress has provided clear authorization to issue the final rule, including by authorizing the Secretary to ''prescribe such regulations as he finds necessary or appropriate to carry out the provisions of'' the subchapter encompassing fiduciary responsibilities.[93]

Finally, as stated in the NPRM, this final rule does not undermine serious reliance interests on the part of fiduciaries selecting investments and investment courses of action or exercising shareholder rights.[94] This final rule does not upend longstanding standards governing the selection of investments and investment courses of action or the exercise of shareholder rights. Instead, it addresses new policies included in a recently promulgated regulation. Further, the Department stayed its enforcement of the current regulation shortly after its effective date and before all portions were applicable. Consequently, the Department concludes any serious reliance interest in the changes introduced by the current regulation in 2020 is unlikely and does not outweigh the Department's good reasons for change.

IV. Regulatory Impact Analysis

This section of the preamble analyzes the regulatory impact of the final rule in 29 CFR 2550.404a–1. As explained earlier in this preamble, the final rule clarifies the legal standard imposed by sections 404(a)(1)(A) and 404(a)(1)(B) of ERISA with respect to the selection of a plan investment or, in the case of an ERISA section 404(c) plan or other individual account plan, a designated investment alternative under the plan, and with respect to the exercise of shareholder rights, including proxy voting.

The primary benefit of the final rule is to clarify legal standards and prevent confusion among stakeholders. The Department has heard from stakeholders that the current regulation, and investor confusion related to the regulation, has had a chilling effect on appropriate use of climate change and other ESG factors in investment decisions, even in circumstances allowed by the current regulation. Based on stakeholder feedback, the Department has determined that aspects of the current regulation could deter plan fiduciaries from: (a) taking into account climate change and other ESG factors when they are relevant to a risk and return analysis, and (b) engaging in proxy voting and other exercises of shareholder rights when doing so is in the plan's best interest. If these concerns with the current regulation were left unaddressed, the regulation would have (a) a negative impact on plans' financial performance as they avoid using climate change and other ESG considerations in investment analysis even when directly relevant to the financial merits of the investment, and (b) a negative impact on plans' financial performance as they shy away from proxy votes and shareholder engagement activities that are economically relevant. The final rule's clarification of the relevant legal standards is intended to address these negative impacts.

The final rule provides cost savings by eliminating the current regulation's special documentation provisions pertaining to the tiebreaker and eliminating its proxy voting safe harbors. In the impact analysis for the current regulation, the Department had estimated that these provisions would impose a regulatory burden. Other benefits include clarifying the tiebreaker standard and clarifying the standards governing QDIAs. All benefits of the amendments are discussed below in section IV.D. As discussed in section IV.E, the final rule will impose costs; however, the costs are expected to be relatively small. Overall, the Department anticipates that the final rule's benefits justify its costs.

The Department has examined the effects of this final rule as required by Executive Order 12866,[95] Executive Order 13563,[96] the Congressional Review Act,[97] the Paperwork Reduction Act of 1995,[98] the Regulatory Flexibility Act,[99] section 202 of the Unfunded Mandates Reform Act of 1995,[100] and Executive Order 13132.[101]

A. Executive Orders 12866 and 13563

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

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by

[91] *West Virginia* v. *EPA,* 142 S. Ct. 2587, 2608 (2022) (quoting *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 159 (2000)).

[92] *Id.* (quoting *Utility Air Regul. Grp.* v. *EPA,* 573 U.S. 302, 324 (2014)).

[93] 29 U.S.C. 1135.

[94] 85 FR 57272, 57283 (Oct. 14, 2021).

[95] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[96] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

[97] 5 U.S.C. 804(2) (1996).

[98] 44 U.S.C. 3506(c)(2)(A) (1995).

[99] 5 U.S.C. 601 *et seq.* (1980).

[100] 2 U.S.C. 1501 *et seq.* (1995).

[101] Federalism, 64 FR 43255 (Aug. 10, 1999).

another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. OMB has determined that this final rule is economically significant within the meaning of section 3(f)(1) of Executive Order 12866. Given the large scale of investments held by covered plans, approximately $12.0 trillion, changes in investment decisions and/or plan performance may result in changes in returns in excess of $100 million in a given year.[102] Therefore, below the Department provides an assessment of the potential costs, benefits, and transfers associated with the final rule.

B. Introduction and Need for Regulation

In late 2020, the Department published two final rules dealing with the selection of plan investments and the exercise of shareholder rights, including proxy voting. The Department intended to provide clarity and certainty to plan fiduciaries regarding their legal duties under ERISA section 404 in connection with making plan investments and for exercising shareholder rights. The Department was also concerned that some investment products may be marketed to ERISA fiduciaries based on purported benefits and goals unrelated to financial performance.

Before issuing the 2020 regulation, the Department had periodically issued guidance pertaining to the application of ERISA's fiduciary rules to plan investment decisions that are based, in whole or part, on factors unrelated to financial performance. This nonregulatory guidance consisted of varied statements that led to confusion. Accordingly, the 2020 regulation was intended to provide clarity and certainty regarding the scope of fiduciary duties surrounding such issues.

Responses to the 2020 rules, however, suggest that they may have inadvertently caused more confusion than clarity. Many stakeholders told the Department that the terms and tone of the final rules and preambles increased concerns and uncertainty about the extent to which plan fiduciaries may consider climate change and other ESG factors in their investment decisions, and that the 2020 rules had chilling effects that would tend to deter consideration of ESG factors and that were contrary to the interests of participants and beneficiaries. Consequently, on March 10, 2021, the Department announced that it would stay enforcement of the 2020 rules pending a complete review of the matter. Subsequently, on May 20, 2021, the President issued Executive Order 14030, entitled ''Executive Order on Climate-Related Financial Risk.'' Section 4 of the Executive order directs the Department to consider suspending, revising, or rescinding any rules from the prior administration that would have barred plan fiduciaries (and their investment-firm service providers) from considering climate change and other ESG factors in their investment decisions related to workers' pensions.[103] In light of the foregoing confusion among stakeholders, the Department concluded that additional notice and comment rulemaking was necessary to safeguard the interests of participants and beneficiaries in their retirement and welfare plan benefits.

The baseline for purposes of the analysis is a future in which the current regulations are implemented. The baseline does not take into account the fact that the Department stayed enforcement of the current regulations pursuant to the March 10, 2021, enforcement policy, which was after their effective date in January 2021 but before their full applicability date.[104]

C. Affected Entities

The clarifications in the final rule will affect subsets of ERISA-covered plans and their participants and beneficiaries. The subset of plans affected by the proposed modifications of paragraphs (b) and (c) of § 2550.404a–1 include those plans whose fiduciaries consider or will begin considering climate change and other ESG factors when selecting investments and the participants in those plans. Based on the sources below, the Department estimates that about 20 percent of plans will be affected by this final rule.

Another subset of affected plans includes ERISA-covered plans (pension, health, and other welfare) that hold shares of corporate stock. This subset of plans will be affected by the proposed modifications to paragraph (d) (relating to proxy voting) of § 2550.404a–1. Some plans will be in both subsets, some in only one subset, and some in neither. There is substantial uncertainty about the number and size of affected plans.

1. Subset of Plans Affected by Proposed Modifications of Paragraphs (b) and (c) of § 2550.404a–1

The Department estimates that 20 percent of plans, both defined contribution (DC) and defined benefit (DB), will be affected by the proposed modifications of paragraphs (b) and (c) of § 2550.404a–1 because their fiduciaries consider or will begin considering climate change or other ESG factors when selecting investments. The administrative data and surveys relied upon for this estimate are discussed below.

According to a survey by the NEPC, LLC (2018), approximately 12 percent of private pension plans (both DB and DC) have adopted ESG investing.[105] A survey conducted by the Callan Institute (2021), which included a greater share of DB plans, found that about 20 percent of private sector pension plans consider ESG factors in investment decisions.[106] In a comment letter on the NPRM, Morningstar estimates that approximately 36 percent of large plans (with at least 100 participants) use ESG information to consider their investments. Their analysis is based on whether a fund's prospectus references considering ESG information when selecting securities. It includes both DB and DC plans.

To focus on ESG investing by participant-directed defined contribution plans, the Department draws from several sources. According to the Plan Sponsor Council of America (PSCA, 2021), about 5 percent of 401(k) and/or profit-sharing ERISA plans offered at least one ESG-themed

[102] EBSA projected ERISA covered pension, welfare, and total assets based on the 2020 Form 5500 filings with the U.S. Department of Labor (DOL), reported SIMPLE assets from the Investment Company Institute (ICI) Report: The U.S. Retirement Market, Second Quarter 2022, and the Federal Reserve Board's Financial Accounts of the United States Z1 September 9, 2022.

[103] *See* White House Fact Sheet titled *FACT SHEET: President Biden Directs Agencies to Analyze and Mitigate the Risk Climate Change Poses to Homeowners and Consumers, Businesses and Workers, and the Financial System and Federal Government Itself* (May 20, 2021) (stating, ''The Executive Order directs the Labor Secretary to consider suspending, revising, or rescinding any rules from the prior administration that would have barred investment firms from considering environmental, social and governance factors, including climate-related risks, in their investment decisions related to workers' pensions.'').

[104] U.S. Department of Labor Statement Regarding Enforcement of its Final Rules on ESG Investments and Proxy Voting by Employee Benefit Plans (Mar. 10, 2021), available at *www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/erisa/statement-on-enforcement-of-final-rules-on-esg-investments-and-proxy-voting.pdf.*

[105] Brad Smith and Kelly Regan, *NEPC ESG Survey: A Profile of Corporate & Healthcare Plan Decisionmakers' Perspectives,* NEPC (Jul. 11, 2018), *https://cdn2.hubspot.net/hubfs/2529352/files/2018%2007%20NEPC%20ESG%20Survey%20Results%20.pdf.*

[106] *2021 ESG Survey,* Callan Institute (2021), *https://www.callan.com/e508ca6d-4014-4c99-b0aa-9fb15170bb18.*

investment option in 2020.[107] The PSCA survey was cited by several commenters on the NPRM. NEPC (2022) surveyed DC plans, the vast majority of which were in the private sector, and found that 6 percent of DC plans in 2020 had at least one fund labeled as ''socially responsible'' or ''ESG.'' [108] Vanguard's administrative data for 2021 indicated that approximately 13 percent of DC plans offered one or more ''socially responsible'' funds.[109] Moreover, about 30 percent of participants were offered at least one ''socially responsible'' fund, and of those participants, 6 percent were using these funds. In a comment letter received on the 2020 NPRM *Financial Factors in Selecting Plan Investments,* Fidelity Investments reported that approximately 14.5 percent of corporate DC plans with fewer than 50 participants offered an ESG option, and that the figure is higher for large plans with at least 1,000 participants.

While survey and administrative data is the best information available, it is not perfect. For instance, a plan fiduciary responding to a survey likely bases their answer on whether the plan offers an investment with a name indicating it is a ''sustainable'' fund or with advertising emphasizing that it pursues ESG. If the plan offers a fund that does not have these characteristics, even if the asset manager factors in ESG information, the plan fiduciary may not be aware of this and would respond to a survey by saying the plan does not consider any ESG factors. To the degree this situation occurs, it would lead to survey data that underestimate the consideration of ESG factors.

It is also likely that ESG investing will increase in the future. Many of the sources above show increases in ESG investing in recent years, and a trend towards ESG investing has also been observed in the wider universe of all investors. A study from Morningstar (2021) shows that between 2018 and 2020, assets under management in sustainable funds increased over three hundred percent.[110] Additionally, U.S. SIF (2020) estimates that U.S.-domiciled assets under management using sustainable investing strategies reached $17.1 trillion at the start of 2020, an increase of 42 percent since 2018.[111] The Deloitte Center for Financial Services (2020) estimates that assets under management with mandates related to ESG factors could comprise half of all professionally managed investments in the U.S. by 2025. This study also finds investment managers are likely to launch up to 200 new ESG funds by 2023, more than double the activity in the previous three years.[112]

The Department received several comments and resources exploring the perception of ESG investing from investors. A survey of individual investors by the Morgan Stanley Institute for Sustainable Investing (2019) finds that 85 percent of investors overall, and 95 percent of millennial investors, are interested in sustainable investing. About 88 percent of all surveyed investors are ''very'' or ''somewhat'' interested in pursuing sustainable investing in 401(k) plans.[113] A survey of consumers between ages 45 and 75 by Schroders (2021) found that 90 percent said that ''they invested in ESG options when they were aware of their availability in their DC plan.'' Of those who said their plans did not offer ESG investment options or did not know, 69 percent said they would increase their overall contribution rate if they were offered an ESG option.[114] A survey conducted by CNBC (2021) finds that ''about one-third of millennials often or exclusively use investments that take ESG factors into account, compared to 19 percent of Gen Z, 16 percent of Gen X, and 2 percent of Baby Boomers.'' [115] A study by Natixis finds that ''7 in 10 individual investors believe it is important to make a positive social impact through their investments.'' [116]

These studies suggest that investor demand for ESG is strong and is poised to increase, given the preferences of younger investors. Taking into account likely future growth, the Department's best estimate of the share of plans that will be affected by the final rule is 20 percent. This is an increase from the 11 percent estimate in the NPRM; the Department increased the estimate based on updated data, comment letters, and to account for future growth. This is an overall estimate, and it is unclear how the share affected may vary between DB and DC plans. An estimate of 20 percent of plans means that approximately 149,300 plans will be affected.[117] The Department estimates that more than 28.5 million participants belong to plans that will be affected.[118] The proportion of plan assets actually invested in ESG options, however, may be much less than 20 percent; the PSCA survey indicates that the average participant-directed DC plan has approximately 0.03 percent of its assets invested in ESG funds in 2020.[119]

2. Subset of Plans Affected by the Modifications to Paragraph (d) of § 2550.404a–1

The final rule, at paragraph (d), will codify longstanding principles of prudence and loyalty applicable to the exercise of shareholder rights, including proxy voting, the use of written proxy voting policies and guidelines, and the selection and monitoring of proxy advisory firms. In particular, paragraph (d) of the final rule will adopt the Department's longstanding position, which was first issued in guidance in the 1980s, that the fiduciary act of managing plan assets includes the management of voting rights (as well as other shareholder rights) appurtenant to shares of stock. Paragraph (d) of the final rule also eliminates the two safe harbors from paragraphs (d)(3)(i)(A) and (B) of § 2550.404a–1.

Under paragraph (d) of the final rule, when deciding whether to exercise shareholder rights and how to exercise

[107] *64th Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2021).

[108] *NEPC 2021 Defined Contribution Plan Trends and Fee Survey Results,* NEPC (February 2022).

[109] *How America Saves 2022,* Vanguard (June 2022), *https://institutional.vanguard.com/content/dam/inst/vanguard-has/insights-pdfs/22_TL_HAS_FullReport_2022.pdf.*

[110] Morningstar, ''Sustainable Funds U.S. Landscape Report: More Funds, More Flows, and Impressive Returns in 2020'' (February 10, 2021), *https://www.morningstar.com/lp/sustainable-funds-landscape-report.*

[111] US SIF, ''US SIF Trends Report Executive Summary: Report on US Sustainable and Impact Investing Trends 2020,'' *https://www.ussif.org/files/US%20SIF%20Trends%20Report%202020%20Executive%20Summary.pdf.*

[112] Sean Collins and Kristen Sullivan, ''Advancing Environmental, Social, and Governance Investing: A Holistic approach for Investment Management Firms'' (February 2020), *https://www2.deloitte.com/us/en/insights/industry/financial-services/esg-investing-performance.html.*

[113] Morgan Stanley Institute for Sustainable Investing, ''Sustainable Signals: Individual Investor Interest Driven by Impact, Conviction, and Choice'' (2019), *https://www.morganstanley.com/pub/content/dam/msdotcom/infographics/sustainable-investing/Sustainable_Signals_Individual_Investor_White_Paper_Final.pdf.*

[114] Schroders, ''Schroders US Retirement Survey Results—2021,'' *https://www.schroders.com/en/us/defined-contribution/dc/retirement-survey-2021.*

[115] Alicia Adamczyk, ''Millennials Spurred Growth in Sustainable Investing for Years. Now All Generations are Interested in ESG Options,'' CNBC (May 2021), *https://www.cnbc.com/2021/05/21/millennials-spurred-growth-in-esg-investing-now-all-ages-are-on-board.html.*

[116] Natixis, ''ESG Investing Survey: Investors Want the Best of Both Worlds,'' (2019), *https://www.im.natixis.com/us/research/esg-investing-report-2019.*

[117] This estimate is calculated as: 20% × 746,610 pension plans = 149,322 pension plans, rounded to 149,300. (*Source Private Pension Plan Bulletin: Abstract of 2020 Form 5500 Annual Reports,* Employee Benefits Security Administration (2022; forthcoming), Table B1.)

[118] *Id.* This estimate is calculated as: 20% × 142.3 = 28.5 million total participants.

[119] *64th Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2021).

such rights, including the voting of proxies, fiduciaries must carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefit to participants and beneficiaries and defraying the reasonable expenses of administering the plan. An assessment of affected parties follows, but the Department believes that the estimate of affected plans is likely an overestimate.

Paragraph (d) of the final rule will affect ERISA-covered pension, health, and other welfare plans that hold shares of corporate stock. It will affect plans with respect to stocks that they hold directly, as well as with respect to stocks they hold through ERISA-covered intermediaries, such as common trusts, master trusts, pooled separate accounts, and 103–12 investment entities. Paragraph (d) will not affect plans with respect to stock held through registered investment companies, such as mutual funds, because it will not apply to such funds' internal management of such underlying investments. Paragraph (d) of the final rule also will not apply to voting, tender, and similar rights with respect to securities that are passed through pursuant to the terms of an individual account plan to participants and beneficiaries with accounts holding such securities.

ERISA-covered plans annually report data on their asset holdings. However, only plans that file the Form 5500 schedule H report their stock holdings as a separate line item (see Table 1). Most plans filing schedule H have 100 or more participants (large plans).[120] All plans with employer stock report their holdings on either schedule H or schedule I. However, schedule I lacks the specificity to determine if small plans hold employer stock or other employer securities. Approximately 25,900 defined contribution plans and 4,600 defined benefit plans, with approximately 83.6 million participants, filed the schedule H in 2020 and report holding common stocks or are an Employee Stock Ownership Plan (ESOP). Additionally, 518 health and other welfare plans file the schedule H and report holding common stocks either directly or indirectly. In total, pension plans and welfare plans filing schedule H hold approximately $2.4 trillion in common stock value. Common stocks constitute about 28 percent of total assets of those pension plans that are not ESOPs and hold common stock. Out of the 24,100 pension plans that hold common stock and are not ESOPs, about 19,300 plans hold common stock through an ERISA-covered intermediary and approximately 3,300 plans hold common stock directly. A smaller number of plans hold stock both directly and indirectly.[121] In total, information is available on approximately 30,500 pension plans, welfare plans, and ESOPs that hold either common stock or employer stock.

TABLE 1—NUMBER OF PENSION AND WELFARE PLANS REPORTING HOLDING COMMON STOCKS OR ESOP BY TYPE OF PLAN, 2020 [a]

Common stock (no employer securities)	Defined benefit	Defined contribution	Total pension plans	Welfare plans	Total all plans
Direct Holdings Only	1,059	2,228	3,288	517	3,805
Indirect Holdings Only	2,649	16,691	19,340	.....	19,340
Both Direct and Indirect	849	645	1,494	1	1,495
Total	4,558	19,564	24,122	518	24,640
ESOP (No Common Stock)	.....	5,809	5,809	.....	5,809
Common Stock and ESOP	.....	574	574	.....	574
Total All Plans Holding Stocks	4,558	25,947	30,505	518	31,023

[a] DOL calculations from the 2020 Form 5500 Pension Research Files.

There are approximately 652,900 small pension plans that hold assets that could be invested in stock.[122] Given that fewer than 1 percent of small plans file a Schedule H, there is minimal data available about small plans' stock holdings. While most participants and assets are in large plans, most plans are small plans. The Department lacks sufficient data to estimate the number of small plans that hold stock, but the Department expects that many small plans are only exposed to stock through mutual funds and consequently will not be significantly affected by paragraph (d) of the final rule. For purposes of estimating the number of small plans that will be affected, the Department assumes that five percent of small plans, or approximately 32,600 small pension plans, hold stock.[123] In the NPRM, the Department solicited comments on the impact of small plans holding stock only through mutual funds and on the assumption that five percent of small plans hold stock. No comments were received in response to either inquiry.

The combined effect of these assumptions is an estimate of 63,700 plans, large and small, that will be affected by the final rule pertaining to proxy voting.[124]

While paragraph (d) of this final rule will directly affect ERISA-covered plans that possess the relevant shareholder rights, the activities covered under paragraph (d) will be carried out by responsible fiduciaries on plans' behalf.

[120] 487 plans with less than 100 participants filed the Form 5500 schedule H and reported holding common stock.

[121] DOL estimates from the 2020 Form 5500 Pension Research Files.

[122] The Form 5500 does not require these plans to categorize the assets as common stock, so the Department does not know if they hold stock. (*Source Private Pension Plan Bulletin: Abstract of 2020 Form 5500 Annual Reports,* Employee Benefits Security Administration (2022; forthcoming), Table B1.)

[123] This estimate is calculated as 652,935 pension plans × 5% = 32,647 plans, rounded to 32,600. To assess the reasonableness of the five percent estimate, the Department looked at the number of pension plans filing the 2020 Form 5500, just above the threshold (100 participants) for needing to file the schedule H. Common stock or employer stock in an ESOP was held by eight percent of pension plans with 100 participants up to 109 participants. Common stock or employer stock in an ESOP was held by twelve percent of pension plans with 110 participants up to 119 participants. While both percentages are above five percent, the percentage falls as the plan size decreases, suggesting that five percent is a reasonable estimate of the percent of small plans holding common stock or employer stock in an ESOP.

[124] This estimate is calculated as 30,505 large pension plans holding common stock or employer stock + 518 large health or welfare plans holding common stock or employer stock + 32,647 small pension plans holding stock = 63,670 plans rounded to 63,700.

Many plans hire asset managers to carry out fiduciary asset management functions, including proxy voting. The Department estimates that large ERISA plans use approximately 17,600 different service providers, some of whom provide services related to the exercise of plans' shareholder rights.[125] Such service providers include trustees, trust companies, banks, investment advisers, investment managers, and proxy advisory firms.[126] Asset managers hired as fiduciaries to carry out proxy voting functions will be subject to the final rule to the same extent as a plan trustee or named fiduciary. The final rule could indirectly affect proxy advisory firms to the extent that plan fiduciaries opt for customized recommendations about which proxy proposals to vote or how they should cast their vote. Plans' preferences for proxy advice services moreover could shift to prioritize services offering more rigorous and impartial recommendations. These effects may be more muted, however; recent rule amendments by the Securities and Exchange Commission (SEC) may enhance the transparency, accuracy, and completeness of the information provided to clients of proxy advisory firms in connection with proxy voting decisions.[127]

D. Benefits

The final rule will clarify the legal standard imposed by sections 404(a)(1)(A) and 404(a)(1)(B) of ERISA with respect to the selection of a plan investment or investment course of action, and the exercise of shareholder rights, including proxy voting. As indicated above, the final rule will benefit plans by making clear that plan fiduciaries are permitted to consider risk and return ESG factors and to exercise shareholder rights that may enhance the value of plan investments. The Department is concerned that the current regulation dissuades plan fiduciaries from such considerations and activities even when they are financially relevant to the plan. Prior to the NPRM, stakeholders told the Department that the current regulation had already had a chilling effect on appropriate use of ESG factors in investment decisions. Acting on relevant ESG factors in a manner consistent with the final rule will redound to the benefit of employee benefit plans, participants, and beneficiaries covered by ERISA. The public provided many comments about the proposal and cited many studies and reports which have helped the Department to assess what the effects of the rule will be. The literature examined by the Department generally shows that the consideration of ESG factors can be beneficial to investing in many circumstances. The Department anticipates that the benefits of this final rule will be significant.

1. Benefits of Paragraphs (b) and (c)

Paragraph (b) of the final rule addresses ERISA section 404(a)(1)(B)'s duty of prudence and clarifies how that duty applies to a fiduciary's consideration of an investment or investment course of action. Paragraphs (b)(1) through (3) of the final rule carry forward much of the same regulatory language that has been in place since 1979. The preservation of settled law should minimize new costs attributable to the final rule.

Paragraph (b)(4) addresses uncertainty under the current regulation as to whether a fiduciary may consider ESG factors in making investment decisions under ERISA. This paragraph clarifies that when selecting an investment or investment course of action plan fiduciaries must base their determination on factors that the fiduciary reasonably determines are relevant to a risk and return analysis. Paragraph (b)(4) further clarifies that risk and return factors may, depending on particular facts and circumstances, include the economic effects of climate change and other ESG factors. The intent of this paragraph is to establish that ESG factors that may be relevant in a risk-return analysis of an investment do not need to be treated differently than other relevant investment factors, and to remove prejudice to the contrary contained in the current regulation. When relevant to a risk and return analysis of an investment, ESG factors may be weighted and factored into investment decisions alongside other relevant factors, as prudently determined by the fiduciary.

For the sake of clarity and to eliminate any doubt caused by the current regulation, the preamble further explains paragraph (b)(4) by providing examples of factors that may be relevant to a fiduciary's risk and return analysis depending on the particular facts and circumstances. For example, such factors may include: (i) climate change-related factors, such as a corporation's exposure to the real and potential economic effects of climate change, including exposure to the physical and transitional risks of climate change and the positive or negative effects of government regulations and policies related to climate change; (ii) governance factors, such as those involving board composition, executive compensation, transparency and accountability in corporate decision-making, as well as a corporation's avoidance of criminal liability and compliance with labor, employment, environmental, tax, and other applicable laws and regulations; and (iii) workforce practices, including the corporation's progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention; its investment in training to develop its workforce's skill; equal employment opportunity; and labor relations.

To its list of examples in section III.B.1.(f)(2) of this preamble the Department added other examples to emphasize that the examples are merely illustrative, and not intended to limit a fiduciary's discretion to identify factors that are relevant to its risk/return analysis of any particular investment or investment course of action. This expansion of examples is intended to avoid regulatory bias and not favor particular investments or investment strategies. As paragraph (b)(4) explicitly states, whether any particular factor is relevant to a risk and return analysis depends upon the individual facts and circumstances.

Paragraph (c)(1) of the final rule addresses the application of the duty of loyalty under ERISA as applied to a fiduciary's consideration of an

[125] DOL estimates are derived from the historical Form 5500 Schedule C data. This value reflects the number of entities that have ever been reported with the service codes associated with trustees (individual, bank, trust company, or similar financial institution), plan investment advisory, or investment management.

[126] A commenter on the proposal for the 2020 rule shared results from a proprietary survey of the largest pension funds and defined contribution plans. The survey finds that approximately 92 percent of the respondents indicated that they have formally delegated proxy voting responsibilities to another named fiduciary and approximately 42 percent of respondents engage a proxy advisory firm (directly or indirectly) to help with voting some or all proxies.

[127] In September 2019, the SEC issued an interpretation and guidance addressing the application of the proxy rules to proxy voting advice businesses. (*See* 84 FR 47416). In July of 2020, the SEC adopted amendments to 17 CFR 240.14a–1(l), 240.14a–2(b), and 240.14a–9 concerning proxy voting advice (the ''2020 Rule Amendments''). (*See* 85 FR 55082) On June 1, 2021, SEC Chair Gary Gensler directed SEC staff to consider whether to recommend further regulatory action regarding proxy voting advice. SEC staff were asked to consider whether to recommend that the SEC revisit its 2020 codification of the definition of solicitation as encompassing proxy voting advice, the 2019 Interpretation and Guidance regarding that definition, and the conditions on exemptions from the information and filing requirements in the 2020 Rule Amendments, among other matters. In July, 2022, the SEC adopted final amendments that, among other things, rescinded certain conditions that were adopted in the 2020 Rule Amendments to the availability of certain exemptions from the information and filing requirements of the Federal proxy rules for proxy advisory firms. (*See* 87 FR 43168)

investment or investment course of action. The primary benefit of this provision to plan participants and beneficiaries is that it clarifies in no uncertain terms that a plan fiduciary may not subordinate the interests of participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to the interests of participants and beneficiaries in their retirement income or financial benefits under the plan. By ensuring that plan fiduciaries may not sacrifice investment returns or take on additional investment risk to promote unrelated goals, paragraph (c)(1) protects the investment returns that accrue to participants and sponsors of ERISA-covered plans. Over the years, the Department has stated this bedrock principle of loyalty many times in non-regulatory guidance, and this final rule, like the current regulation, incorporates the principle directly into title 29 of the Code of Federal Regulations. This incorporation will result in a higher degree of permanency and certainty for plan fiduciaries, relative to periodic restatements in non-regulatory guidance, and as such is considered a benefit.

Much of the anticipated economic benefits under this final rule is derived from paragraph (b)(4) of the final rule and the examples earlier in section III.B.1.(f)(2) of this preamble and the clarity they provide to plan fiduciaries. In the Department's view, and consistent with the comments of the concerned stakeholders mentioned above, the examples in the preamble should overcome unwarranted concerns about investing in ESG-themed funds that are economically advantageous to plans. Removing this uncertainty is considered a primary benefit of this final rule.

Two comments on the proposal argued against the Department's assertion that the current regulation has had a chilling effect. One argued that the Department did not articulate what confusion it had created, while the other said the Department had failed to demonstrate that it had a negative impact.

However, many comments on the NPRM agreed with the Department's assessment of the impact of the 2020 rule, noting the 2020 rule created confusion on whether ERISA fiduciaries should incorporate ESG factors into their decision-making and that this confusion created a chilling effect. One comment states that the 2020 rule had introduced ''significant uncertainty'' and ''potential legal liability'' for fiduciaries making investment decisions. Some of the commenters assert that the documentation requirement in the 2020 rule could chill investments in ESG assets. According to Lipton (2020), under the 2020 rule it would be harder for 401(k) plans to offer ESG investment options and fewer plan participants would have access to these options.[128] According to the United Nations Principles for Responsible Investment, the uncertainty in how considerations of ESG factors fall within the legal standard of ERISA has precluded plan fiduciaries from considering ESG factors within their investment analysis.[129] Avoiding the chilling effects described by these comments and reports will be a benefit to participants and beneficiaries.

As described in the preamble, paragraph (c)(2) of the final rule will replace the tiebreaker provision in the current regulation with a formulation that is intended to be broader. Paragraph (c)(2) provides that if a fiduciary prudently concludes that competing investments or investment courses of action equally serve the financial interests of the plan over the appropriate time horizon, the fiduciary is not prohibited from selecting the investment, or investment course of action, based on collateral benefits other than investment returns. Paragraph (c)(2) of the final rule will not carry forward the documentation requirements contained in paragraphs (c)(2)(i) through (iii) of the current regulation.

Commenters said these requirements are burdensome and have the effect of singling out ESG investments for special scrutiny. Stakeholders point to these special, heightened documentation provisions as casting an unnecessarily negative shadow on investments or investment courses of action that are prudent. Paragraph (c)(2) of the final rule permits fiduciaries to take into account an investment's potential collateral benefits, including potential increases in plan contributions, to break a tie. The Department received several comments citing research that increased access to ESG investment could increase contributions to retirement plans. Avoiding unnecessarily burdensome documentation and clarifying the extent to which fiduciaries may factor in collateral benefits to break ties are benefits of the final rule.

Several commenters supported the proposed changes to the tiebreaker. One commenter noted that under the current rule, fiduciaries may only consider the collateral benefit between two investments if the fiduciaries are unable to distinguish between two investments based on pecuniary factors. However, it may be unclear under what circumstances, if any, two investment courses of action would meet the current rule's standard. The proposed rule recognizes that competing investments can equally serve the financial interests of the plan. However, several commenters expressed that the proposed provisions were still too narrow, while other commenters argued that the tiebreaker should be eliminated altogether. One commenter argued that the test was obsolete and additional tests or documentation would increase costs for plan participants and beneficiaries without a corresponding benefit.

Paragraph (c)(3) of the final rule confirms that plan fiduciaries do not violate the paragraph (c)(1) duty of loyalty solely because they take participant preferences into consideration. Plan fiduciaries must ensure that consideration of participant preferences is consistent with the requirements in paragraph (b). This clarification may lead to investment options that are more aligned with employee preferences and that, accordingly, result in increased contributions to the plan and greater retirement savings.

Commenters on the NPRM supported the idea that reflecting participant preferences in investment options has a positive effect on participation and retirement savings, including comments from institutional asset managers and asset custodians. This is supported by a survey conducted by Schroders (2021) of consumers between ages 45 and 75, finding that 69 percent of participants, who said their plans did not offer ESG investment options or did not know, would increase their overall contribution rate if an ESG option was offered.[130] Commenters also suggested that not considering participant preferences may be detrimental to retirement savings. A few of the commenters argued that participants may not utilize ERISA plans that do not offer investments reflective of their

[128] Martin Lipton, ''DOL Proposes New Rules Regulating ESG Investments,'' *Harvard Law School Forum on Corporate Governance* (2020), *https://corpgov.law.harvard.edu/2020/07/07/dol-proposes-new-rules-regulating-esg-investments/.*

[129] Rory Sullivan, Will Martindale, Elodie Feller, and Anna Bordon, ''Fiduciary Duty in the 21st Century,'' United Nations Principles for Responsible Investment, *https://www.unpri.org/download?ac=1378.*

[130] Schroders, ''Schroders US Retirement Survey Results—2021,'' *https://www.schroders.com/en/us/defined-contribution/dc/retirement-survey-2021.*

values, resulting in some individuals foregoing saving for retirement or choosing to save outside of a qualified plan.

The current regulation prohibits fiduciaries from adding or retaining any investment fund, product, or model portfolio as a qualified default investment alternative (QDIA) as described in 29 CFR 2550.404c–5 if the fund, product, or model portfolio reflects non-pecuniary objectives in its investment objectives or principal investment strategies. The final rule amends the current regulation to remove the stricter rules for QDIAs, such that, under the final rule, the same standards apply to QDIAs as to investments generally. The Department expects to see an increase in the number of QDIAs that are ESG funds. This will affect many participants since a large and growing share of plans use automatic enrollment. For example, Vanguard administrative data shows that 70 percent of participants in 2021 were in plans with automatic enrollment.[131] It is difficult to obtain data on how many of these participants' accounts were invested in a QDIA.

The clarifications provided by paragraphs (b) and (c) of this final rule relate to the appropriate use of ESG factors by plan fiduciaries in selecting investments or investment courses of action. Outside the ERISA context, investors may choose to invest in funds that promote collateral objectives, and even choose to sacrifice return or increase risk to achieve those objectives. Such conduct, however, would be impermissible for ERISA plan fiduciaries, who cannot sacrifice return or increase risk for the purpose of promoting collateral goals unrelated to the economic interests of plan participants in their benefits.

In the proposal, the Department requested comment on the financial materiality of ESG factors in various investment contexts. In the analysis below, the Department has considered and taken into account the comments received and the resources referenced by commenters as well as other resources that came to its attention. The studies and reports often examine investing circumstances that are outside of ERISA and may not apply to an ERISA context. Several comments on the NPRM criticized the Department's survey of the literature. For example, one commenter asserted that there was an oversampling of studies showing better returns from ESG investing, compared to literature showing lower returns. The comparison between the various studies cited is difficult, however, as studies differ between whether they consider corporate or investment performance, which benchmarks are considered, the time horizon studied, and how ESG is incorporated into the company or investment strategy. The Department has reviewed the literature received from commenters and summarized the findings.

(a) Challenges of Determining the Relationship Between Performance and ESG Factors

The primary types of ESG portfolio management are integration, negative screening, and positive screening. Integration incorporates ESG factors into the investment analysis and decisions. Screening filters investments based on ESG-related preferences. Negative screening excludes investments based on the investment's sector, issuer, activity, or other ESG criteria; positive screening includes investments based on similar characteristics. Positive screening is often referred to as ''best-in-class'' investing.[132]

The Royal Bank of Canada (RBC, 2019) outlines the challenges of comparing studies on ESG. This report divides the research literature on socially responsible investment (SRI) into four categories: index comparison, mutual fund comparison, hypothetical portfolios, and company performance. In their review, they find that research comparing equity SRI and non-SRI indices generally find that equity SRI indices do not underperform traditional indices, with much of the literature finding that SRI indices outperformed traditional indices. However, mutual fund comparison studies prove difficult to compare because of the variety of funds and investment strategies considered as SRI, resulting in mixed and inconclusive results from this type of study. Similarly, hypothetical portfolio studies may use different techniques to incorporate ESG, making it difficult to compare results.[133]

Other research has pointed to the lack of a standardized definition for ESG as a cause of mixed conclusions on the benefits of ESG. For instance, Lioui and Tarelli (2022) analyze ESG data from three vendors, comparing the properties of their ESG factors. They find that the different factor construction methodologies can contribute to the mixed evidence on the ESG performance in the literature and that disagreement across data vendors has substantial implications for the performances of ESG factors.[134] Similarly, Cornell, and Damodaran (2020) review ESG literature and note that while there is evidence that ''being good'' benefits a company's operating performance, the literature's findings are sensitive to how ESG is defined and profitability is measured.[135]

Likewise, the comments on the proposal are mixed in their assessment on the relationship between ESG performance and corporate or investment performance. Several comments note that ESG factors are financially material for financial returns. For example, a comment notes that firms with strong ratings on material sustainability issues have better performance than firms with inferior ratings. One commenter states that ESG-focused companies in the MSCI ACWI Index saw higher returns, stronger earnings, and higher dividends. Another commenter notes that the iShares ESG Aware MSCI USA ETF outperformed the S&P 500 index by five percentage points from the beginning of 2020 to the second quarter of 2021. Still another commenter notes that ignoring the entire category of information and analysis that comprises ESG factors could be deemed an abrogation of a fiduciary's responsibility to consider all relevant information when assessing the risk and return of an investment opportunity.

Conversely, several commenters assert that ESG factors are not relevant for financial returns and may be detrimental to returns and retirement savings. For instance, one commenter remarks that the time horizon associated with ESG risks often surpasses the time horizon of retirement investors. Other commenters note that ESG return premiums are due to larger weights placed on technology stocks, which have experienced increased value but also present increased risk. A commenter asserts that the claim in the NPRM that the proposal would lead to increased investment returns is unsubstantiated.

[131] *How America Saves 2022,* Vanguard, 2022.

[132] United Nations Principles for Responsible Investment, ''An Introduction to Responsible Investment: Screening'' (May 2020), *https://www.unpri.org/an-introduction-to-responsible-investment/an-introduction-to-responsible-investment-screening/5834.article.*

[133] RBC Global Asset Management, ''Does socially responsible investing hurt investment returns?'' (2019), *https://www.rbcgam.com/documents/en/articles/does-socially-responsible-investing-hurt-investment-returns.pdf.*

[134] Abraham Lioui and Andrea Tarelli, ''Chasing the ESG Factor,'' *Journal of Banking and Finance,* forthcoming (March 2022), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3878314.*

[135] Bradford Cornell and Aswath Damodaran, ''Valuing ESG: Doing Good or Sounding Good?'' *The Journal of Impact and ESG Investing,* Fall 2020, 1(1). *https://jesg.pm-research.com/content/1/1/76.*

(b) Meta-Studies

The body of research evaluating ESG investing shows ESG investing can have financial benefits, although the literature overall has varied findings. In a meta-analysis of over 1,000 studies published between 2015 and 2020, Whelan et al. (2021) report that of the studies concerning corporate performance—focusing on measurements such as return on equity, return on assets, and stock price for an individual firm—58 percent find a positive relationship between corporate financial performance and ESG, while 13 percent find a neutral relationship, 21 percent find a mixed relationship, and 8 percent find a negative relationship. For the studies concerning investment performance—focusing on risk-adjusted return measurements for a portfolio of stocks—33 percent find a positive relationship between investment performance and ESG, 26 percent find a neutral impact, 28 percent find mixed results, and 14 percent find negative results.[136] They found similar results when focusing only on studies about climate change and financial performance. Clark, Feiner, and Vieha (2014) conduct a meta-study analyzing more than 200 studies, 45 of which looked at operational performance, and showed that 88 percent of these studies found that ESG practices lead to better operational performance. Additionally, 41 of the operational performance studies review the relationship between sustainability and financial market performance, of which 80 percent show that stock price performance of companies is positively influenced by good sustainability practices.[137] Friede et al. (2015) find in their meta-study that only 10.0 percent of studies found a negative ESG performance relationship, while 47.9 percent of vote-count studies[138] and 62.6 percent of meta-studies[139] show positive findings.[140]

(c) Association Between ESG Investing and Performance

Ito, Managi, and Matsuda (2013) find that socially responsible funds outperformed conventional funds in the European Union and United States.[141] The Morgan Stanley Institute for Sustainable Investing (2019) compared the performance of sustainable funds to traditional funds between 2004 and 2018 and found that sustainable funds provided returns in line with comparable traditional funds such that the returns, net of fees, were not statistically significantly different.[142] Morningstar (2022) finds that of trailing three- and five-year periods, 44 percent of sustainable funds, as defined by Morningstar, ranked in the top quartile of their respective categories.[143] Curtis, Fisch, and Robertson (2021) measures ESG orientation of mutual fund portfolios from four rating providers to analyze returns of ESG funds between 2018 and 2019. They find that ESG funds did not perform worse in terms of either raw or risk-adjusted returns.[144]

In contrast, other studies have found that ESG investing has resulted in lower returns than conventional investing. For example, Winegarden (2019) shows that over ten years, a portfolio of ESG funds has a net return that is 43.9 percent lower than if it had been invested in an S&P 500 index fund.[145] One commenter criticizes the Winegarden report, saying that the study does not isolate how incorporation of ESG data affects performance. Trinks and Scholten (2017) examine socially responsible investment funds and find that a market portfolio based on negative screening significantly underperforms an unscreened market portfolio.[146] Ferruz, Muñoz, and Vicente (2012) find that a portfolio of mutual funds that implements negative screening[147] underperforms a portfolio of conventionally matched pairs.[148] Ciciretti, Dalò, and Dam (2019) analyze a global sample of operating companies and find that companies that score poorly on ESG indicators have higher expected returns.[149]

Furthermore, there are many studies with inconclusive results. Goldreyer and Diltz (1999) find that employing positive social screens does not affect the investment performance of mutual funds, based on analysis of 49 socially responsible mutual funds.[150] Similarly, Renneboog, Ter Horst, and Zhang (2008) find that the risk-adjusted returns of socially responsible mutual funds are not statistically different from conventional funds when analyzing a sample of global socially responsible mutual funds.[151] Research by Bello

[136] Tenise Whelan, Ulrich Atz, Tracy Van Holt, and Casey Clark, ''ESG and Financial Performance: Uncovering the Relationship by Aggregating Evidence from 1,000 Plus Studies Published Between 2015 and 2020,'' *Journal of Sustainable Finance & Investment* (2021). *https://www.stern.nyu.edu/sites/default/files/assets/documents/NYU-RAM_ESG-Paper_2021%20Rev_0.pdf.*

[137] Gordon Clark, Andreas Feiner, and Michael Viehs, ''From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance,'' University of Oxford and Arabesque Partner (2014), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2508281.*

[138] A ''vote count study'' in this context is a review study which counts the number of primary studies with significant positive, negative, and non-significant results and ''votes'' the category with the highest share as winner.

[139] A ''meta-study'' in this context is a review study which directly imports effect sizes and sample sizes of primary studies to compute a summary effect across all primary studies.

[140] In this study, the authors analyze 60 review studies on ESG performance, encompassing the finding of 2,250 unique underlying studies. (*See* Gunnar Friede, Michael Lewis, Alexander Bassen, and Timo Busch. ''ESG & Corporate Financial Performance: Mapping the global landscape.'' DWS, University of Hamburg (December 2015). *https://download.dws.com/download?elib-assetguid=2c2023f453ef4284be4430003b0fbeee.*)

[141] Yutaka Ito, Shunsuke Managi, and Akimi Matsuda, ''Performances of Socially Responsible Investment and Environmentally Friendly Funds,'' 64 *Journal of the Operational Research Society* 11 (2013).

[142] Morgan Stanley Institute for Sustainable Investing, ''Sustainable Reality: Analyzing Risk and Returns of sustainable Funds,'' *https://www.morganstanley.com/pub/content/dam/msdotcom/ideas/sustainable-investing-offers-financial-performance-lowered-risk/Sustainable_Reality_Analyzing_Risk_and_Returns_of_Sustainable_Funds.pdf.*

[143] Morningstar Manager Research, ''Sustainable U.S. Landscape Report. 2021: Another Year of Broken Records'' (January 2022), *https://assets.contentstack.io/v3/assets/blt4eb669caa7dc65b2/blta4326c09c190e82b/62100fefcf85c1619ad897b2/U.S._Sustainable_Funds_Landscape_2022.pdf.*

[144] In this study, the authors identify ESG funds based on their fund names. (*See* Quinn Curtis, Jill Fisch, and Adriana Robertson, ''Do ESG Funds Deliver on Their Promises?'' *Michigan Law Review,* Vol. 120(3) (2021), *https://repository.law.umich.edu/cgi/viewcontent.cgi?params=/context/mlr/article/7846/&path_info=#:~:text=We%20find%20that%20ESG%20funds,increasing%20costs%20or%20reducing%20returns.*)

[145] Wayne Winegarden, ''Environmental, Social, and Governance (ESG) Investing: An Evaluation of the Evidence,'' Pacific Research Institute (2019), *https://www.pacificresearch.org/wp-content/uploads/2019/05/ESG_Funds_F_web.pdf.*

[146] Pieter Jan Trinks and Bert Scholtens, ''The Opportunity Cost of Negative Screening in Socially Responsible Investing'' *Journal of Business Ethics* 140, 193–208 (2017).

[147] The authors describe a negative screening strategy as one that ''removes stocks'' that do not align with the socially responsible ideology from a portfolio. Comparatively, a positive screening strategy ''selects stocks'' that align with the socially responsible ideology for a portfolio.

[148] Luis Ferruz, Fernando Muñoz, and Ruth Vicente, ''Effect of Positive Screens on Financial Performance: Evidence from Ethical Mutual Fund Industry'' (2012), *https://www.efmaefm.org/0efmameetings/efma%20annual%20meetings/2012-Barcelona/papers/EFMA2012_0183_fullpaper.pdf.*

[149] Rocco Ciciretti, Ambrogio Dalò, and Lammertjan Dam, ''The Contributions of Betas versus Characteristics to the ESG Premium,'' (2019).

[150] Elizabeth Goldreyer and David Diltz, ''The Performance of Socially Responsible Mutual Funds: Incorporating Sociopolitical Information in Portfolio Selection,'' 25 *Managerial Finance* 1 (1999).

[151] Luc Renneboog, Jenke Ter Horst, and Chendi Zhang, ''The Price of Ethics and Stakeholder

(2005), which examines 126 mutual funds, finds that the long-run investment performance is not statistically different between conventional and socially responsible funds.[152] Likewise, Ferruz, Muñoz, and Vicente (2012) finds that a portfolio of mutual funds that implement positive screening performs equally well as a comparable conventional mutual funds, matched based on fund age, size, risk factors.[153] Humphrey and Tan (2014), which examines socially responsible investment funds, finds no evidence of negative screening affecting the risks or returns of portfolios.[154]

Marsat and Williams (2020) uses the Markowitz Portfolio optimization model, the direct application of modern portfolio theory, to create the ''best complete portfolio'' by allocating to the optimal risky portfolio and the risk-free asset. It does so assuming that investors are risk averse and that, given equal returns, an investor would prefer the one with less risk. Backtesting various constructed portfolios over the past 10 years, the study did not observe a correlation between high ESG scores and financial returns. The study observes a wide range of performance depending on the provider of ESG data.[155]

A few of the studies referenced in the comments discussed the performance of ESG funds during the COVID–19 pandemic. Whieldon and Clark (2021) look at the performance of 26 ESG exchange traded funds (ETFs) and mutual funds with more than $250 million in assets between March of 2020 and 2021 and found that 19 of the 26 funds outperformed the S&P 500.[156] The Morgan Stanley Institute for Sustainable Investing (2020) finds that, three out of four sustainable equity funds beat their Morningstar category average. The authors posit that the performance of sustainable funds in 2020 demonstrates that investing strategies that manage material ESG risks can produce good returns in an uncertain economic environment. The study finds that between January and June of 2020, domestic sustainable equity funds outperformed their traditional peers by a median of 3.9 percentage points.[157]

(d) Fees

Some commenters expressed concern that higher fees associated with ESG investments will result in lower returns and retirement savings. The Department recognizes that ESG investing requires information collection and research that will incur costs. For instance, a 2020 study estimates that, globally, investment managers would spend $745 million in 2020 on ESG information.[158]

The findings in the literature discussing fees on ESG funds were mixed. Morningstar (2020) finds that sustainable funds have higher asset-weighted average expense ratios (0.61 percent) than their traditional peers (0.41 percent).[159] According to Wursthorn (2021), at the end of 2020, the average fee for ESG funds was 0.20 percent, compared to 0.14 percent for standard ETFs that invest in U.S. large-cap stocks.[160] Winegarden (2019) analyzes 30 ESG funds that have either existed for more than 10 years or have outperformed the S&P 500 over a short-term timeframe and finds that the average expense ratio was 0.69 percent for the 30 ESG funds, compared to an expense ratio of 0.09 percent for a S&P 500 index fund.[161] Conversely, a study conducted by Curtis, Fisch, and Robertson (2021) found that when controlling for whether a fund is an actively managed fund or an index fund, as well as net assets by fund manager, fund, and class, there is not a statistically significant difference between the fees of ESG funds and the fees that would be expected given fund characteristics.[162]

There has been some reduction in sustainable funds fees. Morningstar (2020) finds that the average fee charged by sustainable funds fell 27 percent between 2011 and 2021 and that this decline in average fees has been driven by the rise of low-fee sustainable index mutual funds and ETFs.[163]

The studies of ESG investment performance discussed in this document generally take fees into account.

(e) Sectoral Bias

Some of the literature addresses the role of sectoral biases within ESG investing. A study by Morningstar (2021) finds that between November 2020 and March 2021, a rally in energy prices may have hampered sustainable equity fund returns.[164] Hale (2020) notes that the performance of sustainable funds during the first quarter of 2020 was helped by having less exposure to energy stocks and a larger exposure to technology stocks than the comparable market indices. The study estimates that U.S. 'sustainable index funds' energy-sector under-weightings contributed an average of 0.43 percent to their outperformance of the S&P 500 during this period. Information technology was the quarter's best-performing sector, and sustainable funds generally had a higher proportion of assets invested in the sector than broad market indices. The study estimates information technology contributed an average of 0.21 percent to the funds' outperformance of the S&P 500. Nevertheless, the author posits that ''the biggest reason for their outperformance is that sustainable funds appear to have benefited from selecting stocks with better ESG credentials.'' [165] Bruno, Esakia, and Goltz (2021) addresses sectorial bias in general, finding that over representation of the technology sector increases ESG performance. The study finds that when

Governance: The Performance of Socially Responsible Mutual Funds'', 14 *Journal of Corporate Finance* 3 (2008).

[152] Zakri Bello, ''Socially Responsible Investing and Portfolio Diversification,'' 28 *Journal of Financial Research* 1 (2005).

[153] Ferruz, Muñoz, and Vicente, ''Effect of Positive Screens on Financial Performance,'' 2012.

[154] Jacquelyn Humphrey and David Tan, ''Does It Really Hurt to be Responsible?'', 122 *Journal of Business Ethics* 3 (2014).

[155] Organisation for Economic Co-operation and Development (OECD). ''ESG Investing: Practices, Progress and Challenges'' (2020). *https://www.oecd.org/finance/ESG-Investing-Practices-Progress-Challenges.pdf.*

[156] Esther Whieldon and Robert Clark, ''ESG Funds Beat Out S&P 500 in 1st Year of COVID–19; How 1 Fund Shot to the Top,'' S&P Global Market Intelligence (2021), *https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/esg-funds-beat-out-s-p-500-in-1st-year-of-covid-19-how-1-fund-shot-to-the-top-63224550.*

[157] Morgan Stanley Institute for Sustainable Investing, ''Sustainable Reality: 2020 Update,'' Morgan Stanley (2020), *https://www.morganstanley.com/content/dam/msdotcom/en/assets/pdfs/3190436-20-09-15_Sustainable-Reality-2020-update_Final-Revised.pdf.*

[158] Sean Collins and Kristen Sullivan, ''Advancing ESG Investing: a Holistic Approach for Investment Management Firms,'' Harvard Law School Forum on Corporate Governance (March 2020), *https://corpgov.law.harvard.edu/2020/03/11/advancing-esg-investing-a-holistic-approach-for-investment-management-firms/.*

[159] Morningstar, ''2020 U.S. Fund Fee Study: Fees Keep Falling'' (August 2021), *https://www.morningstar.com/content/dam/marketing/shared/pdfs/Research/annual-us-fund-fee-study-updated.pdf.*

[160] Michael Wursthorn, ''Tidal Wave of ESG Funds Brings Profit to Wall Street,'' *Wall Street Journal* (March 2021), *https://www.wsj.com/articles/tidal-wave-of-esg-funds-brings-profit-to-wall-street-11615887004.*

[161] Winegarden, ''Environmental, Social, and Governance (ESG) Investing,'' 2019.

[162] Curtis, Fisch, and Robertson, ''Do ESG Funds Deliver on Their Promises?'' 2021.

[163] Morningstar, ''2020 U.S. Fund Fee Study: Fees Keep Falling,'' Morningstar (2020), *https://assets.contentstack.io/v3/assets/blt4eb669caa7dc65b2/blt0b2eed63bfb1eb8b/619f8bf6224a1b121d540f7e/annual-us-fund-fee-study-updated.pdf.*

[164] Morningstar Manager Research, ''Sustainable U.S. Landscape Report. 2021: Another Year of Broken Records'' (Jan. 2022), *https://assets.contentstack.io/v3/assets/blt4eb669caa7dc65b2/blta4326c09c190e82b/62100fefcf85c1619ad897b2/U.S._Sustainable_Funds_Landscape_2022.pdf.*

[165] Jon Hale, ''Sustainable Funds Weather the First Quarter Better than Conventional Funds,'' Morningstar (April 2020), *https://www.morningstar.com/articles/976361/sustainable-funds-weather-the-first-guarter-better-thanconventional-funds.*

the sectoral weights of portfolios are rebalanced to more closely resemble the overall sectoral composition of the market, ESG strategies ''consistently deliver zero alpha.'' [166] However, Lefkovitz (2021) refutes the claims that ESG performance is entirely due to sectorial bias, observing that companies with a sustainable competitive advantage have often experienced lower volatility. The author posits that while sectoral bias contributes to the performance of ESG strategies, security selection also contributes to the outperformance.[167]

Conversely, Brav, and Heaton (2021) compare the returns of high-carbon assets and low-carbon assets. The study found that, for firms included in the S&P 500, the average return for the energy sector in 2021 was 64.8 percent, compared to an average return of 28.7 percent for all companies not in the energy sector. Similarly, for firms included in the Russell 3000, the average return for the energy sector was 74.4 percent, compared to an average return of 25.5 percent for all companies not in the energy sector. The authors state that the transition to a low-carbon economy may fail and investors should not avoid high-carbon assets.[168]

(f) Investment Screening

As discussed above, one of the ESG investment strategies used is investment screening. One commenter noted that many of the studies cited by the Department in the proposal finding ESG underperformance focus on the implications of negative screening or a socially responsible investing lens. The commenter notes that most of the studies cited by the Department showing ESG as beneficial to returns focus on ESG as a means to maximize risk-adjusted returns. The commenter further notes that most plan sponsors, except for those relying on the tiebreaker test, would rely on a modern, financially material ESG lens to select investments. Similarly, one commenter called integrated ESG analysis a tool in the modern investment toolkit to be used alongside traditional fundamental analysis, valuation assessment, or quantitative analysis. For instance, one asset manager with more than $50 billion assets under management commented that they seek to generate superior, risk-adjusted investment returns by investing in assets they believe are better positioned to seize opportunities and mitigate risks associated with the transition to a more sustainable economy. Another commenter noted that the ''digitalization of the economy and pioneering research has helped generate awareness of critical issues that were previously not considered significant for investors, including, but not limited to, climate change, data privacy and social justice issues.'' The commenter notes that the drawdowns and the risks associated with these ESG issues are factors that financial markets and ERISA fiduciaries must consider when making business, investment and voting decisions.

Several studies have specifically addressed the ESG investment strategy of screening. For instance, the U.S. Commodity Futures Tradition Commission (2020) refutes the historical view that ESG investing is a values-driven activity inconsistent with fiduciary duty. The study notes that this view ''ignore[s] the evolution of a wide range of financial ESG factors and strategies, as well as the proposition that impact investing may yield additional returns.'' [169]

Verheyden, Eccles, and Feiner (2016) analyze stock portfolios that were selected using ESG screening.[170] The study finds that screening tends to increase a stock portfolio's annual performance by 0.16 percent. Similarly, Kempf, and Osthoff (2007) examine stocks in the S&P 500 and the Domini 400 Social Index (renamed as the MSCI KLD 400 Social Index in 2010) and find that it is financially beneficial for investors to positively screen their portfolios.[171] A study from Morningstar (2021), looking at the performance of 69 ESG-screened Morningstar indices, finds that 75 percent ''outperformed their broad market equivalents in 2020'', 88 percent outperformed between 2015 and 2020, and 91 percent ''lost less than their broad market equivalents during down markets over the past five years, including the bear market in the first quarter of 2020.'' [172]

Trinks and Scholtens (2017) explores the effect of negative screening stocks related to abortion, adult entertainment, alcohol, animal testing, contraceptives, controversial weapons, fur, gambling, genetic engineering, meat, nuclear power, pork, embryonic stem cells, and tobacco has on investment returns. Looking at a sample of 1,763 stocks between 1991 and 2013, the authors note that negative screens decrease the investment universe and limit the ability to diversify. The study finds that there is an opportunity cost in negative screening of ''refraining from investing in controversial firms.'' The study finds that screened portfolios underperformed the unscreened portfolio and notes that there ''can be a trade-off between values and beliefs and financial returns.'' [173] AQR Capital Management warns that the performance of a constrained portfolio will always ex-ante be less than or equal to an unconstrained portfolio.[174] Similarly, Cornell and Damodaran (2020) present a theoretical framework demonstrating that adding an ESG constraint to investing increases expected returns is counter intuitive, as a constrained optimum can, at best, match an unconstrained one, and most of the time, the constraint will create a cost.[175] Sharfman (2021) argues that ''screening techniques based on non-financial factors lead to an increased probability that the big winners in the stock market will be excluded from or underweighted in an investment portfolio.'' Based on this premise, the author concludes that screening will result in lower expected risk-adjusted returns, relative to a benchmark index.[176]

[166] Giovanni Bruno, Mikheil Esakia, and Felix Goltz, '' 'Honey, I Shrunk the ESG Alpha': Risk-Adjusting ESG Portfolio Returns'' (April 2021), *https://cdn.ihsmarkit.com/www/pdf/0521/Honey-I-Shrunk-the-ESG-Alpha.pdf.*

[167] Dan Lefkovitz, ''Morningstar's ESG Indexes have Outperformed and Protected on the Downside'' (February 2021), *https://www.morningstar.com/insights/2021/02/08/morningstars-esg-indexes-have-outperformed-and-protected-on-the-downside.*

[168] Alon Brav and J.B. Heaton, ''Brown Assets for the Prudent Investor,'' *Harvard Business Law Review* (2021), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3895887.*

[169] U.S. Commodity Futures Trading Commission, ''Managing Climate Risk in the U.S. Financial System'' (2020), *https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf.*

[170] Tim Verheyden, Robert G. Eccles, and Andreas Feiner, ''ESG for All? The Impact of ESG Screening on Return, Risk, and Diversification,'' 28 *Journal of Applied Corporate Finance* 2 (2016).

[171] Alexander Kempf and Peer Osthoff, *The Effect of Socially Responsible Investing on Portfolio Performance,* 13 *European Financial Management* 5 (2007).

[172] Dan Lefkovitz, ''Morningstar's ESG Indexes have Outperformed and Protected on the Downside'' (February 2021), *https://www.morningstar.com/insights/2021/02/08/morningstars-esg-indexes-have-outperformed-and-protected-on-the-downside.*

[173] Trinks and Scholtens, ''The Opportunity Cost of Negative Screening in Socially Responsible Investing,'' 2017.

[174] Cliff Asness, ''Virtue Is Its Own Reward: Or, One Man's Ceiling Is Another Man's Floor,'' AQR Capital (May 2017), *https://www.aqr.com/Insights/Perspectives/Virtue-is-its-Own-Reward-Or-One-Mans-Ceiling-is-Another-Mans-Floor.*

[175] Cornell and Damodaran, ''Valuing ESG,'' 2020.

[176] Bernard Sharfman, ''ESG Investing Under ERISA.'' *Yale Journal on Regulation Bulletin,* Vol. 38 (March 2021). *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3809129.*

(g) ESG Factors and Risk

In addition to performance, the ESG literature also addresses the relationship between ESG factors and risk. Common ESG factors are also common risk factors, for both companies and investors. As such, ESG integration inherently serves as a risk management function. For instance, the E in ESG may include risks from climate change, deforestation, or water scarcity. The S may consider risk associated with data protection and privacy, employee engagement, or labor standards within a supply chain. The G may address issues with bribery and corruption, board and executive compensation, and whistleblower protections.[177] Each of these factors has direct connections to the profitability and resilience of an investment, but as pointed out by Kumar et al. (2016), may also be relevant with respect to the reputation, political, and regulatory risk faced by the investment.[178] As a reference to the magnitude of risks associated with ESG factors, a study by Schroders (2019) estimates that the negative externalities of listed companies equate to almost half of their combined earnings. The authors posit that these economic costs will become tangible in the future, affecting financial cost and income.[179]

This was confirmed by several commenters. Some commenters on the NPRM state that ESG funds have lower downside risk or lower systematic volatility. One commenter noted that ESG consideration is a form of risk mitigation that can confer an investment edge and that neglecting ESG-related risk can impact a company's competitive advantage and diminish long-term economic gains. Another commenter noted that ESG factors should be treated no differently than other risk and return factors, as appropriate for a given industry and investment timeframe.

Several studies have found that the consideration of ESG factors in investment processes can mitigate risk. For instance, a meta study by Clark et al. (2014) observes that most of the studies (90 percent) addressing the relationship between sustainability standards and the cost of capital show that incorporating sustainability standards is associated with a lower cost of equity or cost of debt.[180] This finding suggests that incorporating sustainable standards is associated with lower risk. The consensus of the relationship between ESG factors and risk has also been confirmed by more recent studies. Campagna, Spellman, and Mishra (2020) find that higher ESG performance is associated with lower volatility.[181] The Morgan Stanley Institute for Sustainable Investing (2019) shows that when comparing downside deviation,[182] sustainable funds were less risky. On average the distribution of downside deviation for sustainable funds was 20.0 percent less than what traditional fund investors experienced in the same period.[183]

Surveys of the investment industry and investors indicate that the application of ESG factors in risk-management is a common practice. In an investigation performed by the Government Accountability Office (GAO) (2020), 12 of 14 interviewed institutional investors seek information on ESG to better understand risks that could affect company financial performance over time, and five of seven public pension funds seek ESG information to enhance their understanding of risks that could affect a companies' value over time.[184] Similarly, survey data reported by Natixis (2018) observes that 46 percent of institutional investors implementing ESG say that the analysis of ESG-related factors is ''as important to their investment process as traditional fundamental analysis'' and that 56 percent of institutional investors believe incorporating ESG mitigates governance and social risks.[185] According to a survey conducted by FTSE Russell (2021), 64 percent of asset owners implementing or evaluating sustainability in portfolios cite risk as a motivator.[186]

The Department agrees that considering relevant ESG factors plays an important role in mitigating risks in the portfolios of ERISA plan participants and beneficiaries.

(h) Market Pricing of ESG Risks

In the proposal, the Department also welcomed comments on the extent to which climate-related financial risk is not already incorporated into market pricing. The Department received two comments that argued that climate risks are not yet fully reflected in asset prices. Conversely, another commenter criticized that the proposal's regulatory impact analysis did not provide a rational basis for the contention that climate change and other ESG factors are not already priced into the market. This commenter argued that if climate change and ESG factors are already priced into the market, then further consideration would not result in investment gains.

Commenters also referenced literature exploring market pricing. For instance, Brest, Gilson, and Wolfson (2018) argue that if ESG ratings and investments in ESG affect productivity, then they should already be reflected in stock prices.[187] However, Condon (2021) identifies several sources of mispricing pertaining to climate risks, including limited asset-level data, reliance on outdated risk assessments, misaligned incentives, and regulatory distortions within the market. Although the efficient market hypothesis posits that arbitrageurs would exploit mispriced assets until the assets are no longer

[177] CFA Institute, ''The Rise of ESG Investing: What is Sustainable Investing?'' *https://interactive.cfainstitute.org/ESG-guide/what-is-sustainable-investing-238UB-188048.html.*

[178] Ashwin Kumar, Camille Smith, Leila Badis, Nan Wang, Paz Amroxy, and Rodrigo Tavres, ''ESG Factors and Risk-Adjusted Performance: A New Quantitative Model,'' *Journal of Sustainable Finance & Investment* (2016) Vol. 6, No. 4, 292–300.

[179] Schroders, ''SustainEx'' (April 2019), *https://www.schroders.com/en/sysglobalassets/digital/insights/2019/pdfs/sustainability/sustainex/sustainex-short.pdf.*

[180] This meta study analyzes more than 200 studies, of which 29 discuss the cost of capital. (*See* Clark, Feiner, and Viehs, ''From the Stockholder to the Stakeholder,'' 2014.

[181] This study looks at the relationship between ESG ratings and returns for 534 securities, with a market cap exceeding $250 million, between 2013 and 2019. (*See* Anthony Campagna, G. Kevin Spellman, and Subodh Mishra, ''ESG Matters,'' *Harvard Law School Forum on Corporate Governance* (2020), *https://corpgov.law.harvard.edu/2020/01/14/esg-matters/.*)

[182] Downside deviation is a risk measurement that focuses on returns below a minimum threshold. (*See* Mark Jahn, ''Downside Deviation,'' *Investopedia* (2022), *https://www.investopedia.com/terms/d/downside-deviation.asp#:~:text=Downside%20deviation%20is%20a%20measure,measure%20of%20risk%2Dadjusted%20return.*)

[183] This study compares the performance of sustainable funds to traditional funds between 2004 and 2018 using Morningstar data on ETF and open-ended mutual funds. Funds considered to be ESG-focused are defined as those that prioritize investments based on multiple screens for numerous ESG factors and a variety of strategies. (*See* Morgan Stanley Institute for Sustainable Investing, ''Sustainable Reality: Analyzing Risk and Returns of sustainable Funds'' (2019), *https://www.morganstanley.com/pub/content/dam/msdotcom/ideas/sustainable-investing-offers-financial-performance-lowered-risk/Sustainable_Reality_Analyzing_Risk_and_Returns_of_Sustainable_Funds.pdf.*)

[184] GAO, ''Report to the Honorable Mark Warner U.S. Senate: Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them'' (July 2020), *https://www.gao.gov/assets/gao-20-530.pdf.*

[185] Natixis Investment Managers, ''Looking for the Best of Both Worlds'' (2019), *https://www.im.natixis.com/us/resources/esg-investing-survey-2019.*

[186] FTSE Russell, ''Sustainable Investment Is Now Standard According to Global Asset Owner Survey'' (October 2021), *https://www.ftserussell.com/press/sustainable-investment-now-standard-according-global-asset-owner-survey.*

[187] Paul Brest, Ronald Gilson, and Mark Wolfson, ''How Investors Can (and Can't) Create Social Value,'' *Columbia Law School Scholarship Archive* (2018), *https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3099&context=faculty_scholarship.*

mispriced, the author acknowledges that the role of arbitrage in the real world is limited by imperfect information, heterogeneous expectations about the future, and uncertainty about when climate-related risks will occur.[188] Brav and Heaton (2021) notes that research in this area is difficult, as the theories rely on expected returns, while researchers only have access to realized returns. The authors note, ''When researchers study average, realized returns, it is always uncertain whether the realized price reflected one of the possible price realizations that investors anticipated at the probability they assigned it, or whether that price reflected a change in the underlying probability distribution.'' [189]

(i) Literature on Environmental Factors

Reflective of the significant economic impacts of climate change to date across various sectors of the economy, the Department believes it can be as appropriate to treat climate change as a relevant factor in assessing the risks and returns of investments as any other relevant factor a prudent fiduciary would consider.

In the proposal, the Department requested comments on whether fiduciaries should consider climate change as presumptively material in their assessment of investment risks and returns, if adopted. The Department received numerous comments specifically addressing the materiality of climate change and environmental risks. Some of the commenters note that while climate change risks are often considered strategic and regulatory, they are also operational risks. One commenter notes that the physical and transition impacts from climate change are already materially affecting public companies and financial institutions. Another commenter notes that weak control of environmental activities, such as pollution, over-consumption of raw materials, or lack of recycling, can lead to volatile or lower financial margins or returns to investors. A few commenters note that climate-related financial risks are especially relevant to retirement investors, who invest over decades and are often universal owners with exposure to many at-risk sectors.

There is a breadth of literature that provides evidence for the materiality of climate change as a driver of risk-adjusted returns. These risks are often referred to in two broad categories: physical risk and transition risk. Physical risk captures the financial impacts associated with a rise in extreme weather events and a changing climate, both chronic and acute. The literature maintains that these risks can be especially material for long duration assets and grow in severity the more that climate mitigation and adaptation are neglected. We are already seeing significant economic costs as a result of warming, and a certain amount of additional warming is guaranteed based on the greenhouse gas pollution already in the atmosphere.[190] This implies that the physical risks of climate change to our economy and to investments will persist. A 2019 report from BlackRock notes that the physical risk of extreme weather poses growing risks that are underpriced in certain sectors and asset classes.[191] Additionally, S&P Trucost found that almost 60 percent of the companies in the S&P500 index hold assets that were at high risk to the physical effects of climate change.[192] The Treasury Financial Stability Oversight Council (2021) provides a sense of the magnitude of the effect, noting that in 2020, there were 22 weather and climate disasters with damages exceeding a billion dollars, resulting in a combined $95 billion in damages.[193] The report asserted that weather and climate disasters may result in credit and market risks, associated with loss of income, defaults, changes in the value of assets, liquidity risks, operational risks, and legal risks.[194]

In contrast, transition risk reflects the risks that carbon-dependent businesses lose profitability and market share as government policies and new technology drive the transition to a carbon-neutral economy. Existing government policies and increasingly ambitious national and international greenhouse reduction goals will continue to create significant transition risk for investments. Studies assess the value of global financial assets at risk from climate change to be in the range of $2.5 trillion to $4.2 trillion, including transition risks and other impacts from climate change.

The U.S. Commodity Futures Trading Commission (CFTC, 2020) warns that much of the risk associated with climate change is not priced into the market, which increases the risk for a systemic shock. The report notes that a ''sudden revision of market participants' perceptions about climate risk could trigger a disorderly repricing of assets, which could have cascading effects on portfolios and balance sheets and, therefore, systemic implications for financial stability.'' [195] A Federal Reserve Board report from 2020, which states ''[c]limate change, which increases the likelihood of dislocations and disruptions in the economy, is likely to increase financial shocks and financial system vulnerabilities that could further amplify these shocks.'' [196] The report continues: ''Opacity of exposures and heterogeneous beliefs of market participants about exposures to climate risks can lead to mispricing of assets and the risk of downward price shocks.'' [197]

[188] Madison Condon, ''Market Myopia's Climate Bubble,'' *1 Utah Law Review* 63 (2022), Boston University School of Law Research Paper (February 2021), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3782675.*

[189] Alon Brav and J.B. Heaton, ''Brown Assets for the Prudent Investor,'' *Harvard Business Law Review* (2021). *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3895887.*

[190] Renee Cho, ''How Climate Change Impacts the Economy'' (June 20, 2019), *https://news.climate.columbia.edu/2019/06/20/climate-change-economy-impacts/.* Celso Brunetti, Benjamin Dennis, Dylan Gates, Diana Hancock, David Ignell, Elizabeth K. Kiser, Gurubala Kotta, Anna Kovner, Richard J. Rosen, and Nicholas K. Tabor, ''Climate Change and Financial Stability,'' FEDS Notes. Washington: Board of Governors of the Federal Reserve System, March 19, 2021, *https://doi.org/10.17016/2380-7172.2893.*

[191] BlackRock Investment Institute, ''Getting Physical: Assessing Climate Risks'' (2019), *https://www.blackrock.com/us/individual/insights/blackrock-investment-institute/physical-climaterisks.*

[192] S&P Trucost Limited, Understanding Climate Risk at the Asset Level: The Interplay of Transition and Physical Risks (2019), *https://www.spglobal.com/_division_assets/images/specialeditorial/understanding-climate-risk-at-the-assetlevel/sp-trucost-interplay-of-transition-andphysical-risk-report-05a.pdf.*

[193] U.S. Treasury Financial Stability Oversight Council, ''Report on Climate-Related Financial Risk: 2021'' (2021), *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.*

[194] *Id.*

[195] Climate-Related Market Risk Subcommittee, ''Managing Climate Risk in the U.S. Financial System,'' U.S. Commodity Futures Trading Commission, Market Risk Advisory Committee (2020), *https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf.*

[196] Board of Governors of the Federal Reserve System, ''Financial Stability Report'' (November 2020), *https://www.federalreserve.gov/publications/files/financial-stability-report-20201109.pdf.*

[197] *Id.*

Several studies quantify the direct economic effects of climate change. For instance, the CFTC estimates that by the end of the century, climate change will decrease the U.S. annual GDP by 1.2 percent for every 1 degree Celsius increase and that by 2090, total impacts from extreme heat conditions could result in more than 2 billion lost labor hours, corresponding to $160 billion (2015) in lost wages.[198] CFTC (2020) notes that transition risks may lead to both stranded capital—where capital assets are at-risk from devaluation—or stranded value—where the market-value of a project or firm is at-risk from devaluation or otherwise negatively discounted.[199] Mecure et al. (2018) estimates that the stranded fossil fuel assets may result in a discounted global wealth loss between $1 trillion and $4 trillion.[200] Similarly, a Mercer and the Center for International Environmental Law 2016 report estimates that the coal subsector may lose as much as 84 percent of its annual return potential over the next 35 years. The study also estimates that the annual returns for the oil and utilities subsectors could fall by as much as 63 percent, and 39 percent, respectively. In comparison, the study estimates that annual returns for renewables could increase by as much 54 percent over the same period.[201]

The risks associated with climate change are also expected to have direct implication for retirement investors. For example, Mercer and the Center for International Environmental Law (2016) finds that the total value of assets in an average U.S. public pension portfolio could be 6 percent lower by 2050 than under a business-as-usual scenario due largely to transition risks associated with climate change.[202]

However, it is worth noting that climate change also represents an investment opportunity, with research suggesting that investment in climate change mitigation will produce increasingly attractive yields.[203] Addressing transition risks can present opportunities to identify investments that are strategically positioned to succeed in the transition. Gradual shifts in investor preferences toward sustainability and the growing recognition that climate risk is investment risk may lead to a reallocation of capital. For instance, Matthews, Eaton, and Benoit (2021) estimates that to meet global energy demand and climate aspirations, annual investments in clean energy would need to grow from $1.1 trillion in 2021 to $3.4 trillion until 2030.[204]

(j) Literature on Social Factors

The literature also has findings on the materiality of weighing social factors in investment processes. The aforementioned meta-analysis by Friede et al. (2015) finds that 55.1 percent of the studies reviewed found a positive correlation between corporate financial performance and social-focused investing.[205] Two topics focused on in the literature were (1) diversity and inclusion and (2) worker voice.

(1) Diversity and Inclusion

Many studies show the material financial benefits of diverse and inclusive workplaces. The Department received several comments noting that diversity is material to financial performance. For instance, one commenter notes that high staff turnover, high strike rates, absenteeism, or death have all been linked to lower productivity and poor-quality control. There are three main vectors across which a company's diversity and inclusion practices that can have a financially material impact on their business: employee recruitment and retention, performance and productivity, and litigation.

(a) Employee Recruitment and Retention

There is evidence that corporate social responsibility affects employee recruitment, productivity, satisfaction, and retention.[206] While not all turnover is undesirable, turnover is costly. These costs are both direct and indirect. Direct costs include staff time to off-board the former employee, covering the reduced capacity with a contingent employee or with existing staff, and the cost of recruitment. The indirect costs include on-the-job training, employee socialization, and productivity gaps between the new and former employees.[207] These costs are commonly estimated as equating to 6 to 9 months of the salary for the position (or 50 to 75 percent of the salary) on top of the salary itself, depending on how exhaustively one catalogues the different types of costs.[208]

- In a survey of 2,745 respondents, the job site Glassdoor found that 76 percent of employees and job seekers overall look at workforce diversity when evaluating an offer.[209]
- The Level Playing Institute (2007) estimates firms incur a cost of $64

[198] U.S. Commodity Futures Trading Commission, ''Managing Climate Risk in the U.S. Financial System'' (2020), *https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf.*

[199] U.S. Commodity Futures Trading Commission. ''Managing Climate Risk in the U.S. Financial System,'' (2020). *https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf.*

[200] J.F. Mercure, H. Pollitt, J.E. Viñuales, N.R. Edwards, P.B. Holden. U. Chewpreecha, P. Salas, I. Sognnaes, A. Lam, and F. Knobloch, ''Macroeconmic Impact of Stranded Fossil Fuel Assets,'' Nature Climate Change 8, 588–593 (2018).

[201] Mercer and the Center for International Environmental Law, ''Trillion-Dollar Transformation: A Guide to Climate Change Investment Risk Management for US Public Defined Benefit Trustees'' (2016), *https://static1.squarespace.com/static/569da6479cadb6436a8fecc8/t/584dcf37893fc01633e3572a/1481494366264/gl-2016-responsible-investments-a-guide-to-climate-change-investment-risk-management-for-us-public-defined-benefit-plan-trustees-mercer.pdf.*

[202] *Id.*

[203] Jason Channell, Elizabeth Curmi, Phuc Nguyen, Elaine Prior, Alastair Syme, Heath Jansen, Ebrahim Rahbari, Edward Morse, Seth Kleinman, and Tim Kruger, ''Energy Darwinism II: Why a Low Carbon Future Doesn't Have to Cost the Earth,'' Citi (August 2015). *https://www.citivelocity.com/citigps/energy-darwinism-ii/.*

[204] Christopher Matthews, Collin Eaton, and Faucon Benoit, ''Behind the Energy Crisis: Fossil Fuel Investment Drops, and Renewables Aren't Ready,'' *Wall Street Journal* (October 2021), *https://www.proquest.com/docview/2582603911?accountid=41086.*

[205] Gunnar Friede, Michael Lewis, and Alexander Bassen, Timo Busch, ''ESG & Corporate Financial Performance: Mapping the Global Landscape,'' Deutsche Asset & Wealth Management, University of Hamburg (December 2015). *https://download.dws.com/download?elib-assetguid=2c2023f453ef4284be4430003b0fbeee.*

[206] Hong-yan Wang and Zhi-Xia Chen, ''Corporate Social Responsibility and Job Applicant Attraction: a Moderated-Mediation Model,'' *PLOS ONE* 17(3): e0260125. *https://doi.org/10.1371/journal.pone.0260125.* DiversityInc., ''Millennial and Gen Z Jobseekers: An Emphasis on Social Responsibility,'' *https://www.diversityincbestpractices.com/millennial-and-gen-z-jobseekers-an-emphasis-on-social-responsibility/.*

[207] David Allen, ''Retaining Talent,'' Society for Human Resources Management Foundation (2008), *https://www.shrm.org/hr-today/trends-and-forecasting/special-reports-and-expert-views/documents/retaining-talent.pdf.*

[208] Shane McFeely and Wigert, Ben, ''This Fixable Problem Costs U.S. Businesses $1 Trillion,'' Gallup (March 2019), *https://www.gallup.com/workplace/247391/fixable-problem-costs-businesses-trillion.aspx#:~:text=The%20cost%20of%20replacing%20an,to%20%242.6%20million%20per%20year.* John Hall, ''The Cost of Turnover Can Kill Your Business and Make Things Less Fun,'' *Forbes* (May 2019), *https://www.forbes.com/sites/johnhall/2019/05/09/the-cost-of-turnover-can-kill-your-business-and-make-things-less-fun/?sh=323adfac7943.* Aharon Tziner and Assa Birati, ''Assessing Employee Turnover Costs: A Revised Approach,'' Human Resources Management Review (1996). 118–119.

[209] Glassdoor, ''Diversity & Inclusion Workplace Survey'' (September 2020), *https://b2b-assets.glassdoor.com/glassdoor-diversity-inclusion-workplace-survey.pdf?_gl=1*14tssal*_ga*MTY5NTI5NTgwMi4xNjYwNjUzMDY3*_ga_RC95PMVB3H*MTY2MDY1MzA2Ni4xLjEuMTY2MDY1MzA3NS41MQ.*

billion per year from losing and replacing over 2 million American professionals and managers who leave their jobs each year due to unfairness and discrimination.[210]

• Robinson and Dechant (1997) estimate that replacing a departing employee costs between $5,000 and $10,000 for an hourly worker, and between $75,000 and $211,000 for an executive making $100,000 per year.[211]

(b) Performance and Productivity

• Chen, Leung, and Evans (2018) find that increased representation of women on corporate boards is associated with an increase in the number of patents and citations, when controlling for the amount of research and development spending.[212]

• Lorenzo et al. (2017) review of 171 German, Swiss, and Austrian companies finds that management diversity has a positive and statistically significant relationship to higher revenue from new products and services.[213]

• Phillips, Lijenquist, and Neale (2008) find that socially different group members do more than simply introduce new viewpoints or approaches. In the study, diverse groups outperformed more homogeneous groups not because of an influx of new ideas, but because diversity triggered more careful information processing that is absent in homogeneous groups.[214]

• A study from Deloitte (2013) finds employee perception of an organization's commitment to diversity and inclusion is associated with higher levels of innovation, responsiveness to customer needs, and team collaboration.[215]

• A 2013 report released by the Center for Talent Innovation (CTI) finds that employees at publicly traded companies that exhibit both inherent and acquired diversity[216] reported substantial benefits. CTI conducted a survey and found that employees at diverse companies were 70 percent more likely to report that they had captured a new market, and 75 percent more likely to report that their ideas had become productized. Employees were also as much as 158 percent more likely to report that they believed they understood their target end-users if one or more members on the team represent the user's demographic.[217]

• Companies in the top quartile for ethnic and racial diversity in management were 36 percent more likely to have financial returns above the median for their industry in their country, and those in the top quartile for gender diversity were 25 percent more likely to have returns above the median for their industry in their country.[218]

• Companies in the top quartile of gender diversity or ethnic diversity on executive teams were more likely to outperform peer companies in the bottom quartile of diversity on executive teams, in terms of profitability.[219]

(c) Litigation

• The U.S. Equal Employment Opportunity Commission (EEOC) received 67,448 charges of workplace discrimination in Fiscal Year (FY) 2020. The agency secured $439.2 million for victims of discrimination in the private sector and state and local government workplaces through voluntary resolutions and litigation.[220]

(d) Studies Covering Multiple Topics

• A meta-analysis on 7,939 business units in 36 companies further confirms that higher employee satisfaction levels are associated with higher profitability, higher customer satisfaction, and lower employee turnover.[221]

• One study found that ''companies reporting highest levels of racial diversity brought in nearly 15 times more sales revenue on average than those with lowest levels of racial diversity.'' It also found that ''[c]ompanies with highest rates reported an average of 35,000 customers compared to 22,700 average customers among those companies with lowest rates of racial diversity.''[222]

• A study of Federal agencies finds that diversity management is strongly linked to both work group performance and job satisfaction, and people of color see benefits from diversity management above and beyond those experienced by white employees.[223]

• A 6-month research study ''found evidence that a growing number of companies known for their hard-nosed approach to business—such as Gap Inc., PayPal, and Cigna—have found new sources of growth and profit by driving equitable outcomes for employees, customers, and communities of color.''[224]

However, some studies surveyed by the Department did not find a statistically significant link between board diversity and corporate financial performance. For instance:

• A 2016 meta-analysis finds that the correlation between gender diversity and corporate financial performance is either nonexistent or very small.[225]

• A 2021 review found that most of the literature used to support diversity mandates on corporate boards does not identify causal effects and that the conclusions of studies that do isolate a causal effect are mixed.[226]

[210] Level Playing Field Institute, ''The Cost of Employee Turnover Due Solely to Unfairness in the Workplace'' (2007).

[211] Gail Robinson and Kathleen Dechant, ''Building a Business Case for Diversity,'' *Academy of Management Executive* 11 (3) (1997): 21–31.

[212] Jie Chen, Woon Sau Leung, and Kevin P. Evans, ''Female Board Representation, Corporate Innovation and Firm Performance,'' *Journal of Empirical Finance* 48 (September 2018): 236–254.

[213] Rocio Lorenzo, Nicole Voigt, Karin Schetelig, Annika Zawadzki, Isabelle Welpe, and Prisca Brosi, ''The Mix that Matters: Innovation through Diversity,'' BCG (2017), *https://www.bcg.com/publications/2017/people-organization-leadership-talent-innovation-through-diversity-mix-that-matters.*

[214] Katherine W. Phllips, Katie A. Lijenquist, and Margaret A. Neale ''Is the Pain Worth the Gain? The Advantages and Liabilities of Agreeing with Socially Distinct Newcomers,'' *Personality and Social Psychology Bulletin* (December 2008), *https://journals.sagepub.com/doi/abs/10.1177/0146167208328062.*

[215] Deloitte, ''Waiter, Is that Inclusion in My Soup? A New Recipe to Improve Business Performance,'' Deloitte (2013), *https://www2.deloitte.com/content/dam/Deloitte/au/Documents/human-capital/deloitte-au-hc-diversity-inclusion-soup-051.*

[216] The report defined inherent diversity to include gender, race, age, religious background, socioeconomic background, sexual orientation, disability, and nationality. The report defines acquired diversity to include cultural fluency, generational savviness, gender smarts, social media skills, cross-functional knowledge, global mindset, military experience, and language skills.

[217] Sylvia Ann Hewlett, Melinda Marshall, Laura Sherbin, and Tara Gonsalves, ''Innovation, Diversity, and Market Growth,'' *Center for Talent Innovation* (2013), *https://coqual.org/wp-content/uploads/2020/09/31_innovationdiversityandmarketgrowth_keyfindings-1.pdf.*

[218] Vivian Hunt, Sara Prince, Sundiatu Dixon-Fyle, and Kevin Dolan. ''Diversity Wins: How Inclusion Matters,'' McKinsey & Company (2020). *https://www.mckinsey.com/~/media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf.*

[219] *Ibid.*

[220] ''EEOC Releases Fiscal Year 2020 Enforcement and Litigation Data,'' (2021).

[221] James K. Harter, Frank L. Schmidt, and Theodore L. Hayes, ''Business-Unit-Level Relationship Between Employee Satisfaction, Employee Engagement, and Business Outcomes: A Meta-Analysis,'' *Journal of Applied Psychology* 87(2) (2002) 268–279.

[222] Cedric Herring, ''Does Diversity Pay? Race, Gender, and the Business Case for Diversity,'' *American Sociological Review* (2009).

[223] David Pitts, ''Diversity Management, Job Satisfaction, and Performance: Evidence from U.S. Federal Agencies,'' *Public Administration Review* (2009).

[224] Angela Glover Blackwell, Mark Kramer, Lalitha Vaidyanathan, Lakshmi Iyer, and Josh Kirschenbaum, ''The Competitive Advantage of Racial Equity,'' FSG and PolicyLink (2018).

[225] Alive Eagly, ''When Passionate Advocates Meet Research on Diversity, Does the Honest Broker Stand a Chance,'' *Journal of Social Issues,* Vol. 72, No. 1 (2016). *https://web.p.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=1&sid=8ad704e4-79e4-4998-827b-07473bb39c31%40redis.*

[226] Jonathan Klick, ''Review of the Literature on Diversity on Corporate Boards,'' American Enterprise Institute (2021), *https://www.aei.org/*

• A 2010 study did not find a statistically significant relationship between the gender or ethnic diversity of boards and financial performance.[227]

• A 2015 meta-analysis from 20 studies on 3,097 companies analyzed the relationship between female representation on corporate boards and firm performance. The analysis found the mean-weighted correlation between female representation and firm performance was small and non-significant. However, the authors note that a higher representation of females on corporate boards was also not associated with a detrimental effect on firm financial performance.[228]

One study cautions that ''the empirical connection between a single dimension of board structure and firm performance may be too nuanced to statistically tease out. Research that empirically links board structure to board or firm actions is a much better method to test if a relationship between board composition and performance exists than an analysis that attempts to go from board structure directly to firm performance and skips over board and firm actions.'' [229] Another study cautioned that when diversity is enforced by regulation, there was no effect on performance.[230]

(2) Worker Voice

The research literature also finds material financial benefits from employee engagement and representation in corporate governance as employees' voices are amplified through unions or through direct representation on corporate boards. Similar to the literature on diversity and inclusion, the literature focuses on the benefits of employee retention and productivity.

Much of the literature on employee voice builds on the tradeoff between exit and voice laid out by Hirschman (1970), in which management becomes aware of failures either by actors, such as employees, leaving the organization (''quitting'') or by actors expressing dissatisfaction to management (''voicing'').[231] A review of theoretical and empirical research by Palladino (2021) finds that when employees have access to voice mechanisms, such as union representation, firms are likely to experience fewer employee ''exits.'' [232] For example, Freeman (1980) shows empirically that the presence of unions reduces turnover.[233]

The literature surveyed by Palladino (2021) also suggests that unionization and worker voice improves employee productivity.[234] Freeman and Lazear (1995) model the economic value of workers' councils, finding that workers' councils may reduce economic inefficiencies by decreasing information asymmetries and aligning employer and worker incentives during difficult times. Their modeling also finds that workers' councils with co-determination rights were associated with increased perceptions of job security amongst workers, aligning long-run interests of the worker and employer, and ultimately increasing productivity.[235] Jäger et al. (2021) performed an empirical analysis of the impact of a policy reform in Germany affecting the degree of worker representation on corporate boards.[236] They found that worker representation does not lower wages or reduce capital formation.

(k) ESG Data, Ratings, and Disclosures

The research community and commenters also weighed in on the data, ratings, and disclosures used to inform ESG investments. Surveys conducted by Natixis Investment Managers in 2018 found that among investment managers implementing ESG, 70 percent of institutions rely on sustainability ratings to evaluate ESG performance, which is higher than the percent of institutions relying on company reports (37 percent), rankings and awards (37 percent), regulatory filings (24 percent), news reports (24 percent), and non-governmental organizations (23 percent).[237]

Research indicates that one of the challenges faced by investment managers and rating agencies is that many of the company disclosures on ESG-related issues are voluntary. Condon (2022) finds that, as of 2018, complying companies, on average, provided less than four of the eleven disclosure metrics recommended by the Task Force on Climate-related Financial Disclosures. The study also finds that voluntary disclosures are more likely to focus on transition risks than physical risks.[238]

To mitigate missing information in voluntary disclosures, ESG rating agencies and investment professionals have begun to utilize alternative data and artificial intelligence. These techniques allow the industry to uncover material data that were not disclosed by the company.[239] For instance, Morgan Stanley Capital International (MSCI) estimates that only 35 percent of the data inputs for the MSCI ESG Ratings model are from voluntary disclosures.[240] Additionally, a 2020 survey of CFA Institute members finds that 71 percent of the participants polled agreed that alternative data reinforce sustainability analysis and 43

research-products/report/review-of-the-literature-on-diversity-on-corporate-boards/.

[227] David A. Carter, Frank D'Souza, Betty J. Simkins, and W. Gary Simpson, ''The Gender and Ethnic Diversity of US Boards and Board Committees and Firm Financial Performance,'' Corporate Governance: An International Review 18, no. 5 (2010): 396–414, *https://wedc-online.wildapricot.org/Resources/WEDC-Documents/Women%20On%20Board/Gender%20Diversity%20and%20Boards.pdf.*

[228] Jan Luca Pletzer, Romina Nikolova, Karina Karolina Kedzior, and Sven Constantin Voelpel, ''Does Gender Matter? Female Representation on Corporate Boards and Firm Financial Performance—A Meta-Analysis'' (June 2015), *https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0130005&type=printable.*

[229] David A. Carter, Frank D'Souza, Betty J. Simkins, and W. Gary Simpson, ''The Gender and Ethnic Diversity of US Boards and Board Committees and Firm Financial Performance,'' *Corporate Governance: An International Review* 18, no. 5 (2010): 396–414. *https://wedc-online.wildapricot.org/Resources/WEDC-Documents/Women%20On%20Board/Gender%20Diversity%20and%20Boards.pdf.*

[230] Deloitte and Nyenrode Research Program, ''Good Governance Driving Corporate Performance? A Meta-Analysis of Academic Research & Invitation to Engage in the Dialogue'' (December 2016).

[231] Albert Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States,* Harvard University Press, Cambridge, Massachusetts (1970).

[232] Lenore Palladino, ''Economic Democracy at Work: Why (and How) Workers Should be Represented on US Corporate Boards,'' *Journal of Law and Political Economy,* Vol. 1, No. 3 (2021).

[233] Richard B. Freeman, ''The Exit-Voice Tradeoff in the Labor Market: Unionism, Job Tenure, Quits, and Separations,'' *The Quarterly Journal of Economics,* Vol. 94, No. 4 (1980), *https://www.jstor.org/stable/pdf/1885662.pdf?refreqid=excelsior%3A04abe825526fefa1f141b7b509419d18&ab_segments=&origin=&acceptTC=1.*

[234] Lenore Palladino, ''Economic Democracy at Work: Why (and How) Workers Should be Represented on US Corporate Boards,'' *Journal of Law and Political Economy,* Vol. 1, No. 3 (2021).

[235] Richard Freeman and Edward Lazear, ''An Economic Analysis of Works Councils,'' *Works Councils: Consultation, Representation, and Cooperation in Industrial Relations,* University of Chicago Press (1995), *https://www.nber.org/system/files/chapters/c11555/c11555.pdf.*

[236] Simon Jäger, Benjamin Schoefer, Jörg Heining, ''Labor in the Boardroom,'' *Quarterly Journal of Economics,* Vol. 136, Issue 2, 2021. *https://doi.org/10.1093/qje/qjaa038.*

[237] Natixis Investment Managers, ''Looking for the Best of Both Worlds'' (2019), *https://www.im.natixis.com/us/resources/esg-investing-survey-2019.*

[238] Madison Condon, ''Market Myopia's Climate Bubble,'' *1 Utah Law Review* 63 (2022), Boston University School of Law Research Paper (February 2021), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3782675.*

[239] Sean Collins and Kristen Sullivan, ''Advancing ESG Investing: a Holistic Approach for Investment Management Firms,'' *Harvard Law School Forum on Corporate Governance* (March 2020), *https://corpgov.law.harvard.edu/2020/03/11/advancing-esg-investing-a-holistic-approach-for-investment-management-firms/.*

[240] Samuel Block, ''Using Alternative Data to Spot ESG Risks,'' MSCI (June 2019), *https://www.msci.com/www/blog-posts/using-alternative-data-to-spot/01516155636.*

percent expect applying artificial intelligence to sustainability analysis will further improve the analysis.[241]

Another challenge faced by investment managers and rating agencies is a lack of standardization in ESG terminology, which makes it difficult to do relative comparisons or to create well-defined categories.[242] In a 2020 report to Congress, the GAO reviewed annual reports, 10–K filings, proxy statements, and voluntary sustainability reports for 32 companies and interviewed 14 large and midsized institutional investors. The report found that the ''differences in methods and measures companies use to disclose quantitative information make it difficult to compare across companies.'' [243] Similarly, the CFA Institute notes that differing terminology, such as the same measure being called different names or different measures sharing the same name, makes it difficult to do relative comparisons.[244]

While ESG rating agencies have improved their methods and transparency in recent years, rating providers vary significantly in scoring methodology, data, analyses, metric weighting, materiality, and how missing information is accounted for.[245] Several studies analyze how ratings differ between agencies. For instance, Feifei and Polychronopoulos (2020) construct four separate portfolios, two in the United States and two in Europe, using ESG ratings data from two providers. The study simulates portfolio performance between July 2010 and June 2018. The authors found that the two constructed portfolios ''have a performance dispersion of 70 basis points (bps) a year in Europe (9.4 percent versus 8.7 percent) and 130 bps a year in the United States (14.2 percent versus 12.9 percent).'' [246] Similarly, a 2020 study from the OECD constructed portfolios using ESG scores from different rating providers and found that risk-adjusted returns varied significantly between different rating providers.[247]

Berg, Kölbel, and Rigobon (2022) compared 709 ESG indicators from different rating systems, to estimate how measurement, scope, and weight divergence account for the differences between ESG ratings. They find that measurement divergence accounts for 56 percent of the difference, while scope and weight divergence account for 38 percent and 6 percent, respectively.[248] They caution that inconsistency with ESG ratings sends mixed signals to companies as to which actions are expected and will be valued by the market. They believe that the divergence of ratings poses a challenge for empirical research, as using one rater versus another may alter a study's results and conclusions.

Curtis, Fisch, and Robertson (2021) find that there is substantial heterogeneity in ESG ratings of companies but more consistency in ESG ratings of portfolios, and that in general ESG portfolios provide a degree of ESG characteristics.[249] They argue this is what really matters from an investor's point of view. They make the analogy that the concerns with an ESG mutual fund are similar to those of a growth mutual fund—neither has a standardized definition, but they offer investors certain characteristics to a degree even if those characteristics vary widely across funds and even if different ratings providers rate them differently.

A 2021 study from MSCI finds that ESG ratings within the same category can have low pairwise correlations, which the study attributes to the use of different ESG metrics and weights.[250] The study creates a composite ESG rating based on subindustry specific weights of E, S, and G and finds composite ratings tend to outperform any of the individual E, S, or G ratings. The bottom quintile of E, S, G, and composite ratings tend to have more stock drawdowns than their top quintile, especially when it comes to large drawdowns. From 2007 to 2019, the bottom quintiles of E, S, G, and composite scores all performed worse than their top quintile. In this longer run analysis, E, S, and G scores had about equal effects, with the composite score improving on all these ratings. However, the top E, S, and G scores underperformed the bottom quintile during some time periods of their analysis. The top quintile of the composite ESG score outperformed for the entire time period.[251]

Many commenters, academic researchers, and industry observers have raised serious questions about the reliability of ESG ratings. Fiduciaries use ratings as tools to synthesize large amounts of information. Reliability concerns make it more challenging for fiduciaries to conduct an analysis, but making decisions based on imperfect information is not limited to ESG investing. The Department anticipates that fiduciaries will give the same careful consideration to the usefulness and shortcomings of data sources pertaining to ESG as they do to any relevant data source.

(l) Summary of the Literature Reviewed

Paragraphs (b) and (c) of the final rule will reduce the uncertainty that fiduciaries might have about considering ESG factors, thereby permitting them to take into account the beneficial impact that ESG can have on investing. The studies examined by the Department show that ESG can have a beneficial impact on investing in many circumstances. However, that impact is not universal and does not mean that ESG investing will result in improved performance or reduced risk in every circumstance. The current lack of standardized ratings also makes it difficult to directly measure the full impact of ESG strategies.

2. Cost Savings Relating to Paragraphs (c), Relative to the Current Regulation

The current regulation expressly requires a fiduciary making an investment decision on collateral benefits when using the tiebreaker to document why pecuniary factors were not sufficient to select the investment, how the selected investment compares to alternative investments with regard to the factors listed in paragraphs (b)(2)(ii)(A) through (C) of the current regulation, and how the chosen non-pecuniary factors are consistent with the interests of the plan. This provision implemented a more rigid, heightened documentation requirement, which

[241] CFA Institute. ''Future of Sustainability in Investment Management: From Ideas to Reality.'' *https://www.cfainstitute.org/-/media/documents/survey/future-of-sustainability.ashx.*

[242] CFA Institute, ''Global ESG Disclosure Standards for Investment Products'' (2021), *https://www.cfainstitute.org/-/media/documents/ESG-standards/Global-ESG-Disclosure-Standards-for-Investment-Products.pdf.*

[243] GAO, ''Report to the Honorable Mark Warner U.S. Senate: Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them'' (July 2020), *https://www.gao.gov/assets/gao-20-530.pdf.*

[244] CFA Institute, ''Global ESG Disclosure Standards for Investment Products'' (2021).

[245] OECD, ''ESG Investing: Practices, Progress and Challenges'' (2020), *https://www.oecd.org/finance/ESG-Investing-Practices-Progress-Challenges.pdf.*

[246] Feifei Li and Ari Polychronopoulos, ''What a Different an ESG Ratings Provider Makes!'' Research Affiliates (January 2020), *https://www.researchaffiliates.com/content/dam/ra/documents/770-what-a-difference-an-esg-ratings-provider-makes.pdf.*

[247] OECD, ''ESG Investing: Practices, Progress and Challenges'' (2020), *https://www.oecd.org/finance/ESG-Investing-Practices-Progress-Challenges.pdf.*

[248] Florian Berg, Julian Kölbel, and Roberto Rigobon, ''Aggregate Confusion: The Divergence of ESG Ratings,'' 2022, *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3438533.*

[249] Curtis, Fisch, and Robertson, ''Do ESG Funds Deliver on Their Promises?'' 2021.

[250] MSCI's ESG ratings are based on subindustry level ratings, selected from 37 ESG metrics. For each subindustry, metrics are weighted based on subindustry specific weights.

[251] MSCI ESG Research, ''Deconstructing ESG Ratings Performance'' (2021), *https://www.msci.com/our-solutions/esg-investing/deconstructing-esg-performance.*

imposed an annual cost burden of $122,115 according to the impact analysis of the current rule. This view was also supported by commenters, who stated that the current regulation created an extra burden of documentation. The final rule eliminates this special documentation requirement. The removal of this provision does not excuse ERISA fiduciaries from the documentation required to satisfy their general prudence obligations.

Removing the special documentation leads to a cost savings. Like in the current regulation, the Department estimates that one percent of plans will invoke the tiebreaker in an investment decision each year, and the special documentation would have required two hours of labor from both a plan fiduciary and clerical worker. Assuming an hourly labor cost of $129.74 for a plan fiduciary and $61.01 for a clerical worker,[252] the Department estimates that this elimination, updated for revised affected entity estimates, will save approximately $506,000 annually.[253]

3. Benefits of Paragraph (d)

Paragraph (d) of the final rule contains provisions addressing the application of the prudence and loyalty duties to the exercise of shareholder rights, including proxy voting, the use of written proxy voting guidelines, and the selection and monitoring of proxy advisory firms. The final rule's paragraph (d) will benefit plans by providing improved guidance regarding these activities. As discussed above, non-regulatory guidance that the Department has previously issued over the years may have led to the misapprehension that fiduciaries are required to participate in all proxy votes presented to them or, conversely, that they may not participate in proxy votes unless they first perform a formal cost-benefit analysis and quantify net benefits. Although the current regulation sought to address the first misunderstanding (*i.e.,* that fiduciaries are required to participate in all proxy votes) with express language, the Department is concerned that the language used may have effectively reinstated the second misunderstanding—that they may not participate in proxy votes unless they first perform a formal cost-benefit analysis and quantify net benefits—by suggesting that fiduciaries need special justification to participate in proxy votes. Several commenters stated that this misinterpretation leads some fiduciaries to abstain from many proxy votes out of an abundance of caution. These abstentions leave the interests of plans, participants, and beneficiaries unrepresented in proxy votes. An increase in proxy votes by plans will improve corporate accountability.

The Department believes that the principles-based approach retained in paragraph (d) of the final rule will address these misunderstandings and clarify that neither extreme is required. Instead, plan fiduciaries, after an evaluation of relevant facts that form the basis for any particular proxy vote or other exercise of shareholder rights, must make a reasoned judgment both in deciding whether to exercise shareholder rights and how to exercise such rights. In making this judgment, plan fiduciaries must act in accordance with the economic interest of the plan, must consider any costs involved, and must never subordinate the interests of participants in their retirement benefits to unrelated goals.

The clarifications offered in this final rule will lead to increased proxy voting activity compared to the baseline. The reason is that the final rule will address the misunderstanding that fiduciaries need special justification to participate in proxy votes. With this additional guidance, fiduciaries will have sufficient clarity to participate in proxy votes unless a responsible plan fiduciary determines it is not in the plan's best interest. The Department believes this is beneficial because it ensures that shareholders' interests, as a company's owners, are protected. By extension, this means the interests of plan participants and beneficiaries as shareholders are also protected.

Preserving flexibility, paragraph (d) of the final rule carries forward core elements of the provision from the current regulation that allows a plan to have written proxy voting policies that govern decisions on when to vote on different categories or types of proposals, subject to the aforementioned principles. With the ability for plans to adopt policies to govern the decision whether to vote on a matter or class of matters, plan fiduciaries will be in a better position to conserve plan assets by establishing specific parameters designed to serve the plan's interests.

The Department received several comments on the NPRM expressing support for proxy voting as an essential fiduciary function. One commenter argued that proxy voting can help reduce investment risk and pointed to the success of shareholder resolutions in reducing hazardous chemicals and pesticides, which could cause reputational and financial damage to firms if improperly managed. Several commenters argued that proxy votes can provide critical oversight of management, which can reduce downside risk. One investment management firm commented that they approach proxy voting with ''the consistent goal of promoting strong corporate governance, acting in the best interest of [. . .] shareholders and clients.'' Another commenter argued that the Department should go further and require voting in favor of proxy votes that align holdings with ESG metrics when in the interest of plan participants and beneficiaries, citing the financial effects that waste reduction efforts can have on lowering business costs. The Department considered this suggestion, but believes that the Department's longstanding view of ERISA with regards to proxy voting sets out a more balanced approach. The Department believes that proxies should

[252] The Department estimates labor costs by occupation. Estimates for total compensation are based on mean hourly wages by occupation from the 2021 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the December 2021 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2020 Service Annual Survey. To estimate overhead cost on an occupational basis, the Office of Research and Analysis (ORA) allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each North American Industry Classification System (NAICS) industry. All values are in 2022 dollars. For more information in how the labor costs are estimated see: *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculation,* Employee Benefits Security Administration (June 2019), *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[253] In the 2020 final rule published on November 13, it was estimated that that plan fiduciaries and clerical staff would each expend, on average, two hours of labor to maintain the needed documentation, resulting in an annual burden estimate of 1,290 hours annually, with an equivalent cost of $122,115 for plans with ESG investments. For the purposes of this analysis, the Department assumes that DB plans will change investments annually, while DC plans review their investments every three years, on average. Updated to reflect updated estimates for affected plans and labor costs, the Department estimates the updated costs as: (124,302 DB plans that use ESG × 1% of plans that have ties × 2 hours × $129.74 per hour for a plan fiduciary) + (124,302 DB plans that use ESG × 1% of plans that have ties × 2 hours × $61.01 per hour for a clerical worker) + (25,020 DC plans that use ESG × 1% of plans that have ties × ⅓ of plans reviewing investments annually × 2 hours × $129.74 per hour for a plan fiduciary) + (25,020 DC plans that use ESG × 1% of plans that have ties × ⅓ of plans reviewing investments annually × 2 hours × $61.01 per hour for a clerical worker) = $506,029. This requirement has been eliminated in the finalized rule. 85 FR 72846. (*Source Private Pension Plan Bulletin: Abstract of 2020 Form 5500 Annual Reports,* Employee Benefits Security Administration (2022; forthcoming), Table D3.)

be voted as part of the process of managing the plan's investment in company stock unless a responsible plan fiduciary determines a proxy vote may not be in the plan's best interest; for example, if the costs associated with voting outweigh the expected benefits.

Commenters provided literature on the cost, benefits, and effects of shareholder engagement and proxy voting.

(a) Changes in Levels of Proxy Voting

The Department expects that the final rule will promote, rather than deter, responsible proxy voting compared to the 2020 rule; however, it is less certain that it will result in any increase in proxy voting as compared to the pre-regulatory guidance, which took a similar approach. In the NPRM, the Department invited comments on whether the proposed rule would increase proxy voting as compared to the pre-regulatory guidance but did not receive any comments on the question.

Some commenters discussed how the proposed rule would affect proxy voting activity. For instance, one commenter noted that the proposed rule would help support appropriate levels of proxy voting, though they did not specify how, while recognizing that a professional advisor across many accounts can play a practical role in alleviating the costs and burdens of voting at the plan level. Conversely, another commenter noted that even large funds could be ''rationally apathetic'' because the costs of analyzing a given proxy vote and overcoming conflicts of interest will likely outweigh the marginal benefits of a ''correct'' proxy vote. This commenter expressed that unless there are explicit standards in place making clear that proxy voting is a fiduciary obligation, there is a significant risk of sub-optimal proxy votes. The Department's longstanding view of ERISA is that proxies should be voted as part of the process of managing the plan's investment in company stock unless a responsible plan fiduciary determines a proxy vote may not be in the plan's best interest. We believe that this standard highlights the importance of proxy voting, while also allowing a fiduciary to make prudent decisions regarding the costs and benefits of any particular proxy vote.

(b) Trends in Proxy Voting

Commenters provided literature on the state of proxy voting. Orowitz, Kumar, and Hagel (2022) observe that by June of the 2022 proxy season there were already 924 shareholder proposal submissions.[254] Even though the 2022 proxy season was not complete at the time of the study, this figure represented a 10 percent increase from 2021, when 837 shareholder proposals were submitted. There was a similar 11 percent increase between 2020 and 2021, when the number of proposals increased from 754 to 837. Based on projections for the rest of the year, the authors state that it is possible that 621 of these shareholder resolutions may eventually come to a vote. This would represent a 42 percent increase from 2021.[255]

Cook and Solberg (2021) examined the number of shareholder resolutions brought to a vote regarding environmental and social issues. The authors observed 171 votes on shareholder-sponsored resolutions pertaining to environmental and social issues between July 1, 2020 and June 30, 2021, down from 220 votes in 2017. The study attributes the decline in environmental and social shareholder resolution votes to SEC regulations, which discouraged climate shareholder resolutions. Of the 171 resolutions, however, a record 36 resolutions passed with majority support. Despite the decline in shareholder resolutions received, average support rose to 34 percent, which is five percentage points higher than the previous record set in 2019.[256]

Koningsburg, Thorne, and Cahill (2021) analyzes trends across annual general meetings in 2021. The authors find that U.S. shareholders submitted 115 proposals related to the environment, with 74 percent of those being related to climate. This is a significant increase from 2020, when shareholders submitted 89 environmental resolutions, with 54 percent of those related to climate. There were 9 shareholder resolutions filed on diversity disclosure, three of which requested public disclosure of EEO–1 data and six of which requested enhanced reporting on diversity, equity, and inclusion data. Further, there were eight shareholder proposals on racial equity audits. For governance, in 2021, there was 95 percent support for re-election of directors in the Russell 3000; however, the proportion of directors receiving less than 80 percent support has increased in recent years. The authors attribute the decline in support to lack of progress by the board on climate change and diversity.[257]

Another important facet of proxy voting is the investor's approach to proposals by management. Shareholder resolutions are often the most discussed aspect of proxy voting, but only make up a small share of total proxy votes. According to ICI (2019), 98 percent of proxy proposals at the 3,000 largest publicly traded firms were submitted by management, with the majority of those proposals being related to compensation, personnel, and other key business decisions. ICI also finds investors are significantly more likely to support management resolutions than they are shareholder resolutions. They found that 94 percent of the votes were cast in favor of proposals by management, whereas only 34 percent of votes were cast in favor of shareholder resolutions. This relationship also held with respect to the recommendations of proxy advisors. Proxy advisors recommended voting in favor of 93 percent of management proposals, but only 65 percent of shareholder proposals.[258]

(c) The Role of Proxy Advisory Firms

Several commenters weighed in on the role of proxy advisory firms. Multiple commenters expressed concerns over the role of the proxy advisory service industry, which they observed as being highly concentrated. Several commenters argued that proxy advisory firms do not have the knowledge or sufficient staff necessary to adequately conduct the type of analysis necessary for making recommendations to fiduciaries. One commenter went on to further express concern that proxy advisory firms have no obligation to explain their recommendations or provide the underlying research to back them up.

In addition to concerns over the role of proxy advisory firms, several commenters expressed concerns regarding the potential for conflicts of interests at these firms. If a proxy advisory firm makes proxy voting recommendations that promote ESG it may increase their lines of business providing ESG ratings and advising companies on how to increase their ESG ratings.

[254] Hannah Orowitz, Rajeev Kumar, and Lee Ann Hagel, ''An Early Look at the 2022 Proxy Season,'' *The Harvard Law School Forum on Corporate Governance* (7 June 2022), *https://corpgov.law.harvard.edu/2022/06/07/an-early-look-at-the-2022-proxy-season/.*

[255] *Id.*

[256] Jackie Cook and Lauren Solberg, ''The 2021 Proxy Season in Charts,'' Morningstar (August 2021), *https://www.morningstar.com/articles/1052234/the-2021-proxy-voting-season-in-7-charts.*

[257] Dan Konigsburg, Sharon Thorne, and Stephen Cahill, ''Investor Behavior in the 2021 Proxy Season,'' *Harvard Law School Forum on Corporate Governance* (2021), *https://corpgov.law.harvard.edu/2021/11/10/investor-behavior-in-the-2021-proxy-season/.*

[258] ''ICI Research Perspective'', ICI (2019), *https://www.ici.org/system/files/attachments/per25-05.pdf.*

Commenters primarily focused on four sections of the final rule which they asserted would lead to increased reliance on proxy advisory firms. First, commenters pointed to the rescission of language from paragraph (e)(2)(ii) of the current regulation stating that ''the fiduciary duty to manage shareholder rights appurtenant to shares of stock does not require the voting of every proxy or the exercise of every shareholder right.'' They believe that removing this language will encourage higher levels of proxy voting by fiduciaries and that fiduciaries will rely on proxy advisory services to deal with the workload from increased proxy voting. Second, commenters stated that removing the specific monitoring provisions from paragraph (e)(2)(ii) of the existing regulation would reduce the effort associated with using proxy advisory firms while simultaneously reducing accountability and monitoring of those firms. Third, commenters stated that the removal of specific recordkeeping requirements from paragraph (e)(2)(ii)(E) of the current regulation would similarly make it easier to rely on proxy advisory firms, while also impeding the ability of participants to ensure that ERISA plan proxies are being voted in a manner consistent with the financial interest of the plan. Finally, the commenters point to the removal of two safe harbors from paragraphs (e)(3)(i)(A) and (B) of the current regulation, which specified policies of limiting voting based on voting type and holding size. Other commenters stated that the safe harbors applied to instances in which proxy voting would not be expected to have an economic effect. They further expanded that without the safe harbors, fiduciaries would participate in all proxy votes, which would require increased reliance on proxy advisory firms.

The Department understands these concerns, and notes that fiduciaries still have a duty under the final rule's general monitoring provision, at paragraph (d)(2)(ii)(E) to prudently select and monitor the provider of proxy advisory services. However, the Department did not find it necessary to retain an additional provision to differentiate the monitoring of a proxy advisory firm from the monitoring of any other service providers that a fiduciary may utilize. Additionally, section 404 (a)(1)(B) of ERISA already requires proper documentation both of the activities of the investment manager and of the named fiduciary of the plan in monitoring the activities of the investment manager. This would require the investment manager or other responsible fiduciary to keep accurate records as to the voting of proxies, and periodically review the voting procedures and individual votes. The Department did not find it necessary to retain additional recordkeeping requirements beyond these that were already required of fiduciaries. With regards to the safe harbors, the Department notes that fiduciaries may still develop written guidelines to determine their decisions to participate in proxy votes. The Department reiterates its longstanding view of ERISA that proxies should be voted unless a responsible plan fiduciary determines a proxy vote is not in the plan's best interest.

Several commenters referenced studies discussing the role of proxy advisory firms. A central theme in this literature was the argument that shareholder resolutions are heavily influenced by the proxy advisory service industry. Malenko and Shen (2016) studied the effects of the proxy advisory industry on say-on-pay proposals from 2010 to 2011. The authors observed that negative recommendations by proxy advisory firms reduced support for proposals by 25 percentage points.[259] A Timothy Doyle (2018) report also observed that certain large institutional investors vote in line with proxy advisory firm recommendations 80–95 percent of the time for positive recommendations, and 50–85 percent for negative recommendations.[260] At its most extreme, this influence can manifest into ''robovoting'' whereby investors follow a proxy advisory firm's voting guidance without any independent review. Another report by Timothy Doyle (2018) finds that 175 asset managers representing more than $5 trillion in assets under management and who voted on more than 100 shareholder resolutions voted in line with proxy advisory firm recommendations more than 95 percent of the time. Of these 175 asset managers, 82 voted with proxy advisory services more than 99 percent of the time.[261] In a similar vein, Paul Rose (2019) found 98 investors, representing $3.2 trillion in assets under management, voted in alignment with ISS more than 99.5 percent of the time.[262]

In addition to concerns over the influence of proxy advisory firms, some literature also took issue with the quality of their recommendations. Larcker, McCall, and Ormazabal (2015) find that companies faced with the prospect of a negative proxy advisory service recommendation on say-on-pay proposals will often change their compensation programs ''in a manner consistent with the features known to be favored by proxy advisory firms.'' The stock market reaction to these pre-emptive changes is statistically negative.[263]

Some literature was more skeptical on the level of influence by the proxy advisory service industry. Nili and Kastiel (2020) find that the success rates of the two largest proxy advisory firms, Glass Lewis and ISS, varies significantly from year to year.[264] From 2005 to 2017, the percentage of proxy fights won by the dissidents when supported by Glass Lewis has been as low as 33 percent in 2012 and as high as 100 percent in 2010. When supported by ISS, the percentage of proxy fights won by the dissidents has been as low as 43 percent in 2006 and as high as 89 percent in 2014.

Similar variation was found in the percentage of proxy fights won by management when supported by these proxy advisory firms. The authors found that these mixed findings were consistent with the overall corporate governance literature on proxy advisory services. In a review of relevant literature, Larcker, Tayan, and Copland (2015), observe that ''the empirical evidence shows that an against recommendation is associated with a reduction in the favorable vote count by 10 percent to 30 percent.''[265] Choi, Fisch, and Kahan (2010) estimate that the negative recommendations of proxy advisory firms only shifted investor votes by 6 to 10 percent after controlling

[259] Nadya Malenko and Yao Shen, ''The Role of Proxy Advisory Firms: Evidence from a Regression-Discontinuity Design,'' *The Review of Financial Studies,* Volume 29, Issue 12, December 2016, Pages 3394–3427, *https://doi.org/10.1093/rfs/hhw070.*

[260] Timothy Doyle, ''The Conflicted Role of Proxy Advisors,'' American Council for Capital Formation (May 2018), *https://accf.org/wp-content/uploads/2018/05/ACCF-The-Conflicted-Role-of-Proxy-Advisor-FINAL.pdf.*

[261] Timothy Doyle, ''The Realities of Robo-Voting,'' American Council on Capital Formation (November 2018), *https://accfcorpgov.org/wp-content/uploads/ACCF-RoboVoting-Report_11_8_FINAL.pdf.*

[262] Paul Rose, ''Robovoting and Proxy Vote Disclosure'' (November 2019). *https://ssrn.com/abstract=3486322.*

[263] David F. Larcker, Allan McCall, and Gaizka Ormazabal, ''The Economic Consequences of Proxy Advisor Say-on-Pay Voting Policies,'' *Journal of Law and Economics,* vol. 58, no. 1, Feb. 2015, pp. 173–204, *https://doi.org/10.2139/ssrn.2101453.*

[264] Yaron Nili and Kobi Kastiel, ''Competing for Votes,'' *Wisconsin Law School Legal Studies Research Paper Series Paper,* No. 1605 (2020), *https://ssrn.com/abstract=3681541.*

[265] David F. Larcker, Brian Tayan, and James R. Copland, ''The Big Thumb on the Scale: An Overview of the Proxy Access Advisory Industry,'' *Harvard Law School Forum on Corporate Governance* (June 14, 2018), *https://corpgov.law.harvard.edu/2018/06/14/the-big-thumb-on-the-scale-an-overview-of-the-proxy-advisory-industry/.*

for observable factors.[266] McCahery, Sauthner, and Starks (2015) find that ''55 percent of institutional investors agree that proxy advisory firms help them make more informed voting decisions,'' but concluded that institutional investors rely on the advice of proxy advisory firms as a complement to their decision-making, rather than a substitute.[267]

As stated in the preamble, the Department believes that the solution to proxy-voting costs is for the fiduciary to be prudent in incurring expenses to make proxy decisions and, wherever possible, to rely on efficient structures, which may include the use of proxy advisory services. However, paragraph (d)(2)(iii) of the final rule states that a fiduciary may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider without a determination that such firm or service provider's proxy voting guidelines are consistent with the fiduciary's obligations described in paragraphs (d)(2)(ii)(A) through (E) of this section. The Department recognizes some commenters' continued concerns about the role of proxy advisory firms, but this provision (in conjunction with the general monitoring provision in paragraph (d)(2)(ii)(E), discussed above) will protect plan participants and beneficiaries by ensuring adequate oversight of proxy advisory firms.

(d) Costs of Proxy Voting and Shareholder Engagement and Its Effect on Company Behavior

The effects of proxy voting and shareholder engagement on company activity is the subject of a diverse body of literature. Much of the research on proxy voting and shareholder engagement focuses on the effects of proxy voting and shareholder engagement on a company's ESG performance, which could then affect a company's financial performance. The association between ESG and financial performance was discussed in detail in previous sections.

Another body of research looks at the effectiveness of shareholder resolutions as a tool to incite change. For instance, Kölbel, Heeb, Paetzold, and Busch (2020) review five studies on shareholder resolutions and found that 18 to 60 percent of shareholder resolutions are successful in changing company behavior.[268] The 18 percent finding by Dimson, Karakas, and Li (2015) comes from the oldest sample period (1999–2009) of the five papers, with more recent studies suggesting higher success rates.[269] One of the studies reviewed went on to further demonstrate an increase in ESG ratings as a result of these shareholder resolutions.[270]

Literature on the direct financial effects of proxy voting on stock returns is more limited. A literature summary by Clark, Feiner, and Viehs (2014) finds that most papers on proxy voting find inconclusive or statistically insignificant results on the relationship to stock returns. The authors find that the reviewed literature ''only provides limited evidence that proxy voting is an effective tool to promote proper ESG standards, or that it is helpful in creating superior financial performance at investee firms.'' [271]

Cuñat, Gine, and Guadalupe (2012) find that companies with successful shareholder governance proposals yielded abnormal returns—1.3 percent higher than firms with failed proposals on the day of the vote. Over the week of the vote, these abnormal returns accumulate to 2.4 percent. This gain in shareholder value is more pronounced regarding anti-takeover provisions, like eliminating classified boards and poison pills. This effect is also stronger at firms with more concentrated ownership, more anti-takeover provisions in place, more research and development (R&D) expenditures, and more shareholder proposals in the past. The effect is also larger for proposals made by institutional shareholders rather than individuals. The authors further find that actually implementing these accepted proposals increases the shareholder value effect to 2.8 percent.[272]

In summary, the literature provided leads the Department to believe that proxy voting and shareholder engagement is increasing in its frequency and scope. The effects of this activity are not uniformly agreed upon in the literature, however there is evidence of proxy voting and shareholder engagement leading to increased shareholder value and financial returns at firms. There is also evidence of proxy voting and shareholder engagement being able to increase a company's ESG performance, which may have financial performance benefits that were discussed previously. Proxy voting and shareholder engagement has a tangible time cost, which can be reduced through the use of efficient structures, including proxy voting guidelines, and proxy advisers/managers that act on behalf of large aggregates of investors. Evidence regarding the influence of these proxy advisory firms is mixed, and varies from year to year, company to company, and topic to topic. Accordingly, the Department stresses fiduciaries' obligation to monitor the performance of proxy advisory firms to ensure that they are performing their work in a way that is consistent with the plan's best interest.

4. Cost Savings Relating to Paragraphs (d) and (e), Relative to the Current Regulation

In the cost savings estimates below, the Department assumes an hourly labor cost of $129.74 for a plan fiduciary and $61.01 for a clerical worker.[273]

Paragraph (d) of the final rule eliminates the recordkeeping requirement in paragraph (e)(2)(ii)(E) of the current regulation which provides that, when deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must maintain records on proxy voting activities and other exercises of shareholder rights. The change is

[266] Stephen Choi, Jill Fisch, and Marcel Kahan, ''The Power of Proxy Advisors: Myth or Reality?'' 59 *Emory Law Journal* 869, 882 (2010), *https://scholarlycommons.law.emory.edu/elj/vol59/iss4/2/.*

[267] Joseph A. McCahery, Zacharias Sautner, and Laura T. Starks, ''Behind the Scenes: The Corporate Governance Preferences of Institutional Investors,'' 71 *Journal of Finance,* 2905, 2928 (2016). *https://www.jstor.org/stable/44155408#metadata_info_tab_contents.*

[268] Julian F. Kölbel, Florian Heeb, Falko Paetzold, and Timo Busch, ''Can Sustainable Investing Save the World? Reviewing the Mechanisms of Investor Impact,'' *Organization & Environment,* vol. 33, no. 4, 2020, pp. 554–574, *https://doi.org/10.1177/1086026620919202.*

[269] E. Dimson, O. Karakas, and X Li, ''Active Ownership,'' *Review of Financial* Studies, volume 28, issue 12, p. 3225–3268, 2015.

[270] Kölbel, Heeb, Paetzold, and Busch, ''Can Sustainable Investing Save the World?'' 2020.

[271] Clark, Feiner, and Viehs, ''From the Stockholder to the Stakeholder,'' 2014.

[272] Cuñat Vicente, Mireia Gine, and Maria Guadalupe, ''The Vote Is Cast: The Effect of Corporate Governance on Shareholder Value,'' *The Journal of Finance,* vol. 67, no. 5, 2012, pp. 1943–1977, *https://doi.org/10.1111/j.1540-6261.2012.01776.x.*

[273] The Department estimates labor costs by occupation. Estimates for total compensation are based on mean hourly wages by occupation from the 2021 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the December 2021 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2020 Service Annual Survey. To estimate overhead cost on an occupational basis, ORA allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are in 2022 dollars. For more information in how the labor costs are estimated see: *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculation,* Employee Benefits Security Administration (June 2019), *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

expected to produce a cost savings of $6.1 million per year relative to the current regulation.[274] This cost savings was confirmed by one commenter.

The final rule amends the provision of the current regulation that addresses proxy voting policies, paragraph (e)(3)(i) of the current regulation, by removing the two ''safe harbor'' examples for proxy voting policies that would be permissible under the provisions of the current regulation. As discussed earlier in the preamble to this regulation, the Department believes that the two ''safe harbor'' examples would likely become widely adopted by plan fiduciaries if maintained. When adopting the current regulation, the Department estimated that it would take a legal professional two hours to evaluate and implement changes to proxy voting policies within the scope of the safe harbors. In the final rule, without the safe harbors, the Department estimates that it will take a legal professional 30 minutes to update policies and procedures. This final rule thus reduces the burden related to evaluating, updating, and implementing proxy voting policies and procedures and voting by $11.6 million in the first year relative to the current regulation.[275]

The total costs savings associated with the amendments to paragraph (d) are estimated to be approximately $17.7 million.

E. Costs

The Department expects the amendments made by the final rule will change plan fiduciary investment behavior; however, the overall effect of amendments on investment behavior is largely uncertain. In the analysis below, the Department has carefully considered the costs associated with the amendments and quantified the costs expected to result from the final rule, with the acknowledgment that a precise quantification of all costs stemming from changes in behavior is not possible. Nevertheless, the Department expects the incremental costs of the final rule to be relatively small and the overall benefits to outweigh the costs. As shown in the analysis below, the known incremental costs of the proposal are expected to be minimal on a per-plan basis.

The analysis below is based on labor cost estimates of $153.21 for a legal professional.[276]

1. Cost of Reviewing the Final Rule and Reviewing Plan Practices

Plans, plan fiduciaries, and their service providers will need to read the final rule and evaluate how it will impact their practices. To estimate the costs associated with reviewing the amended rule, the Department considers two sub-groups of plans: plans that consider ESG factors in their investment process and plans that hold corporate stock with voting rights.

The Department estimates that approximately 149,300 plans will consider ESG factors in their investment practice and will be affected by the finalized amendments in paragraphs (b) and (c).[277] For each plan, a legal professional will need to review paragraphs (b) and (c) of the final rule, evaluate how these provisions might affect their investment practices and assess whether the plan will need to make changes to investment practices. The Department estimates that this review will take a legal professional approximately four hours to complete, resulting in an aggregate cost burden of approximately $91.5 million[278] or a per-plan cost burden of approximately $613.[279]

The Department estimates that 63,670 plans hold corporate stock with voting rights and will be affected by the finalized amendments pertaining to proxy voting in paragraph (d). For each plan, a legal professional will need to review paragraph (d) of the amended rule and evaluate how it affects their proxy voting practices. The Department estimates that this review process will require a legal professional, on average, approximately four hours to complete, resulting in an aggregate cost burden of approximately $39.0 million[280] or a per-plan cost of approximately $613.[281]

The Department believes that most plans, in both subsets discussed above, will rely on a service provider to perform such a review and that each service provider will likely oversee multiple plans. The Department does not have data that would allow it to estimate the number of service providers acting in such a capacity for these plans. While the Department believes that this cost is likely an overestimate, given the lack of data, the Department believes it is reasonable.

2. Possible Changeover Costs

The Department expects that some plans may change investments or investment processes in light of the clarifications in the final rule. For example, plans may decide to replace existing investments with ESG investments. This may involve some short-term costs. In the Department's view, this will be net beneficial because compliant acquisitions of ESG assets will be done with the aim of reducing the plan's ESG-related financial risk or improving the plan's investment performance. Thus, even if there are short-term costs associated with changed investment practices, the benefits to the plan of reduced ESG-related financial risk are expected to exceed these costs over time. The Department lacks data to estimate the likely size of this impact. The Department solicited comments on this assumption in the NPRM but did not receive any comments.

[274] In the 2020 final rule published on December 16, it was estimated that a plan fiduciary and a clerical staff would expend, on average, 30 minutes each to fulfill the recordkeeping requirement. The burden in the 2020 rule was estimated as $6.05 million. Updated to reflect updated estimates for affected plans and labor costs, the Department estimates the updated costs as: (63,670 plans * 0.5 hours * $129.74 per hour for a plan fiduciary) + (63,670 plans * 0.5 hours * $61.01 per hour for a clerical worker) = $6,072,526, or $6.1 million.

[275] In the 2020 final rule published on December 16, it was estimated that a legal professional would expend, on average, two hours to update policies and procedures. The burden in the 2020 rule was estimated as $17.2 million. Updated to reflect updated estimates for affected plans and labor costs, the Department estimates the updated costs for the original requirement as: 63,670 plans * 2 hours * $129.74 per hour for a plan fiduciary = $16,521,092. As discussed in the Cost section of this analysis, the Department estimates that it will take a legal professional just thirty minutes to update policies and procedures for each of the estimated 63,670 plans affected by the rule, resulting in a cost of $4,877,440. This results in a cost savings of $11,643,651, or $11.6 million. 85 FR 81658.

[276] The Department estimates labor costs by occupation. Estimates for total compensation are based on mean hourly wages by occupation from the 2021 Occupational Employment Statistics and estimates of wages and salaries as a percentage of total compensation by occupation from the December 2021 National Compensation Survey's Employee Cost for Employee Compensation. Estimates for overhead costs for services are imputed from the 2020 Service Annual Survey. To estimate overhead cost on an occupational basis, ORA allocates total industry overhead cost to unique occupations using a matrix of detailed occupational employment for each NAICS industry. All values are in 2022 dollars. For more information in how the labor costs are estimated see: *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculation,* Employee Benefits Security Administration (June 2019), *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[277] For more information on this estimate, refer to the discussion of affected entities in section IV.C.

[278] The burden is estimated as follows: 149,322 plans × 4 hours = 597,288 hours. A labor rate of $153.21 is used for a legal professional. The cost is estimated as follows: 149,322 plans × 4 hours × $153.21 = $91,510,494.

[279] The per-plan burden is estimated as follows: $91,510,494/149,322 plans = $612.84, rounded to $613.

[280] The burden is estimated as follows: 63,670 plans × 4 hours = 254,680 hours. A labor rate of $153.21 is used for a lawyer. The cost burden is estimated as follows: 63,670 plans × 4 hours × $153.21 = $39,019,523.

[281] The per-plan burden is estimated as follows: $39,019,523/63,670 plans = $612.84, rounded to $613.

3. Cost Associated With Changes in Investment or Investment Course of Action

Paragraphs (b) and (c)(1) of the final rule address a fiduciary's duty of prudence and loyalty under ERISA with respect to consideration of an investment or investment course of action. Paragraph (c)(1) of the final rule provides that a fiduciary may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to said interests of the participants and beneficiaries. Paragraph (b)(4) of the final rule, in relevant part, provides that a fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan established pursuant to section 402(b)(1) of ERISA. These provisions will require a fiduciary to perform an evaluation, including a prudent analysis of risk and return factors. These provisions provide direction on what to include in that evaluation.

In the NPRM, the Department did not attribute a cost to these requirements, with the understanding that many plan fiduciaries already undertake such evaluations as part of their investment selection decision-making process, including documentation of their decisions, process, and reasoning. One commenter refuted this assumption, noting that the industry lacks consistent definitions on ESG topics and stating that evaluating ESG topics would be a manual process for plan sponsors, requiring time and resources. Conversely, another commenter noted that data collection costs imposed by the rule would likely be de minimis, as the investment community is collecting ESG data independent of the rulemaking process.

The commenters have not persuaded the Department to change its views on this topic. Plan fiduciaries generally already undertake deliberative evaluations as part of their investment selection decision-making process and this final rule does not add burden to those deliberations; but rather, the final rule clarifies that the scope of those deliberations may include climate change and other ESG factors within the confines of paragraphs (b)(4) and (c)(1) of the final rule. The Department does not intend to increase fiduciaries' burden of care attendant to such consideration; therefore, no incremental costs are estimated for these requirements.

4. Cost Associated With Changes to the ''Tiebreaker'' Rule

The final rule, at paragraph (c)(2), implements a version of the tiebreaker concept that is comparable to and commensurate with the formulation previously expressed in Interpretive Bulletin 2015–1 (and first explained in Interpretive Bulletin 94–1). The final rule's tiebreaker provision is relevant and operable only once a prudent fiduciary determines that competing alternative investments equally serve the financial interests of the plan. In these circumstances, the plan fiduciary may focus on the collateral benefits of an investment or investment course of action to decide the outcome. This version of the tiebreaker is more flexible than the regulation this rule replaces, which requires that the risk and reward of competing investments be indistinguishable before the tiebreaker can be utilized.

While the provision implies a requirement for analysis and documentation, the Department expects that the analytics and documentation requirements of the tiebreaker provision are subsumed in the analytics and documentation requirements of the risk and return analysis required by paragraphs (c)(1) and (b)(4) of the final rule. The analysis of risk and return factors under paragraphs (c)(1) and (b)(4) of the final rule in the first instance will necessarily reveal any collateral benefits of an investment or investment course of action, which may then be used to break a tie pursuant to paragraph (c)(2) of the final rule. In this sense, paragraph (c)(2) of the final rule thus imposes no distinct process, and therefore no significant additional costs, apart from a plan's ordinary investment selection process. Based on this assumption, the Department attributes no costs to paragraph (c)(2) of the final rule.

5. Cost To Update Plan's Written Proxy Voting Policies

Paragraph (d)(3)(i) of the final rule provides that plan fiduciaries may adopt proxy voting policies on when to vote a proxy ballot. Such a policy must be prudently designed to serve the plan's interests in providing benefits to participants and their beneficiaries and to defray reasonable expenses of administering the plan. In addition, plan fiduciaries must periodically review any such proxy voting policies under paragraph (d)(3)(ii).

The Department estimates that 63,670 plans hold corporate stock with voting rights and will be affected by the finalized amendments pertaining to proxy voting in paragraph (d).[282] For each plan, the Department estimates that, on average, it will take a legal professional thirty minutes to update policies and procedures, resulting in an aggregate incremental cost of $4.9 million,[283] or a per-plan incremental cost of $77,[284] in the first year relative to the current rule.

The amended paragraph (d)(3)(ii) will require plans to periodically review proxy voting policies. However, the Department believes that the final rule largely comports with current practice for ERISA fiduciaries, such that plan fiduciaries already periodically review proxy voting policies to meet their obligations under ERISA. The Department does not expect that plans will incur additional cost associated with the periodic review.

6. Summary

The Department estimates that the total incremental costs associated with the final rule will be $135.4 million in the first year with no additional costs in subsequent years. The aggregate and per-plan costs are summarized in Table 2.

[282] For more information on this estimate, refer to the discussion of affected entities in section IV.C.

[283] The burden is estimated as follows: 63,670 plans × 0.5 hour = 31,835 hours. A labor rate of $153.21 is used for a legal professional: (63,670 plans × 0.5 hour × $153.21 = $4,877,440).

[284] The per-plan burden is estimated as follows: $4,877,440/63,670 plans = $76.61, rounded to $77.

TABLE 2—COSTS FOR PLANS TO COMPLY WITH THE REQUIREMENTS

Requirement	Aggregate cost		Per-plan cost	
	Year 1	Year 2	Year 1	Year 2
Plans considering ESG factors when selecting investments				
Review of Plan Investment Practices	$91,510,494	$0.00	$612.84	$0.00
Total	91,510,494	0.00	612.84	0.00
Plans holding corporate stock, directly or through ERISA-covered intermediaries				
Review of Proxy Voting Practices	39,019,523	0.00	612.84	0.00
Update Proxy Voting Policies	4,877,440	0.00	76.61	0.00
Total	43,896,963	0.00	689.45	0.00
Plans that both consider ESG factors when selecting investments and hold corporate stock, directly or through ERISA-covered intermediaries				
Total	135,407,458	0	1,302.29	0.00

This cost estimate differs from the cost estimate in the NPRM in several ways. First, paragraph (c)(3) of the NPRM included a disclosure requirement when collateral benefits were used in a tiebreaker. The removal of this requirement in the final rule decreased the cost estimate. Additionally, in the NPRM, the Department estimated that 11 percent of retirement plans would be affected by paragraph (c) of the proposal. In the final rule, in consideration of comments received on the NPRM, this estimate was increased to 20 percent of retirement plans. This change increased the cost estimate. Finally, this cost estimate reflects more recent data on the number of retirement plans and updated estimates of labor costs. The incorporation of updated data also increased the cost estimate.

F. Transfers

The final rule will result in transfers. For instance, the final rule may facilitate changes in plan fiduciary behavior, resulting in transactions in which a party experiences increased returns while other parties experience decreased returns of equal magnitude, resulting in a transfer, due to either the selection of investments or the investment course of action.

In particular, transfers could arise as a result of substantially greater confidence on the part of fiduciaries that they may consider ESG factors going forward. As discussed previously, the public record reflects that the current regulation has already had a chilling effect on appropriate use of relevant ESG factors in investment decisions. Although the current regulation acknowledges that ESG factors can in some instances be taken into account by a fiduciary, it also includes multiple statements that have been interpreted as discouraging their consideration. This conflicting guidance has disincentivized fiduciaries from considering relevant ESG factors in order to minimize potential legal liability under ERISA. Such a disincentive has a distortionary effect on the investment of ERISA plan assets well into the future by changing fiduciaries' investment decisions and preventing them from considering ESG factors that they would otherwise find economically advantageous. The Department expects the clear guidance in this final rule to eliminate this existing market distortion.

While the effect the amendments will have on assets is discussed as a benefit in section IV.D, this will also impact the flow of revenue to investment entities. For example, if, because of the amendments, plan assets are moved from Fund A to Fund B, Fund A's asset managers would experience a decrease in revenue while Fund B's asset managers would experience an increase in revenue. As a result, there would be a transfer from non-ESG product providers to ESG product providers. Similarly, there could be a transfer from companies with lower ESG ratings to companies with higher ESG ratings. Although the Department is unable to quantify the transfers that might result, the Department expects the magnitude of transfers will likely exceed $100 million annually, given that roughly $12.0 trillion is currently invested in ERISA plan assets,[285] and the lower bound estimate of plan assets invested using ESG factors in 2020 is 0.03 percent.[286]

Similarly, transfers also could arise as a result of the proposed changes to the proxy voting provisions in paragraph (e) of the current regulation (relocated to paragraph (d) of the amended rule). For instance, the current regulation may discourage plans from voting proxies as a result of the no-vote statement in paragraph (e)(2)(ii) and the two safe harbors in paragraphs (e)(3)(i)(A) and (B) of the current regulation. The final rule's rescission of these provisions, however, will increase plan proxy votes and effectively transfer some voting power from other shareholders back to ERISA plans. A common proxy vote where such an outcome may occur would be a vote to select a member of the Board of Directors, resulting in a shift in power from a losing candidate to a winning candidate. A transfer might also occur related to a proxy vote for one company to acquire another company.

G. Uncertainty

The Department's economic assessment of the final rule's effects is subject to uncertainty. Special areas of uncertainty are discussed below:

A significant source of uncertainty comes from the lack of a widely-accepted standard or definition of what ESG is. This uncertainty was echoed by commenters. The Department received several comments concerned with the lack of a standard definition of ESG.

[285] EBSA projected ERISA covered pension, welfare, and total assets based on the 2020 Form 5500 filings with the U.S. Department of Labor (DOL), reported SIMPLE assets from the Investment Company Institute (ICI) Report: The U.S. Retirement Market, Second Quarter 2022, and the Federal Reserve Board's Financial Accounts of the United States Z1 September 9, 2022.

[286] *64th Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2021).

One commenter noted that there is no way to uniformly assess or weight the separate E, S, and G factors. Another commenter noted that because ESG frameworks in the U.S. have been designed by the private sector and are voluntary in nature, there is no industry-wide standard for how to disclose information or comply under these frameworks.

In the affected-entities discussion of the regulatory impact analysis, the Department estimates that 20 percent of plans, both defined benefit (DB) and defined contribution (DC), consider or will begin considering ESG factors when selecting investments and, thus, will be affected by the final rule's amendments to paragraphs (b) and (c) of the current regulation. As discussed in the regulatory impact analysis, the Department referenced several sources and surveys for DB and DC plans to arrive at this estimate. However, the range of estimates from these resources confirms the degree of uncertainty of how many plan fiduciaries currently consider ESG factors when selecting investments. This is particularly true for DB plans. While there is some survey evidence on how many DB plans factor in ESG considerations, the surveys were based on small samples and yielded varying results.

It is also difficult to estimate the degree to which the use of ESG factors by ERISA fiduciaries will expand in the future. The clarification provided by this final rule may encourage more plan fiduciaries to use ESG factors. Trends in other countries suggest that pressure for such expansion may continue to increase.[287] Based on current trends, the Department believes that the use of ESG factors by ERISA plan fiduciaries will likely increase in the future, although it is uncertain when or by how much.

For purposes of this analysis, the Department has prepared low-, mid-, and high-cost scenarios for costs associated with paragraphs (b) and (c), varying by the estimated number of affected plans. As discussed in the cost discussion, the Department's estimate of 20 percent of ERISA plans being affected by these provisions translated into approximately 149,300 affected plans and a cost of $91.5 million. If instead, the Department were to rely on the 5 percent estimate of 401(k) and/or profit-sharing plans offering at least one ESG themed investment option from the Plan Sponsor Council of America[288] and the 12 percent estimate of private pension plans that have adopted ESG investing from NEPC,[289] this would result in an estimate of approximately 46,100 affected plans and a cost of $28.2 million.[290] Further if the Department were to rely on the 36 percent estimate of large plans using ESG information to consider their investments provided by commenters to all plans, this would result in an estimate of approximately 268,800 affected plans and a cost of $164.7 million.[291]

Regarding paragraph (d) of the final rule, it is uncertain whether the amendments would create a demand for new or different services associated with proxy voting and if so, what alternate services or relationships with service providers might result and how overall plan expenses could be impacted. Similarly, it is unclear whether and to what extent paragraph (d) of the amended rule will cause plans to modify their securities holdings, for example, in favor of greater mutual fund holdings (to avoid management responsibilities with respect to holdings of individual companies).

The Department has heard from stakeholders that the current regulation, and investor confusion about it, has already had a chilling effect on appropriate use of ESG factors in investment decisions. Additionally, the Department received a significant number of comments on the impacts the current regulation has had on the appropriate use of ESG factors in investment decisions. A larger discussion of the comments received is included in the discussion of the benefits above.

H. Alternatives

In developing this final rule on the application of ERISA's fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, the Department considered several regulatory approaches to the overarching rule and its various elements.

Beyond the major alternatives discussed below, the Department considered many other specific alternatives. For example, the Department considered eliminating the tiebreaker test in response to commenters' requests to do so. The Department decided against this alternative because the tiebreaker test has been relied on by fiduciaries for many years in making decisions about plan investments and investment courses of action, is consistent with the fiduciary obligations set forth in Section 404 of ERISA, and complete removal of the provision could lead to disruptions in plan investment activity. In addition, the Department, in response to commenters' requests, considered amending the current regulation to explicitly provide participants' preferences with a status equal to risk and return factors under the final regulation, such that participants' preferences could be considered and factored into decisions alongside risk and return factors, and weighted as determined appropriate by the plan's fiduciary. The Department decided against this alternative for many reasons, but mainly because plan fiduciaries must focus on financial benefits and fiduciaries may not add imprudent investment options to menus based on participant preferences or requests because that would violate ERISA's duty of prudence. Many other relatively more granular alternatives that were considered and not accepted are discussed throughout section III of this preamble in connection with views of the commenters.

In order to ensure a comprehensive review, the Department examined as an alternative leaving the current regulation in place without change. However, as explained in more detail earlier in this document, following informal outreach activities with a wide variety of stakeholders, including asset managers, labor organizations and other plan sponsors, consumer groups, service providers and investment advisers, and after considering the significant volume of public comment on the NPRM, the Department believes that uncertainty with respect to the current regulation has and likely will continue to deter fiduciaries from taking steps that other

[287] *See generally* Government Accountability Office Report No. 18–398, *Retirement Plan Investing: Clearer Information on Consideration of Environmental, Social, and Governance Factors Would Be Helpful* (May 2018), *https://www.gao.gov/products/gao-18-398;* Principles for Responsible Investment, *Fiduciary Duty in the 21st Century,* United Nations Environment Programme Finance Initiative (2019), *https://www.unepfi.org/wordpress/wp-content/uploads/2019/10/Fiduciary-duty-21st-century-final-report.pdf.*

[288] *64th Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2021).

[289] Smith and Regan, *NEPC ESG Survey,* 2018.

[290] The estimate of plans is calculated as: (5% × 621,509 401(k) type plans) + (12% × 125,101 defined benefit and nonparticipant-directed defined contribution plans) = 46,087 plans, rounded to 46,100 plans. The cost estimate is calculated as: 46,087 plans × 4 hours = 184,348 hours. A labor rate of $153.21 is used for a lawyer. The cost burden is estimated as follows: 46,087 plans × 4 hours × $153.21 = $28,243,957. (*Source Private Pension Plan Bulletin: Abstract of 2020 Form 5500 Annual Reports,* Employee Benefits Security Administration (2022; forthcoming), Table D3.)

[291] The estimate of plans is calculated as: (36% × 746,610 pension plans) = 268,779 plans, rounded to 268,800 plans. The cost estimate is calculated as: 268,779 plans × 4 hours = 1,075,116 hours. A labor rate of $153.21 is used for a lawyer. The cost burden is estimated as follows: 268,779 plans × 4 hours × $153.21 = $164,718,522.

marketplace investors might take to enhance investment value and performance, or improve investment portfolio resilience against the financial risks and impacts associated with climate change. This could hamper fiduciaries as they attempt to discharge their responsibilities prudently and solely in the interests of plan participants and beneficiaries. The Department therefore did not elect this alternative.

The Department also considered rescinding the *Financial Factors in Selecting Plan Investments* and *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rules. This alternative would remove the entire current regulation from the Code of Federal Regulations, including provisions that reflect the original 1979 Investment Duties regulation. The original Investment Duties regulation has been relied on by fiduciaries for many years in making decisions about plan investments and investment courses of action, and complete removal of the provisions could lead to disruptions in plan investment activity. Accordingly, the Department rejected this alternative. As discussed in section IV.D.4, the Department quantified some costs of the current rule related to proxy voting totaled $17.7 million in the first year and $6.1 million in subsequent years for the current rule. Rescission of the current rule would save this quantified amount, but these savings would be offset by the aforementioned disruptions.

As another alternative, the Department considered revising the current regulation by, in effect, reverting it to the original 1979 Investment Duties regulation. This would reduce the potential of disrupting plan investment activity that would be caused by complete rescission, as described above. However, because the Department's prior non-regulatory guidance on ESG investing and proxy voting was removed from the Code of Federal Regulations by the *Financial Factors in Selecting Plan Investments* and *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rules, this alternative will leave plan fiduciaries without any guidance on the consideration of ESG issues when relevant to plan financial interests. Similar to the first alternative described above, this could inhibit fiduciaries from taking steps that other marketplace investors might take in enhancing investment value and performance, or from improving investment portfolio resilience against the potential financial risks and impacts associated with climate change. The Department therefore rejected this alternative. As discussed in section IV.D.2, the Department quantified some of the costs for the current rule related to the tiebreaker, which totaled approximately $506,000 annually.

The Department also considered revising the current regulation by adopting changes similar to the fiduciary responsibilities as proposed by the European Commission.[292] The European Commission (EC) is amending existing rules on fiduciary duties in delegated acts for asset management, insurance, reinsurance and investment sectors to encompass sustainability risks such as the impact of climate change and environmental degradation on the value of investments. Specifically, the EC has added the requirement that fiduciaries must proactively solicit client's sustainability preferences, in addition to existing requirements that a fiduciary obtain information about the client's investment knowledge and experience, ability to bear losses, and risk tolerance as part of the suitability assessment. The European Union's guidelines for the supervision of institutions for occupational retirement provisions (IORPs) require member states to ensure that IORPs consider ESG factors related to investment assets in their investment decisions, as part of their prudential standards. Where ESG factors are considered, an assessment must be made of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory changes.[293] One estimate finds that 89 percent of European pension funds take ESG risks into account as of 2019.[294]

Although this final rule clarifies that risk and return factors may include the economic effects of climate change and other ESG factors on the investment, the final rule does not require ERISA fiduciaries to solicit preferences regarding ESG factors nor are fiduciaries required to consider ESG factors when making all investment decisions. While aligning the U.S. to the European approach would have such benefits as harmonizing taxonomy for asset and investment managers across jurisdictions, the Department was concerned that incorporating such an approach would increase costs without a commensurate benefit, and could not be fully harmonized with ERISA's fiduciary provisions.

Finally, in the NPRM, the Department proposed a requirement to inform plan participants of the collateral benefits that influenced the selection of the investment or investment course of action, when such investment or investment course of action constitutes a designated investment alternative under a participant-directed individual account plan, so participants could understand whether their preferences regarding the collateral purpose aligned with the fiduciary's for a given investment option. Upon further consideration, including the comments received on the NPRM, the Department has decided to remove the disclosure requirement from this final rule for all the reasons set forth in section III.B.2 of this preamble.

I. Conclusion

In summary, a significant benefit of this final rule is to clarify the application of ERISA's fiduciary duties of prudence and loyalty to selecting investments and investment courses of action, exercising shareholder rights, such as proxy voting, and the use of written proxy voting policies and guidelines. These benefits, while difficult to quantify, are anticipated to outweigh the costs.

The amendments to paragraphs (b) and (c) are designed to ensure that plans do not improvidently avoid considering relevant ESG factors when selecting investments or exercising shareholder

[292] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing finance towards the European Green Deal Brussels, 21.4.2021 COM (2021) 188 final.

[293] ''It is essential that IORPs improve their risk management while taking into account the aim of having an equitable spread of risks and benefits between generations in occupational retirement provision, so that potential vulnerabilities in relation to the sustainability of pension schemes can be properly understood and discussed with the relevant competent authorities. IORPs should, as part of their risk management system, produce a risk assessment for their activities relating to pensions. That risk assessment should also be made available to the competent authorities and should, where relevant, include, inter alia, risks related to climate change, use of resources, the environment, social risks, and risks related to the depreciation of assets due to regulatory change ('stranded assets'). . . . Environmental, social and governance factors, as referred to in the United Nations-supported Principles for Responsible Investment, are important for the investment policy and risk management systems of IORPs. Member States should require IORPs to explicitly disclose where such factors are considered in investment decisions and how they form part of their risk management system. The relevance and materiality of environmental, social and governance factors to a scheme's investments and how such factors are taken into account should be part of the information provided by an IORP under this Directive.''

[294] ''ESG Becoming the New Normal for European Pensions'' (August 31, 2020), *https://www.ai-cio.com/news/esg-becoming-new-normal-european-pensions/.*

rights, as they might otherwise be inclined to do under the current regulation. The Department expects that acting on relevant ESG factors in these contexts, and in a manner consistent with the final rule, will redound to employee benefit plans, participants, and beneficiaries covered by ERISA. Further, by ensuring that plan fiduciaries will not give up investment returns or take on additional investment risk to promote unrelated goals, these amendments are expected to lead to increased investment returns over the long run.

The final rule will also make certain that proxy voting activity by plans will be governed by the economic interests of the plan and its participants. The amendments require plan fiduciaries to make a reasoned judgment deciding whether to exercise shareholder rights and how to exercise such rights, while promoting the economic interest of the plan. This will promote management accountability to shareholders, including the affected shareholder plans.

The total cost of the final rule is approximately $135.4 million in the first year with no additional costs in subsequent years. Over 10 years, the costs associated with the amendments will total approximately $126.6 million, annualized to $18.0 million per year, applying a seven percent discount rate.[295] In addition, the final rule is expected to result in cost savings. The total cost savings of the final rule is approximately $18.2 million in the first year with an annual cost savings of $6.6 million in subsequent years, relative to the current regulation. The estimates for cost and cost savings of the final rule are summarized in Table 3. Besides cost savings, the rule will have many other benefits that have not been quantified and are not shown in Table 3.

TABLE 3—QUANTIFIED COSTS AND COST SAVINGS ASSOCIATED WITH THE FINAL RULE

Requirement	Year 1	Year 2
Aggregate Costs		
Review of Plan Investment Practices	$91,510,494	$0
Review of Proxy Voting Practices	39,019,523	0
Update Proxy Voting Policies	4,877,440	0
Total	135,407,458	0
Cost Savings		
Removal of the Special Collateral Benefit Documentation Requirement under the Tie-breaker Rule in the Current Rule	506,029	0
Removal of the Special Recordkeeping Requirement for Proxy Voting in the Current Rule	6,072,526	6,072,526
Removal of the Proxy Voting "Safe Harbors" in the Current Rule	11,643,651	0
Total	18,222,207	6,072,526

V. Paperwork Reduction Act

The current regulations contain two collections of information with OMB Control Number 1210–0162 and OMB Control Number 1210–0165. In the notice of proposed rulemaking, the Department had announced its intent to discontinue OMB Control Number 1210–0165 and revise OMB Control Number 1210–0162 to only include the proposed disclosure requirement contained in the proposed amendment. Paragraph (c)(3) of the NPRM included a requirement that if a plan fiduciary uses the tiebreaker to select a designated investment alternative for a participant-directed individual account plan based on collateral benefits other than investment returns, "the plan fiduciary must ensure that the collateral-benefit characteristic of the fund, product, or model portfolio is prominently displayed in disclosure materials provided to participants and beneficiaries." This would have been a new disclosure requirement under ERISA. At this time, the Department has decided not to adopt the proposed disclosure requirement. As discussed in more detail earlier in the preamble, based on comments received, the Department has decided that a disclosure emphasizing matters collateral to the economics of an investment may not be in the best interests of plan participants. Plan fiduciaries will still have the ability to use collateral benefits to break a tie; they will not be required to make a special disclosure. The Department is aware that the SEC is conducting rulemaking on investment company names, addressing, among other things, "certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks."[296] The SEC also is conducting rulemaking on disclosures by mutual funds, other SEC-regulated investment companies, and SEC-regulated investment advisers designed to provide consistent standards for ESG disclosures, allowing investors to make more informed decisions, including as they compare various ESG investments.[297] The Department will monitor these rulemaking projects and may revisit the need for collateral benefit reporting or disclosure depending on the findings of that agency. The Department emphasizes that the decision against adopting a collateral benefit disclosure requirement in the final rule has no impact on a fiduciary's duty to prudently document the tiebreaking decisions in accordance with section 404 of ERISA.

Therefore, upon publication of the final rule, the Department will request that OMB discontinue both information collection requests (ICRs) 1210–0162 and 1210–0165, eliminating all paperwork burden associated with the ICRs.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[298] imposes certain requirements with respect to Federal rules that are

[295] The costs would be $131.5 million over 10-year period, annualized to $15.4 million per year, if a three percent discount rate were applied.

[296] 87 FR 36594 (June 17, 2022).

[297] 87 FR 36654 (June 17, 2022).

[298] 5 U.S.C. 601 *et seq.*

subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act [299] and that are likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis of the final rule.

For purposes of analysis under the RFA, the Department considers a small entity to be an employee benefit plan with fewer than 100 participants.[300] The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued—at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10—certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans. Such plans include unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements. While some large employers may have small plans, in general small employers maintain small plans. Thus, EBSA believes that assessing the impact of these amendments on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) [301] pursuant to the Small Business Act.[302]

The Department has determined that this final rule could have a significant impact on a substantial number of small entities. Therefore, the Department has prepared a Final Regulatory Flexibility Analysis that is presented below.

A. Need for and Objectives of the Rule

In late 2020, the Department published two final rules (the current regulation) pertaining to the selection of plan investments and the exercise of shareholder rights to address concerns that some investment products may be marketed to ERISA fiduciaries on the basis of purported benefits and goals unrelated to financial performance. Responses to the current regulation, however, suggest that it created further uncertainty and may have the undesirable effect of discouraging fiduciaries' consideration of financially relevant ESG factors in investment decisions, even when contrary to the interest of participants and beneficiaries.

The Department is concerned that uncertainty may deter plan fiduciaries, for small and large plans alike, from participating in investments or investment courses of action that enhance investment value and performance or improve investment portfolio resilience. The Department is particularly concerned that the current regulation created a perception that fiduciaries are at risk if they consider any ESG factors in the financial evaluation of plan investments and that they may need to have special justifications for even ordinary exercises of shareholder rights.

The amendments in this document are intended to address uncertainties stemming from the current regulation and related preamble discussions and to increase fiduciaries' clarity about their obligations. The Department expects that the final rule will improve the current regulation and further promote retirement income security and retirement savings, while safeguarding the interests of plan participants and beneficiaries.

B. Comments

The Department received more than 895 written comments and 21,469 petitions (*e.g.,* form letters) submitted during the open comment period. Comments received did not focus on the impacts to just small entities but focused on the impacts regardless of size. Comments are discussed by topic, and readers are directed to those respective sections for a summary of the significant comments and responses to those comments.

The Office of Advocacy of the Small Business Administration did not file a comment on the proposed rule.

C. Affected Small Entities

To estimate the costs associated with reviewing the final rule, the Department considers two sub-groups of plans: plans that consider ESG factors in their investment process and plans that hold corporate stock with voting rights. Due to the nature of the finalized amendments, these subsets are not mutually exclusive and some plans may be included in both subsets. The Department does not have the data necessary to estimate how many plans are included in both subsets, so the affected entities and related costs are calculated separately in this analysis.

1. Small Plans Affected by the Proposed Modifications of Paragraphs (b) and (c) of § 2550.404a–1

Plans, as well as plan participants and beneficiaries, whose fiduciaries consider or will begin considering ESG factors when selecting investments will be affected by the modifications of paragraphs (b) and (c). As discussed in the regulatory impact analysis, the Department estimates that approximately 20 percent of plans consider or will begin considering ESG factors when selecting investments. This estimate is based on administrative data and surveys on investment behavior, which did not address how the investment behavior of small plans might differ from plans overall. The Department acknowledges that this likely overestimates the number of small plans affected. For instance, one survey indicates that only 0.03 percent of total participant-directed DC plan assets are invested in ESG funds. In fact, it finds that among 401(k) and profit-sharing plans with fewer than 50 participants, none of the plans offered an ESG investment option.[303]

For the purpose of this analysis, the Department assumes that the proportions of plans who consider or will begin considering ESG factors when selecting investments is uniform across plan size. Accordingly, the Department estimates that 20 percent of small plans will be affected by the modifications of paragraphs (b) and (c). According to the 2020 Form 5500, there were approximately 652,935 plans with fewer than 100 participants,[304] resulting in an estimate of approximately 130,600 small plans that will be affected by the

[299] 5 U.S.C. 553(b).

[300] The Department consulted with the Small Business Administration's Office of Advocacy before making this determination, as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c). Memorandum received from the U.S. Small Business Administration, Office of Advocacy on July 10, 2020.

[301] 13 CFR 121.201.

[302] 15 U.S.C. 631 *et seq.*

[303] *64th Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2021).

[304] DOL calculations reflecting plans with fewer than 100 participants. (*Source Private Pension Plan Bulletin: Abstract of 2020 Form 5500 Annual Reports,* Employee Benefits Security Administration (2022; forthcoming), Table B1.)

modifications of paragraphs (b) and (c).[305]

2. Subset of Plans Affected by Modifications of Paragraph (d) and (e) of § 2550.404a–1

Paragraphs (d) and (e) of the amended rule will affect small ERISA-covered pension, health, and other welfare plans, and plan participants and beneficiaries, that hold shares of corporate stock, directly or through ERISA-covered intermediaries, such as common trusts, master trusts, pooled separate accounts, and 103–12 investment entities. While the majority of participants and assets are in large plans, most plans are small plans.

There is limited data available about small plans' stock holdings. The primary source of information on assets held by pension plans is the Form 5500. Using the various asset schedules filed, only 3,900 small plans can be identified as holding stock, either employer securities or common stock.[306] The Department assumes that small plans are significantly less likely to hold common stock than larger plans.[307]

For purposes of illustrating the number of small plans that could be affected, the Department assumes that five percent of small plans will be affected by the amendments to paragraphs (d) and (e). In 2020, there were approximately 652,500 small pension plans,[308] resulting in an estimate of approximately 32,600 small plans that will be affected by the amended provisions.[309] The Department requested comment on this assumption in the NPRM but did not receive any comments.

While paragraph (d) of this amended rule will directly affect ERISA-covered plans that possess the relevant shareholder rights, many plans hire asset managers to carry out fiduciary asset management functions, including proxy voting. The Department recognizes that service providers, including small service providers who act as asset managers, could also be impacted indirectly by this rule. The Department expects that service providers will pass incremental compliance costs onto plans.

D. Impact of the Rule

As described in the preamble and the regulatory impact analysis, the amendments will impose costs on small and large plans

1. Cost of Reviewing the Final Rule and Reviewing Plan Practices

Plans, plan fiduciaries, and their service providers will need to read the amended rule and evaluate how it will impact their practices. To estimate the costs associated with reviewing the amended rule, the Department considers two sub-groups of plans: plans that consider ESG factors in their investment process and plans that hold corporate stock with voting rights.

The Department estimates that approximately 130,600 small plans consider ESG factors in their investment practice and will be affected by the finalized amendments in paragraphs (b) and (c). For each plan, a legal professional will need to review paragraphs (b) and (c) of the final rule, evaluate how these provisions might affect their investment practices and assess whether the plan will be needed to make changes to investment practices. The Department estimates that this review will take a legal professional approximately four hours to complete, resulting in a per-plan cost burden of approximately $612.84.[310]

The Department estimates that approximately 32,600 small plans hold corporate stock with voting rights and will be affected by the finalized amendments pertaining to proxy voting in paragraph (d). For each plan, a legal professional will need to review paragraph (d) of the final rule and evaluate how it affects their proxy voting practices. The Department estimates that this review process will require a legal professional, on average, approximately four hours to complete, resulting in a per-plan cost of approximately $612.84.[311]

The Department believes that most plans, in both subsets discussed above, will rely on a service provider to perform such a review and that each service provider will likely oversee multiple plans. The Department does not have data that would allow it to estimate the number of service providers acting in such a capacity for these plans. While the Department believes that this cost is likely an overestimate, given the lack of data, the Department believes it represents the best, most conservative estimate.

2. Cost To Update Written Proxy Voting Policies

Paragraph (d)(3)(i) of the final rule provides that, for purposes of deciding whether to vote a proxy, plan fiduciaries may adopt proxy voting policies if the authority to vote a proxy is exercised pursuant to specific parameters prudently designed to serve the plan's interests in providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. The Department estimates that these provisions will impose additional cost to review such policies initially. The Department believes that the final rule largely comports with industry practice for ERISA fiduciaries; therefore, the Department estimates that on average, it will take a legal professional 30 minutes to update policies and procedures for each of the estimated 32,600 plans affected by these provisions. This results in a cost per plan of $76.61 in the first year.[312]

Paragraph (d)(3)(ii), also requires plan fiduciaries to periodically review any such proxy voting policies. The Department believes that the final rule largely comports with industry practice for ERISA fiduciaries, since plans are already required to periodically review proxy voting policies to meet their obligations under ERISA. Therefore, the Department does not expect that plans will incur additional cost associated with the periodic review.

[305] *Id.* This estimate is calculated as: 20% × 652,935 pension plans = 130,587, rounded to 130,600.

[306] Based on DOL calculations based on 2020 Form 5500 data, only the 3,900 small plans that filed schedule H would report a separate line item for stock holdings. The small plans filing the Form 5500–SF (595,565) or file schedule I (52,737) do not report stock as a separate line item, therefore these plans cannot be identified as to whether they hold common stock.

[307] Many small plans have exposure to stocks only through mutual funds, and consequently will not be significantly affected by the finalized amendments to paragraphs (d) and (e).

[308] DOL calculations of plans with fewer than 100 participants find that in 2020, there were 652,935 plans with less than 100 participants, rounded to 652,900. (*Source Private Pension Plan Bulletin: Abstract of 2020 Form 5500 Annual Reports,* Employee Benefits Security Administration (2022; forthcoming), Table B1.)

[309] This estimate is calculated as: 652,935 small plans × 5% = 32,647, rounded to 32,600.

[310] The Department estimates that it will take a lawyer at each plan four hours to review the rule. A labor rate of $153.21 is used for a lawyer. The cost burden is estimated as follows: 4 hours × $153.21 = $612.86. Labor rates are based on DOL estimates for 2022. For more information in how the labor costs are estimated, see *Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculation,* Employee Benefits Security Administration (June 2019), *www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[311] The Department estimates that it will take a lawyer at each plan four hours to review the rule. A labor rate of $153.21 is used for a lawyer. The cost burden is estimated as follows: 4 hours × $153.21 = $612.86.

[312] The Department estimates that it will take a plan fiduciary at each plan 30 minutes to update policies and procedures. A labor rate of $153.21 is used for a plan fiduciary: (0.5 hours × $153.21 = $76.61).

3. Summary of Costs

As illustrated in Table 4 below, the Department estimates, if a small plan both considers ESG factors in their investment process and hold corporate stock with voting rights, the incremental cost associated with the finalized amendments will be $1,302.29 per affected plan in year 1. There are no costs expected in subsequent years. Some plans may only incur costs associated with considering ESG factors in their investment process or holding corporate stock with voting rights.

TABLE 4—COSTS FOR PLANS TO COMPLY WITH THE REQUIREMENTS

Requirement	Labor rate	Hours	Year 1 cost	Year 2 cost
Plans considering ESG factors when selecting investments				
Review of Plan Investment Practices: *Lawyer*	$153.21	4	$612.84	$0.00
Total		4	612.84	0.00
Plans holding corporate stock, directly or through ERISA-covered intermediaries				
Review of Proxy Voting Practices: *Lawyer*	153.21	4	612.84	0.00
Update Proxy Voting Policies: *Lawyer*	153.21	0.5	76.61	0.00
Total		4.5	689.49	0.00
Plans that both consider ESG factors when selecting investments and hold corporate stock, directly or through ERISA-covered intermediaries				
Total		8.5	1,302.29	0

The Department believes that this is likely an overestimate of the costs faced by small plans, as small plans are likely to rely on service providers that provide services to multiple plans. The Department expects that these costs will be passed on to plans, but by offering services to multiple plans, service providers create economies of scale.

E. Regulatory Alternatives

The final rule seeks to provide clarity and certainty regarding the scope of fiduciary duties surrounding ESG factors in investment practice and proxy voting policies. These duties apply to all affected entities, both large and small; therefore, the Department's ability to craft specific alternatives for small plans is limited. Throughout the rulemaking process, the Department sought to minimize the burden placed on the affected entities overall; however, the Department did not identify any special consideration that could be made for small plans that would not lessen the protection of participants and beneficiaries in small plans. As discussed in the preamble, the Department has decided to provide a general applicability date of 60 days after publication in the **Federal Register** with two exceptions. In response to comments received on the NPRM, the Department has decided to delay applicability of paragraphs (d)(2)(iii) and (d)(4)(ii) of the final rule's proxy voting provisions until 1 year after the date of publication. The delayed applicability of paragraph (d)(4)(ii) of the final rule will give fiduciaries of plans invested in pooled investment vehicles additional time for reviewing any proxy voting policies of the investment vehicle's investment manager and addressing any concerns. The delayed applicability of paragraph (d)(2)(iii) will give plan fiduciaries additional time to review proxy voting guidelines of proxy advisory firms and make any necessary changes in their arrangements with such firms. Outside of these two exceptions, the Department believes the requirements in the final rule are consistent with established Department views. As such, the Department does not believe it is appropriate to extend the applicability date for small plans.

The Department examined as an alternative leaving the current regulation in place without change and rescinding its enforcement statement issued on March 10, 2021. However, as explained in more detail earlier in this notice, following informal outreach activities with a wide variety of stakeholders, including asset managers, labor organizations and other plan sponsors, consumer groups, service providers, and investment advisers, the Department believes that uncertainty with respect to the current regulation may deter fiduciaries of small and large plans alike from taking steps that other marketplace investors might take in enhancing investment value and performance, or improving investment portfolio resilience against the potential financial risks associated with ESG factors. This could hamper fiduciaries as they attempt to discharge their responsibilities prudently and solely in the interests of plan participants and beneficiaries. The Department therefore did not elect this alternative.

The Department also considered rescinding the *Financial Factors in Selecting Plan Investments* and *Fiduciary Duties Regarding Proxy Voting and Shareholder Rights* final rules. This alternative would remove the entire current regulation from the Code of Federal Regulations, including provisions that reflect the original 1979 Investment Duties regulation. The original Investment Duties regulation has been relied on by fiduciaries for many years in making decisions about plan investments and investment courses of action, and complete removal of the provisions could lead to potential disruptions in plan investment activity, regardless of plan size. The Department rejected this alternative.

Another alternative considered was revising the current regulation by, in effect, reverting it to the original 1979 Investment Duties regulation. As explained in more detail earlier in this notice, this alternative would reduce the potential of disrupting plan investment activity that would be caused by complete rescission, but would leave plan fiduciaries without any guidance published in the Code of Federal Regulations on the consideration of ESG issues. Similar to the first alternative described above, this could inhibit fiduciaries from taking steps that other marketplace investors might take in enhancing investment value and performance, or from improving investment portfolio resilience against the potential financial risks and impacts

associated with various ESG factors. The Department therefore rejected this alternative.

In the NPRM, the Department proposed a requirement to inform plan participants of the collateral benefits that influenced the selection of the investment or investment course of action, when such investment or investment course of action constitutes a designated investment alternative under a participant-directed individual account plan. The Department received one comment in favor of the collateral benefit disclosure for QDIAs, stating that participants and beneficiaries should have information about collateral benefits considered by their plan. Another commenter expressed that the requirement should go further, requiring the disclosure of specific collateral benefits considered. However, other commenters expressed concern that the disclosure requirement may chill the use of ESG factors in investments. Another commenter expressed concern that the disclosure requirement is unclear and could relegate ESG characteristics to collateral benefit characteristics. Upon further consideration, including the comments received on the NPRM, the Department has decided to remove the disclosure requirement from this final rule. Commenters expressed concern that the collateral benefit disclosure could distract plan participants from the important-related information required by the Department's other regulations.

F. Duplicate, Overlapping, or Relevant Federal Rules

For the requirements relating to investment practices, the Department is issuing this final rule under sections 404(a)(1)(A) and 404(a)(1)(B) of Title I under ERISA. The Department is the only agency with jurisdiction to interpret these provisions as they apply to plan fiduciaries' consideration in selecting plan investment funds. Therefore, there are no duplicate, overlapping, or relevant Federal rules.

For the requirements relating to proxy voting policies, the Department is monitoring other Federal agencies whose statutory and regulatory requirements overlap with ERISA. In particular, the Department is monitoring SEC rules and guidance to avoid creating duplicate or overlapping requirements with respect to proxy voting.

VII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 [313] requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, this final rule does not include any Federal mandate that the Department expects would result in such expenditures by state, local, or tribal governments, or the private sector.

VIII. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the states, the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.[314] Federal agencies promulgating regulations that have federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the proposed amendment.

In the Department's view, these finalized amendments will not have federalism implications because they will not have direct effects on the states, the relationship between the National Government and the states, or on the distribution of power and responsibilities among various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the states as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the finalized amendments do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and as such have no implications for the states or the relationship or distribution of power between the national government and the states.

Statutory Authority

This regulation is finalized pursuant to the authority in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR, 1978 Comp., p. 332, and under Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012).

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Department amends part 2550 of subchapter F of chapter XXV of title 29 of the Code of Federal Regulations as follows:

Subchapter F—Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 continues to read as follows:

Authority: 29 U.S.C. 1135 and Secretary of Labor's Order No. 1–2011, 77 FR 1088 (January 9, 2012). Sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 727 (2012). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–1 also issued under sec. 657, Pub. L. 107–16, 115 Stat 38. Sec. 2550.404a–2 also issued under sec. 657 of Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Revise § 2550.404a–1 to read as follows:

§ 2550.404a–1 Investment duties.

(a) *In general.* Sections 404(a)(1)(A) and 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) provide, in part, that a fiduciary shall discharge that person's duties with respect to the plan solely in the interests of the participants and beneficiaries; for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan; and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) *Investment prudence duties.* (1) With regard to the consideration of an investment or investment course of

[313] 2 U.S.C. 1501 *et seq.* (1995).

[314] Federalism, 64 FR 43255 (August 10, 1999).

action taken by a fiduciary of an employee benefit plan pursuant to the fiduciary's investment duties, the requirements of section 404(a)(1)(B) of the Act set forth in paragraph (a) of this section are satisfied if the fiduciary:

(i) Has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio or menu with respect to which the fiduciary has investment duties; and

(ii) Has acted accordingly.

(2) For purposes of paragraph (b)(1) of this section, ''appropriate consideration'' shall include, but is not necessarily limited to:

(i) A determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties) or menu, to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action compared to the opportunity for gain (or other return) associated with reasonably available alternatives with similar risks; and

(ii) In the case of employee benefit plans other than participant-directed individual account plans, consideration of the following factors as they relate to such portion of the portfolio:

(A) The composition of the portfolio with regard to diversification;

(B) The liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and

(C) The projected return of the portfolio relative to the funding objectives of the plan.

(3) An investment manager appointed, pursuant to the provisions of section 402(c)(3) of the Act, to manage all or part of the assets of a plan, may, for purposes of compliance with the provisions of paragraphs (b)(1) and (2) of this section, rely on, and act upon the basis of, information pertaining to the plan provided by or at the direction of the appointing fiduciary, if:

(i) Such information is provided for the stated purpose of assisting the manager in the performance of the manager's investment duties; and

(ii) The manager does not know and has no reason to know that the information is incorrect.

(4) A fiduciary's determination with respect to an investment or investment course of action must be based on factors that the fiduciary reasonably determines are relevant to a risk and return analysis, using appropriate investment horizons consistent with the plan's investment objectives and taking into account the funding policy of the plan established pursuant to section 402(b)(1) of ERISA. Risk and return factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action. Whether any particular consideration is a risk-return factor depends on the individual facts and circumstances. The weight given to any factor by a fiduciary should appropriately reflect a reasonable assessment of its impact on risk-return.

(c) *Investment loyalty duties.* (1) A fiduciary may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to interests of the participants and beneficiaries in their retirement income or financial benefits under the plan.

(2) If a fiduciary prudently concludes that competing investments, or competing investment courses of action, equally serve the financial interests of the plan over the appropriate time horizon, the fiduciary is not prohibited from selecting the investment, or investment course of action, based on collateral benefits other than investment returns. A fiduciary may not, however, accept expected reduced returns or greater risks to secure such additional benefits.

(3) The plan fiduciary of a participant-directed individual account plan does not violate the duty of loyalty under paragraph (c)(1) of this section solely because the fiduciary takes into account participants' preferences in a manner consistent with the requirements of paragraph (b) of this section.

(d) *Proxy voting and exercise of shareholder rights.* (1) The fiduciary duty to manage plan assets that are shares of stock includes the management of shareholder rights appurtenant to those shares, such as the right to vote proxies.

(2)(i) When deciding whether to exercise shareholder rights and when exercising such rights, including the voting of proxies, fiduciaries must carry out their duties prudently and solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

(ii) When deciding whether to exercise shareholder rights and when exercising shareholder rights, plan fiduciaries must:

(A) Act solely in accordance with the economic interest of the plan and its participants and beneficiaries, in a manner consistent with paragraph (b)(4) of this section;

(B) Consider any costs involved;

(C) Not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to any other objective;

(D) Evaluate relevant facts that form the basis for any particular proxy vote or other exercise of shareholder rights; and

(E) Exercise prudence and diligence in the selection and monitoring of persons, if any, selected to exercise shareholder rights or otherwise advise on or assist with exercises of shareholder rights, such as providing research and analysis, recommendations regarding proxy votes, administrative services with voting proxies, and recordkeeping and reporting services.

(iii) A fiduciary may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider without a determination that such firm or service provider's proxy voting guidelines are consistent with the fiduciary's obligations described in paragraphs (d)(2)(ii)(A) through (E) of this section.

(3)(i) In deciding whether to vote a proxy pursuant to paragraphs (d)(2)(i) and (ii) of this section, fiduciaries may adopt proxy voting policies providing that the authority to vote a proxy shall be exercised pursuant to specific parameters prudently designed to serve the plan's interests in providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan.

(ii) Plan fiduciaries shall periodically review proxy voting policies adopted pursuant to paragraph (d)(3)(i) of this section.

(iii) No proxy voting policies adopted pursuant to paragraph (d)(3)(i) of this section shall preclude submitting a proxy vote when the fiduciary prudently determines that the matter being voted upon is expected to have a significant effect on the value of the investment or the investment performance of the plan's portfolio (or investment performance of assets under management in the case of an investment manager) after taking into

account the costs involved, or refraining from voting when the fiduciary prudently determines that the matter being voted upon is not expected to have such an effect after taking into account the costs involved.

(4)(i)(A) The responsibility for exercising shareholder rights lies exclusively with the plan trustee except to the extent that either:

(*1*) The trustee is subject to the directions of a named fiduciary pursuant to ERISA section 403(a)(1); or

(*2*) The power to manage, acquire, or dispose of the relevant assets has been delegated by a named fiduciary to one or more investment managers pursuant to ERISA section 403(a)(2).

(B) Where the authority to manage plan assets has been delegated to an investment manager pursuant to ERISA section 403(a)(2), the investment manager has exclusive authority to vote proxies or exercise other shareholder rights appurtenant to such plan assets in accordance with this section, except to the extent the plan, trust document, or investment management agreement expressly provides that the responsible named fiduciary has reserved to itself (or to another named fiduciary so authorized by the plan document) the right to direct a plan trustee regarding the exercise or management of some or all of such shareholder rights.

(ii) An investment manager of a pooled investment vehicle that holds assets of more than one employee benefit plan may be subject to an investment policy statement that conflicts with the policy of another plan. Compliance with ERISA section 404(a)(1)(D) requires the investment manager to reconcile, insofar as possible, the conflicting policies (assuming compliance with each policy would be consistent with ERISA section 404(a)(1)(D)). In the case of proxy voting, to the extent permitted by applicable law, the investment manager must vote (or abstain from voting) the relevant proxies to reflect such policies in proportion to each plan's economic interest in the pooled investment vehicle. Such an investment manager may, however, develop an investment policy statement consistent with Title I of ERISA and this section, and require participating plans to accept the investment manager's investment policy statement, including any proxy voting policy, before they are allowed to invest. In such cases, a fiduciary must assess whether the investment manager's investment policy statement and proxy voting policy are consistent with Title I of ERISA and this section before deciding to retain the investment manager.

(5) This section does not apply to voting, tender, and similar rights with respect to shares of stock that are passed through pursuant to the terms of an individual account plan to participants and beneficiaries with accounts holding such shares.

(e) *Definitions.* For purposes of this section:

(1) The term *investment duties* means any duties imposed upon, or assumed or undertaken by, a person in connection with the investment of plan assets which make or will make such person a fiduciary of an employee benefit plan or which are performed by such person as a fiduciary of an employee benefit plan as defined in section 3(21)(A)(i) or (ii) of the Act.

(2) The term *investment course of action* means any series or program of investments or actions related to a fiduciary's performance of the fiduciary's investment duties, and includes the selection of an investment fund as a plan investment, or in the case of an individual account plan, a designated investment alternative under the plan.

(3) The term *plan* means an employee benefit plan to which Title I of the Act applies.

(4) The term *designated investment alternative* means any investment alternative designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term ''designated investment alternative'' shall not include ''brokerage windows,'' ''self directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

(f) *Severability.* If any provision of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of invalidity or unenforceability, in which event the provision shall be severable from this section and shall not affect the remainder thereof.

(g) *Applicability date.* (1) Except for paragraphs (d)(2)(iii) and (d)(4)(ii) of this section, this section shall apply in its entirety to all investments made and investment courses of action taken after January 30, 2023.

(2) Paragraphs (d)(2)(iii) and (d)(4)(ii) of this section apply on December 1, 2023.

Signed at Washington, DC, this 21st day of November, 2022.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–25783 Filed 11–30–22; 8:45 am]

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Part III

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. 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–01; 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) 2023–01. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

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 2023–01

Item	Subject	FAR case	Analyst
I	Updates to Title 10 Citations	2022–005	Moore.
II	Effective Communication Between Government and Industry	2016–005	Jackson.
III	United States-Mexico-Canada Agreement	2020–014	Jackson.
IV	Technical Amendments.		

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

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 2023–01 amends the FAR as follows:

Item I—Update to Title 10 Citations (FAR Case 2022–005)

This final rule amends the Federal Acquisition Regulation to update statutory references to Title 10 of the United States Code, which were revised by Title XVIII of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), Transfer and Reorganization of Defense Acquisition Statutes, and Title XVII of the NDAA for FY 2022 (Pub. L. 117–81), Technical Amendments Related to the Transfer and Reorganization of Defense Acquisition Statutes. The final rule will not have a significant economic impact on a substantial number of small entities because it simply updates statutory references in existing regulations.

Item II—Effective Communication Between Government and Industry (FAR Case 2016–005)

This final rule amends the FAR to implement section 887 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). This rule clarifies that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing laws and regulations, and do not promote an unfair competitive advantage to particular firms.

DoD, GSA, and NASA do not expect this final rule to have a significant economic impact on a substantial number of small entities. Any effect to small businesses should be positive. Small businesses will benefit from better communication with the Government.

Item III—United States-Mexico-Canada Agreement (FAR Case 2020–014)

This final rule implements the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113). The rule makes changes in the FAR to conform to Chapter 13 of the United States-Mexico-Canada Agreement (USMCA), which sets forth certain obligations between the United States and Mexico with respect to Government procurement of goods and services, as specified in Annex 13–A of the USMCA. Chapter 13 of the USMCA applies only between Mexico and the United States and does not cover Canada. Although Canada is still a designated country under the World Trade Organization Government Procurement Agreement, Canada is no longer a Free Trade Agreement country. Therefore, references to Canada as a Free Trade Agreement country in the FAR are deleted, including the $25,000 threshold. DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities. The effect on contracting officers is expected to be minimal as they will continue to apply the rule implementing the USMCA to contracts to which the North American Free Trade Agreement (NAFTA) applied, at the higher threshold for Mexico.

Item IV—Technical Amendments

Administrative changes are made at FAR 17.701, and 53.300.

William F. Clark,

Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Federal Acquisition Circular (FAC) 2023–01 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 2023–01 is effective December 1, 2022 except for Items I through IV, which are effective December 30, 2022.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,

Assistant Administrator for Procurement, Senior Procurement Executive, National Aeronautics and Space Administration.

[FR Doc. 2022–25957 Filed 11–30–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17 and 53

[FAC 2023–01; Item IV; Docket No. FAR–2022–0052; Sequence No. 4]

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:* December 30, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2023–01, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes editorial changes to 48 CFR parts 17 and 53.

List of Subjects in 48 CFR Parts 17 and 53

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 17 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 17 and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 17—SPECIAL CONTRACTING METHODS

17.701 [Amended]

■ 2. Amend section 17.701 in the introductory text of the definition of ''Nondefense agency that is an element of the intelligence community'' by removing the phrase ''50 U.S.C. 401a(4)'' and adding the phrase ''50 U.S.C. 3003(4)'' in its place.

PART 53—FORMS

■ 3. Amend section 53.300, in Table 53–1 in paragraph (a), by revising the entry for ''SF 273'' to read as follows:

53.300 Listing of Standard, Optional, and Agency forms.

* * * * *

(a) * * *

TABLE 53–1—FORMS IN THE GSA FORMS LIBRARY

Form No.	Form title
*	*
SF 273	Reinsurance Agreement for a Bonds Statute Performance Bond.
*	*

* * * * *

[FR Doc. 2022–25961 Filed 11–30–22; 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. 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2023–01; 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) 2023–01, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2023–01, which precedes this document.

DATES: December 1, 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 2023–01 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 2023–01

Item	Subject	FAR case	Analyst
I	Updates to Title 10 Citations	2022–005	Moore.
*II	Effective Communication Between Government and Industry	2016–005	Jackson.
*III	United States-Mexico-Canada Agreement	2020–014	Jackson.
IV	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 2023–01 amends the FAR as follows:

Item I—Update to Title 10 Citations (FAR Case 2022–005)

This final rule amends the Federal Acquisition Regulation to update statutory references to Title 10 of the United States Code, which were revised by Title XVIII of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), Transfer and Reorganization of Defense Acquisition Statutes, and Title XVII of the NDAA for FY 2022 (Pub. L. 117–81), Technical Amendments Related to the Transfer and Reorganization of Defense Acquisition Statutes. The final rule will not have a significant economic impact on a substantial number of small entities because it simply updates statutory references in existing regulations.

Item II—Effective Communication between Government and Industry (FAR Case 2016–005)

This final rule amends the FAR to implement section 887 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). This rule clarifies that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing laws and regulations, and do not promote an unfair competitive advantage to particular firms.

DoD, GSA, and NASA do not expect this final rule to have a significant economic impact on a substantial number of small entities. Any effect to small businesses should be positive. Small businesses will benefit from better communication with the Government.

Item III—United States-Mexico-Canada Agreement (FAR Case 2020–014)

This final rule implements the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113). The rule makes changes in the FAR to conform to Chapter 13 of the United States-Mexico-Canada Agreement (USMCA), which sets forth certain obligations between the United States and Mexico with respect to Government procurement of goods and services, as specified in Annex 13–A of the USMCA. Chapter 13 of the USMCA applies only between Mexico and the United States and does not cover Canada. Although Canada is still a designated country under the World Trade Organization Government Procurement Agreement, Canada is no longer a Free Trade Agreement country. Therefore, references to Canada as a Free Trade Agreement country in the FAR are deleted, including the $25,000 threshold. DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities. The effect on contracting officers is expected to be minimal as they will continue to apply the rule implementing the USMCA to contracts to which the North American Free Trade Agreement (NAFTA) applied, at the higher threshold for Mexico.

Item IV—Technical Amendments

Administrative changes are made at FAR 17.701, and 53.300.

William F. Clark,

Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

[FR Doc. 2022–25962 Filed 11–30–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 13, 18, 22, 25, 27, and 52

[FAC 2023–01; FAR Case 2020–014; Item III; Docket No. FAR–2020–0014; Sequence No. 1]

RIN 9000–AO14

Federal Acquisition Regulation: United States-Mexico-Canada Agreement

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 implement the United States-Mexico-Canada Agreement Implementation Act.

DATES: Effective December 30, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or by email at *michaelo.jackson@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 2023–01, FAR Case 2020–014.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 86 FR 70808 on December 13, 2021, to implement the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113). On June 12, 2017, the President announced his intention to commence negotiations with Canada and Mexico to modernize the North American Free Trade Agreement (NAFTA). On November 30, 2018, the Governments of the United States, Mexico, and Canada (the Parties) signed the protocol replacing NAFTA with the United States-Mexico-Canada Agreement (USMCA). On December 10, 2019, the Parties signed the protocol of amendment to the USMCA. On January 29, 2020, the President signed into law the United States-Mexico-Canada Agreement Implementation Act, through which Congress approved the USMCA. On July 1, 2020, the USMCA entered into full force. (See U.S. Trade Representative Determination published June 29, 2020, 85 FR 39037.) Although Canada is still a designated country under the World Trade Organization Government Procurement Agreement, Canada is no longer a Free Trade Agreement country, because chapter 13 of the USMCA (government procurement) applies only to the United States and Mexico. Therefore, references to Canada as a Free Trade Agreement country are deleted, including the $25,000 threshold. Mexico thresholds remain unchanged.

There were no comments submitted on the proposed rule.

II. Discussion and Analysis

There were no public comments for the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) to review. Therefore, there are no changes in the final rule from the proposed, except for baseline updates. The baseline updates include changes made in FAC 2022–03, FAR case 2022–001, Trade Agreements Thresholds, to incorporate the revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative, effective on January 1, 2022. The final rule also includes baseline updates published in FAC 2022–05 for FAR case 2021–008, effective on October 25, 2022.

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 final rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial products (including COTS items) and commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

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.

VI. 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. 601–612. The FRFA is summarized as follows:

The objective of this rule is to implement the USMCA Implementation Act. The rule makes changes in the FAR to conform to Chapter 13 of the USMCA, which sets forth certain obligations between the United States and Mexico with respect to Government procurement of goods and services, as specified in Annex 13–A of the USMCA. Chapter 13 of the USMCA applies only between Mexico and the United States and does not cover Canada. Although Canada is still a designated country under the World Trade Organization Government Procurement Agreement, Canada is no longer a Free Trade Agreement country, because chapter 13 of the USMCA (government procurement) applies only to the United States and Mexico. Therefore, references to Canada as a Free Trade Agreement country in the FAR are deleted, including the $25,000 threshold.

Canadian end products will still receive nondiscriminatory treatment with respect to the Buy American statute but starting at $183,000, rather than $25,000. Mexico thresholds remain unchanged.

The legal basis for these changes is Public Law 116–113.

There were no public comments submitted in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because, although the rule removes Canada as a Free Trade Agreement designated country and deletes the associated $25,000 threshold, Canada remains a World Trade Organization Government Procurement Agreement designated country, at $183,000. The Mexico thresholds remain unchanged.

Based on fiscal year 2019 data from the Federal Procurement Data System, 129,308 small businesses were awarded Government contracts. Impacts to small businesses are anticipated to be negligible based on the data analysis approved under Office of Management and Budget (OMB) Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry. Alternate I of the clause, FAR 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act, and Alternate I of the provision, FAR 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, are deleted. The Trade Agreements clause at FAR 52.225–5, the Buy American—Construction Materials under Trade Agreements clause at FAR 52.225–11, and the FAR 52.225–23 equivalent for the Recovery Act are revised to delete references to Canada as a Free Trade Agreement country. In regard to FAR 52.225–23, additional construction awards are not anticipated using Recovery Act funds.

This final rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. The rule does not impose additional information collection requirements to the paperwork burden previously approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501–3521), Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry.

There are no known significant alternative approaches to the final rule.

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 the Small Business Administration.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) does apply. However, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry.

List of Subjects in 48 CFR Parts 4, 13, 18, 22, 25, 27, 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, 13, 18, 22, 25, 27, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 13, 18, 22, 25, 27, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.1202 [Amended]

■ 2. Amend section 4.1202 by removing from paragraph (a)(28) the phrase ''Alternates I, II, and III'' and adding ''Alternates II and III'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.302–5 [Amended]

■ 3. Amend section 13.302–5, in paragraph (d)(3)(i) by removing the word ''FAR'' twice.

PART 18—EMERGENCY ACQUISITIONS

18.120 [Removed and Reserved]

■ 4. Remove and reserve section 18.120.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 5. Amend section 22.1503 by—

■ a. Removing paragraph (b)(1);

■ b. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(1) through (3); and

■ c. Adding ''Canada,'' in newly redesignated paragraph (b)(3) between the words ''Bulgaria'' and ''Croatia''.

22.1505 [Amended]

■ 6. Amend section 22.1505 in paragraph (a) by removing ''$25,000'' and adding ''$50,000'' in its place.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 7. Amend section 25.003 by removing ''Canada,'' from paragraph (2) of the definition of ''Designated country'' and from the definition of ''Free Trade Agreement country''.

■ 8. Amend section 25.400 by revising paragraph (a)(2)(i) to read as follows:

25.400 Scope of subpart.

(a) * * *

(2) * * *

(i) USMCA (United States-Mexico-Canada Agreement, as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to the United States and Mexico) (Pub. L. 116–113) (19 U.S.C. chapter 29 (sections 4501–4732));

* * * * *

■ 9. Amend section 25.401 by—

■ a. Removing ''and'' from the end of paragraph (a)(4);

■ b. Removing ''13.501(a).'' from paragraph (a)(5) and adding ''13.501(a); and'' in its place;

■ c. Adding paragraph (a)(6); and

■ d. In the table of paragraph (b), revising the heading of the third column.

The addition and revision read as follows:

25.401 Exceptions.

(a) * * *

(6) Goods and services specifically excluded under individual trade agreements, such as exceptions negotiated by the U.S. Trade Representative for particular agencies. See the agency supplementary regulations.

(b) * * * * *

.....	.....	Bahrain FTA, CAFTA–DR, Chile FTA, Columbia FTA, USMCA, Oman FTA, Panama FTA, and Peru FTA.	.....

* * * * * * *

* * * * *

■ 10. Amend section 25.402 by revising table 1 to paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$183,000	$183,000	$7,032,000
FTAs:			
Australia FTA	92,319	92,319	7,032,000
Bahrain FTA	183,000	183,000	12,001,460
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	92,319	92,319	7,032,000
Chile FTA	92,319	92,319	7,032,000
Colombia FTA	92,319	92,319	7,032,000
Korea FTA	100,000	100,000	7,032,000
Morocco FTA	183,000	183,000	7,032,000
USMCA:.			
—Mexico	92,319	92,319	12,001,460
Oman FTA	183,000	183,000	12,001,460
Panama FTA	183,000	183,000	7,032,000
Peru FTA	183,000	183,000	7,032,000
Singapore FTA	92,319	92,319	7,032,000
Israeli Trade Act	50,000	.....	.....

* * * * *

25.504–1 [Amended]

■ 11. Amend section 25.504–1 by removing ''$25,000'' from paragraphs (a)(2) and (c)(2) and adding ''$50,000'' in its place.

25.1101 [Amended]

■ 12. Amend section 25.1101 by—

■ a. Removing ''$25,000'' from paragraphs (a)(1) introductory text and (b)(1)(i)(A) and adding ''$50,000'' in its place, wherever it appears;

■ b. Removing paragraph (b)(1)(ii);

■ c. Redesignating paragraphs (b)(1)(iii) through (v) as paragraphs (b)(1)(ii) through (iv);

■ d. Removing from the newly redesignated paragraph (b)(1)(ii) the phrase ''*Alternate II*'' and adding the phrase ''Alternate II'' in its place;

■ e. Removing paragraph (b)(2)(ii);

■ f. Redesignating paragraphs (b)(2)(iii) and (iv) as paragraphs (b)(2)(ii) and (iii); and

■ g. Removing from the newly redesignated paragraph (b)(2)(ii) the phrase ''*Alternate II*'' and adding the phrase ''Alternate II'' in its place.

PART 27—PATENTS, DATA, AND COPYRIGHTS

■ 13. Revise section 27.204–1 to read as follows:

27.204–1 Use of patented technology under the United States-Mexico-Canada Agreement.

When questions arise with regard to use of patented technology under the United States-Mexico-Canada Agreement, the contracting officer should consult with legal counsel. Note that Article 20.6(a) of the Agreement discusses public health and pharmaceuticals.

■ 14. Amend section 27.204–2 by adding a sentence to the end of the paragraph to read as follows:

27.204–2 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

* * * Article 20.40 of the United States-Mexico-Canada Agreement preserves parties' rights under Article 31.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 15. Amend section 52.204–8 by revising the date of the provision and paragraph (c)(1)(xxi) to read as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (DEC 2022)

* * * * *

(c)(1) * * *

(xxi) 52.225–4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Basic, Alternates II and III.) This provision applies to solicitations containing the clause at 52.225–3.

(A) If the acquisition value is less than $50,000, the basic provision applies.

(B) If the acquisition value is $50,000 or more but is less than $92,319, the provision with its Alternate II applies.

(C) If the acquisition value is $92,319 or more but is less than $100,000, the provision with its Alternate III applies.

* * * * *

■ 16. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Removing paragraph (g)(2);

■ c. Redesignating paragraphs (g)(3) through (5) as paragraphs (g)(2) through (4); and

■ d. Revising the newly redesignated paragraph (g)(2).

The revisions read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (DEC 2022)

* * * * *

(g) * * *

(2) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If *Alternate II* to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Israeli end products as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act'':

Israeli End Products:

Line Item No.		

[List as necessary]

* * * * *

■ 17. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(28) the date ''(JAN 2022)'' and adding ''(DEC 2022)'' in its place;

■ c. Revising paragraphs (b)(49)(i) and (ii);

■ d. Removing from paragraph (b)(49)(iii) the date ''(JAN 2021)'' and adding ''(DEC 2022)'' in its place; and

■ e. Removing from paragraph (b)(50) the date ''(OCT 2019)'' and adding ''(DEC 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 (DEC 2022)

* * * * *

(b) * * *

(49)(i) 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act (DEC 2022) (19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501–4732), Public Law 103–182, 108–77, 108–78, 108–286, 108–302, 109–53, 109–169, 109–283, 110–138, 112–41, 112–42, and 112–43.

(ii) Alternate I [Reserved].

* * * * *

■ 18. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. In paragraph (b)(1)(ii)—

■ i. Removing the date ''(JAN 2022)'' and adding ''(DEC 2022)'' in its place; and

■ ii. Removing the phrase ''FAR'';

■ c. In paragraph (b)(1)(xvii)(A) introductory text removing the phrase ''FAR''; and

■ d. Removing ''$25,000'' from paragraph (b)(1)(xvii)(A)(*2*) and adding ''$50,000'' in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (DEC 2022)

* * * * *

■ 19. Amend section 52.222–19 by—

■ a. Revising the date of the clause;

■ b. Removing paragraph (a)(1);

■ c. Redesignating paragraphs (a)(2) through (4) as paragraphs (a)(1) through (3); and

■ d. Adding ''Canada,'' in newly redesignated paragraph (a)(3) between ''Bulgaria,'' and ''Croatia''.

The revision reads as follows:

52.222–19 Child Labor—Cooperation With Authorities and Remedies.

* * * * *

Child Labor—Cooperation With Authorities and Remedies (DEC 2022)

* * * * *

■ 20. Amend section 52.225–3 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition of ''Free Trade Agreement country'' removing ''Canada,'';

■ c. Removing and reserving Alternate I;

■ d. Revising Alternate II;

■ e. Removing from the introductory text of Alternate III ''25.1101(b)(1)(iv)'' and adding ''25.1101(b)(1)(iii)'' in its place; and

■ f. Removing from the introductory text of Alternate IV ''25.1101(b)(1)(v)'' and adding ''25.1101(b)(1)(iv)'' in its place.

The revisions read as follows:

52.225–3 Buy American—Free Trade Agreements—Israeli Trade Act.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act (DEC 2022)

* * * * *

Alternate II (DEC 2022). As prescribed in 25.1101(b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Delivery of end products.* 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product,

excluding COTS fasteners. In addition, the Contracting Officer has determined that the Israeli Trade Act applies to this acquisition. Unless otherwise specified, this trade agreement applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.'' If the Contractor specified in its offer that the Contractor would supply an Israeli end product, then the Contractor shall supply an Israeli end product or, at the Contractor's option, a domestic end product.

* * * * *

■ 21. Amend section 52.225–4 by—
■ a. Removing and reserving Alternate I;
■ b. Revising Alternate II; and
■ c. In Alternate III removing from the introductory text ''25.1101(b)(2)(iv)'' and adding ''25.1101(b)(2)(iii)'' in its place.

The revisions read as follows:

52.225–4 Buy American—Free Trade Agreements—Israeli Trade Act Certificate.

* * * * *

Alternate II (DEC 2022). As prescribed in 25.1101(b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Israeli end products as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act—Balance of Payments Program'':

Israeli End Products

Line Item No.		

[List as necessary]

* * * * *

■ 22. Amend section 52.225–5 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a), in the definition ''Designated country'' removing ''Canada,'' from paragraph (2).

The revision reads as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (DEC 2022)

* * * * *

■ 23. Amend section 52.225–11 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a), in the definition of ''Designated country'', removing ''Canada,'' from paragraph (2);
■ c. Revising the date of Alternate I; and
■ d. In paragraph (b)(1) of Alternate I:
■ i. Removing the phrase ''FAR''; and
■ ii. Removing the phrase ''NAFTA'' and adding ''United States-Mexico-Canada Agreement'' in its place.

The revisions read as follows:

52.225–11 Buy American—Construction Materials Under Trade Agreements.

* * * * *

Buy American—Construction Materials Under Trade Agreements (DEC 2022)

* * * * *

Alternate I (DEC 2022). * * *

* * * * *

■ 24. Amend section 52.225–23 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a), in the definitions of ''Designated country'' and ''Recovery Act designated country'', removing ''Canada,'' from paragraph (2).

The revisions read as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements (DEC 2022)

* * * * *

[FR Doc. 2022–25960 Filed 11–30–22; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53

[FAC 2023–01; FAR Case 2022–005; Item I; Docket No. FAR–2022–0005, Sequence No. 1]

RIN 9000–AO42

Federal Acquisition Regulation: Update to Title 10 Citations

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 update statutory references to Title 10 of the United States Code.

DATES: *Effective:* December 30, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, Procurement Analyst, at 571–300–5917 or by email at *carrie.moore@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 2023–01, FAR Case 2022–005.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are amending the FAR to update numerous statutory references to Title 10 of the United States Code, which were revised by Title XVIII of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), Transfer and Reorganization of Defense Acquisition Statutes, and Title XVII of the NDAA for FY 2022 (Pub. L. 117–81), Technical Amendments Related to the Transfer and Reorganization of Defense Acquisition Statutes.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this rule only updates statutory references in the existing regulations, makes no substantive changes to those regulations, and has no significant cost or administrative impact on contractors or offerors.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule does not create any new solicitation provisions or contract clauses. It does not change the applicability of any existing provisions or clauses included in solicitations or contracts valued at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

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.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 3501–3521) does apply; however, the changes to these FAR clauses do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers: 9000–0034, Examination of Records by Comptroller General and Contract Audit: FAR Section(s) Affected: 52.212–5(d), 52.214–26, 52.215–2; 9000–0135, Prospective Subcontractor Requests for Bonds; and 9000–0138, Contract Financing—FAR sections affected: 52.232–28; 52.232–29; 52.232–30; 52.232–31; and 52.232–32.

List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53

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 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53 as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

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

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

2.101 [Amended]

■ 3. Amend section 2.101, in paragraph (b)(2) by—

■ a. In the definition of ''Certified cost or pricing data'' removing ''10 U.S.C. 2306a'' and adding ''10 U.S.C. chapter 271'' in its place;

■ b. In the definition of ''Cost or pricing data'', introductory text, removing ''10 U.S.C. 2306a(h)(1)'' and adding ''10 U.S.C. 3701(1)'' in its place;

■ c. In the definition of ''Humanitarian or peacekeeping operation'' removing ''10 U.S.C. 2302(8)'' and adding ''10 U.S.C. 3015(2)'' in its place;

■ d. In the definition of ''Major system'', in paragraph (3), removing ''(10 U.S.C. 2302 and 41 U.S.C. 109'' and adding ''(10 U.S.C. 3041 and 41 U.S.C. 109)'' in its place;

■ e. In the definition of ''Qualifying offeror'' removing ''10 U.S.C. 2305(a)(3)(D)'' and adding ''10 U.S.C. 3206(c)(4)'' in its place;

■ f. In the definition of ''Simplified acquisition threshold'', in paragraph (2), removing ''10 U.S.C. 2302'' and adding ''10 U.S.C. 3015'' in its place; and

■ g. In the definition ''Small Business Teaming Arrangement'', in paragraph (2)(ii), removing ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4901 note prec.'' in its place.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 4. The authority citation for part 3 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

3.104–1 [Amended]

■ 5. Amend 3.104–1 in the definition ''Contractor bid or proposal information'', in paragraph (1), by removing ''10 U.S.C. 2306a(h)(1)'' and adding ''10 U.S.C. 3701(1)'' in its place.

3.104–2 [Amended]

■ 6. Amend section 3.104–2 by removing from paragraph (b)(1) ''10 U.S.C. 2207'' and adding ''10 U.S.C. 4651'' in its place.

3.201 [Amended]

■ 7. Amend section 3.201 by removing ''(10 U.S.C. 2207)'' and adding ''(10 U.S.C. 4651)'' in its place.

3.303 [Amended]

■ 8. Amend section 3.303 by removing from paragraph (a) ''10 U.S.C. 2305(b)(9)'' and adding ''10 U.S.C. 3307'' in its place.

3.400 [Amended]

■ 9. Amend section 3.400 by removing ''10 U.S.C. 2306(b)'' and adding ''10 U.S.C. 3321(b)(1)'' in its place.

3.402 [Amended]

■ 10. Amend section 3.402 by removing from the introductory text ''10 U.S.C. 2306(b)'' and adding ''10 U.S.C. 3321(b)'' in its place.

3.503–1 [Amended]

■ 11. Amend section 3.503–1 by removing ''10 U.S.C. 2402'' and adding ''10 U.S.C. 4655'' in its place.

3.900 [Amended]

■ 12. Amend section 3.900 by removing from the introductory text ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in its place.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

■ 13. The authority citation for part 4 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

4.702 [Amended]

■ 14. Amend section 4.702 by removing from paragraph (b) ''Chapter 137, Title 10, U.S.C.,'' and adding ''10 U.S.C. chapter 137 legacy provisions (10 U.S.C. 3064) and 10 U.S.C. 3016 and chapter 203'' in its place.

4.1102 [Amended]

■ 15. Amend section 4.1102 by removing from paragraph (a)(3)(i) ''10 U.S.C. 2302(8)'' and adding ''10 U.S.C. 3015(2)'' in its place.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 16. The authority citation for part 5 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 6—COMPETITION REQUIREMENTS

■ 17. The authority citation for part 6 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

6.101 [Amended]

■ 18. Amend section 6.101 by removing from paragraphs (a) and (b) ''10 U.S.C. 2304'' and adding ''10 U.S.C. 3201'' in their places; respectively.

6.301 [Amended]

■ 19. Amend section 6.301 by removing from paragraph (a) ''10 U.S.C. 2304(c)'' and adding ''10 U.S.C. 3204'' in their places (twice).

6.302–1 [Amended]

■ 20. Amend section 6.302–1 by—

■ a. Removing from paragraph (a)(1) ''10 U.S.C. 2304(c)(1)'' and adding ''10 U.S.C. 3204(a)(1)'' in its place;

■ b. Removing from paragraph (a)(2)(i)(C) ''10 U.S.C. 2304(d)(1)(A)'' and adding ''10 U.S.C. 3204(b)(A)'' in its place; and

■ c. Removing from paragraphs (a)(2)(ii)(B) and (a)(2)(iii)(B) ''10 U.S.C. 2304(d)(1)(B)'' and adding ''10 U.S.C. 3204(b)(B)'' in their places; respectively.

6.302–2 [Amended]

■ 21. Amend section 6.302–2 by removing from paragraph (a)(1) ''10 U.S.C. 2304(c)(2)'' and adding ''10 U.S.C. 3204(a)(2)'' in its place.

6.302–3 [Amended]

■ 22. Amend section 6.302–3 by removing from paragraph (a)(1) ''10 U.S.C. 2304(c)(3)'' and adding ''10 U.S.C. 3204(a)(3)'' in its place.

6.302–4 [Amended]

■ 23. Amend section 6.302–4 by removing from paragraph (a)(1) ''10 U.S.C. 2304(c)(4)'' and adding ''10 U.S.C. 3204(a)(4)'' in its place.

6.302–5 [Amended]

■ 24. Amend section 6.302–5 by—

■ a. Removing from paragraph (a)(1) ''10 U.S.C. 2304(c)(5)'' and adding ''10 U.S.C. 3204(a)(5)'' in its place; and

■ b. Removing from paragraphs (c)(1)(ii) and (iii) ''10 U.S.C. 2304(k)'' and adding ''10 U.S.C. 3201(e)'' in their places; respectively.

6.302–6 [Amended]

■ 25. Amend section 6.302–6 by removing from paragraph (a)(1) ''10 U.S.C. 2304(c)(6)'' and adding ''10 U.S.C. 3204(a)(6)'' in its place.

6.302–7 [Amended]

■ 26. Amend section 6.302–7 by removing from paragraph (a)(1) ''10 U.S.C. 2304(c)(7)'' and adding ''10 U.S.C. 3204(a)(7)'' in its place.

6.305 [Amended]

■ 27. Amend section 6.305 by removing from paragraph (a) ''10 U.S.C. 2304(l)'' and adding ''10 U.S.C. 3204(f)'' in its place.

PART 7—ACQUISITION PLANNING

■ 28. The authority citation for part 7 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

7.102 [Amended]

■ 29. Amend section 7.102 by—

■ a. Removing from paragraph (a)(1) ''10 U.S.C. 2377'' and adding ''10 U.S.C. 3453'' in its place; and

■ b. Removing from paragraph (a)(2) ''10 U.S.C. 2305(a)(1)(A)'' and adding ''10 U.S.C. 3206(a)(1)'' in its place.

7.103 [Amended]

■ 30. Amend section 7.103 by—

■ a. Removing from paragraph (a) ''10 U.S.C. 2305(a)(1)(A)'' and adding ''10 U.S.C. 3206(a)(1)'' in its place;

■ b. Removing from paragraph (b) ''10 U.S.C. 2377'' and adding ''10 U.S.C. 3453'' in its place; and

■ c. Removing from paragraph (c) ''10 U.S.C. 2305(a)(1)(A)'' and adding ''10 U.S.C. 3206(a)(1)''.

7.202 [Amended]

■ 31. Amend section 7.202 by removing from paragraph (a) introductory text ''10 U.S.C. 2384a'' and adding ''10 U.S.C. 3242'' in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 32. The authority citation for part 8 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

8.602 [Amended]

■ 33. Amend section 8.602 by removing from paragraph (a) introductory text ''10 U.S.C. 2410n'' and adding ''10 U.S.C. 3905'' in its place.

PART 9—CONTRACTOR QUALIFICATIONS

■ 34. The authority citation for part 9 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

9.200 [Amended]

■ 35. Amend section 9.200 by removing ''10 U.S.C. 2319'' and adding ''10 U.S.C. 3243'' in its place.

PART 10—MARKET RESEARCH

■ 36. The authority citation for part 10 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

10.000 [Amended]

■ 37. Amend section 10.000 by removing ''10 U.S.C. 2377'' and adding ''10 U.S.C. 3453'' in its place.

10.001 [Amended]

■ 38. Amend section 10.001 by removing from paragraph (a)(2)(v) ''10 U.S.C. 2377(c)'' and adding ''10 U.S.C. 3453(c)'' in its place.

PART 11—DESCRIBING AGENCY NEEDS

■ 39. The authority citation for part 11 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

11.002 [Amended]

■ 40. Amend section 11.002 by removing from paragraph (a) introductory text ''10 U.S.C. 2305(a)(1)'' and ''10 U.S.C. 2377'' and adding ''10 U.S.C. 3206(a)'' and ''10 U.S.C. 3453'' in their places; respectively.

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 41. The authority citation for part 12 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

12.000 [Amended]

■ 42. Amend section 12.000 by removing ''10 U.S.C. 2375–2377'' and adding ''10 U.S.C. 3451–3453'' in its place.

■ 43. Amend section 12.503 by—

■ a. Removing from paragraph (a)(5) ''10 U.S.C. 2306(b)'' and adding ''10 U.S.C. 3321(b)'' in its place;

■ b. Removing from paragraph (a)(6) ''10 U.S.C. 2313(c)(1)'' and adding ''10 U.S.C. 3841(d)(1)'' in its place;

■ c. Removing from paragraph (a)(9) ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4601 note prec.'' in its place;

■ d. Removing from paragraph (c)(1) ''10 U.S.C. 2402'' and adding ''10 U.S.C. 4655'' in its place; and

■ e. Revising paragraph (c)(2) to read as follows.

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial products and commercial services.

* * * * *

(c) * * *

(2) 41 U.S.C. chapter 35 and 10 U.S.C. chapter 271, Truthful Cost or Pricing Data (see 15.403).

* * * * *

■ 44. Amend section 12.504 by—

■ a. Removing from paragraph (a)(6) ''10 U.S.C. 2306(b)'' and adding ''10 U.S.C. 3321(b)'' in its place;

■ b. Removing from paragraph (a)(7) ''10 U.S.C. 2313(c)'' and adding ''10 U.S.C. 3841(d)'' in its place;

■ c. Removing from paragraph (a)(13) ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4601 note prec.'' in its place;

■ d. Removing from paragraph (c)(1) ''10 U.S.C. 2402'' and adding ''10 U.S.C. 4655'' in its place; and

■ e. Revising paragraph (c)(2) to read as follows.

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial products and commercial services.

* * * * *

(c) * * *

(2) 41 U.S.C. chapter 35 and 10 U.S.C. chapter 271, Truthful Cost or Pricing Data (see subpart 15.4).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 45. The authority citation for part 13 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

13.005 [Amended]

■ 46. Amend section 13.005 by—

■ a. Removing from paragraph (a)(2) ''10 U.S.C. 2306(b)'' and adding ''10 U.S.C. 3321(b)'' in its place;

■ b. Removing from paragraph (a)(3) ''10 U.S.C. 2313'' and adding ''10 U.S.C. 3841'' in its place; and

■ c. Removing from paragraph (a)(4) ''10 U.S.C. 2402'' and adding ''10 U.S.C. 4655'' in its place.

13.106–1 [Amended]

■ 47. Amend section 13.106–1 by removing from paragraph (a)(2)(iv) introductory text ''10 U.S.C. 2305(a)(3)'' and adding ''10 U.S.C. 3206(c)'' in its place.

13.500 [Amended]

■ 48. Amend section 13.500 by removing from paragraph (a) ''10 U.S.C. 2304(g) and 2305'' and adding ''10 U.S.C. 3205–3208 and chapter 241'' in its place.

PART 14—SEALED BIDDING

■ 49. The authority citation for part 14 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 15—CONTRACTING BY NEGOTIATION

■ 50. The authority citation for part 15 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

15.209 [Amended]

■ 51. Amend section 15.209 by removing from paragraph (b)(1) introductory text ''10 U.S.C. 2313'' and adding ''10 U.S.C. 3841'' in its place.

15.303 [Amended]

■ 52. Amend section 15.303 by removing from paragraphs (b)(4) and (6) ''10 U.S.C. 2305(b)(4)(C)'' and adding ''10 U.S.C. 3303(c)'' in their places; respectively.

15.304 [Amended]

■ 53. Amend section 15.304 by—

■ a. Removing from paragraph (c)(1)(i) ''10 U.S.C. 2305(a)(3)(A)(ii)'' and adding ''10 U.S.C. 3206(c)(1)(B)'' in its place;

■ b. Removing from paragraph (c)(1)(ii) introductory text ''10 U.S.C. 2305(a)(3)'' and adding ''10 U.S.C. 3206(c)'' in its place;

■ c. Removing from paragraph (c)(2) ''(10 U.S.C. 2305(a)(3)(A)(i) and 3306(c)(1)(A)'' and adding ''(10 U.S.C. 3206(c)(1)(A) and 41 U.S.C. 3306(c)(1)(A))'' in its place;

■ d. Removing from paragraph (d) ''(10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 3306(b)(1)(A)'' and adding ''(10 U.S.C. 3206(b)(1) and 41 U.S.C. 3306(b)(1)'' in its place; and

■ e. Removing from paragraph (e)(3) ''10 U.S.C. 2305(a)(3)(A)(iii)'' and adding ''(10 U.S.C. 3206(c)(1)(C)'' in its place.

15.306 [Amended]

■ 54. Amend section 15.306 by—

■ a. Removing from paragraph (a)(3) ''10 U.S.C. 2305(b)(4)(A)(ii)'' and adding ''10 U.S.C. 3303(a)(2)'' in its place; and

■ b. Removing from paragraph (c)(2) ''10 U.S.C. 2305(b)(4)'' and adding ''10 U.S.C. 3303'' in its place.

15.401 [Amended]

■ 55. Amend 15.401 in the definition ''Subcontract'' by removing ''10 U.S.C. 2306a(h)(2)'' and adding ''10 U.S.C. 3701(2)'' in its place.

15.403–1 [Amended]

■ 56. Amend section 15.403–1 by removing from the section heading and paragraph (c)(3)(ii)(A) ''10 U.S.C. 2306a'' and adding ''10 U.S.C. chapter 271'' in their places; respectively.

15.403–3 [Amended]

■ 57. Amend section 15.403–3 by—

■ a. Removing from paragraph (a)(1)(ii) ''10 U.S.C. 2306a(d)(1)'' and adding ''10 U.S.C. 3705(a)'' in its place; and

■ b. Removing from paragraph (c)(2) introductory text ''10 U.S.C. 2306a(d)(2)'' and adding ''10 U.S.C. 3705(b)'' in its place.

15.403–4 [Amended]

■ 58. Amend section 15.403–4 by removing from the section heading ''10 U.S.C. 2306a'' and adding ''10 U.S.C. chapter 271'' in its place.

15.404–1 [Amended]

■ 59. Amend section 15.404–1 by removing from paragraph (f)(2) ''10 U.S.C. 2306a(b)(1)(A)(i)'' and adding ''10 U.S.C. 3703(a)(1)(A)'' in its place.

15.404–2 [Amended]

■ 60. Amend section 15.404–2 by removing from paragraph (c)(2) ''10 U.S.C. 2313'' and adding ''10 U.S.C. 3841'' in its place.

15.404–4 [Amended]

■ 61. Amend section 15.404–4 by removing from paragraph (c)(4)(i) introductory text ''10 U.S.C. 2306(d) and 41 U.S.C. 3905)'' and adding ''10 U.S.C. 3322(b) and 41 U.S.C. 3905'' in its place.

15.503 [Amended]

■ 62. Amend section 15.503 by removing from paragraph (b)(1) introductory text ''10 U.S.C. 2305(b)(5)'' and adding ''10 U.S.C. 3304'' in its place.

15.505 [Amended]

■ 63. Amend section 15.505 by removing from the introductory text ''10 U.S.C. 2305(b)(6)(A)'' and adding ''10 U.S.C. 3305'' in its place.

PART 16—TYPES OF CONTRACTS

■ 64. The authority citation for part 16 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

16.102 [Amended]

■ 65. Amend section 16.102 by—

■ a. Removing from paragraph (b) ''10 U.S.C. 2306(a)'' and adding ''10 U.S.C. 3321(a)'' in its place; and

■ b. Removing from paragraph (c) ''10 U.S.C. 2306(a)'' and adding ''10 U.S.C. 3322(a)'' in its place.

16.501–2 [Amended]

■ 66. Amend section 16.501–2 by removing from paragraph (a) ''10 U.S.C. 2304d'' and adding ''10 U.S.C. 3401'' in its place.

16.505 [Amended]

■ 67. Amend section 16.505 by—

■ a. Removing from paragraph (a)(10)(i)(B)(*2*) ''10 U.S.C. 2304c(e)'' and adding ''10 U.S.C. 3406(f)'' in its place; and

■ b. Removing from paragraph (b)(2)(i)(G) ''10 U.S.C. 2304c(b)(5)'' and ''10 U.S.C. 2304(c)(7)'' and adding ''10 U.S.C. 3406(c)(5)'' and ''10 U.S.C. 3204(a)(7)'' in their places; respectively.

PART 17—SPECIAL CONTRACTING METHODS

■ 68. The authority citation for part 17 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

17.101 [Amended]

■ 69. Amend section 17.101 by removing ''10 U.S.C. 2306b'' and adding ''10 U.S.C. 3501'' in its place.

17.700 [Amended]

■ 70. Amend section 17.700 by removing from paragraph (b) ''10 U.S.C. 2304 Note'' and adding ''10 U.S.C. 3201 note prec.'' in its place.

PART 18—EMERGENCY ACQUISITIONS

■ 71. The authority citation for part 18 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 19—SMALL BUSINESS PROGRAMS

■ 72. The authority citation for part 19 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

19.000 [Amended]

■ 73. Amend section 19.000 by removing from paragraph (a) introductory text ''(10 U.S.C. 2302, *et seq.*)'' and adding ''(10 U.S.C. 3063–3064 and 3203)'' in its place.

19.201 [Amended]

■ 74. Amend section 19.201 by removing from paragraph (c)(14)(ii) ''10 U.S.C. 2318'' and adding ''10 U.S.C. 3249'' in its place.

19.811–1 [Amended]

■ 75. Amend section 19.811–1 by removing from paragraph (b)(1) ''10 U.S.C. 2304(c)(5)'' and adding ''10 U.S.C. 3204(a)(5)'' in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 76. The authority citation for part 22 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNO0LOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 77. The authority citation for part 23 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

■ 78. The authority citation for part 24 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

24.202 [Amended]

■ 79. Amend section 24.202 by—

■ a. Removing from paragraph (a) ''10 U.S.C. 2305(g)'' and adding ''10 U.S.C. 3309'' in its place; and

■ b. Removing from paragraph (b) ''10 U.S.C. 2306a(d)(2)(C)'' and adding ''10 U.S.C. 3705(c)(3)'' in its place.

PART 25—FOREIGN ACQUISITION

■ 80. The authority citation for part 25 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

25.302–1 [Amended]

■ 81. Amend section 25.302–1 by removing from the text ''10 U.S.C. 2302 Note'' and adding ''10 U.S.C. Subtitle A, Part V, Subpart G Note'' in its place.

25.1001 [Amended]

■ 82. Amend section 25.1001 by removing from paragraph (a) introductory text ''10 U.S.C. 2313'' and adding ''10 U.S.C. 3841'' in its place.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

■ 83. The authority citation for part 26 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 27—PATENTS, DATA, AND COPYRIGHTS

■ 84. The authority citation for part 27 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 28—BONDS AND INSURANCE

■ 85. The authority citation for part 28 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

28.106–4 [Amended]

■ 86. Amend section 28.106–4 by removing from paragraph (b) ''10 U.S.C.

2302 note'' and adding ''10 U.S.C. 4601 note prec.'' in its place.

28.106–6 [Amended]

■ 87. Amend section 28.106–6 by removing from paragraph (d) introductory text ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4601 note prec.'' in its place.

PART 29—TAXES

■ 88. The authority citation for part 29 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 89. The authority citation for part 30 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

30.201–1 [Amended]

■ 90. Amend section 30.201–1 by removing from paragraph (b) ''10 U.S.C. 2306a(a)(1)(A)(i)'' and adding ''10 U.S.C. 3702(a)(1)(A)'' in its place.

30.603–2 [Amended]

■ 91. Amend section 30.603–2 by removing from paragraph (e) ''10 U.S.C. 2325'' and adding ''10 U.S.C. 3761'' in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 92. The authority citation for part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

31.205–6 [Amended]

■ 93. Amend section 31.205–6 by—

■ a. Removing from paragraph (g)(6) ''10 U.S.C. 2324(e)(1)(M)'', ''10 U.S.C. 2324(e)(1)(N)'', and ''10 U.S.C. 2324(e)(3)'' and adding ''10 U.S.C. 3744(a)(13)'', ''10 U.S.C. 3744(a)(14)'', and ''10 U.S.C. 3744(b)'' in their places; respectively;

■ b. Removing from paragraph (p)(2)(ii) ''10 U.S.C. 2324(e)(1)(P)'' and adding ''10 U.S.C. 3744(a)(16)'' in its place;

■ c. Removing from paragraph (p)(3)(ii) ''10 U.S.C. 2324(e)(1)(P)'' and ''10 U.S.C. 2324'' and adding ''10 U.S.C. 3744(a)(16)'' and ''10 U.S.C. 3744'' in their places, respectively; and

■ d. Removing from paragraph (p)(4)(ii) ''10 U.S.C. 2324(e)(1)(P)'' and adding ''10 U.S.C. 3744(a)(16)'' in its place.

31.205–18 [Amended]

■ 94. Amend section 31.205–18 by removing from paragraph (e)(1)(iii) ''10 U.S.C. 2371'' and adding ''10 U.S.C. 4021'' in its place.

31.205–47 [Amended]

■ 95. Amend section 31.205–47 by—

■ a. Removing from paragraph (b) introductory text ''10 U.S.C. 2324(k)'' and ''10 U.S.C. 2409'' and adding ''10 U.S.C. 3750'' and ''10 U.S.C. 4701'' in their places; respectively;

■ b. Removing from paragraphs (b)(2) and (c)(2)(ii) ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in their places, respectively; and

■ c. Removing from paragraph (f)(9) ''10 U.S.C. 2324(e)(1)(Q)'' and adding ''10 U.S.C. 3744(a)(17)'' in its place.

31.603 [Amended]

■ 96. Amend section 31.603 by—

■ a. Removing from paragraph (b) introductory text ''10 U.S.C. 2324'' and adding ''10 U.S.C. 3744'' in its place; and

■ b. Removing from paragraph (b)(15) ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in its place.

31.703 [Amended]

■ 97. Amend section 31.703 by removing from paragraph (b) ''10 U.S.C. 2324(e)'' and adding ''10 U.S.C. 3744'' in its place.

PART 32—CONTRACT FINANCING

■ 98. The authority citation for part 32 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

32.006–1 [Amended]

■ 99. Amend section 32.006–1 by—

■ a. Removing from paragraph (a) ''10 U.S.C. 2307(i)(8)'' and adding ''10 U.S.C. 3806(j)'' in its place; and

■ b. Removing from paragraph (b) ''10 U.S.C. 2307(i)(2)'' and adding ''10 U.S.C. 3806(c)'' in its place.

32.006–2 [Amended]

■ 100. Amend section 32.006–2, in the definition of ''Remedy coordination official'', by removing ''10 U.S.C. 2307(i)(10)'' and adding ''10 U.S.C. 3806(a)'' in its place.

32.006–5 [Amended]

■ 101. Amend section 32.006–5 by removing from paragraph (a) and paragraph (b) introductory text ''10 U.S.C. 2307(i)(7)'' and adding ''10 U.S.C. 3806(h)'' in their places; respectively.

32.101 [Amended]

■ 102. Amend section 32.101 by removing ''10 U.S.C. 2307'' and adding ''10 U.S.C. chapter 277'' in its place.

32.102 [Amended]

■ 103. Amend section 32.102 by removing from paragraph (d) ''10 U.S.C. 2307'' and adding ''10 U.S.C. chapter 277'' in its place.

32.112–1 [Amended]

■ 104. Amend section 32.112–1 by removing from paragraph (a) introductory text ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4601 note prec.'' in its place.

32.112–2 [Amended]

■ 105. Amend section 32.112–2 by removing from paragraph (a) introductory text ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4601 note prec.'' in its place.

32.201 [Amended]

■ 106. Amend section 32.201 by removing ''10 U.S.C. 2307(f)'' and adding ''10 U.S.C. 3805'' in its place.

32.202–4 [Amended]

■ 107. Amend section 32.202–4 by removing from paragraph (a)(1) ''10 U.S.C. 2307(f)'' and adding ''10 U.S.C. 3805'' in its place.

32.401 [Amended]

■ 108. Amend section 32.401 by removing from paragraph (b) ''10 U.S.C. 2307'' and adding ''10 U.S.C. chapter 277'' in its place.

32.410 [Amended]

■ 109. Amend section 32.410 by removing from paragraph (c) of the example ''Findings, Determinations, and Authorization for Advanced Payments'' ''10 U.S.C. 2307'' and adding ''10 U.S.C. chapter 277'' in its place.

32.501–1 [Amended]

■ 110. Amend section 32.501–1 by removing from paragraph (d) ''10 U.S.C. 2307(e)(2)'' and adding ''10 U.S.C. 3804(b)'' in its place.

32.703–3 [Amended]

■ 111. Amend section 32.703–3 by removing from paragraph (b) ''10 U.S.C. 2410a'' and adding ''10 U.S.C. 3133'' in its place.

PART 33—PROTESTS, DISPUTES, AND APPEALS

■ 112. The authority citation for part 33 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 34—MAJOR SYSTEM ACQUISITION

■ 113. The authority citation for part 34 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

■ 114. The authority citation for part 35 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 115. Revise section 35.017–7 to read as follows.

35.017–7 Limitation on the creation of new FFRDC's.

Pursuant to 10 U.S.C. 4126, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating an FFRDC that was not in existence before June 2, 1986, until—

(a) The head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(b) A period of 60 days, beginning on the date such report is received by Congress, has elapsed.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 116. The authority citation for part 36 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

36.104 [Amended]

■ 117. Amend section 36.104 by removing from paragraph (a) ''10 U.S.C. 2305a'' and adding ''10 U.S.C. 3241'' in its place.

36.300 [Amended]

■ 118. Amend section 36.300 by removing ''10 U.S.C. 2305a'' and adding ''10 U.S.C. 3241'' in its place.

PART 37—SERVICE CONTRACTING

■ 119. The authority citation for part 37 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

37.106 [Amended]

■ 120. Amend section 37.106 by removing from paragraph (b) ''10 U.S.C. 2410a'' and adding ''10 U.S.C. 3133'' in its place.

37.113–1 [Amended]

■ 121. Amend section 37.113–1 by removing from paragraph (c)(1) ''10 U.S.C. 2324(e)(2)'' and adding ''10 U.S.C. 3744(d)'' in its place.

37.115–1 [Amended]

■ 122. Amend section 37.115–1 by removing ''10 U.S.C. 2331'' and adding ''10 U.S.C. 4507'' in its place.

37.401 [Amended]

■ 123. Amend section 37.401 by removing from the introductory text ''10 U.S.C. 2304'' and adding ''10 U.S.C. chapter 221'' in its place.

PART 38—FEDERAL SUPPLY SCHEDULES CONTRACTING

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

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 125. The authority citation for part 39 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 41—ACQUISITION OF UTILITY SERVICES

■ 126. The authority citation for part 41 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

41.103 [Amended]

■ 127. Amend section 41.103 by removing from paragraph (a)(2) ''10 U.S.C. 2304'' and adding ''10 U.S.C. 3201(a)'' in its place.

41.201 [Amended]

■ 128. Amend section 41.201 by removing from paragraph (d)(2)(ii) ''10 U.S.C. 2394'' and adding ''10 U.S.C. 2922a'' in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 129. The authority citation for part 42 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

42.703–1 [Amended]

■ 130. Amend section 42.703–1 by—

■ a. Removing from paragraph (a) ''10 U.S.C. 2313(d)'' and adding ''10 U.S.C. 3841(e)'' in its place; and

■ b. Removing from paragraph (c) introductory text ''10 U.S.C. 2324(a)'' and adding ''10 U.S.C. 3743(a)'' in its place.

42.703–2 [Amended]

■ 131. Amend section 42.703–2 by—

■ a. Removing from paragraph (a) ''10 U.S.C. 2324(h)'' and adding ''10 U.S.C. 3747'' in its place; and

■ b. Removing from paragraph (e) ''10 U.S.C. 2324(a) through (d)'' and adding ''10 U.S.C. 3743'' in its place.

42.705–1 [Amended]

■ 132. Amend section 42.705–1 by removing from paragraph (b)(4) introductory text ''10 U.S.C. 2324(f)'' and adding ''10 U.S.C. 3745'' in its place.

42.709–1 [Amended]

■ 133. Amend section 42.709–1 by removing from paragraph (a) introductory text ''10 U.S.C. 2324 (a) through (d)'' and adding ''10 U.S.C. 3743'' in its place.

PART 43—CONTRACT MODIFICATIONS

■ 134. The authority citation for part 43 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 135. The authority citation for part 44 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

44.201–2 [Amended]

■ 136. Amend section 44.201–2 by removing from paragraph (a) ''10 U.S.C. 2306'' and adding ''10 U.S.C. 3322(c)'' in its place.

PART 45—GOVERNMENT PROPERTY

■ 137. The authority citation for part 45 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 46—QUALITY ASSURANCE

■ 138. The authority citation for part 46 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 47—TRANSPORTATION

■ 139. The authority citation for part 47 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

47.502 [Amended]

■ 140. Amend section 47.502 by removing paragraph (b)(1) and redesignating (b)(2) and (3) as (b)(1) and (2), respectively.

PART 48—VALUE ENGINEERING

■ 141. The authority citation for part 48 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

48.102 [Amended]

■ 142. Amend section 48.102 by removing from paragraph (e) ''10 U.S.C. 2306(d)'' and adding ''10 U.S.C. 3322(b)'' in its place.

PART 49—TERMINATION OF CONTRACTS

■ 143. The authority citation for part 49 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

■ 144. The authority citation for part 50 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 145. The authority citation for part 51 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 146. The authority citation for part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 147. Amend section 52.207–6 by—

■ a. Revising the date of the provision; and

■ b. Removing from paragraph (a)(2)(ii) ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4901 note prec.'' in its place.

The revision reads as follows:

52.207–6 Solicitation of Offers from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts).

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Solicitation of Offers From Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts) (Dec 2022)

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■ 148. Amend section 52.212–4 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (r) ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in its place.

The revision reads as follows:

52.212–4 Contract Terms and Conditions—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions—Commercial Products and Commercial Services (Dec 2022)

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■ 149. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(1) ''10 U.S.C. 2402'' and adding ''10 U.S.C. 4655'' in its place;

■ c. Removing from paragraph (b)(52) ''10 U.S.C. 2302 Note'' and adding ''10 U.S.C. Subtitle A, Part V, Subpart G Note'' in its place;

■ d. Removing from paragraph (b)(56) ''10 U.S.C. 2307(f)'' and adding ''10 U.S.C. 3805'' in its place;

■ e. Removing from paragraph (b)(57) ''10 U.S.C. 2307(f)'' and adding ''10 U.S.C. 3805'' in its place;

■ f. Removing from paragraph (e)(1)(xx) ''10 U.S.C. 2302 Note'' and adding ''10 U.S.C. Subtitle A, Part V, Subpart G Note'' in its place;

■ g. Revising the date of Alternate II; and

■ h. In Alternate II removing from paragraph (e)(1)(ii)(S) ''10 U.S.C. 2302 Note'' and adding ''10 U.S.C. Subtitle A, Part V, Subpart G Note'' 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 (Dec 2022)

* * * * *

Alternate II (Dec 2022)

* * * * *

■ 150. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(viii) to read as follows.

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (Dec 2022)

(a) * * *

(2) * * *

(viii) 52.244–6, Subcontracts for Commercial Products and Commercial Services (Dec 2022)

* * * * *

■ 151. Amend section 52.228–12 by—

■ a. Revising the date of the clause; and

■ b. Removing ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4601 note prec.'' in its place.

52.228–12 Prospective Subcontractor Requests for Bonds.

* * * * *

Prospective Subcontractor Requests for Bonds (Dec 2022)

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■ 152. Amend section 52.232–31 by—

■ a. Revising the date of the provision; and

■ b. Removing from paragraph (c) introductory text ''10 U.S.C. 2307(f)'' and adding ''10 U.S.C. 3805'' in its place.

52.232–31 Invitation To Propose Financing Terms.

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Invitation To Propose Financing Terms (Dec 2022)

* * * * *

■ 153. Amend section 52.237–9 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a) ''10 U.S.C. 2324(e)(3)(A)'' and adding ''10 U.S.C. 3744(b)'' in its place.

52.237–9 Waiver of Limitation on Severance Payments to Foreign Nationals.

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Waiver of Limitation on Severance Payments to Foreign Nationals (Dec 2022)

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■ 154. Amend section 52.242–3 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (b) ''10 U.S.C. 2324'' and adding ''10 U.S.C. 3748'' in its place.

52.242–3 Penalties for Unallowable Costs.

* * * * *

Penalties for Unallowable Costs (Dec 2022)

* * * * *

■ 155. Amend section 52.244–6 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (c)(1)(xviii) ''10 U.S.C. 2302 Note'' and adding ''10 U.S.C. Subtitle A, Part V, Subpart G Note'' in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (Dec 2022)

* * * * *

PART 53—FORMS

■ 156. The authority citation for part 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

53.214 [Amended]

■ 157. Amend section 53.214 by—

■ a. Removing from the paragraph (a) heading ''(Rev. 3/2013)'' and adding ''(Rev. 12/2022)'' in its place;

■ b. Removing from the paragraph (c) heading ''(Rev. 9/97)'' and adding ''(Rev. 12/2022)'' in its place; and

■ c. Removing from the paragraph (d) heading ''(Rev. 8/2016)'' and adding ''(Rev. 12/2022)'' in its place.

53.236–1 [Amended]

■ 158. Amend section 53.236–1 by removing from the paragraph (d) heading ''(4/85)'' and adding ''(Rev. 12/2022)'' in its place.

[FR Doc. 2022–25958 Filed 11–30–22; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 2023–01; FAR Case 2016–005; Item II; Docket No. FAR–2016–0005, Sequence 1]

RIN 9000–AN29

Federal Acquisition Regulation: Effective Communication between Government and Industry

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 implement a section of the National Defense Authorization Act for Fiscal Year 2016. This rule clarifies that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms.

DATES: *Effective:* December 30, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or by email at *michaelo.jackson@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 2023–01, FAR Case 2016–005.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 81 FR 85914 on November 29, 2016, to revise the FAR to implement section 887 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). This provision provides that the Federal Acquisition Regulatory Council shall prescribe a regulation making clear that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms. Nineteen 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 and the changes made to the final rule as a result of comments received are provided as follows:

A. Summary of Significant Changes From the Proposed Rule

Minor changes to the proposed rule are made as a result of public comments. At FAR 1.102–2(a)(4), first sentence, the words ''the commercial sector'' are deleted and replaced with the word ''industry'', the word ''commercial'' is deleted, and FAR 1.102–2(a)(4), second sentence, the words ''as part of market research (see 10.002)'' are replaced with ''(*e.g.,* see 10.002 and 15.201)''. These changes are made to clarify that FAR 1.102–2(a)(4) applies to communication with all of industry.

At FAR 1.102–2(a)(4), second sentence, the text that describes examples of exchanges with industry has been abbreviated to provide citations to those descriptions in their respective parts of the FAR; and the text has been changed from ''so long as those exchanges . . . promote a fair competitive environment,'' to ''so long as those exchanges . . . do not promote an unfair competitive advantage to particular firms,'' in order to clarify the purpose of the sentence and better align with the statute.

B. Analysis of Public Comment

1. General Support for the Rule

Comment: A number of respondents that provided comments stated their support of the proposed rule change.

Response: The Councils acknowledge the support of the respondents.

2. Expansion of the Rule Beyond FAR Part 1

Comment: A number of respondents indicated that this rule should expand beyond FAR part 1.

Response: This FAR case implements the requirement of section 887 in part 1; the Councils will carefully consider whether another FAR case would be beneficial to furthering the goal of effective communication. Regulatory coverage is just one of a number of ways in which meaningful dialogue is facilitated between the Government and contractors. For example, the Office of

Federal Procurement Policy (OFPP) has issued ''myth-busting'' memoranda to dispel workforce misunderstandings about what communications are allowed. The Chief Acquisition Officers Council sponsors a Governmentwide knowledge management portal, known as the Periodic Table of Acquisition Innovations, which includes tested artifacts provided by agency acquisition innovation advocates to improve communication with prospective and actual offerors. Agency industry liaisons and small business specialists assist program and acquisition personnel in developing strategies for engaging potential vendors to build and maintain the diversity and resilience of the agency's supplier base, with small business specialists focused, in particular, on communications that can help bring socioeconomic and other small businesses to the base. OFPP has agreed to confer with agency acquisition innovation advocates, agency industry liaisons, and small business specialists, as well as program and project personnel whose programs are supported by contractors, review ideas on effective communication provided in response to crowdsourcing campaigns, and discuss feedback with the Councils.

3. Rule Should Do More To Make an Impact on Communication

a. Establish Agency Official Responsibilities

Comment: A respondent stated that the rule should incentivize officials to enhance levels of communication without fear of reprimand.

Response: The Councils believe the rule builds on existing guidance in FAR subpart 1.1 and FAR part 10, as well as the ongoing efforts by industry and Government to promote greater Government-vendor communications. Acquisition innovation advocates, industry liaisons, and OFPP's continued efforts are expected to help encourage Government acquisition personnel to engage with industry in accordance with existing law and regulation.

b. Develop Government Communication Rules

Comment: A respondent requests that this rule should expand FAR part 10 to include rules on allowable communications.

Response: FAR 10.002(b)(2) covers market research techniques and the Councils believe that additional changes are not necessary at this time.

Comment: A respondent requests that the rule should create safe havens from bid protest for contracting officers that communicate with industry.

Response: The rule encourages communication between Government acquisition personnel and industry as long as the exchanges do not promote an unfair competitive advantage to particular firms, and are consistent with existing laws and regulations.

Comment: A respondent commented that the rule be expanded to include key stakeholders in the communications such as technical personnel.

Response: The Government acquisition personnel referenced in the rule includes key technical personnel. FAR 1.102(c) describes the acquisition team as including the technical, supply, and procurement communities and the customers they serve.

Comment: A respondent commented that before implementing this rule, the Councils should look at Community of Practice and agency communication plans, gather ideas, supplement the rule with non-exclusive list of ideas and crosswalk them to FAR parts 3, 13, 14, and 15.

Response: The Councils reviewed several parts of the FAR that provide policy on exchanges between Government and industry. The Councils determined that amending FAR part 1 was the appropriate place in the FAR for this rule. FAR part 1 sets forth basic policies and general information about the Federal Acquisition Regulations System including FAR parts 3, 13, 14, and 15.

Comment: A respondent stated that the rule should require OFPP to create a FAR-based series of practice, training, or engagement aids to assist in the communication process.

Response: The FAR provides guidance and direction to the contracting workforce and industry. While the FAR sometimes implements guidance published by OFPP, the FAR does not provide direction to OFPP.

c. Require Communication Between Government and Industry

Comment: A respondent stated that the rule should force industry and Government communication.

Response: This change to the FAR encourages effective communication between Government and industry where appropriate. The rule is not a mandate, allowing contracting officers the discretion to use business judgment and best practices.

Comment: Several respondents commented that the rule is not likely to have an impact on the Federal acquisition process as there are no required actions.

Response: The rule amends the FAR to implement section 887 of the NDAA for FY 2016. The rule clarifies that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms. Section 887 did not require communication actions, but clarified that they be permitted and encouraged.

4. Alternative to the Rule

Comment: A respondent noted that revising FAR 1.102 would not enhance communication between Government and industry because very few contracting officers read this part of the FAR or even know that it exists.

Response: The revision in FAR 1.102 is meant to enhance communication between Government and industry when coupled with the existing guidance in FAR subpart 1.1 and the market research strategies set forth in FAR part 10. The rule will be disseminated in accordance with agency procedures to ensure that Government acquisition personnel are aware of the changes to FAR 1.102.

Comment: A respondent stated that FAR part 10 should be amended to change the title and add a new subpart containing policy about communications with industry.

Response: The rules and guidance pertaining to Government exchanges with industry already exist in the FAR, for example FAR 1.102, FAR part 10 and FAR 15.201. The Councils do not believe the requested changes to FAR part 10 are necessary.

5. Recommended Changes to the Proposed Text

Comment: Some respondents stated that the text could be viewed as limiting communication to market research and recommended that the text be more inclusive by covering all of the acquisition process.

Response: The FAR text has been revised to remove a reference to market research and instead provide citations to sections of the FAR that provide examples of communication policies and procedures located elsewhere in the FAR.

Comment: A respondent stated that the text is redundant, since FAR 10.002 encourages exchanges with industry.

Response: The rule encourages exchanges between Government and industry. FAR 10.002 provides market research procedures.

Comment: A respondent suggested the rule be revised to affirmatively state the benefits of proactive, ongoing communication with industry.

Response: There are benefits to proactive, ongoing communication with industry. However, the Councils do not believe the suggested changes are necessary to implement section 887 of the NDAA for FY 2016.

Comment: A respondent stated that the text should cover the preproposal submission industry exchanges described at FAR 15.201.

Response: FAR part 1 sets forth basic policies and general information about the Federal Acquisition Regulations System including FAR part 15.

Comment: Some respondents suggested rewording ''commercial sector'' unless the rule only applies to commercial items/vendors.

Response: In the first sentence of FAR 1.102–2(a)(4) the term ''commercial sector'' is changed to ''industry''.

Comment: A respondent suggested dropping the word ''commercial'' from ''commercial marketplace.''

Response: In the first sentence of FAR 1.102–2(a)(4), ''commercial marketplace'' is changed to ''marketplace''.

Comment: A respondent suggested changing the word ''communicate'' to ''exchange information''.

Response: The first sentence of FAR 1.102–2(a)(4) will not be changed to replace ''communicate'' with ''exchange information''. The term ''communicate'' is used here in its normal dictionary sense, not as the technical usage at FAR 15.306. The Councils believe that the exchange of information is part of communication and that the suggested change is not needed.

Comment: A respondent suggested adding after ''(see 10.002)'' the phrase ''under the general guidelines as provided in FAR 15.201 for all procurements, . . .''.

Response: The FAR text has been revised to remove a reference to market research and instead reference those sections of the FAR where corresponding procedures exist. In addition, the Councils reviewed several parts of the FAR that provide policy on exchanges between Government and industry. The Councils determined that amending FAR part 1 was the appropriate place in the FAR for this rule. FAR part 1 sets forth basic policies and general information about the Federal Acquisition Regulations System including FAR 15.201.

6. OFPP Myth-Busting Memos

Comment: A number of respondents raised concerns with the OFPP's Myth-Busting memoranda referenced in the **Federal Register** Notice for the proposed rule. A respondent stated that the Myth-Busting memoranda did not reflect a full understanding about why contracting officers are often hesitant to communicate with industry. In addition, the respondents were concerned that the memoranda did not go far enough to change the misperception that communications with industry are not endorsed by the acquisition community.

Response: The OFPP's Myth-Busting memoranda highlight the importance of meaningful dialogue between Government and industry. Within the context of this rulemaking, the reference to the memoranda in the preamble of the proposed rule served as an invitation for interested parties to share their assessment of the impediments to effective communication during the acquisition process. It was the intent of the Councils to obtain valuable insights from the community affected most by these challenges so as to develop innovative approaches for overcoming these obstacles in the future.

7. General Concerns About Communications Between Government and Industry

a. Rigid Regulatory Structure Inhibits Communication

Comment: Some respondents stated that the acquisition workforce is constrained by regulations, policies, and procedures that limit communication and flexibility and are incompatible with modern workforce culture and technology changes.

Response: The Councils believe the rule coupled with the existing guidance in FAR subpart 1.1 will better equip Federal acquisition officials to actively engage with industry and overcome the concerns and constraints cited by the respondents.

Comment: Some respondents noted that rigid regulatory structure can cause risk averse contracting officers to shun communications with industry unless it is expressly allowed.

Response: The Councils believe the encouragement provided in the rule will assuage the concerns of risk averse contracting officers.

Comment: Several respondents remarked that contracting officers may be hesitant to engage in communications with industry because they fear saying something inappropriate or drawing a protest because of their statements.

Response: The Councils believe the encouragement provided in the rule will assuage the concerns of fearful contracting officers.

Comment: A respondent emphasized the flexibilities in the FAR.

Response: The Councils acknowledge the input provided.

b. Need for Acquisition Workforce Training

Comment: Several respondents commented that there is a need to improve and increase the communication training that is available to the acquisition workforce.

Response: Training for the Federal acquisition workforce is developed and provided in accordance with agency procedures.

Comment: A respondent suggested including industry speakers at training events and forums. Another respondent recommended instituting cross-functional training and an industry exchange program. A respondent asserted that communication training should be comprehensive and required for contracting personnel.

Response: Training for the Federal acquisition workforce is developed and provided in accordance with agency procedures.

c. Lack of Support for Communicating With Industry

Comment: A respondent commented that industry is ignorant of Government rules and processes surrounding communication.

Response: It is incumbent on industry to ensure their workforces are educated in the rules and processes involved with communicating with the Government.

Comment: A respondent commented that some agencies have not implemented vendor communication plans and are not participating in the ''vendor engagement collaboration community of practice.''

Response: OFPP has called for vendor communication plans and oversees their implementation Governmentwide. Participation in the ''vendor engagement collaboration community of practice'' is encouraged, but not required, by OFPP.

Comment: A respondent commented that effective communication must be ingrained across an organization to achieve any lasting effect.

Response: The Councils agree that wide-spread adoption of effective communication techniques is warranted and believe the rule will further that goal.

Comment: A respondent recommended that the Government establish agency industry liaisons/ombudsmen to facilitate communication.

Response: In its Myth-Busting #4 Memorandum, ''Strengthening Engagement with Industry Partners Through Innovative Business Practices'', issued April 30, 2019, OFPP asked each Chief Financial Officer Act agency to name an industry liaison. Further

establishment of an agency industry liaison or ombudsman is done in accordance with each agency's procedures.

Comment: A respondent recommended expanded use of collaboration tools and technology.

Response: The use of collaboration tools and technology is in accordance with agency procedures.

Comment: A respondent recommended creation of opportunities to exchange information not related to specific procurements, such as reverse industry days and scenario-based role-playing opportunities.

Response: Opportunities to exchange information not related to specific procurements are in accordance with agency procedures.

Comment: A respondent noted that the Government has improved the availability of information.

Response: The Councils acknowledge the input provided.

Comment: A respondent commented that communication with industry is becoming a ''check the box'' exercise.

Response: The Councils do not agree that communication with industry is a ''check-the-box'' exercise. The rule encourages Government acquisition personnel to have engagement with industry.

Comment: A respondent commented that Government should increase the amount of communications with industry and ensure that communications with industry result in better solutions and value.

Response: The purpose of the rule is to have more effective communication with industry that results in better solutions and greater value.

Comment: A respondent recommended that the Government ensure contracting officers have management support to be innovative in their communications and collaborations with industry.

Response: Contracting officers already have the authority to be innovative in their communication with industry (see FAR 1.102–4).

Comment: A respondent suggested that a lack of organizational support undermines efforts toward improved industry communications.

Response: The Councils do not believe that there is a lack of Government organizational support for increased communications with industry and believe the rule will bolster the level of organizational support for improved industry communications.

Comment: A respondent commented that the acquisition community is not utilizing the ability to communicate with industry to the fullest extent.

Response: The rule encourages communication with industry. The Councils believe it will result in more extensive interaction.

d. Industry/Government Working Group

Comment: Some respondents urge that an industry/Government working group be established to determine how rules governing communications can be strengthened.

Response: The rule will be implemented by each agency. As agencies deem appropriate, implementation may include any number of collaborative methods.

8. Public Feedback

In addition to the text of the proposed rule, the Councils welcomed, in the preamble, public feedback suggestions on: which phases of the acquisition process would benefit from more exchanges with industry and what specific policies or procedures would enhance communication during these phases; whether any current Federal acquisition policies inhibit communication, and if so, how such policies may be revised to remove barriers to effective communication; and whether it may be beneficial to encourage or require contracting officers to conduct discussions with offerors after establishing the competitive range for contracts of a high dollar threshold. The public feedback will be valuable when developing further initiatives to address effective and efficient communications during the acquisition process. The Councils extend their appreciation for the input provided by the public regarding further enhancing open communication between industry and the Federal acquisition community. A discussion of the public input is as follows:

a. Enhanced Communication—All Phases

Comment: Several respondents stated that all phases of the acquisition lifecycle would benefit from enhanced communication and that communication is essential during all three phases of the acquisition process and should not be limited to a specific phase.

Response: The FAR authorizes a broad range of opportunities for vendor communication; the acquisition workforce is encouraged to engage industry early and frequently throughout an acquisition in accordance with applicable statutes, ethics regulations, procurement integrity requirements, and other statutes or regulations that govern communication and information sharing.

b. Enhanced Communication—Market Research

Comment: Several respondents stated that Government acquisition personnel should use market research to communicate agency needs and to obtain input in requirements development, although the communication should not be limited only to market research phase. Some respondents stated that the Government should respond to industry input during market research including submissions of read-receipts and analysis of respondents.

Response: The acquisition workforce is encouraged to use the wide range of techniques for conducting thorough market research as identified in the FAR and additional agency guidance. Market research is a critical step that informs key decisions in acquiring best value goods and services—while an effective and informed market research practice is important, it is only a building block that plays a part in the acquisition and affects future outcomes and practices. Effective market research enables agencies to gain an understanding of the marketplace and helps inform agencies on requirements development which in turn help drive strategy and future interactions with potential vendors.

Comment: Several respondents recommended that Requests for Information be used to solicit input and that that input and response should be publicly shared. A respondent stated that Government acquisition personnel should share information with industry including strategic plans, acquisition dashboard, and acquisition forecasts.

Response: Issuing an RFI enables agencies to not only understand the capabilities of industry, but to also develop and improve acquisition strategy regarding contract type, performance requirements, performance work statements/statements of work, and performance metrics. Agencies are encouraged, to the allowable extent, to share relevant procurement materials and information to support better industry engagement.

Comment: A respondent stated that some agencies have not implemented vendor communication plans.

Response: As part of the ongoing Governmentwide effort to improve vendor communication, and in accordance with OFPP myth-busting guidance, agencies maintain vendor communication plans for the purpose of reducing barriers to communication, incorporating more industry input into agency acquisitions, publicizing

engagement events, and providing training and awareness to employees and vendors.

Comment: The respondent added that Chief Management Officers (CMOs) should be empowered to optimize business processes across Federal agencies.

Response: Successful acquisitions that deliver best value are dependent on the work of various participants ranging from the program office, to the acquisition personnel, to executives leading the process, to the policy and strategic office, legal counsel, and many more. As an example, the Category Management Leadership Council (CMLC) is a council of representatives that come from the agencies who comprise the majority of Federal procurement spending. The Council representatives are agency Category Managers who are empowered to manage, structure, and help guide agency spending to make Federal procurements more efficient and cost effective.

Comment: A respondent stated that OFPP should define the Federal acquisition workforce roles and responsibilities and should be granted the authority to manage the acquisition workforce and related roles.

Response: OFPP statutory authorities and responsibilities are set forth in the Office of Federal Procurement Policy Act, which is generally codified within subtitle I of title 41 of the United States Code. OFPP sets qualification training standards and certification standards for the civilian acquisition workforce and sets the requirements for and oversees the Federal Acquisition Institute (FAI). Having skilled, competent, and professional personnel is essential to agency success.

Comment: A respondent stated that all significant programs be led and managed by an ''Integrated Accountability Chain'' similar to the Integrated Project Team, and industry should be engaged by such teams.

Response: Successful acquisitions that deliver best value are dependent on the work of various participants ranging from the program office, to the acquisition personnel, to executives leading the process, to the policy and strategic office, legal counsel, and many more. This multidisciplinary team that collaborates and communicates throughout the process is collectively responsible for leveraging the Government's buying power.

Comment: The respondent recommended that Government should create a cost focused culture by using rigorous business case analyses that assess total costs for decision making and use of share-in-savings.

Response: OFPP recognizes that the Federal Government, in its procurement activity, should leverage its buying power to the maximum extent as well as achieve administrative efficiencies and cost savings. OMB memorandum M–19–13, Category Management: Making Smarter Use of Common Contract Solutions and Practices dated March 20, 2019, provides guidance on the use of category management to eliminate redundancies, increase efficiency, and deliver more value and savings from the Government's acquisition programs.

c. Enhanced Communication—Solicitation/Award

Comment: A respondent stated that lack of discussions during the solicitation phase can cause cost increases and program performance issues and recommended that more conversations, webinars, question/answer sessions be conducted during the proposal response phase.

Response: A well-planned solicitation process is a valuable opportunity for agency acquisition personnel and potential vendors to interact and exchange information on the procurement. Industry days, as well as presolicitation and preproposal conferences, directly benefit the government by promoting a common understanding of the procurement requirements, the solicitation terms and conditions, and the evaluation criteria. Agency acquisition personnel are encouraged, when appropriate, to use interactive web-based technology to expand the reach of the exchange, such as a live webinar with streaming video to immediately address questions. Agency acquisition personnel are encouraged to combine such an approach with additional meetings available to all potential vendors to make solicitation engagements more useful, especially for large, complex requirements.

Comment: A respondent stated that Government acquisition personnel use more innovative solicitation techniques including open-ended solicitation methods that allow industry to provide alternative solutions, using Statement of Objective as default solicitation method, and disclosing the weights of all evaluation factors. Another respondent noted that FAR 15.206 already permits amending the solicitation to change the evaluation criteria, when the solicitation no longer meets the Government's needs.

Response: Agency acquisition workforce is encouraged to use the broad range of FAR techniques to pursue innovative techniques throughout the acquisition process, including the solicitation phase.

Comment: A respondent stated that information on Federal Business Opportunities (FBO) is not up to date, is not being updated by Government officials, and many Government platforms are antiquated. The respondent also stated that it is difficult to make contact with Government contracting officers when an offeror has a question regarding the status of a solicitation.

Response: The Federal Business Opportunities site has been moved to the System for Award Management and is now known as Contract Opportunities.

d. Enhanced Communication—Post Award

Comment: A respondent stated that post award continued communication enables mitigation of disputes, enables course correction, and enhances past performance information. The respondent recommended that post award ''kick-off'' meetings be required between key Government personnel and the incoming contractor to ensure common understanding of requirements and expectations of contract transition and execution.

Response: A post-award orientation, also known as a ''kick-off meeting,'' enables both acquisition personnel and contractor to have a complete understanding of their roles and responsibilities. This post-award orientation aids both Government and contractor personnel to (1) achieve a clear and mutual understanding of all contract requirements, and (2) identify and resolve potential problems. When deciding whether post-award orientation is necessary, and if so, what form it will take, the agency acquisition personnel must consider factors such as type, value, and complexity of the contract; length of the planned production cycle; complexity and acquisition history of the product or service, and complex financing arrangements.

Comment: A respondent stated that thorough past performance evaluations be required with a full-scale utilization of the Contractor Performance Assessment Reporting System (CPARS).

Response: In accordance with FAR subpart 42.15, Contractor Performance Information, agencies are responsible for recording and maintaining contractor past performance information, including relevant ratings and supporting narratives. Assessments of a contractor's performance and contractor adherence to Federal rules and regulations are

critical to informing source selection and award decisions and ensuring the government builds relationships with high-performing suppliers. OFPP concurs that improving the collection and use of this information will increase agencies' ability to deliver better outcomes and increase productivity. OFPP has worked and will continue to work with agency Chief Acquisition Officers (CAOs) and Senior Procurement Executives (SPEs) to improve the value of contractor performance assessments and increase the transparency of data about contractor integrity.

Comment: A respondent stated that post-award debriefings should be required to contain all information that would otherwise be releasable in the course of a legal discovery process, including a detailed description of how the offeror was rated in each of the evaluation criteria.

Response: The current FAR contains a satisfactory description of the information to be disclosed, at FAR 15.506(d). In January 2017, OFPP released general guidance and best practices on debriefings via the ''myth-busting'' memorandum ''Myth-busting 3—Further Improving Industry Communication with Effective Debriefing.'' As stated in the memorandum, ''the debriefing is meant to provide a thorough explanation of the basis for the award'' and should comply with the requirements in accordance with FAR 15.506, including an explanation of deficiencies and strengths of offeror proposal; ratings of debriefed offeror's proposal and successful offeror's proposal; past performance ratings of the offeror; overall general ranking of proposals when any ranking was developed by the agency during the source selection; and reasonable responses to relevant questions.

Comment: A respondent stated that continued, consistent communication is needed after an award has been announced. The respondent cited instances where respondent requested post-award debriefings and level of response from contracting officers varied from responsive to no response.

Response: FAR 15.506, Post-award debriefing of offerors provides for the timely debriefing of offerors as well as the information a contracting officer is required to include when a timely request for debriefing is received. In January 2017, OFPP released general guidance and best practices on debriefings via the ''myth-busting'' memorandum ''Improving Industry Communication with Effective Debriefing'' which includes guidance on promptly responding to requests for debriefings.

Comment: A respondent recommended that the Government institute a ''360-degree'' assessment of the acquisition process. The respondent stated that the OFPP ''Acquisition 360'' assessment only applies to a limited number of agency acquisitions and only focuses on the pre-award process.

Response: The final rule for FAR Case 2017–014, Use of Acquisition 360 to Encourage Vendor Feedback, will encourage the use of a standardized survey instrument to facilitate feedback from industry on their experience with the Federal marketplace.

e. Communication Inhibitors

Comment: Several respondents identified that FAR 15.201, which addresses exchanges with industry before receipt of proposals could be further revised for clarification regarding presolicitation and postsolicitation communication, protecting submitted industry information, and providing scenarios on how acquisition personnel may engage with industry.

Response: OFPP has identified improved communication with industry as a core element for driving better return from each dollar spent on acquisitions. To maximize the return on its acquisition investment and to ensure access to high-quality solutions, the acquisition workforce must ensure it conducts productive interactions with its industry partners. OFPP, in consultation with the Councils, will continue to evaluate the relevant FAR sections to ensure clear and accurate information.

Comment: Several respondents identified that FAR 15.306 which addresses exchanges with offerors after receipt of proposals could be further revised and clarified with definitions. Some respondents stated that the section should be revised to allow communication to better understand proposals prior to establishing a competitive range and/or prior to contract award. Several respondents identified additional FAR sections that could be further revised for clarification (including FAR part 3, part 10, 15.307, 15.505, 15.506). Several respondents stated that Government agencies should be more explicit about industry communication rules. A respondent stated that further public feedback and input is needed as such changes to the FAR may have unintended consequences.

Response: Improved communication with industry is a core element for driving better return from each dollar spent on acquisitions. To maximize the return on its acquisition investment and to ensure access to high-quality solutions, the acquisition workforce must ensure it conducts productive interactions with its industry partners and maximizes the guidance and instructions provided in the FAR. OFPP, in consultation with the Councils, will continue to evaluate the relevant FAR sections to ensure clear and accurate information. The Councils will carefully consider whether another FAR case is necessary to expound on communication beyond what is included in this FAR case.

f. Encourage/Require Discussions

Comment: A respondent supported that encouraging or requiring discussions after establishing the competitive range could be beneficial to the procurement process to the extent that doing so would not further impede the procurement process or create unequal discussions. Another respondent supported the encouraging or requiring of discussions for contracts valued at twenty million dollars and above. Other respondents stated that encouraging or requiring discussions after establishing the competitive range could be beneficial and this decision should be based on complexity of the contract.

Response: While agencies do not have the resources, and are not required, to meet with every vendor at every step of the acquisition process, information gathered from industry sources plays an invaluable role in the acquisition process. Industry partners are often the best source of information, so productive interactions between Federal agencies and the private sector are encouraged to ensure that the Government clearly understands the marketplace and can award a contract or order for an effective solution at a reasonable price. The Federal Government's ability to achieve successful program outcomes, effectively and efficiently, depends upon agencies establishing effective strategies for industry engagement and supporting those strategies with senior-level commitment.

Comment: A respondent stated that imposition of a communication requirement on all contracts may unnecessarily slow the acquisition process. A respondent stated that further steps should be taken to address contract review processes for lower cost contracts.

Response: While discussions may add time to the acquisition schedule, the contracting officer should make a thoughtful decision as to whether to

conduct discussions and, if so, what the scope and extent of discussions required should be. Schedule pressures should generally not be the primary, or even a strong, driver in the contracting officer's decision on whether or not to hold discussions. One consideration the contracting officer should take into account is that conducting robust presolicitation communications with industry may actually minimize the need for discussions and result in a better technical solution and improved contract performance. Other considerations include the complexity of the procurement, and the history of change orders on previous or related contracts that were due to lack of a clear understanding of the requirements, and contract terms and conditions by the parties.

9. Issues Outside the Scope of the Rule

Comment: A respondent commented that the rule should clarify that professional conference attendance is authorized so industry and Government dialogue can take place. A respondent encouraged Government to host procurement-related training conferences and tradeshows and have Government employees attend those events.

Response: Government acquisition personnel host and or attend professional conferences consistent with existing laws and regulations and in accordance with agency procedures. The respondent's suggested changes are outside the scope of this case.

Comment: A respondent stated that the rule should encourage the workforce to use the flexibilities in FAR 1.102(d) and/or discourage officials from issuing guidance that stifles innovation.

Response: The rule encourages communication between Government acquisition personnel and industry. The respondent is suggesting changes to FAR 1.102(d) concerning the use of acquisition initiatives; the suggested changes are outside the scope of this case.

Comment: A respondent commented that the rule should clarify that professional conference attendance is authorized so industry and Government dialogue can take place.

Response: Government acquisition personnel attend professional conferences consistent with existing laws and regulations and in accordance with agency procedures. The respondent's suggested change is outside the scope of this case.

Comment: A respondent advocated that agencies should be required to create and report on metrics to indicate progress towards strategic objectives.

Response: The respondent's suggestion is outside the scope of the case.

Comment: A respondent recommended mandatory collection of data on all protests filed and resolved by agencies, including data on evaluation technique and contract type. The respondent recommended that Government agencies or components form a protest review committee comprised exclusively of Government legal and contracting experts to perform an independent review of the protest record and oversee any corrective action.

Response: Protest processes and procedures are described in the FAR. Agencies may supplement these processes, as necessary and proper. The remainder of the comment is outside the scope of this case.

Comment: A respondent pointed out that in bill H.R. 1735, the National Defense Authorization Act appears to have been vetoed by the President on October 2, 2016, and does not see any action to override the veto. The respondent questioned whether it is appropriate to issue regulations in anticipation of a veto override.

Response: The President signed into law S. 1356, Public Law 114–92, the ''National Defense Authorization Act for Fiscal Year 2016'', on November 25, 2015, that contains Sec. 887 on which the rule is based.

Comment: A respondent commented that the FAR Council, Defense Acquisition Regulations System (DARS), Defense Procurement and Acquisition Policy (DPAP) circumvent the Small Business Act and Organizational Conflicts of Interest. This proposed illegal change to the Federal Acquisition Regulations should be scrapped.

Response: This comment is outside the scope of the current rule.

Comment: A respondent provided statements on the West Virginia House Bill #2339; that it may impact relations with the coal industry. The bill declares that when coal is mined and used in West Virginia, coal mines do not have to be permitted by the Environmental Protection Agency.

Response: This comment is outside the scope of the current 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 final rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial products, including COTS items, or for commercial services.

IV. Expected Impact of the Rule

The rule is expected to benefit both the Government and industry by encouraging more constructive communication during the Government's market research efforts.

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 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. 601–612. The FRFA is summarized as follows:

This rule implements section 887 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92), which provides that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. The objective of the rule is to encourage Government acquisition personnel to communicate with industry to determine the capabilities available in the marketplace in a manner that complies with existing laws and regulation.

There were no significant issues raised by the public in response to the Initial

Regulatory Flexibility Analysis provided in the proposed rule.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, *et seq.* Data obtained from the Federal Procurement Data System for FY 2019 through 2021, indicates that an average of 2,559,356 new awards were awarded to an average of 61,797 small entities annually.

This rule does not impose any new reporting, recordkeeping or other compliance requirements.

There are no known alternative approaches to the rule that would accomplish the objectives of the statute.

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 the Small Business Administration.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Part 1

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 part 1 as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

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

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 2. Amend section 1.102–2 by—

■ a. Revising paragraph (a)(4);

■ b. Redesignating paragraphs (a)(5) through (7) as paragraphs (a)(6) through (8), and

■ c. Adding a new paragraph (a)(5).

The revision and addition read as follows:

1.102–2 Performance standards.

(a) * * *

(4) The Government must not hesitate to communicate with industry as early as possible in the acquisition cycle to help the Government determine the capabilities available in the marketplace. Government acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry (*e.g.,* see 10.002 and 15.201), so long as those exchanges are consistent with existing laws and regulations, and do not promote an unfair competitive advantage to particular firms.

(5) The Government will maximize its use of commercial products and commercial services in meeting Government requirements.

* * * * *

[FR Doc. 2022–25959 Filed 11–30–22; 8:45 am]

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